HUMAN RIGHTS DEFENDER
AD HOC REPORT

ON THE RIGHT TO PEACEFUL ASSEMBLY IN THE REPUBLIC OF ARMENIA

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Contents

INTRODUCTION

The right to peaceful assembly is a fundamental human right. In the modern era, especially, it constitutes not only an integral element of the constitutional legal status of the person in democratic states, but also a benchmark of democratization. The substance and degree of protection of the right to peaceful assembly underlie the essence of a number of other human and civil rights and freedoms. The exercise of the right to assembly is an essential safeguard of the freedom of expression, the right to vote, the right to be elected, and other rights and freedoms. Peaceful assembly can serve as a civilized bridge between the political authorities and society by conveying to the authorities the opinion of certain parts of the population on various facts, events, or policies. People are trying increasingly more frequently to exercise the right to freedom of expression collectively by means of assemblies.[1] As a rule, people often use peaceful assembly (rallies, demonstrations, gatherings, sit-ins, meetings, and other forms of assembly) to convey their collective opinions, agreement, or disagreement to the public authorities and all of society regarding domestic and foreign policies of the state, the conduct of certain public bodies or officials, or the positions or behavior of various public or political forces.

Hence, **safeguarding** the freedom of peaceful assembly should be viewed as an essential guarantee of the person's and/or citizen's participation in the governance of a democratic state or society.

Furthermore, the right to peaceful assembly is universally recognized as a cornerstone of democracy, a vital tool for building and strengthening civil society, and an effective channel of dialogue and feedback between society or its different segments and the authorities. To this end, a number of theoreticians even consider the right to peaceful assembly an integral element of "people power."

Thus, any illegitimate interference with the right to peaceful assembly must be viewed as a significant diversion from the core principles of the constitutional order of the democratic state and a serious threat to stability of such state and society. However, it should be born in mind that **abuse** of this right may pose a serious threat to the stability and security of the democratic state and all of society. This right may, in particular, be used for purposes of advancing anti-constitutional or extremist slogans, instigating mass disorder or ethnic, religious, or other hatred, or otherwise violating the rights and lawful interests of others.

Respect for the right to peaceful assembly is a key prerequisite of building a tolerant society in which social groups with different political, religious, social, economic, or other views, behavior, or visions can peacefully coexist. Even when it does not result in limitation of certain rights and freedoms of others (as elaborated below), the exercise of the right to peaceful assembly may at least cause them some inconvenience.

The right to peaceful assembly is one of the ways to express opinions. As a genuine and effective method of expressing public opinion, the freedom of peaceful

[1] In a number of judgments, the European Court of Human Rights has noted the correlation between the right to freedom of assembly and the right to freedom of expression. See, for example, Ezelin v. France (1991), paras. 37, 51; Djavit An v. Turkey (2003), para. 39; Christian Democratic People's Party v. Moldova (2006), para. 62; Ollinger v. Austria (2006), para. 38.

assembly cannot be reduced to a mere duty on the part of the State not to interfere.[2] A purely negative concept of the state's role would contradict the essence of the right to freedom of assembly stipulated by international legal instruments, as well as Article 29 of the Constitution of the Republic of Armenia. They imply the state's direct positive obligation to safeguard the protection of the right to freedom of assembly. Article 11(1) of the European Convention on Human Rights and Fundamental Freedoms provides: "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."

The protection awarded by the Convention implies the obligation of the state to carry out certain measures from time to time to secure the freedom. It flows from both the Convention and Article 20 of the Constitution of the Republic of Armenia that the state does not assume the obligation to make sure that people assemble and participate in a demonstration. Rather, the state is directly responsible for safeguarding that a peaceful and unarmed assembly takes places. The safeguards cannot be viewed as absolute. There can always be counter-assemblies or provocations. However, the right to hold a counter-demonstration cannot lead to a restriction of the right to hold an assembly in a democratic society.[3]

In its judgments, the European Court of Human Rights has articulated a clear-cut position on the state's positive and negative obligations: "Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. Like Article 8, Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be."[4] **As a fundamental right, the right to freedom of peaceful assembly should be realized, to the extent possible, without rigorous legal regulation. Whatever is not clearly prohibited by law should be considered permitted, and those wishing to assembly should not have to request permission for doing so.** The presumption in favor of the freedom of assembly should be clearly stipulated by law. The laws of many countries enshrine it in the form of constitutional safeguards, but it may be stipulated in the specific law regulating assemblies. Moreover, the state has the obligation to enact appropriate mechanisms and procedures that will not create unnecessary bureaucratic red tape and would in practice safeguard the exercise of the freedom of assembly. The relevant authorities should facilitate individuals and groups that wish to organize and conduct peaceful assemblies.

Although the classical conception of assembly would imply the presence of at least two people, a person who presents an individual complaint by exercising his right to freedom of expression in a way that his physical presence constitutes an essential element of such expression should be entitled to the same protection as is awarded to more than one people that have come together in an assembly.

The freedom of peaceful assembly comprises a number of actions that take place within a certain site. As a rule, they are outdoor areas of public use (public parks,

[2] Микеле де Сальвиа Прецеденты Европейского Суда по правам человека; СПб.; Изд. «Юридичеслий центр Пресс» 2004, p. 689.
[3] Plattform "Artze fur das Leben" v. Austria (1988).
[4] Ibid.

squares, streets, avenues, sidewalks, boulevards, and the like). There can be the so-called static assemblies (meetings, mass actions, demonstrations, gatherings, sit-ins, pickets, and the like), or mobile assemblies (rallies).

Participants in assemblies have as much a claim to use such sites for a reasonable period as everyone else. Indeed, freedom of assembly should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used (such as pedestrian and vehicular traffic). This principle was clearly states in a decision of the Israeli Supreme Court in 1979 in the case of Sa'ar v. Minister of Interior and Police (1979): "… In exercising the 'traffic' consideration, a balance must always be struck between the interests of citizens who wish to hold a meeting or procession and the interests of citizens whose right of passage is affected by that meeting or procession. Just as my right to demonstrate in the street of a city is restricted by the right of my fellow to free passage in that same street, his right of passage in the street of a city is restricted by my right to hold a meeting or procession. The highways and streets were meant for walking and driving, but this is not their only purpose."[5]

1. Legal Regulation of the Right to Peaceful Assembly in the Republic of Armenia

1.1. Legislation on the Right to Peaceful Assembly in the Republic of Armenia

In the early years after Armenia declared independence, as well as during the Soviet era, the right to assembly was regulated by the 1978 Constitution of the Armenian Soviet Socialist Republic, Decree 9306-XI (dated 28 July 1988) of the USSR Supreme Council Presidency "On the Procedure of Organizing and Holding Meetings, Gatherings, Street Rallies, and Demonstrations in the USSR", as well as Decree 1289-XI (dated 29 July 1988) of the Armenian Republic Supreme Council Presidency "On Liability for Violating the Established Procedure of Organizing and Holding Meetings, Gatherings, Street Rallies, and Demonstrations."[6] Although the aforementioned legal acts had become out of date after independence, they remained in effect even beyond the adoption of the Republic of Armenia Constitution in 1995, until the adoption on 28 April 2004 of the Republic of Armenia Law (HO-63-N) on Conducting Meetings, Gatherings, Rallies, and Demonstrations based on the 1995 Constitution.[7] The mere fact that the citizens' constitutional right to peaceful assembly was for about 14 years after gaining independence being regulated by legal acts inherited from the Soviet era demonstrates that the regulation of matters related to the exercise of the constitutional right to peaceful assembly has been through quite some difficulties. To this end, it can be said with confidence that the adoption in 2004 of the Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations amounted to significant progress.

[5] OSCE Guidelines on Freedom of Peaceful Assembly, Yerevan 2009, pp. 30-31.
[6] www.arlis.am or ԽՍՀՄ ԳՍՏ1988/31(2469), ՀՍՍՀ ԳՍՏ 07.88./13-14(921-922).
[7] Ibid, or ՀՀՊՏ 12.05.04./26(325).

The Law is more progressive than the aforementioned Decree 9306-XI of the USSR Supreme Council (dated 28 July 1988), which stipulated the right of executive authorities to prohibit conducting gatherings, rallies, or demonstrations if their objectives contradicted the Constitution of the country or threatened the public order or the security of citizens. The adoption of the Law marked the end of the **authorization procedure** for conducting mass public events, which was deemed not democratic, instead introducing a **notification procedure**. Article 5 of the Law, for instance, which regulates the organization and conduct of public events, provides that the organizer does not seek the authorization or permission of bodies of executive government or local self-government, but rather, simply notifies them of the intent to conduct a mass event.

The Law still remains in effect, with a number of amendments and additions, although the current text of the Law cannot be deemed sufficient in terms of proper legal regulation and safeguarding of the right to peaceful assembly. The issue is that the Law was adopted on the basis of the 1995 text of the RoA Constitution, which was amended in 2005 in a reform that also influenced the right to assembly. Prior to the constitutional amendments, Article 26 of the RoA Constitution provided that "***citizens*** *have the right to conduct peaceful and unarmed* ***meetings, gatherings, rallies, and demonstrations****,"* while Article 29 of the Amended 2005 Constitution provides: *"****Everyone*** *has the right to conduct peaceful and unarmed* ***gatherings****. Restrictions on the exercise of such rights by persons serving in the armed forces, the police, or national security or prosecution bodies, as well as by judges and constitutional court members may be stipulated only by law."* Clearly, the Constitution not only has considerably expanded the range of persons that entitled to the right to assembly[8] by removing the citizenship requirement, but also no longer contains enumeration of the types of gatherings.

