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

**DRAFT OPINION  
ON THE DRAFT LAW ON MEETINGS, RALLIES  
AND MANIFESTATIONS  
OF BULGARIA**

**on the basis of comments by**

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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 27 March 2009, the Bulgarian authorities sought the Venice Commission's assessment of the draft Law on meetings, rallies and manifestations (CDL(2009)067, hereinafter "the Draft Law").
2. Ms Flanagan and Messrs Aurescu and Grabenwarter were appointed as rapporteurs. The rapporteurs were not provided with background information on this Draft Law, and did not have a chance to visit Bulgaria in order to get acquainted with the situation concerning freedom of assembly in that country. Their comments were therefore only based on an abstract analysis of the text.
3. The present opinion was prepared on the basis of the rapporteurs' contributions and was adopted by the Venice Commission at its ... Plenary Session (Venice, ... 2009).

## II. General observations on the European and international standards on the freedom of assembly

4. Article 43 of the Constitution of Bulgaria adopted on 12 July 1991 provides as follows:

"(1) Citizens shall have the right to peaceful and unarmed assembly for meetings and manifestations.  
(2) The procedure for the organizing and holding of meetings and manifestations shall be established by law.  
(3) No notice to the municipal authorities shall be required for meetings held indoors."

5. Article 5 of the Constitution provides that international instruments ratified and which have come in to force are part of domestic legislation and supersede conflicting legislation. Bulgaria has acceded to both the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR).
6. The Venice Commission has adopted several opinions<sup>1</sup> on laws dealing with the right of assembly and has set out therein the European and international standards on the freedom which mainly derive from ECHR and ICCPR together with their related case law. These were summarised in an opinion adopted in October 2006<sup>2</sup> as follows:

- *The freedom of assembly is a fundamental democratic right and should not be interpreted restrictively.*
- *It covers all types of gathering, whether public or private provided they are "peaceful".*
- *It is a "qualified" right and the state may justify what is a prima facie interference with the right. Article 11(2) ECHR expressly permits limitations provided they are "such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or*

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<sup>1</sup> See Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia ([CDL-AD\(2004\)039](#)); Opinion on the Draft Law Making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia ([CDL-AD\(2005\)007](#)); Opinion on the Law Making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, rallies and Demonstrations of the Republic of Armenia ([CDL-AD\(2005\)035](#)); Opinion on the Draft Law on Freedom of Conscience and Religious Entities of Georgia ([CDL-AD\(2003\)20](#)); Opinion on the Law on Assemblies of the Republic of Moldova ([CDL-AD\(2002\)27](#)).

<sup>2</sup> [CDL-AD\(2006\)034 Opinion on the Law on Freedom of assembly in Azerbaijan, adopted by the Venice Commission at its 68th Plenary Session \(Venice, 13-14 October 2006\)](#)

*crime, for the protection of health or morals or for the protection of the rights and freedoms of others". The State is given a wide margin of appreciation in order to deal with disorder or crime or to protect the rights and freedoms of others.*

- *A regime of prior authorisation of peaceful assemblies is not necessarily an infringement of the right but this must not affect the right as such.*
- *The state may be required to intervene to secure conditions permitting the exercise of the freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. This involves arriving at a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community i.e. by applying the principle of proportionality.*
- *The exercise of fundamental rights and freedoms is a constitutional matter par excellence and, as such, should be governed in principle primarily by the Constitution.*
- *Fundamental rights should, insofar as possible, be allowed to be exercised without regulation, except where their exercise would pose a threat to public order and where necessity would demand state intervention. A legislative basis for any interference with fundamental rights such as the right of peaceful assembly is required by the Convention. The relevant regulation, in other words, should focus on what is forbidden rather than on what is allowed: it should be clear that all that is not forbidden is permissible, and not vice-versa.*
- *Accordingly, it is not indispensable for a State to enact a specific law on public events and assemblies, as control of such events may be left to general policing and the rights in relation to them may be subject to the general administrative law.*
- *Laws specifically devoted to the right of freedom of assembly, if they are enacted, should be limited to setting out the legislative bases for permissible interferences by State authorities and regulating the system of permits without unnecessary details.*

7. The Constitution of Bulgaria thus provides an appropriate basis for giving effect to the guaranteed freedom of assembly.

