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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS
ON THE LAW
ON ASSEMBLY AND MANIFESTATIONS
OF THE REPUBLIC OF GEORGIA

By

Mr Bogdan AURESCU (Substitute Member, Romania)

1. The President of the Georgian Parliament has asked the Venice Commission to provide an Opinion on the amendments recently adopted (on 17 July 2009) to the “Law of Georgia on Assemblage and Manifestations” of 12 June 1997, subsequently modified (hereinafter, “the Law”).
2. It is not for the first time when the Venice Commission is asked to provide legal assistance on pieces of legislation which are adopted or modified without waiting for the observations of the Commission. It is therefore important that this Opinion be considered by the Georgian authorities with due attention and subsequently be taken into account in adjusting the respective legislation to the European standards on the matter examined.
3. Even though the request by the Georgian Parliament refers to the amendments to the mentioned Law, the Opinion necessarily has to examine their legal context, i.e. the provisions of the Law on assemblies, in order to assess their conformity with the European standards on this matter.
4. The “Law of Georgia on Amendments and Addendums” to provides for a number of modifications to articles 9, 11 and 13 to the Law on assemblies.
5. The amendment introduced to article 9 prohibits the organisations of gatherings and manifestations within the radius of 20 meters from buildings and their entrances of the following institutions: the parliament, the presidential administration, the Constitutional Court, the Supreme Court, Common Courts, office of the Prosecutor, police, penitentiary and law-enforcement bodies, military units and points, railway stations, airports, ports, hospitals, diplomatic entities, governmental structures, local self-government bodies, factories, entities and organisations with special regime of security or having armed guards. The initial text provided the prohibition to hold assemblies inside the buildings of the institutions enumerated above.
6. This prohibition is excessive. According to the 2008 Venice Commission/ODIHR Guidelines (para. 83), “blanket legislative provisions that ban assemblies at specific times or *in particular locations*¹ require much greater justification than restrictions on individual assemblies. Given the impossibility of having regard to the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation (and their application) may be found to be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated², “Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.” In assessing a certain individual case, Article 11 para. 2 of ECHR should be applied. This text of ECHR (a reference to it is recommended to be included in the Law) provides sufficient basis for deciding upon restrictions on assemblies, including as far as the location of holding an assembly is concerned, on a case by case basis, pending on the specific circumstances.
7. The amendment at article 11, para. 3, sub-para. b provides that participants to an assembly are prohibited to “intentional (*sic*) impede for the movement of transport of pedestrians, which is expressed in violation of requirements stated in article 11¹”, newly introduced. So, it has to be read in connection with this new provision, as it is a secondary provision, ensuing from the latter.

¹ Italics added.

² *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para. 97.

8. This new article includes 4 paragraphs. They provide that “absolute blocking of pedestrians’ part, as well as partial or entire stop of vehicle transportation sector is allowed only in case there is no other possibility to organise” the assembly, “due to the number of” participants (para. 1), and only “in the very period of time when that is requested by the number of” participants (para. 2). It is added that “it is also prohibited to stop the pedestrians’ part or transportation sector by vehicles, different constructions and / or other stuff.” (para. 3). Para. 4 mentions the obligation of local authorities to “fence in the respective territory”.

9. The first two paragraphs just described do not provide for a blanket prohibition, but for a restriction as to the manner of conducting an assembly. In principle, they are not inadmissible. In practice, they allow for a certain margin of appreciation for the authorities as to assessing the situation where “there is no other possibility to organise the assembly, due to the number of participants”. According to the 2008 Venice Commission/ODIHR Guidelines (para. 83), “such restrictions should be concisely drafted so as to provide clarity both for those who have to follow them (assembly organizers and participants) and for those tasked with enforcing them (primarily, the police).” As to the blanket prohibition of para. 3, the same reasoning as above (related to the place of the assembly) is applicable. The provision of para. 4 is correct, as it is meant for the protection of the participants to the assembly.

10. The amendment to article 13 provides for the assembly to be “immediately stopped at the request of the authorised representative of the local self/government body” when there are “mass violations of requirements stated in” the 2nd paragraph of article 4, in article 11 and in article 11¹.

11. Article 4 (2) sets forth that “in organising or holding an assemblage or manifestation, it is prohibited to call for subversion or forced change of constitutional order of Georgia, infringement on independence or violation of the territorial integrity of the country, which constitute propaganda for war and violence and trigger a national, ethnical religious or social confrontation.”

12. According to the 2008 Venice Commission/ODIHR Guidelines (para. 135) “calls for the imminent and violent overthrow of the constitutional order might provide a sufficient ground for restricting an event, *whereas an assembly where non-violent change of the constitutional order is advocated would be deserving of protection*”.³ Consequently, the proportionality condition for stopping such an assembly is met when the „violent overthrow of the constitutional order” called by the assembly participants is also „imminent”.