The term "gathering" has a broader meaning that includes all types of public events. The definition of a "public event" is prescribed in Article 2 of the Law: "*A 'public event' means meetings, gatherings, rallies (parades), or demonstrations (including sit-ins) that are conducted peacefully, ensuring everyone's participation, in areas of common use with a view to expressing opinions on or seeking, receiving, or disseminating information or ideas about economic, social, political, spiritual, or other needs, issues, or matters."*

Several extensive amendments and additions to the RoA Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations have been adopted. The first major set of amendments to the Law were enacted by means of the RoA Law HO-183-N dated 4 October 2005, which was mostly aimed at addressing the shortcomings of the Law, improving the legislative regulation, and generally "democratizing" it further. In its opinion adopted in the 64th Plenary Session in October 2005, the Venice Commission concluded that the amendments were generally positive and reflected the majority of the recommendations made before its adoption.[9]

[8] www.un.org. UN Human Rights Committee, General Comment 15, "The position of aliens under the Covenant."

[9] Venice Commission opinion CDL(2008)037 http://www.coe.am/docs/venice/arm.pdf, as well as opinions CDL(2005)089 and CDL(2005)090. http://www.venice.coe.int

The same, however, would not hold true for the amendments to the Law enacted later,[10] which took the legislative regulation closer to the so-called "Soviet model" of regulating the right to assembly: such deformation of the Law was triggered by the pre- and post-electoral political tension surrounding the 2008 Presidential Election, especially the tragic events of 1 and 2 March 2008.

The amendments to the Law adopted on 17 March 2008 (Article 1(1)), in particular, provided the competent body the power to prohibit the conducting of a public event, if it had credible information according to which such event was aimed at forcibly overthrowing the constitutional order, inciting ethnic, racial, or religious hatred, preaching violence or war, or could result in mass disorder and crime, distortion of state security, the public order, or the health and morals of the public, or infringement of the rights and freedoms of others.[11] Similar restrictions are prescribed by the laws of a number of European states, including *France, Germany, Romania, Latvia, Lithuania, Estonia, Finland,* and *Hungary*, as well as the European Convention on Human Rights and Fundamental Freedoms and other international instruments. However, as the OSCE/ODIHR Panel of Experts on the Freedom of Assembly rightly notes in its opinion, it is extremely important that:

a) **The enumerated grounds are consistently interpreted; and**
b) **The restriction of rights based on such grounds is permissible only if there is imminent threat of violence.**[12]

The Panel of Experts elaborates: "The inherent imprecision of the term 'public order' must not be exploited to justify the prohibition or dispersal of peaceful assemblies. Neither a hypothetical risk of public disorder nor the presence of a hostile audience is a legitimate basis for prohibiting a peaceful assembly."

Prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate, and any isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (2001), para. 94*).

Regarding the protection of the rights and freedoms of other persons, the Panel of Experts notes: "The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of those who live, work, shop, trade, and carry on business in the locality affected by an assembly. … Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe the rights and freedoms of others."

The amendments to the Law enacted on 17 March 2008 stipulated the following provision: "*In case when a mass public event has turned into mass disorder that resulted in human death, the competent body may, with a view to preventing new crime, temporarily prohibit conducting mass public events until the circumstances of the crimes and the persons that committed them have been discovered*" (Article 13(6)). This rule was incompatible with the spirit of the European Convention on Human Rights and

[10] Republic of Armenia Law on Amending and Supplementing the Republic of Armenia Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations (Republic of Armenia Law HO-1-N dated 17 March 2008).
[11] Ibid.
[12] Venice Commission, CDL(2008)037 http://www.coe.am/docs/venice/arm.pdf, pp. 3-4.

Fundamental Freedoms and the case law of the European Court of Human Rights, which had noted, in particular, that a person does not lose his right to peaceful assembly as a consequence of violence or other reprehensible acts committed by other persons during assembly, provided that he retains his peaceful intent or conduct."[13] Any restrictions imposed on freedom of assembly must pass the proportionality test. Given that a wide range of interventions might be suitable, the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. The regulatory authority must be aware that it has the authority to impose a range of restrictions, rather than viewing their choice as one simply between nonintervention or prohibition. Any restrictions should closely relate to the particular concerns raised, and should be narrowly tailored to meet the specific aim(s) pursued by the authorities. The state must show that any restrictions promote a substantial interest that would not be served absent the restriction. The principle of proportionality thus 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.[14]

Moreover, the aforementioned legal wording is incompatible with the principle of individualization of punishment, because, in such cases, a sanction would be imposed on not only the offender, but also those that wished to exercise their constitutional right to conduct peaceful and unarmed assembly.

Besides, every instance of prescribing such restrictions of rights should be viewed in light of Article 3 of the Constitution, which provides: "The human being, his/her dignity and the fundamental human rights and freedoms are an ultimate value. The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of the international law. The state shall be limited by fundamental human and civil rights as a directly applicable right."

The Republic of Armenia Constitution prescribes three possible methods of restricting fundamental human rights and freedoms (including the right to peaceful assembly) in this respect. The first method is stipulated by Paragraph 2 of Article 29 of the Constitution, which is in fact the article that defines the right to assembly: there is a restriction for certain categories of officials, whereby "restrictions on the exercise of such rights by those serving in the armed forces, the police, national security and prosecution bodies, as well as judges and Constitutional Court members may be prescribed only by law."

The next restriction is that stipulated for ordinary situations in which such restriction is necessary "in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morals, the constitutional rights and freedoms, as well as honor and reputation of others" (Article 43). The next possibility is that of restricting rights in martial law or a state of emergency: Article 44 of the Constitution provides that "certain categories of fundamental human and civil rights … may be temporarily restricted in accordance with a procedure prescribed by law, proportionate to the situation, in martial law or a state of emergency within the scope of

[13] See Ezelin v. France (1991), Ziliberberg v. Moldova (2004).
[14] For details, see paragraphs 34-40 and 80-82 of the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly prepared by the OSCE/ODIHR Panel of Experts on the Freedom of Assembly.

the assumed international commitments on derogation from obligations in state of emergency."

Paragraph 2 of Article 43 of the Constitution provides that "limitations of fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments assumed by the Republic of Armenia." To this end, it is worth noting that the case law of the European Court of Human Rights has outlined the ways in which violence in assemblies may be countered and the right to assembly may be restricted.

The amendments to the Law enacted on 17 March 2008 (Law HO-1-N) were severely criticized not only domestically within Armenia by various political, human rights, and professional circles, but also in a joint opinion of the Venice Commission and the ODIHR. The internal and external pressure resulted in further amendments to bring the Law back into compliance with the international standards: Law HO-74-N on Amending the Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations was adopted on 11 June 2008. Its adoption not only restored the provisions that existed in the Law prior to the 17 March 2008 amendments, but also introduced more thorough and substantiated legal regulation of several matters. A number of the key comments and recommendations of the Venice Commission and the ODIHR were taken into consideration.

The extant Law generally reflects the spirit of the constitutional right to assembly and is consistent with the international standards; the restrictions are compatible with the international commitments undertaken by Armenia.

Yet, the Law contains a number of provisions that contradict the European standards, including the case law of the European Court; addressing these issues would improve the legislative regulation of the right to freedom of assembly in the country.

The meaning and aim of a mass public event is freely to form and disseminate opinions, to express the public mood and interests, and to draw the attention of others and the authorities on the demands of participants of the assembly. They are intrinsically linked with the time and place of the assembly. Therefore, any change in the time and place (especially on the grounds stipulated by Paragraph 5 of Article 13 of the Law) can deprive of the assembly of its very meaning, limit its public and mass nature, undermine its effectiveness, and even restrict indirectly the right to freedom of assembly. Clear procedures do not exist for determining whether the demands of the organizers are "reasonable." There are no criteria for determining whether the proposed new place is "as close as possible to the place specified in the notification."

The Law lacks provisions regulating the negotiations between the organizer and the competent body on the conditions of conducting the assembly. In the absence of such provisions, assemblies will eventually be prohibited in cases in which negotiations could possibly lead to agreement on the permissible framework of the assembly instead of its prohibition.

The provisions regulating the review of notifications on assemblies are not effective. The short time period stipulated by the Law at times renders impossible the proper notification and the organizer's fully-fledged participation in the review of the notification.

The legislature has, without any basis, construed the restrictions enshrined in Article 29 of the Constitution as a prohibition, thereby depriving certain categories of officials of the right to freedom of assembly. The democratic standards, however, merely refer to limitations and political restraint in the exercise of this right.

The important presumption in favor of the right to hold assembly is not prescribed.

The lack of clear delineation between the organizer and leader of an assembly may create problems in their relationship with police and other authorities during the assembly and enable the actual organizers of an assembly to avoid from responsibility.

The procedure of reviewing assembly notifications is not adequately regulated.

The generic definition of the grounds for restricting assembly creates problems in enforcement, which organizers at times rightfully complain about.

The Law does not regulate the specificities of conducting assemblies during night hours.

The lack or inadequacy of these and a number of other regulatory provisions hinders the effective exercise of the right to assembly, which in turn undermines the process of democratization.

These legislative gaps are possibly among the reasons why the Yerevan Mayor issued over 80 decisions prohibiting the conduct of mass public events in 2008 alone.

1.2. International Legal Regulation and Standards on the Right to Peaceful Assembly

The right to assembly has long ceased being regulated by domestic legislation alone. A number of international legal instruments acceded to by the Republic of Armenia address this right.