### **III. General observations concerning the draft law**

8. According to the after OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly<sup>3</sup> (hereinafter OSCE/ODIHR-Venice Commission Guidelines), national legislation governing freedom of assembly should clearly articulate three principles: the presumption in favour of holding assemblies, the state's duty to protect peaceful assembly and proportionality.

9. The Bulgarian Draft Law attends to this order by Article 1, Article 3 paragraph 2 and Article 13, which is highly appreciated. Article 1 establishes the state's duty to ensure the freedom of assemblies and to take appropriate measures of the peaceful implementation thereof. Article 3 paragraph 2 sets up the presumption in favour of holding assemblies by claiming that the

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<sup>3</sup> CDL(2008)062 [OSCE / ODIHR Guidelines on Freedom of Peaceful assembly](#), endorsed by the Venice Commission, at paragraph 24.

exercise of this right is not subject to any restriction (except in cases prescribed by law, and the legal aims named in Article 3 paragraph 2 are identical to the legal aims of Article 11 paragraph 2 ECHR).

10. It is to be observed nevertheless that the Draft Law seeks to regulate the exercise of the freedom of assembly in considerable detail. There is inevitably a difficulty with seeking accurately and comprehensively to describe and regulate the variety of circumstances that the Draft Law seeks to describe and regulate. As will be seen from the comments below, there is in places in the Draft Law ambiguity and vagueness about what is intended. This is unsatisfactory where it occurs especially since freedom of assembly covers all type of gathering, whether public or private, provided it is peaceful.

11. In view of the approach taken in the Draft Law, it is essential that adequate awareness-raising and training for the authorities in its implementation be assured to avoid an overly restrictive reading of the law and to ensure that the freedom of assembly is guaranteed in practice so that international human rights standards are, in fact, met. The OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly emphasise this requirement.<sup>4</sup>

#### **IV. Analysis**

##### **A. Definitions and scope of application**

12. Article 1 is broadly drafted and sets out the principle that there is freedom of peaceful assembly. It sets out the order for the organization and holding of “meetings, rallies and manifestations”. An “Additional provision” after Article 27 paragraph 1 gives a more specific definition of “meetings, rallies and manifestations”. All of them are peaceful meetings; meetings and rallies are static ones, whereas manifestations are understood to include movement from one place to another. It is important not to restrict the scope of the law only to these two categories of assemblies – meetings and manifestations (or processions – the term used in the OSCE/ODIHR - Venice Commission Guidelines): for instance, pickets are not mentioned in the draft law. On the other hand, in order to avoid repetitions and enumerations – which are difficult to be exhaustive – in the title it is suggested that the draft law be titled “Law/Act on freedom of assembly” or on “peaceful assemblies”.

13. Article 1 at sub-paragraph 3 correctly acknowledges the state's positive obligation to protect the right to assemble.

14. The Draft Law shall not apply to cultural and sport events, weddings, family and friendly celebrations, funeral rites, religious ceremonies and the like (Article 2). These exceptions are consistent with the idea of assemblies under Article 11 ECHR that does not include assemblies for social purposes. It is recommended to place this provision at the very beginning of the law.

15. However, the phrase "and the like" is vague and, undoubtedly, there will be a variety of events which either do not clearly fall into the excepted category on the one hand or clearly into the non-excepted category of "public event" which is defined in Article 27 and comprehends meetings, rallies and manifestations "for the purpose of expressing opinions, views or disapproval regarding matters of political, economic, social, cultural or other nature." It would seem that once the purpose of an assembly is publicly to express an opinion of some sort that it is covered by the Draft Law. However, cultural, social or religious events might also seek to express an opinion and in these circumstances it is not clear whether the Draft Law applies to them.

