



April 19, 2011

**50 days of the Defender: reflection on the right to freedom of assembly**

The right of freedom of assembly is considered to be not only a political right of an utmost importance; the effective realization of this right allows the society to protect other fundamental rights and freedoms. The current reflection about the right to freedom of assembly will be presented by me in the capacity of the Ombudsman from three main viewpoints:

- ✓ As a mediator in political dialogue
- ✓ As an observer of current human rights situation
- ✓ As a human rights defender in individual cases

From the first day of my office, I dealt with a complaint regarding the right to freedom of assembly and the necessity of its protection. On 3<sup>rd</sup> of March I received information about violation of rights by the Police with excelling legal power during the peaceful demonstration organized and held by peaceful protest near the building of the RA Government organized by people complaining against the prevention of open-air commerce and deputies of the “Heritage” party. After being informed, my representatives and then I myself arrived to the Republic Square. Being a witness of an already completed action, I applied to the Police, offering to hold full and comprehensive examination of the incident, by taking into account not only the point of view of the Police, but also the witnesses of the incident. The Police response to my letter stated, that the issue was discussed at the Police Collegium, and the officers took legitimate actions within the scope of their liabilities, with the aim to ensure public order and prevent illegal actions by the protesters. Unfortunately, during the examination of the case, the Police did not accept the principle presented by me, which will never contribute to the strengthening of public trust towards the Police. Nevertheless, the “Heritage” party has not yet consumed all the mechanisms authorized to examine and assess the incident, and now the case is under the authority of the Special Investigation Service, which instituted a criminal case. The official announcement of “Heritage” on crime report was transferred to the RA Special Investigation Service. Within the framework of the observer of the human rights situation, I will follow the process and the result of the case.

In the context of realization of right of freedom of assembly on March 21<sup>st</sup>, I touched upon the hunger strike of Raffi Hovhannisyán and the process of prevention of installment of a tent, assessing it as a human rights violation and the actions of Police as illegal, because the request of installing a tent as an accompanying action of non-mass event cannot be evaluated as violation of public order.

By appreciating positively the actions of Police, which did not prevent installing a tent after my announcement, it is important to mention, that the Police left the non-legitimate actions of police officers, who were preventing the process of installation of a tent, without any consequences.

In the scope of my intermediary function in the social and political dialogue I welcome the fact that on the 17<sup>th</sup> of March 2011 during the assembly organized by opposition, the latter were able to enter the Liberty Square without any obstruction in the result of negotiations and civilized dialogue.

At the same time we would like to note that both non legitimate restriction and abuse of the right to peaceful assembly are viewed as not only significant deviation from democratic principles but a serious threat to stability of the State and civil society. The ensuring of this law requires a positive obligation of the State to uninterruptedly realize freedom of assembly. Every restriction must suit to proportionality principle and preference must be given to the least interference. In regard to the protection of rights and freedoms of other people a clear balance should be found between implementation of the right of freedom of assembly and rights and legal interests of third people.

On the 28<sup>th</sup> of April, 2004 the Law of the RA “On Conducting Meetings, Rallies, Marches and Demonstrations” was adopted. It had some provisions subject to controversial interpretation and implementation resulting in inappropriate restrictions on the freedom of assemblies. Particularly, the presumption for the conduct of assemblies was partially or completely violated, the clear criteria to restrict or cease assemblies were absent, the jurisdiction of the authorized state bodies was not clearly defined and the provisions regulating the process of informing about the assemblies as well as mechanism of legal protection of this right were not effective.

On the 14<sup>th</sup> of April 2011, the Law of the RA “On Freedom of Assembly” was adopted by the RA National Assembly the draft of which had been developed by the RA Human Rights Defender and the Administration of the RA President, in 2010, taking into consideration the suggestions of Venice Commission and the Office of Democratic Institutions and Human Rights (ODIHR). The adopted Law now operates not on all kinds of “events” but only “assemblies”. The Law clearly differentiates two main types of assemblies: those, subject to be informed about and those which are not. The latter also clearly

defines the frame of places where conducting of meetings is prohibited. The principle approach inherent to the Law is that until the meeting is peaceful it cannot be ceased by the Police. I believe that the adopted Law will greatly contribute to ensuring the constitutional right on conducting assemblies. In my jurisdiction I will continue to exert efforts to ensure the freedom of assemblies and will take all the necessary steps to exclude any violation of this right.

In terms of newly adopted positive regulations it is very important for the RA Police and Heads of Communities to ensure the proper and precise implementation of the Law and the whole legislation of the Republic of Armenia. In case of the Police, I want to specially emphasize that it holds the considerable part of the power mechanism and from the standpoint of the strong it should be more tolerant, generous and humane in any situation, particularly in the case of the implementation of the right to freedom of peaceful assembly, of course by highlighting and maintaining public order, tranquility and normal life activity.

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