Paragraph 2 of Article 3 of the Republic of Armenia Constitution provides: "***The state shall ensure*** *the* ***protection*** *of fundamental human and civil rights in conformity with the principles and norms of the international law."* Article 1 of the Law provides: "*The* ***object*** *of this Law is* ***to create the conditions necessary for the exercise of the right*** *of Republic of Armenia citizens, foreign citizens, and stateless persons (hereinafter, "citizens") and legal entities stipulated by* ***the Constitution and international treaties*** *to peaceful and unarmed meetings, gatherings, rallies, and demonstrations."* It is not by accident that the very first sentence in the Law refers to the international treaties, as the human right to freedom of peaceful assembly is enshrined in:

- **The Universal Declaration of Human Rights** (Article 20(1)): "*Everyone has the right to peaceful assembly and association.*"
- **The International Covenant on Civil and Political Rights** (Article 21): "*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."*

- **The European Convention for the Protection of Human Rights and Fundamental Freedoms** (Article 11): "*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 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.

- **The OSCE Copenhagen Document** (9.2): "*The participating States reaffirm that everyone 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."*

The following key principles flow from the international legal instruments and the case law of the European Court of Human Rights regarding the right to freedom of peaceful assembly:

a) The legislative regulation of the right to hold peaceful assembly must not restrict such right or prescribe a system of permission for its exercise. An assembly may be prohibited only on the grounds stipulated by the Constitution. The Armenian legislation has opted for a procedure of notification: unless the review of the notification results in a decision to prohibit the assembly, conducting the assembly shall be deemed lawful.

b) The state is obliged to protect the right to peaceful assembly. The constitutional stipulation of the right to peaceful assembly implies the state's direct obligation to safeguard the right.

c) Any restriction stipulated by law must be both grounded and compatible with the Constitution and the international treaties. The restrictions on the right to hold assembly must be general and apply equally to both the prohibition of assemblies and the termination of assemblies that have already started.

d) Naturally, conducting an assembly to varying degrees hinders the exercise of rights by others. However, not any hindrance can serve as a basis for prohibiting the assembly. Besides, it should be born in mind that the right to assembly may be restricted only if it causes significant violations of the constitutional rights of others. Hence, any restriction must be proportionate to the threat that may arise as a consequence of prohibiting the assembly.

The event should not be terminated immediately if the organizers or individual participants of an assembly commit violations that serve as a basis for forcibly terminating the public event. At first, the competent state bodies should take all the possible measures to prevent such violations. The only basis for forcibly terminating a public event is when other organizers or participants of the assembly obstruct the natural efforts to prevent the violations of law and to sanction the perpetrators of such violations.

e) The competence of state bodies responsible for safeguarding assemblies and their officials must be ensured. The actions of such officials must be utmost

transparent. Clearly, competence is required for the performance of any function, but competence in this case is highlighted due to the much higher likelihood of grave violations of the public order and the exertion of violence against large numbers of persons when there is a considerable buildup of people, especially when irrigating and offensive expressions and calls to violence are uttered.

f) Complete lack of discrimination, which implies consistency of not only the legal provisions, but also their enforcement.

g) Organizers may be held liable for violations of law by participants of assemblies and third parties only if it is proven that the organizers initiated or participated in such violations.

h) When safeguarding the security of an assembly, the state may not demand monetary compensation from the organizers of the assembly, and all costs have to be incurred at the expense of the state.

i) The organizers of assembly may designate stewards to assist in safeguarding the public order. The stewards may act only as volunteers and shall not enjoy the powers of law-enforcement officials. It is appropriate for stewards to carry certain signs.

Observers can help to address the aforementioned issues. Observers cannot be the organizers or participants of the assembly. By observing the assembly, they make an impartial assessment of the events, including the lawfulness of the actions of officers responsible for security in the assembly.

2. Application of the Legislation on the Right to Peaceful Assembly

Article 5(1) of the Republic of Armenia Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations (hereinafter, "the Law") provides: "*A citizen (citizens) or a legal entity (entities) has the right to organize a public event.*"

Article 10(4) of the Law provides: "*The organizers shall give written notification of the intended mass public event to the head of the community in which they wish to conduct the event. The notification shall be deemed lawful and subject to review, if it is submitted at least five and at most 20 days prior to the planned date of the event. If the mass public event is to be conducted in the form of a rally, then notification must be given to the competent bodies of all the areas in which the rally is to be conducted.*"

2.1. Organizer's Right to be Heard as a Legal Safeguard of the Exercise of the Right to Peaceful Assembly

The Republic of Armenia legislation stipulates a procedure for the review of the notification on conducting a mass public event.

Article 12 of the Law provides:

"1. The competent body shall review the notification within 72 hours of its receipt in the order in which notifications were received.

2. The review of notifications shall be carried out, and the decision based on the review made on behalf of the competent body by the head of the community or a person authorized by him.
3. The review of the notification shall be open. The organizers and their no more than three representatives have the right to participate in the review of the notification."

Given the importance of negotiations between the organizers and the competent body, the OSCE/ODIHR Panel of Experts on the Freedom of Assembly has noted in the Guidelines on Freedom of Peaceful Assembly prepared by the Panel that the regulatory authority should also ensure that any relevant concerns raised are communicated to the event organizer, and the organizer should be offered an opportunity to respond to any concerns raised. This is especially important if these concerns might later be cited as the basis for imposing restrictions on the event. Providing the organizer with such information allows them the opportunity to address the concerns, thus diminishing the potential for disorder and helping foster a co-operative, rather than confrontational, relationship between the organizers and the authorities.

The overview of the practice of competent bodies reviewing notifications of assemblies in the Republic of Armenia shows that, in some cases, the competent bodies do not ensure the organizers' and their representatives' presence in the review of notifications by not giving or not properly giving them notice of the place, time, date, and other conditions of the review.

On 29 September 2008, A.Z., the person authorized by Armenian citizen A.A., filed a notification with the Yerevan City Mayor's Office on a mass public event to be held on 17 October 2008. On 2 October 2008, the person authorized by the Yerevan City Mayor convened and held a session to review the notification of the mass public event to be held in Yerevan on 17 October, but did not ensure the presence of the organizer and/or his representative in the discussion. On 2 October 2008, the person authorized by the Yerevan City Mayor issued decision number 149 on prohibiting the conduct of the event.

It is noted in protocol number 138 prepared by the representative of the competent body that the representative of the competent body gave written notice to the organizer's representative on the date, time, and place of the review, but there is no evidence in the case of the organizer's representative being informed of the time and place of the review prior to such review.

The competent body should not treat the process of notifying organizers and their representatives in a formalistic manner, because the process is aimed at securing the practical exercise of a number of due process rights of the organizer. There are different methods of giving notice. Notice may be sent by registered mail with confirmation of receipt or using other means of communication documenting delivery, or delivered in person against a signed receipt. However, regardless of the method of notice, it must be such as to provide evidence that the organizers and/or their representatives were informed of the review. If there is no evidence in the case to show that the organizer's representative was given due notice of the time, date, and place of the session held to review the notification of the mass public event, then the organizer may not be deemed to have been given due notice. Due notice is the only way to enable organizers to exercise in practice their due process rights stipulated by law.

The rule of law implies that everyone has the right to be heard before imposing on him a sanction that may have unfavorable legal or practical consequences for him.

Article 12(4) of the Law provides:

"*The procedure of review of notifications shall be set by the competent body, but the organizer's right to present his opinion shall be fully secured. Anyone participating in the review of notifications shall have the right to make speeches, ask or answer questions, file recommendations or motions, and present additional documents, opinions, or other information.*"

Thus, the Republic of Armenia legislation stipulates the organizer's right to be heard and certain other due process rights. The right to be heard and the obligation of the respective administrative body to hear the participants in proceedings (the organizer or his representatives) are essentially new concepts in the legislation and legal practice of the Republic of Armenia. In order to reveal all the circumstances, to substantiate with evidence, to ensure the comprehensiveness and completeness of the proceedings, and to ensure that a lawful decision is made, it is necessary for the competent body to become aware of the opinions of all the stakeholders prior to making a decision, especially if an interfering administrative act is to be adopted. Giving proper notice to the organizers and their representatives of the place, date, and time of the review should not be an end in itself; rather, it should be aimed at ensuring the comprehensive, complete, and impartial review of the case, on the one hand, and the safeguarding and protection of the organizer's rights, on the other. Otherwise, it may deepen the divide between the public and the authorities.

2.2. Practice of De-Facto Prohibitions of Assemblies

2.2.1. Insofar as the right to assembly is concerned, the practical application of legal provisions is more important in Armenia given the fact that the legislation is not always applied directly in practice. Violations of the laws, inconsistent legal practices, and diverging interpretations of legal rules unfortunately mar the reality in Armenia.

Article 29 of the Republic of Armenia Constitution safeguards everyone's right to conduct peaceful and unarmed assembly. However, the Republic of Armenia Constitution does not stipulate a procedure, whether a request for permission or prior notification, through which this fundamental right is to be exercised in practice. As was mentioned above, the Law prescribes a prior notification procedure, which means notification of the intent to conduct an assembly, rather than a request for permission to conduct the assembly. The main purpose of the notification process is to enable the public authorities to fulfill their positive obligation to safeguard peaceful assembly.[15]

Whereas, an overview of the activities of officials of administrative bodies ("competent bodies") of the Republic of Armenia at times leaves the impression that they tend to believe that holding an assembly is not a fundamental right of persons, but rather a result of permission by the administrative body, which is dependent on the absolute discretion of the administrative body.