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<sup>4</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraphs 117 – 119.

16. The Draft Law further states in Article 2 that it is not applicable to those meetings that are “held in virtue of a separate law or another statutory instrument”, without explicitly detailing to what other laws assemblies may be subject. Since the Draft Law is supposed to be a general law governing the freedom of assembly, the possibility of assemblies being governed by other unspecified laws should be avoided. Also, such a provision might undermine the requirement of foreseeability of the law: an individual may assess whether his/her organisation of, or participation in, an assembly is in compliance with the law, only if he/she knows which laws govern public assemblies. Specific and concrete references or indications as to these “other laws” should be included in this Article.

17. The Draft Law has no distinct and concrete provisions on counter-demonstrations (with the exception of only one side reference in Article 15 para. 3) and no provisions on spontaneous assemblies. Specific articles should be dedicated to these two kinds of assemblies, according to the OSCE/ODIHR - Venice Commission Guidelines.

18. Freedom of peaceful assembly is to be enjoyed equally by everyone. The Bulgarian Act refers to the constitutional right to hold peaceful assemblies of citizens of the Republic of Bulgaria, foreign citizens and stateless persons<sup>5</sup> (Article 1 paragraph 2). This is consistent with international human rights law and the Guidelines<sup>6</sup>. It is recommended to add a statement concerning the ability of children and other persons without full legal capacity to hold peaceful assemblies under this Draft Law<sup>7</sup>.

19. The Guidelines stipulate that the organization and holding of assemblies shall be exercised both by individuals and by corporate bodies<sup>8</sup>. Article 3 paragraph 1 acts upon this maxim by approving the organization and holding of assemblies by citizens, political parties, movements and other organizations of citizens.

20. Article 3 paragraph 2 is generally satisfactory and sets out the permitted restrictions on freedom of assembly precisely as they are provided for in Article 11 para. 2 ECHR.

21. It is to be welcomed that the Bulgarian Draft Law emphasizes the fact that citizens’ participation in assemblies shall be free and voluntary and that citizens may not be prosecuted or punished for organizing, or taking part in, assemblies (Article 5). Article 23 stipulates that each organizer or participant is responsible for the damage that he/she has wilfully caused during the course of the public event. It is recommended to expand this provision in accordance with the OSCE/ODIHR - Venice Commission Guidelines<sup>9</sup> to the effect that the organizers shall not be held liable for actions of individual participants or stewards who fail to adhere to the

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<sup>5</sup> The draft law like the Constitution of Bulgaria (see para. 3) use the term “citizen”. In the opinion on the Constitution of Bulgaria (CDL-AD(2008)009), the Venice Commission has expressed its concern for this apparent restrictions on fundamental rights, but had accepted the explanation by the Bulgarian authorities that “the term ‘citizen’ refers to all individuals to whom this Constitution applies” and that therefore the term “citizen” shall be read as “everyone”, except when it is used together with the adjective “Bulgarian. The Venice Commission had nevertheless expressed the wish that the term “citizen” should be replaced with the equivalent of “everyone” during a future constitutional revision. For the same reasons, the Venice Commission considers that the term “citizens” should also be changed in the Draft Law under consideration.

<sup>6</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 53

<sup>7</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraphs 55, 57

<sup>8</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 51

<sup>9</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 161

terms of their briefing, and that under no circumstances the organizer of a lawful and peaceful assembly should be held liable for disruption caused by others.

#### B. Organizing and holding of a public event

22. It is not stated whether it is essential to have an "organiser" though in view of the rights and obligations accorded to the organiser in the Draft Law, it is assumed that it is intended that one is essential. This should be clarified. Nor is it clear what is the difference between the role of the "organiser" and the "leader" where a leader is appointed and this needs to be clarified also. In addition, more precise provisions seem necessary in cases where the organizer is a legal person (party or movement of citizens ..., cf. Article 19 para. 2). For these cases the wording of the law shall include the words "or a representative of the organizers".