13. It is worth noting that the same 2008 Venice Commission/ODIHR Guidelines (para. 135) provide that “speech and other forms of expression will normally enjoy protection under Article 19 of the ICCPR and Article 10 of the ECHR. This is the case *even where such expression is hostile or insulting to other individuals, groups, or particular sections of society*.”⁴ However, as provided by Article 20 of the ICCPR, “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Principle 4 of the Council of Europe Committee of Ministers Recommendation No. R(97)20 further provides that specific instances of hate speech “may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.” *Even then, resort to such speech by participants in an assembly does not of itself turn an otherwise peaceful assembly into a non-peaceful or unlawful assembly, and the regulatory authorities should arrest the particular individuals involved rather than dispersing the entire event.*⁵ They also set forth that „demonstrations supporting a military

³ Italics added.

⁴ Italics added.

⁵ Italics added.

offensive against another sovereign state ... should not be deemed illegal even if such military action might itself be”.

14. The requirements of article 11 refer to the observance of the time and place and other obligations indicated and assumed in the notification, the legislation of Georgia and the prohibition for participants to have “arms, explosives, inflammables, tear gas, radioactive, neuroparalytic action and poisonous substances, alcoholic beverages” or to “deliberately hinder the work of public transport”. As far as the place and time, a distinction has to be made in the law between a deliberate non-observance and a fortuitous one: in this latter case, the authorities have to show flexibility and find, in consultation with the organisers (who are to inform as soon as possible the authorities about the reasons and options of changing the time and place), the best option for holding the assembly. Stopping an assembly where participants have arms etc. is legitimate whenever there is an indication that they are supposed to be used, as such a conduct amounts to a transformation of a peaceful assembly into a non-peaceful one. Hindering the public transport is dealt with in article 11¹, and the remarks above referring to that article are incident here, too.

15. The Law introducing amendments to the Law should have also included further modifications, in order for the Law to be in line with the European standard on the matter.

The list below is synthetic and not exhaustive:

- the title of the Law should be “*on peaceful assemblies*” or *on freedom of assembly*
- the restriction included in para. 2 of article 1 should be eliminated, as it is excessive: any person, irrespective of his/her job should be allowed to exercise the freedom of assembly
- a reference to the ECHR should be included in article 2 of the Law, including an express reference to article 11 para. 2 (see above)
- it is important not to restrict the scope of the law only to meetings and manifestations (or processions – the term used in the 2005 “Venice Commission/ODIHR Guidelines for drafting laws pertaining to the freedom of assembly”): for instance, pickets are not mentioned in the definitions of article 3 of the Law
- article 4 refers only to citizens as participants to an assembly. The law should provide also for the possibility for non-citizens to be participants or among the organizers. Also, according to the international standards on the matter, the Law 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). The same kind of reference should be also included with regard to the participants to the assembly
- article 6 needs redrafting: freedom of assembly means, *as a rule*, and not as an exception, that participants to an assembly are free to select the place and time for their assembly, best suited to express their views in a meaningful manner; the restrictions as to the time and place are to be determined on a case by case basis, pending on the specific circumstances – that is why the provision of para. 1 of this article, allowing for a local governance body to determine, without prior notification, a permanent place and time for holding assemblies, is excessive and should be eliminated
- the 5 day time limit within which a notification has to be submitted, provided by article 8, should be made more flexible: a modification of the provision regarding the deadline within which a notification may be submitted should be included in the sense that a notification shall be submitted “*as a rule*” “five working days before the assembly”. Also, notifications can not be required for spontaneous assemblies. Para. 6 of this article

refers to “a decision referred to in paragraph 5”, but para. 5 seems to have been removed by a 1998 modification of the Law; this reference should be clarified

- the Law has no provisions on counter-demonstrations (there is only a indirect reference in article 10 para. 1 sub-para. a, which seems to prohibit counter-demonstrations) and on spontaneous assemblies. Definitions of these types of assemblies should be included in article 3 of the Law. Specific articles should be dedicated to these two kinds of assemblies, according to the 2005 and 2008 Venice Commission/ODIHR Guidelines

- also, the provision in article 10 para. 1 sub-para. a, according to which the competent authority shall recommend the organisers to change the form, place and time when another event (notified earlier) is arranged in the same form and at the same venue and time indicated in the notification, should be revised in order to add further conditions: there is a practical, objective impossibility for both events to take place simultaneously and, when the second assembly is a counter-demonstration, there are grounds for assumption that a conflict between the participants to the two assemblies may occur and the sufficient policing resources to manage both meetings are lacking. According to the 2008 Venice Commission/ODIHR Guidelines, „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”. 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

- also, specific provisions on the liability of the organisers and participants, in line with the Venice Commission/ODIHR Guidelines⁶ are to be included in the Law, as well as on 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.

16. The Venice Commission stands ready to assist further the Georgian authorities in the process of amending the Law on assemblies.

⁶ Such provisions may include *inter alia* the following rules. 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. 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.