[15] Rassemblement Jurassien Unite v. Switzerland (1979).

This impression is confirmed by the fact that the competent bodies frequently use the words “permit” and “allow to conduct” in their decisions on acknowledging notifications.

Paragraph 1 of Decision number 10 of the authorized representative of the Yerevan Mayor (dated 1 February 2008) on the results of the review of the notification reads: “… **to permit** Republic of Armenia citizens N.P. and D.M. … to conduct a demonstration.”

Such wording is unacceptable under a procedure of prior notification.

An overview of the practice of administrative bodies (“competent bodies”) of the Republic of Armenia shows that they often use the notification process to create artificial obstacles to the holding of assemblies and to prohibit them. Moreover, the prohibitions are often based on the flawed and ambiguous provisions of the Law.

In practice, administrative bodies prohibit assemblies on the basis of various grounds, some of which are founded, while others are susceptible or ostensibly even illegitimate.

The decisions of competent bodies to prohibit events often contain very brief reasoning that is limited to reiteration of the restriction grounds enshrined in the Law, without any concrete explanation as to how such criteria apply to the case on hand. The decisions of the competent body seem to be based on a template that undergoes only minor amendments each time.

Article 13(2) of the Law provides:

“The decision to prohibit conducting a mass public event shall contain substantiated and clear statement of the reasons for prohibiting such event.”

Whereas, decisions of the competent bodies on prohibiting events often cite the following reasons or pretexts:

- Possible violations of the public order, health and morals, and the constitutional rights and freedoms of others;
- Construction works;
- Disturbing the normal course of life in the city, and complaints of residents and passers-by;
- Other events; and
- Expediency or simply fear of negative developments.

2.2.2. Serious concerns exist in relation to the competent bodies’ practice of prohibiting mass public events on the basis of Paragraph 4(3) of Article 9 of the Law, which provides:

“Conducting a public event may be prohibited by the competent body:

…3) If there is credible information that conducting the event will pose a direct threat of violence or pose an imminent danger to state security, the public order, the public health and morals, the life and health of persons, the constitutional rights and freedoms of others, or that it will be conducted with the aim of forcibly overthrowing the constitutional order, inciting racial, ethnic, or religious hatred, or preaching war, or may lead to mass disorders or inflict significant damage to the property of the state, a community, or natural persons or legal entities.”

The Law gives the competent body the power to prohibit a mass public event. The discretionary power is the administrative body's right under the law to select one of several possible legitimate solutions.

Article 6(2) of the Republic of Armenia Law on Fundamentals of Administration and on Administrative Proceedings provides:

"When exercising discretionary authority, the administrative body is obliged to be led only by the need to protect human and civil rights and freedoms enshrined in the Republic of Armenia Constitution, their legal equality, the proportionality of administration, the prohibition of arbitrariness, and the pursuit of other objectives stipulated by law."

The legal practice of the competent bodies in relation to Paragraph 4(3) of Article 9 of the Law is inconsistent: the competent bodies have demanded the official opinions of the Police or National Security Service in a number of cases, but have not done so in others.

On 28 April 2007, Republic of Armenia citizens A.A. and P.M. filed notification with the Gyumri City Mayor's Office on a demonstration to be held on 6 May 2007. The competent body did not demand an official opinion from the Police or National Security Service of the Republic of Armenia in relation to this notification.

On 26 May 2008, the Gyumri City Mayor was notified of a demonstration to be held on 31 May 2008. In this instance, the competent body demanded the substantiated official opinions of the Police and National Security Service of the Republic of Armenia as specified in Paragraph 4(3) of Article 9 of the Law.

Whenever the Police or National Security Service of the Republic of Armenia issued substantiated opinions on the existence of the information stated in Paragraph 4(3) of Article 9 of the Law, the competent bodies almost always prohibited conducting the mass public events. Despite the prohibitions, the vast majority of the events did take place; interestingly, the violations of law stated in the "substantiated" official opinions never occurred. The assurances of the Police and the National Security Service about their inability to ensure the security of the participants of the mass public event in the place mentioned in the notification and the normal course of the event did not correspond to the reality. The public events were conducted peacefully, and the security of their participants and the normal course of the assemblies were ensured.

The OSCE/ODIHR Panel of Experts on the Freedom of Assembly has noted in the Guidelines on Freedom of Peaceful Assembly, prohibition is a measure of last resort, only to be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant interests. Furthermore, given the state's positive duty to provide adequate resources to protect peaceful assembly, prohibition may actually represent a failure of the state to meet its positive obligations.

On 14 July 2008, A.Z., the authorized representative for Republic of Armenia citizens L.T. and A.S., filed notification with the Yerevan City Mayor's Office on a mass public event to be conducted on 1 August 2008. On 17 July 2008, the authorized representative of the Yerevan City Mayor adopted decision number 85 on prohibiting the mass event.

Decision number 85 reads: "According to official opinion number h19/1-875 issued by the Republic of Armenia Police, intelligence data checked by the Police show

that a number of participants of the demonstration and rally to be organized in Yerevan on 1 August … will incite clashes with police officers and mass disorders. The information received serves as a basis for concluding that the failure to prohibit the demonstration and rally will pose an imminent threat to the life and health of the participants of the event, disturb the public order and public security, and illegitimately restrict the constitutional rights and freedoms of others. According to official opinion number 39/2457 of the National Security Service of the Republic of Armenia, if a demonstration and rally are conducted in the specified places on 1 August, … certain groups and unidentified individuals are actively preparing to carry out various provocative actions, including clashes with law-enforcement officers. According to the same information, they will try to turn the mass events into continuing violations of the public order accompanied with violence."

As was noted above, the authorized representative of the Yerevan City Mayor decided on 17 July 2008 to prohibit conducting a mass public event on 1 August 2008.

However, the demonstration and rally took place on 1 August, and none of the events mentioned in the official opinions of the Republic of Armenia Police and National Security Service occurred. On 4 August 2008, citizen A.Z. requested the Republic of Armenia Police and National Security Service to clarify whether any of the acts mentioned in the official opinions occurred during the demonstration and rally conducted on 1 August 2008.

The response of the Republic of Armenia Police dated 27 August 2008 to citizen A.Z.'s request reads: "…the Police undertook appropriate measures to ensure the public order and to prevent possible violations of law and crimes. As a result of the implemented measures, no clashes and mass disorder by the participants of the public event occurred." The response of the National Security Service dated 27 August 2008 to citizen A.Z.'s request reads: "As a result of the preventive measures implemented by the law-enforcement bodies, … illegal activities did not occur during the event."

A natural question that follows is why the relevant authorities did not contemplate that implementing proper measures would prevent illegal activities, precluding all grounds for prohibiting the assembly.

The competent authority must not impose restrictions simply to pre-empt possible disorder or interference with the rights of others. The existence of such a threat in itself cannot serve as a basis for prohibiting the assembly. The relevant bodies should implement the measures necessary to eliminate or mitigate the threat, and impose the assembly only if they are impossible. The fact that restrictions can be imposed during an event (and not only before it takes place) enables the authorities to both avoid imposing onerous prior restrictions and to ensure that restrictions correspond with and reflect the situation as it develops. Any interference with the right to peaceful assembly must pass the proportionality test. The presumption in favor of the right to h old assembly is a cornerstone of the international standards related to this right.

In the case of Rassemblement Jurassien Unite v. Switzerland (1979), the European Court of Human Rights noted that, given that a wide range of interventions might be suitable, the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.

Thus, the right to peaceful assembly should not be restricted due to the existence of illusionary or even real risks that could be properly reduced prior to the event. The

competent body should be able to show that any restrictions promote a substantial interest that would not be served absent the restriction, and that the reasons underlying such restrictions could not be addressed by means of precautionary measures; in other words, the competent bodies must specify in their decisions to prohibit assemblies not only the reasons for prohibition, but also the impossibility or ineffectiveness of precautionary measures needed to eliminate such reasons.

2.2.3. There are cases in practice in which the competent bodies have adopted decision to prohibit conducting mass public events on the basis that conducting an assembly will disturb the normal course of life in the city or create additional trouble for the city's residents or tourists. A number of administrative cases contain letters of residents and entrepreneurs stating the difficulties associated with conducting assemblies.

Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe the rights and freedoms of others. This is particularly so given that freedom of assembly, by definition, amounts only to temporary interference with these other rights.

Competent bodies must realize the fundamental importance of the right to assembly in free democratic society. The competent body has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of those who live, work, shop, trade, and carry on business in the locality affected by an assembly, and the result of the process should not be to the detriment of the fundamental human right to freedom of peaceful assembly. The third parties should put up with the temporary inconveniences that inevitably arise when the right to peaceful assembly is exercised.

2.2.4. In practice, there are cases in which two or more notifications are filed for public events to be held in the same place, and the competent body acknowledged receipt of only one, prohibiting the others and adopting decisions directly citing Paragraph 1(2) of Article 13 of the Law, which provides:

"*1. As a result of the review, a decision taken by the competent body in accordance with the procedure stipulated by Article 12 may prohibit a mass public event only if…*

2) *Another mass public event is to be held on the same day at the same time and in the same place, which precludes conducting the specified event, or a non-mass public event or other is to be held on the same day at the same time and in the same place, about which notification has been filed in accordance with the procedure stipulated by this Law, which precludes conducting the said event."*

However, the competent bodies have prohibited mass public events solely on the basis that another mass public event or non-mass public event or other event is to be held on the same day at the same time and place, without substantiating whether or not conducting such an event precludes conducting another mass public event on the same day at the same time and place.