23. Article 7 paragraph 1 stipulates that assemblies may be held at any time of the day except between 22:00 and 6:00. This seems to be a blanket legislative provision that bans assemblies at specific times, but Article 7 paragraph 2 explains that this restriction does not apply, when due to the nature of the event it can be held at any time of the day, as long as this does not disturb the public order. Despite paragraph 2, the question arises whether or not this restriction on time could be seen as proportionate. Unlike Article 14, Article 7 does not refer to Article 3 para. 2. It is questionable whether this is in line with Article 11 of the ECHR. Therefore, it is recommended to withdraw this provision and instead to decide upon a restriction on time by using a case by case basis<sup>10</sup>.

24. Articles 8 and 9 of the draft regulate the rights and obligations of the organiser of an assembly. According to the international standards on the matter, these provisions may also include a reference to the possibility of children and persons without full legal capacity other than children to be among the organisers, under certain conditions (age requirement and/or consent of the parents or legal guardians).

25. Article 8 para.2(2) requires that the organiser identify him or her self and, where an organisation is involved, that detailed information about the objective, format and estimated time of completion be announced. The obligation to give this information (if it is known) amounts to a restriction which is not related in the Draft Law to any of the permissible restrictions in Article 11 para. 2 ECHR.

26. As concerns the requirement in Article 8 para. 2(3) that the organiser "shall take measures aimed at securing compliance of the participants in the public event with the legislation and the requirements for the protection of the public peace", it should be made clear that it is not intended to place the burden or the responsibility on the organiser for policing. As the Guidelines state at paragraph 159 "*[U]nder some circumstances, it may be legitimate to impose on organizers a condition that they arrange a certain level of stewarding for their gathering. However, such a condition should only be imposed as the result of a specific assessment and never by default. Otherwise, it would violate the proportionality principle. Any requirement to provide stewarding in no way detracts from the positive obligation of the state to provide adequately resourced policing arrangements. Stewards are not a substitute for the police, and the police still bear overall responsibility for public order.*"

27. Articles 9 and 10 provide for the appointment and rights and obligations of a leader of the public event. This rule is not a necessity, as it restricts the exercise of the rights and duties of the organisers to only one person. Also, the provision of Article 9 para. 3 ("The leader shall open the event, preside over its course and close the event") is likely to affect the way the

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<sup>10</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 83

freedom of assembly is exercised during the assembly, as it is up to the participants to the assembly to decide freely inter alia upon whom to open, preside and close the event.

28. The provision of Article 10 para. 2 is not fully clear. Does the leader act as “the arm” of the authority or police? In the affirmative, which “procedure” does he apply? What are the rules of judicial review, under what terms is he liable for illegal acts?

29. Article 11 details the rights and obligations of participants. The content of Article 11 para. 1 duplicates that of Article 5. The text may be redrafted as to provide that any participant to an assembly has the right to discontinue his/her participation at any time during the unfolding of the assembly.

30. Article 11 paragraph 2 subparagraph 5 prohibits the blocking of the free entry and exit to and from buildings, constructions and other areas in, or adjacent to the venue of the public event. This blanket prohibition is excessive, as it is irrespective of any considerations of public safety or health or the rights or freedoms of others. In general it can be said that there will be some inconvenience to some of the public when a public event is held and this must be tolerated to a reasonable degree. It is therefore recommended to withdraw this provision and instead to decide upon a restriction by using a case by case basis.

31. Article 11 para. 3 (3) setting forth the prohibition for participants to wear masks should be redrafted to the effect that it should be possible for the competent authorities to decide on a case-by-case basis on whether to ban masks from certain assemblies, depending on the risk potential of the individual assembly and its participants. This decision should be based on the principle of proportionality.

32. The obligations of the competent authority and the Ministry of the Interior (Articles 12 and 13) requiring the organising of policing and the presence of a representative might not be necessary in the case of very small assemblies which present no threat of disorder or inconvenience, all of which appear to be covered by the Draft Law (see also comment in relation to Article 27 paragraph 3 below).

### C. Restrictions on Organising and conducting a Public Event

33. This Article stipulates the requirement to respect the principle of proportionality in restricting events and specifically links such restrictions to Article 3 of the Draft Law which reiterates the provisions of Article 11 para. 2 ECHR. This is a desirable provision.

34. Article 15 para. 1 sets forth that the competent authority may propose the organisers a change in time and venue of the public event. According to the OSCE/ODIHR-Venice Commission Guidelines, “*restrictions placed on assemblies should be communicated in writing including a brief explanation of the reason for each restriction*”<sup>11</sup>. Neither the requirement of written form nor the requirement of explanation can presently be found in the Draft Law. It is highly recommended to add these provisions.

35. The Draft Law stipulates a proposal of a change of time and venue of the public event, if necessary, but it does not stipulate any provision concerning the required reaction of the organizer thereon. It is recommended to add a provision instructing the organizer to submit a written notification with regard to the changed time and venue to the authority.

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<sup>11</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 106

36. Concerning simultaneous assemblies, it is the “first come, first served” rule that is used in the Draft Law. This is consistent with international human rights standards and the OSCE/ODIHR-Venice Commission Guidelines, provided however that there lack sufficient policing resources to manage both meetings, given that, as the OSCE/ODIHR – Venice Commission Guidelines point out, “*related simultaneous assemblies should be facilitated so that they occur within sight and sound of their target insofar as this does not physically interfere with the other assembly*”<sup>12</sup>. A prohibition on conducting public events in the place and time of another public event would be a disproportionate response, unless there is a clear and objective indication that both events cannot be managed in an appropriate manner through the exercise of policing powers. This condition should therefore be added.

37. The authority shall propose that, in case of a conflict, the organizers who submitted their notification at a later date are required to choose another venue or time for their event (Article 15 paragraph 3). It is recommended to add the criteria of written form and explanation for the authority’s proposal, too.

38. In case of disagreement between the competent authority and the organizers on the change, it is important to provide the organizers the possibility to challenge this decision or to clarify the issue before the appropriate authorities, including in court. A specific reference in this regard should be included in the draft law.

#### D. Prohibition to conduct a public event

39. It is necessary that the decision-making and review process is fair and transparent. Article 18 stipulates that the notification submitted within the defined period of time shall be subject to consideration. Article 16 stipulates that the event shall be prohibited according to *undisputable data*. However, there is no clear definition for the term “undisputable data”, and it is also unclear how the competent authority gains access to this data. The Bulgarian Draft Law does not provide for facilitating meetings with the organizer and other interested parties, the communication of relevant concerns to the organizer, or the organizer’s opportunity to respond to any concerns raised<sup>13</sup>. In order to foster a cooperative relationship between the organizers and the authorities and to avoid the imposition of arbitrary and unnecessary restrictions, it is recommended to add provisions including the named purposes into the Bulgarian Draft Law.

40. Article 16 para. 1 (7) provides for the prohibition of the assembly “when the notification has been submitted after the stipulated by this Act period”. This prohibition is excessive, and should be deleted (see also the comments related to Article 18 para. 2, below) . The Draft Law must provide for the possibility of holding spontaneous assemblies, without need of prior notification.

41. Article 16 paragraph 2 provides for a prohibition of the public event if the organizer has not indicated sufficient measures for ensuring the public order, the protection of the lives and health of participants and other persons. This provision seems excessive for two reasons: first, while not precluding or superseding the organisers’ responsibilities, it is the State’s positive duty to actively protect peaceful and lawful assemblies. Second, the term “sufficiency” (of the measures) may give place for subjective interpretation by the authorities. It is recommended in addition that a co-operative process between the organizer and the authority be established in order to give the organizer the possibility to improve the framework of the assembly.