The competent body's decision on prohibiting an event often does not even state the other event to be held, which precludes conducting another mass public event.

On 9 October 2009, A.R., a representative of the highest body of the ARF Dashnaktsutyun Party filed notification with the Yerevan City Mayor's Office for a demonstration to be held on 16 October 2009 in the area adjacent to the Moscow

Cinema in Yerevan (Charles Aznavour Square). The authorized representative of the Yerevan City Mayor issued decision number 133 on 12 October 2009 to prohibit conducting the event. The decision prohibited the demonstration solely on the basis that another event would be conducted on the same day at the same time and place. The prohibiting decision failed either to specify the other event precluding the notified mass public event or to substantiate how another event rendered conducting the notified demonstration impossible.

Such practical application of the legal provisions can possibly violate the right to freedom of peaceful assembly safeguarded by the Constitution. Whenever another mass public event is to be held on the same day and at the same time and place as a notified event, the competent body must exert maximum efforts to ensure that the notified mass public event is conducted on the day and at the time and place mentioned in the notification. If it is not possible, then the competent body must properly substantiate why conducting the event is impossible. Otherwise, prohibition of concurrent events would more likely be viewed as an illegitimate restriction.

2.2.5. Clearly, competent bodies of the Republic of Armenia have extensively applied the grounds for restricting peaceful assemblies.

The OSCE/ODIHR Panel of Experts on the Freedom of Assembly has noted in the Guidelines on Freedom of Peaceful Assembly that a wide spectrum of possible restrictions that do not interfere with the message communicated is available to the regulatory authority. In other words, rather than the choice for the authorities being between non-intervention and prohibition, there are many mid-range limitations that might adequately serve the purpose that they seek to achieve. These can be in relation to changes to the time or place of an event, or the manner in which the event is conducted.

The Republic of Armenia Law, too, allows the competent bodies to apply such restrictions. Paragraph 4 of Article 13 of the Law provides:

"If the competent body finds during the review of the notification a ground for prohibiting the mass public event stipulated by Paragraph 1(2) or the last paragraph of this Article for prohibiting the event, it shall be obliged to propose to the organizer another date for conducting the mass public event (at the time and place mentioned in the notification) or other hours (on the day and in the place mentioned in the notification) or other terms related to the form of the event (in the place and at the time mentioned in the notification).

The other date proposed by the competent body must be within two days of the date proposed by the organizers.

The other time of day proposed by the competent body must overlap with the hour proposed by the organizers or differ from it by no more than three hours."

Paragraph 5 of Article 13 of the Law provides:

"If the competent body finds during the review of the notification any of the grounds for prohibiting the mass public event under Paragraphs 3, 4(2), 4(4), or 5 of Article 9 of this Law, it shall be obliged to propose to the organizer another place for conducting the mass public event (on the day and at the time mentioned in the notification).

The other place proposed by the competent body must meet the reasonable requirements of the organizers, namely ensure the possibility for the participation of the

appropriate number of participants, if information on the number of participants is included in the notification. The competent body must not propose places outside the territory of the community chosen by the organizers. The proposed place must be as close as possible to that mentioned in the notification."

These legal provisions enable the competent body to apply the least intrusive restrictions, as well as to communicate with the organizers.

In practice, however, these legal provisions have triggered confrontation between the competent body and the organizers, rather than any collaboration.

In 2008, as a consequence of the overly formalistic application of Article 13(5), the competent body has proposed to organizers places that formally meet the requirements of Article 13(5), but are remote from the squares, central avenues, and streets.

On 23 June 2008, R.S., the authorized representative for Republic of Armenia citizen L.T., filed notification with the Yerevan City Mayor's Office on a mass public event to be held in the Freedom Square or in the area adjacent to the Matenadaran on 4 July 2008. The authorized representative of the Yerevan City Mayor proposed to conduct the demonstration planned for 4 July 2008 on the same day and at the same time either in the area adjacent to the Southern stands of the Hrazdan Stadium or in the area adjacent to the Dinamo Sports Complex. The organizer did not accept the proposals of the competent body. As a consequence, the authorized representative of the Yerevan City Mayor issued decision 82 dated 26 June 2008 to prohibit conducting the event.

In the judgment in the case of Rai, Almond and "Negotiate Now" v. the United Kingdom (1995), the European Court of Human Rights noted that if, having regard to the relevant factors, the authorities have a proper basis for concluding that restrictions should be imposed on the time or place of an assembly (rather than merely the manner in which the event is conducted), a suitable alternative time or place should be made available.

A proposal to move a mass public event from a busy central avenue, street, or square of the city to a remote area, such as an area adjacent to a sports stadium or a sports complex, **cannot be considered an adequate or suitable alternative**.

The objective of any assembly is to convey the message and protest of the participants to the authorities, the public, or certain groups of society, and to draw the attention of the authorities and the public to certain problems. Therefore, any alternative place, time, or form should be proportionate in terms of the impact and target audience. Otherwise, the assembly may lose its meaning. Any assembly pursues a specific aim, and measures should be taken to facilitate that **the assembly is conducted within sight and sound of the target audience**.

The proposal of an alternative day, time, or place by the competent body must not be an end in itself; any proposal must be aimed at ensuring the effective practical exercise of the right to peaceful assembly. Any legal provision concerned with the exercise of constitutionally-safeguarded human rights must be interpreted in light of the role and place of such right in a lawful state. Any interpretation should be based on the aim to ensure the effective practical exercise of fundamental human rights.

2.3. Rallies as a Way to Exercise the Right to Assembly

The application of the legal provisions on rallies is extremely controversial and often causes severe conflicts. Therefore, it is worth dwelling upon the competent bodies' practices related to notifications of rallies and de-facto prohibitions.

A rally is one of the ways in which the right enshrined in Article 29 of the RoA Constitution may be exercised.

Paragraph 4 of Article 2 of the Law provides: "*A rally is an event that is conducted by means of moving from one place to another.*"

The practical application of the legal provisions has led to the emergence of a type of tradition whereby **the right to conduct a rally apparently is less protected than the right to conduct a demonstration**; acknowledging the notification of a rally and allowing the rally to proceed is viewed as **a manifestation of good will** by the administrative authorities, rather than respect for the fundamental human right safeguarded by the Constitution.

2.3.1. Competent bodies often decide to prohibit rallies based solely on brief or virtually identical wording cited from the Law.

On 1 September 2008, A.Z., authorized representative for the Republic of Armenia citizens L.T. and A.S., filed notification with the Yerevan City Mayor's Office on conducting a mass public event ending with a rally on 12 September 2008. It was stated in the notification that the rally route would encompass the area near the Matenadaran, Mashtots Avenue, Amiryan Street, Hanrapetutyan Street, Nalbandyan Street, Sayat-Nova Street, Mashtots Avenue, Tumanyan Street, and the Northern Avenue. The rally would start at 9pm and end at 9:30pm. On 4 September 2008, the authorized representative of the Yerevan City Mayor issued decision number 126 on prohibiting the event, including the rally. The rally prohibition was reasoned as follows: "According to the last sub-paragraph of Article 13(1) of the Republic of Armenia Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations, a rally may be prohibited if its duration is so long that it will result in unreasonable restriction of the rights and freedoms of others. The route indicated in the organizers' notification covered the busiest avenues and streets of the capital city, which contained diverse transport knots and were very busy with pedestrian traffic, which meant that conducting the rally would significantly disturb the normal course of life in the City of Yerevan, create jams, make impassable the central streets, avenues, and intersections, and create difficulties and obstacles for the free movement of citizens and the safe and uninterrupted flow of transport traffic."

In this instance, prohibiting a rally that would last only 30 minutes on these arguments was not persuasive, to say the least. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly (including rally) will unreasonably infringe the rights and freedoms of others

Restriction of the freedom of assembly cannot be justified merely by the existence of lawful interests of other persons, i.e. third parties should put up with the inconvenience that naturally arises during the exercise of the right to freedom of assembly. Such

inconvenience cannot be avoided without imposing restrictions that are incompatible with the object of assembly. Similarly, the possibility to prohibit assembly cannot be considered solely on the basis that it disturbs transport traffic, because the conditions that would allow the use of streets by the assembly participants as well as transport traffic can normally be taken into account in advance.

Participants in assemblies (rallies) have as much a claim to use such sites for a reasonable period as everyone else. Indeed, freedom of assembly should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used (such as pedestrian and vehicular traffic). This principle was clearly states in a decision of the Israeli Supreme Court in 1979 in the case of Sa'ar v. Minister of Interior and Police (1979): "… In exercising the 'traffic' consideration, a balance must always be struck between the interests of citizens who wish to hold a meeting or procession and the interests of citizens whose right of passage is affected by that meeting or procession. Just as my right to demonstrate in the street of a city is restricted by the right of my fellow to free passage in that same street, his right of passage in the street of a city is restricted by my right to hold a meeting or procession. The highways and streets were meant for walking and driving, but this is not their only purpose."[16]

Thus, everyone has the right to conduct a rally during a reasonable time period in even the busiest central streets. Some inconvenience for third parties caused by the practical exercise of the right to assembly (rally) is inevitable, and the existence of such inconvenience per se cannot justify restriction of the constitutionally-safeguarded fundamental right.

2.3.2. An overview of the practice of administrative bodies ("competent bodies") of the Republic of Armenia shows that they often display a **differentiated** treatment towards cases with similar factual circumstances, especially in the practice related to notification of rallies.