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<sup>12</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 102

<sup>13</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraphs 104



42. Article 16 para. 3 provides for a prohibition for holding assembly in a “marked zone” around the buildings of the National Assembly, the Presidency and the Council of Ministers, as well as in the “close proximity” to military and other facilities related to the national security, court buildings and premises of the judiciary, Ministry of Defence, medical establishments and prisons. The same reasoning as in the case of blanket prohibition with regard to time is applicable also as to the question of the venue of an assembly. In assessing a certain individual case, the provisions of Article 3 para. 2, which duplicate those of Article 11 para. 2 ECHR, provide sufficient basis for deciding upon restrictions on assemblies, including as far as the venue is concerned.

43. The prohibition of public events involving republican roads, road facilities and road accessories, tunnels and bridges according to the Bulgarian Roads Act in Article 16 paragraph 3 subparagraph 4 seems to be problematic, because of the fact that assemblies might be held on roads for specific reasons, too (e.g. demonstrations against traffic – e.g. ECJ in the case of Schmidberger; demonstrations against the construction of a tunnel).

44. The prohibition under Article 16 paragraph 6 may turn out to be too restrictive. Much depends on the interpretation of the words “populated place”. Would a manifestation of farmers with a few animals per se be illegal?

#### E. Notification: content and procedural issues

45. Article 18 raises a number of questions. First, para. (1) (“A public event may be conducted only after notifying the competent authority in writing”) seems excessive, as it excludes a priori spontaneous assemblies. This conclusion is confirmed by the provision in Article 21 para. 2 (1), which states that an assembly can be terminated if is conducted without notification. That is why the spontaneous assemblies should be regulated distinctively in the law. Also, the requirement to give advance notice may be waived with regard to small scale events where the number of participants does not exceed a certain number set by the law.

46. Also, Article 18 para. 2 should be amended in order to provide more flexibility: the submission of the notification should be made possible “as a rule within five working days before the assembly” and the provision that it cannot be done “earlier than twenty days prior” to the event should be deleted from the text (it can only be in the interest of the authorities and of the safe unfolding of the assembly if the intention to organise it is made known as earlier as possible).

47. The question arises why the notification has to be jointly submitted if there is more than one organizer (Article 18 paragraph 2), although the notification about conducting a public event has already been signed by the organizers (Article 19 paragraph 1).

48. Concerning the notification process, it is not clear who the competent authority shall be. Because of this, the provision of Article 18 paragraph 3, which stipulates that notifications of manifestations have to be submitted to the competent authorities of all areas/districts on the route of such a manifestation, cannot be evaluated clearly. This provision might lead to an onerous and bureaucratic notification process disapproved by the OSCE/ODIHR - Venice Commission Guidelines<sup>14</sup>.

49. It is highly recommended to add a provision that includes the instruction to the competent authority to issue a receipt explicitly confirming that the organizers of the assembly have fulfilled the applicable notice requirements<sup>15</sup>.

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<sup>14</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 92

<sup>15</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 94

50. The forwarding of a copy of the notification by the competent authority and the inclusion of this notification in a special journal in chronological order (Article 19 paragraphs 3, 4) are appreciated with regard to transparency and legal security.

51. It is appreciated that the competent authority shall consider the notification within 48 hours after receiving it, and in the order in which notifications have been received, to avoid discrimination (Article 20 paragraph 1).

52. In accordance with the OSCE/ODIHR – Venice Commission Guidelines, Article 20 paragraph 3 stipulates that in case of failing of the competent authority to issue a decision prohibiting the holding of the public event within the time limit of 48 hours, the organizers shall have the right to conduct the public event in the time and under the terms and conditions set forth in the notification<sup>16</sup>. This is welcome.

53. The information of the organizer about the holding of the public event or its prohibition shall occur immediately by the competent authority (Article 20 paragraph 2). In case of prohibition, the organizer has to be informed about this decision by way of a substantiated order by the competent authority within 48 hours. It is recommended to add the requirement that the decision shall be published in written form and additionally, shall be made public in an appropriate way (for instance, on a dedicated website). This guarantees that the public has access to reliable information about events taking place in the public domain<sup>17</sup>.

54. It is highly recommended to add provisions that enable the identification of the competent authorities in the notification process, and following actions, in order to ensure transparency and legal security.

55. The Draft Law (Article 20 para. 5) stipulates the possibility to appeal against the prohibition of a public event before the respective administrative court within 3 days after the receipt of the prohibition. The OSCE/ODIHR – Venice Commission Guidelines recommend an effective remedy through a combination of administrative and judicial reviews and not just before the administrative court<sup>18</sup>. Furthermore, an organizer shall be given the opportunity to take legal actions not only against the prohibition of a public event, but also against restrictions that affect the event.

56. It is therefore recommended that the provisions concerning legal actions are redrafted, with a special focus on administrative and judicial reviews both in case of a prohibition and in case of a restriction of the public event.

57. The time limits in Article 20 may turn out to be too inflexible. While it is welcomed that the Law intends to provide for a decision prior to the event, it is not realistic that a court renders a reasoned decision within 24 hours in cases where for instance an appeal is introduced e.g. on a Friday afternoon. Provisional measures may be necessary. A final court decision will in most cases only be possible after the date of the assembly. – On the other hand a time limit of three days may be too short for the purposes of an effective remedy. One may need legal advice which often cannot be found within hours.

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<sup>16</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 96

<sup>17</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 107

<sup>18</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraphs 108 seqq

#### F. Termination of an event

58. The OSCE/ODIHR – Venice Commission Guidelines emphasize that the dispersal of assemblies should be a measure of last resort. Furthermore, dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate and to protect the assembly from harm and unless there is an imminent threat of violence<sup>19</sup>.

59. The Draft Law stipulates in Article 21 paragraph 2 (1) that the public event shall be terminated if the event takes place without prior notification. This provision is in conflict with the principles of permissibility and necessity of spontaneous assemblies, and should therefore be withdrawn. It is questionable whether the sole fact that a public event was prohibited shall lead to its termination. Rather, the OSCE/ODIHR-Venice Commission Guidelines state that "*[if] the organizer fails or refuses to comply with any requisite preconditions for the holding of an assembly (including valid notice requirements, and necessary and proportionate restrictions based on legally prescribed grounds), they might face prosecution. However, such assemblies should still be accommodated by law enforcement authorities as far as is possible. If a small assembly is scheduled to take place and, on the day of the event, it turns into a significantly larger assembly because of an unexpectedly high turnout, the assembly should be accommodated by law enforcement authorities and should be treated as being lawful so long as it remains peaceful.*"

60. Article 21 paragraph 2 (3) stipulates that the public event shall be terminated if participants in the event violate the public order [...]. The OSCE/ODIHR - Venice Commission Guidelines consider the acting of a small number of participants in a violent manner not as sufficient for dispersing an assembly<sup>20</sup>. Therefore, the Bulgarian provision should be redrafted, for example by inserting the term "a significant number or percentage of the assembly participants", instead of just "participants".

61. Article 21 paragraph 4 provides for the organizer notifying the participants and taking action for enforcing the order. According to the OSCE/ODIHR - Venice Commission Guidelines it is necessary to inform the organizer and participants clearly and audibly prior to any police intervention<sup>21</sup>. It is questionable whether or not the organizer will always have the technical equipment and the possibility to issue a clearly audible and understandable order to disperse. Such an order might better be issued by the competent authority.

62. Article 21 paragraph 5 requires the immediate dispersal of the participants after termination of the public event. The OSCE/ODIHR - Venice Commission Guidelines recommend that the participants should be given a reasonable amount of time to disperse, prior to any intervention<sup>22</sup>. Therefore it is recommended to add a provision that the participants of an event shall have a reasonable and adequate amount of time to disperse, and shall be provided with a clear and safe route for dispersal.