On 29 January 2008, the Republican ("Hanrapetakan") Party of Armenia filed notification with the Yerevan City Mayor's Office for a demonstration and rally to be conducted on 17 February 2008. The notification mentioned that the rally would encompass the busiest central avenues and streets of the city, such as Mashtots Avenue and Tumanyan Street. The notification did not specify when the rally would begin and how long it would last. On 30 January 2008, the authorized representative of the Yerevan City Mayor's Office issued decision number 6 acknowledging the notification.

On 14 April 2008, A.R., a representative of the highest body of the ARF Dashnaktsutyun Party filed notification with the Yerevan City Mayor's Office for a public event to be held on 23 April 2008, which would be continued in a rally. The notification mentioned that the rally would begin at 8pm and encompass the busiest central avenues and streets of Yerevan, such as Baghramyan Avenue, where the Presidential Office is located. On 17 April 2008, the authorized representative of the Yerevan City Mayor's Office issued decision number 53 acknowledging the notification.

[16] See OSCE Guidelines on Freedom of Peaceful Assembly, Yerevan 2009, p. 31.

On 6 August 2008, A.Z., the authorized representative for Republic of Armenia citizens L.T. and A.S., filed notification with the Yerevan City Mayor's Office on a mass public event to be conducted on 13 August 2008, which would end with a rally. The notification mentioned that the rally would encompass the busiest central avenues and streets of Yerevan, such as Mashtots Avenue and Tumanyan Street. The notification also stated that the rally would last 40 minutes. On 8 August 2008, the authorized representative of the Yerevan City Mayor adopted decision number 96 on prohibiting the rally on the ground that the 40-minute duration was so long that it would result in unreasonable restriction of the rights and freedoms of others.

As the aforementioned cases illustrate, the competent body has acted arbitrarily by acknowledging some notifications on rallies to be held in the busiest avenues and streets of Yerevan and prohibiting identical rallies on the ground that such avenues and streets were busy and that the rights and freedoms of others would be unreasonably restricted.

The prohibition of arbitrariness is a pillar of democratic states. In the Republic of Armenia, it is prescribed in Article 7 of the Law on Fundamentals of Administration and on Administrative Proceedings. The prohibition of arbitrariness is the specific reflection in law of the constitutional principle of equality in law (Article 14.1 of the RoA Constitution).

Article 7 of the RoA Law on Fundamentals of Administration and on Administrative Proceedings provides:

"1. Administrative bodies are prohibited from displaying unequal treatment towards identical factual circumstances, unless there is a basis for differentiating them.

Administrative bodies are obliged to display individualized treatment towards essentially different factual circumstances.

2. If an administrative body has exercised some discretionary power in a certain manner, then it must exercise such discretionary power in the same manner in identical cases in the future, as well."

The competent body must treat cases with identical factual circumstances in the same way. The prohibition of arbitrariness is based on the notion of equity, which is also a pillar of the rule of law so much needed today in Armenian society.

2.3.3. Serious concerns have arisen over the competent bodies' practice of posing requirements not prescribed by law for rallies: decisions acknowledging notification of a rally often cite certain requirements, which they have no power to demand. A common example of such requirements on rally organizers is the demand to "hold the rally in the non-vehicular part of the route."

On 8 September 2009, Republic of Armenia citizen A.Z. filed notification with the Yerevan City Mayor's Office on a mass public event to be held on 20 September 2009, which would start as a demonstration and end as a rally. On 10 September 2009, the authorized representative of the Yerevan City Mayor issued decision number 115 acknowledging the notification. Paragraph 2.1 of the decision read: "Conduct the rally in the non-vehicular part of the route."

By imposing such a requirement, for which it has no power, the competent body violated the principle of lawfulness, which is a cornerstone of the rule of law in democratic states.

One of the main purposes of the principle of lawfulness is to make the activities of public authorities accountable and predictable.

The principle of lawfulness stems from the principle of the rule of law enshrined in Article 1 of the RoA Constitution. The principle of lawfulness is also directly stipulated by Article 4 of the RoA Law on Fundamentals of Administration and on Administrative Proceedings, which provides:

"1. Administrative bodies are obliged to oversee compliance with the laws.
2. The powers of administrative bodies are defined by law or, in cases stipulated by law, other legal acts."

The principle of lawfulness of administration implies that administrative bodies are not free in their activities, but rather, are bound by law and rights. This relationship is manifested in two ways, the rule of law and provision by law.

Provision by law means that an administrative body must be authorized by law or, in cases stipulated by law, by other legal acts to exercise any authority. Provision by law flows directly from Article 5(2) of the Constitution, which provides that "state government and local self-government bodies and officials may perform only such acts for which they are authorized by the Constitution and law."

Clearly, the authorized representative of the Yerevan Mayor has violated the principle of lawfulness, because no law has vested in him the power to impose such requirements on rally organizers.

3. Judicial Remedies of the Right to Peaceful Assembly

3.1. Effectiveness of Judicial Remedies

The rule of law implies the state's positive obligation to ensure stability and certainty in the interaction between various actors, including the obligation to safeguard their rights, freedoms, and legitimate interests by means of special judicial institutions, which can be achieved by safeguarding the right of access to judicial remedies of violated or challenged rights.

Article 18 of the RoA Constitution provides that everyone has the right to effective legal remedies for the protection of his rights and freedoms in courts and other state bodies.

It means that the freedom of assembly can be protected in both administrative and judicial proceedings. The person seeking the remedy has the freedom to choose the method of protection.

There have been no attempts to seek administrative remedy of the right to freedom of peaceful assembly, because there are no bodies superior to those reviewing notification of assembly, i.e. the local self-government bodies. Hence, judicial remedy remains the only form of protection of the freedom of assembly.

Despite their potential, administrative remedies of the right to peaceful assembly have never been used by any of the stakeholders, which is primarily due to the fact that the stakeholders do not trust that the competent bodies reviewing the same matter on appeal would be either impartial or objective.

Another reason is that, under Article 10(4) of the RoA Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations, the notification shall be deemed lawful and subject to review, if it is submitted at least five and at most 20 days prior to the planned date of the event. Article 12(1) of the Law provides that the competent body shall review the notification within 72 hours of its receipt in the order in which notifications were received. In this situation, it is possible that a person receives the decision prohibiting the assembly three days after filing notification and has only 16 or 17 days before conducting the planned public event, while the total duration of the proceedings is 30 days, and the law does not prescribe a special time period that would be shorter. Although the legislation prescribes the administrative body's duty to act swiftly, there is a strong fear that the administrative body will not respect this principle due to Article 46(1) of the RoA Law on Fundamentals of Administration and on Administrative Proceedings. Such situations arise due to the fact that the law does not prescribe shorter time periods for lodging and resolving administrative appeals against decisions prohibiting public events. In practice, persons immediately resort to judicial remedies, which take only 24 hours to implement. The legislation should be amended to set time periods for the review of administrative appeals concerning violations of the right to assembly, which would enable review of the administrative appeal at a reasonable time prior to the date indicated in the notification.

Sub-paragraph 4(2) of Paragraph 4 of Article 9 of the RoA Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations (hereinafter, "the Law") provides that the decision to prohibit conducting a mass public event may be appealed to court, which must render judgment within 24 hours. The court's judgment repealing a decision to prohibit conducting a mass public event shall become final when published. However, such over-expedited proceedings are not fully justifiable given the peculiar nature of violations of the right to peaceful assembly and the specific difficulties of establishing and proving such violations. Whenever some time still remains before the date indicated in the notification, the courts should have the right to try the case and render judgment at a speed that will give the organizers reasonable time to organize the assembly if their claim is granted.

From the standpoint of the stakeholders, judicial remedies have certain advantages, because:

a) Courts are more impartial and objective; and

b) Judicial remedies are implemented in accordance with a procedure strictly regulated by law.

3.2. General Overview of Judicial Remedies of the Right to Peaceful Assembly

During 2008, the Administrative Court of the Republic of Armenia received 23 applications challenging the decisions of the competent body to prohibit public events or its inaction.

The Court decided to return two of the 23 applications, rejected 16 by judgments, and granted five, of which two partially.

During 2009, the Administrative Court received three applications against the Yerevan City Mayor's Office. All applications were filed by the "Armenian National

Congress" campaign alliance. The Court decided to return two of the applications (which were subsequently not appealed) and rejected the third, which was appealed to the Cassation Court of the Republic of Armenia, and the cassation appeal was returned on 15 July 2009.

3.3. General Overview of Court Trials of Administrative Cases Instigated to Protect the Right to Peaceful Assembly

3.3.1. ***Applications Returned***

Administrative cases are tried and resolved in a number of phases.

Case instigation by filing application and the judge declaring it admissible is the phase of administrative proceedings, during which the court may reject or return the application.

Considering that, under Article 10(4) of the Law, notification is considered lawful and must be reviewed if it is filed at least five and at most 20 days prior to the planned date of the event, as well as the fact that the party concerned receives the decision regarding the notification with a lag, little time remains to take the case to court. Expedited rules apply in these cases, which imply that the court must adjudicate within 24 hours.

A sole judge determines whether or not to find the application admissible.

In six of the court cases reviewed, the application was returned mostly due to the failure either to pay the required stamp duty or to forward the application to the other party in accordance with the procedure defined by law.

Administrative case VD 5649/05/08 is of particular interest among cases in which the application filed on 11 September 2008 was returned to the applicants. The remarkable feature of this case is that the admissibility procedure ended only in August 2009. In this administrative case, the person authorized by the applicants sought in the application "to declare as null and void decisions 128, 129, 130, and 132 of the authorized representative of the Yerevan Mayor dated 8 September 2008, to recognize the right to freedom of assembly and freedom of expression, and to pay a total of 4,000 Armenian drams as stamp duty." The court (judge A. Sargsyan) decided on 12 September 2008 to return the application because of the failure to pay the required amount of the stamp duty and the fact that the application was signed by a person who did not have proper authority (his power-of-attorney had expired). The decision to return the application was appealed immediately thereafter, and the appeal was rejected by a decision of the court dated 29 September 2008. Then, on 29 September 2008, the rejection was appealed to the RoA Cassation Court, which decided on 24 October 2008 to return the appeal. On 6 November 2008, another application in the same case was filed with court requesting to reduce the amount of the stamp duty. This time, the court rejected the application (decision dated 13 November 2008) on the ground that the obstacles to declaring the application admissible had not been removed. The Administrative Court's decision dated 13 November 2008 was appealed, and the appeal was granted by a decision of the same court dated 28 November 2008. Subsequently, the Court decided on 22 December 2008 to reject the request to reduce the stamp duty amount and to return the application. Then, the decision was appealed to the Administrative Court, which rejected the appeal on 13 January 2009.

This decision was appealed to the Cassation Court, which decided on 15 April 2009 to return the appeal. Eventually, the persons seeking judicial remedy agreed to pay the required stamp duty and re-filed the application to court on 14 May 2009; however, the court declared the application only partially acceptable and returned the

part of the application concerning the Hanrapetutyun Party on the ground that the power-of-attorney for the representative had expired.

This decision was appealed on 25 May 2009. The appeal was partially granted on 30 May 2009, and the court's earlier decision on returning a part of the application was quashed. On 9 June 2009, the court decided to find the application admissible. This time, the applicant's representative lodged a cassation appeal against the decision on 10 June 2009. The Administrative Court decided on 15 June 2009 to discontinue proceedings. Then, on 22 July 2009, the Cassation Court returned the appeal, and it was decided on 25 August 2009 to resume proceedings and schedule a hearing.

In this case, the applicants were challenging decisions 128, 129, 130, and 132 of the authorized representative of the Yerevan Mayor dated 8 September 2008 with a view to holding a mass public event in the City of Yerevan, in the area adjacent to the Matenadaran and in the Freedom Square, during the period from 12 to 15 September 2008 inclusive.

The applicants, too, were guilty of this delay, because they failed to pay the required stamp duty and challenged it as being excessive on the ground of inability to pay (failing to produce any documents to confirm such inability). As for the expiry of the power-of-attorney of the applicants' representative in the case, it had indeed expired in one case, but subsequently, after the shortcomings of the application had been corrected and the application was re-filed with the court, a proper power-of-attorney was attached to the application, which was found by the Administrative Court in a panel hearing that resulted in rightful quashing of the sole judge's decision to return the application.

In the vast majority of cases in which the application is returned, the applicants are partially responsible for obstructing or delaying swift completion of the case instigation phase on various grounds.

In a number of administrative cases (such as VD 2221/05/08, VD 2204/05/08, VD 0333/05/08, and VD 2583/05/08), the applications included a number of non-pecuniary claims, for which a stamp duty of only 4,000 drams had been paid, and those applications were declared admissible without any problems. Whenever the Administrative Court's specific decision to return the application was appealed (the party appealing specifically mentioned so and provided evidence supporting the claim for the appeal court), the court was aware of this circumstance, and one or more of the judges reviewing the appeal declared admissible and tried applications in which a stamp duty of only 4,000 drams had been paid against several claims, while in other cases courts decided to return applications on the ground of the failure to pay the required amount of stamp duty.

3.3.2. Specific Conduct of Applicants and Their Representatives; Importance of Legal Awareness and Need for Professionalism

Studies have shown that persons filing application with the Administrative Court at times violate certain rules regarding the preparation and filing of the application, which inherently obstructs the swift trial of the administrative case. The Administrative Procedure Code prescribes special rules and requirements that must be met when filing an application.

In a number of cases, such as all the applications filed in 2009, applicants failed to send copies of the application to the respondent and the body managing state finances prior to filing the application with court; others based their claims on irrelevant legal provisions, asking the court to declare an act or action illegitimate instead of

claiming to declare it null and void, or vice versa, or demanded the court to find a violation of substantive provisions of law by making a fair judgment, or filing a claim to find a violation instead of filing a challenge and/or a claim to obligate (all of this is indicative of a low level of legal awareness); for these reasons, the court rejected many of the applications or declared them inadmissible. Administrative case VD 2204/05/08 is an example of how the claims were misstated: the applicant filed two claims, asking to declare the interfering administrative act null and void and to make a reasoned judgment. The latter cannot be viewed as a standalone non-pecuniary claim, because it is merely an element of the court's inherent obligation to administer justice. In such cases, a problem connected with the amount of stamp duty arises. The court's position on the issue of stamp duties is not justifiable, either, to the extent that demanding compliance with formalistic requirements is abused to create artificial obstacles, which implicitly reflects the court's reluctance to make progress in certain cases by completing the successive phases of administrative proceedings.

In the vast majority of cases, the representatives of applicants in administrative cases are non-lawyers or, what is worse, non-advocates, which considerably reduces the likelihood of sound representation of the case in court. Administrative cases are typically rather complex, requiring speed and the ability of parties to make quick decisions. In contrast, the representatives of the respondent are lawyers who are closely familiar with the legislation, its application techniques, rules of interpretation, succession of procedural rules, and the strategy to win cases.

3.4. Effectiveness of Proceedings (Compliance with Procedural Principles)

The democratic nature of proceedings (civil, administrative, or constitutional) depends largely on their underlying principles.

The principle of lawfulness, which has been declared a cornerstone of proceedings, implies rigorous compliance with the legal provisions. Administrative proceedings are designed to serve the effective protection of certain rights, freedoms, and lawful interests of persons. All the actions of the courts as public authorities administering justice, including all of their decisions and judgments, must comply with both substantive and procedural rules of law. Clearly, all other parties to proceedings, too, must comply with the binding requirement to ensure lawfulness.

An overview of cases in this area shows that there are, nonetheless, violations of substantive and procedural rules.

When unfavorable decisions of an administrative body regarding notification were challenged in court, the courts complied with the procedural deadlines, i.e. all such applications were adjudicated within 24 hours of their receipt, and stakeholders have not voiced any complaints over this aspect of proceedings. As to challenges of the actions of administrative bodies in court, time is not always efficiently used during proceedings for becoming familiar with the administrative case materials or making copies thereof, even if the concerned party has sought expedited trial.

Time is not efficiently used in cases appealed to the Cassation Court, though they account for only a negligible percentage of all court cases. Concerned parties sometimes miss the deadline for appeals and cite naive reasons for doing so (for

instance, they claim that the challenged court act did not specify a deadline for the appeal, see administrative case 3086/05/08; or try to argue that they only had the old text of the law, which stipulated a different deadline for the cassation appeal).

Article 6 of the RoA Administrative Procedure Code enshrines the important principle that the Administrative Court shall act ex officio to establish the facts of the case.

The court outlines the facts that it considers essential for resolving the dispute and, if necessary, demands the parties to adduce evidence to prove such facts. To form the "inner conviction" necessary for resolving the dispute, the court has the power to go beyond the motions filed and evidence adduced by the parties to administrative proceedings and to take reasonable measures, such as demanding materials of administrative proceedings, information, evidence, and additional explanations, or instructing the parties to be present in court.

Another article of the RoA Administrative Procedure Code, Article 22, provides that the court shall establish all the facts of material relevance to the resolution of the case by means of examining and weighing the collected evidence in accordance with the procedure stipulated by the Procedure Code.

Furthermore, Article 24 of the Administrative Procedure Code enshrines the principle that the court is free in weighing the evidence, i.e. determining whether facts can be found by directly assessing all the evidence in the case, with inner conviction formed on the basis of a comprehensive, complete, and objective review. In the judgment, the court must reason the formation of such conviction.

Article 26 of the RoA Administrative Procedure Code provides that the state government or local self-government body or official that adopted the challenged legal act or performed the challenged action or failed to perform the requested action, which had to be performed in the applicant's opinion, bears the burden of proving the factual circumstances that served such decision, action, or inaction.

In many of the administrative court cases studied, the administrative body that adopted the interfering administrative act had the burden of proof, but failed to do so properly.

For instance, in administrative cases number VD 2789/05/08, VD 3086/05/08, VD 2582/05/08, VD 2561/05/08, VD 2562/05/08, VD 2581/05/08, and VD 2229/05/08, the administrative body decided to deny the right to conduct mass public events on the ground of Paragraph 4(3) of Article 9 of the RoA Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations (hereinafter, "the Law"), citing opinions presented by the Republic of Armenia Police or National Security Service. In all these cases, the representatives of the City Mayor's Office claimed that the aforementioned state bodies had issued opinions on the existence of the grounds stipulated by Paragraph 4(3) of Article 9 of the Law, and that the City Mayor's Office was obliged to comply with such opinions unconditionally by denying the applicants' right to conduct mass public events. The court acted in an identical manner (in administrative case number VD 2562/05/08, for instance) by stating in the reasoning of its judgment that "the decision of the City Mayor's representative was based on the official opinions issued by the Republic of Armenia Police and National Security Service, in which they considered conducting a mass public event temporarily impossible, due to which the City Mayor's representative did not have the power to make any other decision." The

substantive provision of the Law (Paragraph 4 of Article 9) enshrines the administrative body's discretion, rather than obligation, by providing that "the authorized body may prohibit conducting a public event…"

On the other hand, the court relieved the administrative body of the burden of proof short of the required review of the circumstances underlying the administrative body's decision. The court never engaged an official or representative of the RoA Police or National Security Service, which issued the opinions, as a witness or third-party participant to the case. Moreover, the court never tried to make a written inquiry to establish the reasons underlying the circumstances stated in the official opinion. Parties to proceedings repeatedly tried in written and oral court proceedings to substantiate why the police or the security service issued such opinions, because organizers did conduct assemblies in a number of cases in spite of decisions prohibiting the mass public event, and nothing extraordinary happened. Interestingly, in one case, the authorized representative of the Yerevan City Mayor based his decision regarding a notification on an earlier-issued official opinion of the National Security Service.