63. It is appreciated that Article 21 paragraph 7 provides for an appeal of the termination order by the organizer. For such cases, the provisions should be redrafted concerning both administrative and judicial review, too.

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<sup>19</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraphs 137 seqq

<sup>20</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 139

<sup>21</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 140

<sup>22</sup> OSCE/ODIHR – Venice Commission Guidelines, at paragraph 140

### G. Filming

64. Article 22 para. 2 provides for the possibility of the competent authority to order filming of the event “where there is a serious danger of breaching the public peace” (para.1). According to the Venice Commission/ODIHR Guidelines, “*during public assemblies, the photographing or video recording of participants by the police is permissible. However, while monitoring individuals in a public place for identification purposes does not necessarily give rise to interference with their right to private life, the recording of such data and the systematic processing or permanent nature of the record kept may give rise to violations of privacy. Moreover, the photographing or video recording of assemblies for the purpose of gathering intelligence can discourage individuals from enjoying the freedom of peaceful assembly, and should therefore not be done routinely.*” It is appreciated that guarding by the relevant police bodies and filming of the event are only allowed in case of a serious threat to public peace and that the organizer shall be informed of these measures. It is recommended however to add the term “immediately” concerning the informing of the organizer and that the recordings shall be used in full observance of the standards regulating the storage and processing of the data of personal character.

### H. Responsibility

65. Article 23 should be clarified in setting that “Each participant is liable only for the damage that he/she wilfully caused during the course of the assembly”. Organisers cannot be held liable if they made reasonable efforts to prevent spontaneous violence but the situation went out of their control (they exercised due care to prevent interference with public order by the assembly participants). They cannot be held liable for actions by third parties and they should not be held responsible for sporadic acts of violence by either participants or non-participants. Holding organisers liable would be a disproportionate response since this would imply that they are imputed responsibility for acts by individuals which were not part of the plan of the event and could not have been reasonably foreseen. Also, it should be made clear that, for instance, participants in unlawful assemblies are exempted from liability when they had no prior knowledge that the assembly is unlawful. By-standers should not have any responsibility imposed upon them where they are innocently caught up in illegal events.

### I. Investigation into use of force by the police

66. Articles 26 and 27 should also include provisions related to the prompt and thorough investigation of the unlawful use of force by the police during assemblies, including in dispersal of the assemblies, and subsequent prosecution, if the situation so requires.

## V. **Conclusions**

67. The Bulgarian Draft Law on Meetings, rallies and manifestations clearly articulates three fundamental principles: the presumption in favour of holding assemblies, the state’s duty to protect peaceful assembly and proportionality. This is in conformity with European and international standards. The Draft Law further presents certain positive features, such as the short time-frames for decision by the authorities and the presumption that in case of non reply by them the assembly can take place.

68. The Draft Law nevertheless presents certain shortcomings, notably because it seeks to regulate the exercise of the freedom of assembly in considerable detail.

69. The Venice Commission recommends the following main amendments:

- The terms “meetings, rallies and manifestations” should be replaced by “peaceful assemblies” and undetermined clauses in Article 2 should be removed;

- Counter demonstrations and spontaneous assemblies should be explicitly allowed;
- The blanket restrictions on the time of the assemblies, on the blocking of the free entry and exit to and from buildings, constructions and other areas in, or adjacent to the venue of the public event, on wearing masks and on holding assemblies on certain marked zones should be removed;
- The prohibition to hold an assembly without prior notification should be removed;
- The time-frames for notification should be made more flexible;
- The “competent authorities” should be identified;
- Judicial review of decisions to refuse an assembly or to change its time and venue should be possible;
- Termination of an assembly and dispersal of the participants should only be a last resort measure.

70. The Venice Commission remains at the disposal of the Bulgarian authorities.