Failure to conduct a comprehensive, impartial, and complete review of the case could be observed in another administrative case: case number VD 2789/05/08 involved an appeal against the administrative body's decisions number 32, 33, 34, and 36 dated 1 April 2008, for which notifications had been filed on 28 March 2009. This circumstance was completely disregarded by the applicant. Nevertheless, the court had the ex-officio obligation to establish the factual circumstances of the case. Article 12(8) of the Law provides that organizers may conduct the mass public event on the terms specified in the notification, unless the competent body decides to prohibit conducting the mass public event within 72 hours of receiving the notification. This timeframe marks the end of a legal relationship in which one side has rights and the other the corresponding obligation.

Another widespread aspect of the relationship between the administrative body and stakeholders is the failure to notify stakeholders of instigated administrative proceedings and the adoption of decisions without hearing the party concerned, even when the administrative body eventually adopts an unfavorable administrative act that due to the lack of notice deprives the stakeholder of the opportunity to prove its position and to obtain a favorable administrative decision. In court, representatives of the City Mayor's Office claim that the law does not require them to give notice, and the courts fail to address this fact of inaction by the administrative body during the court trial of the case. According to the procedure stipulated by law, administrative bodies are obliged to give parties to proceedings notice of administrative proceedings that last more than three days. In a number of cases, notice of instigated administrative proceedings is given in such a way that it is received long after the notification has been processed and rejected.

Although the court notes in all of its judgments that it has "heard the explanations of the parties and reviewed the written evidence presented to the court, which was assessed by inner conviction based on the comprehensive, complete, and impartial examination of all the evidence in the case," the vast majority of the court's judgments copy-paste the relevant segments of the objections by the respondent, i.e. the Yerevan City Mayor, without any substantiation of either the grounds for its "inner conviction" or the reasons for rejecting or accepting certain evidence. In all the cases in which

notifications were rejected, the court failed to examine the materials available in the administrative body, such as the minutes of the discussion held at the administrative body, the parties' assertions, or the documents submitted; by invoking the provisions of the RoA Law on Fundamentals of Administration and on Administrative Proceedings regarding the finding of decisions as illegitimate (invalid) or null and void, the court cited the official opinions of the RoA Police or National Security Service that underlay the administrative body's decision and rejected the application as groundless, even though it is obliged under the procedural rules to substantiate and reason its decision to an extent that will demonstrate the formation of inner conviction based on the comprehensive, complete, and impartial examination of the admissible and relevant evidence obtained or found in the case. In administrative case number VD 2561/05/08, the court reiterated a segment of the decision made on the basis of the review of the notification, copy-pasted the official opinions of the RoA Police and National Security Service on the same case, and concluded, without any reasoning, that it found the aforementioned opinions consistent with the requirements of Paragraphs 4(3) and 6 of Article 9 of the Law with a view to preventing mass disorder and crime, ensuring state security, the public order, and the rights and freedoms of others.

In very different administrative cases, the official opinions of the RoA Police and National Security Service had the same contents, which, without any additional reasoning, were presented to the City Mayor's Office and accepted by the latter in every single case. The official opinions are like a "template" that can be printed and delivered to the competent body every time there is a need, without much difficulty.

In a number of administrative cases, the administrative body disregarded Article 13(4) of the RoA Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations, which provides that, if the competent body finds during the review of the notification that the grounds for prohibiting a mass public event stipulated by Paragraph 1(2) or the last paragraph of the same article, then the competent body must propose to the organizer other days for conducting the mass public event (at the time and place indicated in the notification) or other hours (on the day and at the place indicated in the notification) or other terms related to the form of the event (at the place and time indicated in the notification), and the other day proposed by the competent body must be within the two days following the day proposed by the organizers. While the party concerned asserts in court that the administrative body has failed to honor this provision, the court fails to address this issue. In administrative case number VD 7449/05/08, the City Mayor's representative noted in response to such an assertion that "the Yerevan City Mayor's Office does not accept the applicant's assertion that, in case of rejecting the notification on the basis of the ground provided by Article 13 of the Law, the City Mayor's Office had to propose another day for conducting the mass public event (at the place and time indicated in the notification) or other hours (on the day and at the place indicated in the notification) or other terms related to the form of the event (at the place and time indicated in the notification)," adding that "the Yerevan City Mayor's Office could have applied the aforementioned provision of the Law only had the organizer participated in the review of the notification, while the applicant did not actually participate in the review of the application." After all of this, the court did not make any effort to establish the facts of the case, failed to establish that the notices reached the applicant late, and that Article 13(4) of the RoA Law on Conducting

Meetings, Gatherings, Rallies, and Demonstrations had to be applied notwithstanding the notifying party's presence. In the same case, the applicant also noted that he had personally checked and videotaped the fact that, during those days, the Culture, Youth Affairs, and Sports Department of the City Mayor's Office did not conduct any events. To this end, the court rather peculiarly found as follows: "The applicant's assertion that the Culture, Youth Affairs, and Sports Department of the City Mayor's Office did not conduct any events during the days in question is not a ground for granting the claim, because the court does not attach any importance to whether or not such events were conducted, because when the decisions to prohibit the events notified by the applicant were made, there was another decision on conducting another event on the same days and at the same hours, which rendered impossible the conduct of another mass public event, as is required by law." The court was indeed not concerned about whether or not the other notified event was conducted, but when establishing facts in an ex-officio manner, the court had to positively safeguard the initiator's right to conduct a mass public event to the extent that an event that was actually not going to be conducted was used as a basis for denying another entity of the right to conduct a mass public event. Yet again, the court copy-pasted the objections of the respondent (the administrative body) without any reasoning to find that the claim had no merit and that the administrative body's decision could not be invalidated. If there is a likelihood of an unfavorable administrative act being adopted in an administrative case, then the administrative body may not make it contingent upon the party's participation in administrative proceedings.

A similar situation is observed in administrative case number VD 4104/05/08. The applicant's notification for a mass public event was rejected on the ground that "Little Yerevantsi" non-mass events would be held at the same place and time. In this case, the court failed to address the issue of compliance with the provisions of Article 13(4) of the RoA Law on Conducting Meetings, Gatherings, Rallies, and Demonstrations.

The court has failed to take any measures to establish whether or not the prohibition of the mass public event was due to the length of the rally. Under these circumstances, the court simply accepts the written objection of the respondent (the administrative body) and the official opinions of the RoA Police. According to the applicants' notifications, the majority of rallies were routed through the central streets of Yerevan and had different proposed durations: in one case, a 40-minute rally was planned, while a two-hour rally was planned in the central streets of Yerevan in another (administrative case VD 6111/05/08) and a 1.5-hour rally in administrative case VD 7064/05/08. Neither the administrative body nor the court tried to determine whether the 40-minute or two-hour rallies would disturb the public order, security, or the rights and lawful interests of others, create a traffic jam during the period from 8pm to 8:40pm, or pass through a busy pedestrian route or parts of the city center with extensive construction activity. No criteria are stipulated for measuring the length of rallies; apparently, ad-hoc solutions are to be found at the administrative body's discretion, with the anticipation that it will be impartial. It is for the court to determine whether the administrative body's conclusion based on the Police opinion was justified and whether such projections could objectively be made. The court failed to address or substantiate these circumstances in any way. To this end, there is no difference between the

substance of the opinions issued by the RoA Police in very different administrative cases or between the Yerevan City Mayor's decisions to deny the right to conduct mass public events in significantly different cases. Whereas, the RoA Law on Fundamentals of Administration and on Administrative Proceedings prohibits administrative bodies from displaying unequal treatment towards identical factual circumstances, unless there is any ground for differentiating between them; it also requires administrative bodies to display individualized treatment towards essentially different factual circumstances.

Conclusion

The current situation concerning the right to freedom of peaceful assembly in the Republic of Armenia is in a number of ways incompatible with the applicable international standards.

Although the legislation on the freedom of assembly was largely brought into line with the international standards since 2004, it still contains ambiguous provisions that may be interpreted in different ways resulting in the creation of inconsistent legal practice.

There is no consistency in the activities of the competent bodies reviewing notifications, which in turn often leads to legal uncertainty and problems in the application of the legal provisions.

The judicial remedies for this right cannot be deemed effective, either.

The following six principles underlying the freedom of assembly are partially or fully breached:

- The presumption in favor of the freedom to assembly;
- The obligation of the state to protect peaceful assembly;
- Lawfulness;
- Proportionality;
- Sound administration; and
- Non-discrimination.

The conduct of public authorities in many cases gives reason to claim that they do not adequately appreciate the importance of the freedom of assembly and the fact that it can serve as a means of resolving many of the problems that exist in the country, in addition to its role in facilitating the expression of opinions and the protection of common interests.

The right o peaceful assembly is a fundamental human and civil right in democracy, which must be safeguarded in order to promote tolerance in a society where individuals and groups with diverging behaviors, principles, ideas, and political views can peacefully coexist.