

# Guidelines on Freedom of Peaceful Assembly

SECOND EDITION

peaceful assembly and demonstration. The exercise of these rights will be preserved

right of peaceful assembly in the exercise of these standards;

the right of association will be guaranteed. The general right of a trade union to be recognized will be guaranteed. The right of a trade union to be recognized will be guaranteed.



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SECOND EDITION



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# Guidelines on Freedom of Peaceful Assembly

SECOND EDITION

**Prepared by the OSCE/ODIHR Panel of Experts  
on the Freedom of Assembly**

Nina Belyaeva  
Thomas Bull  
David Goldberger  
Michael Hamilton  
Neil Jarman  
Muatar S. Khaidarova  
Serghei Ostaf  
Vardan Poghosyan  
Alexander Vashkevich  
Yevgeniy A. Zhovtis

And by the Council of Europe's European Commission for Democracy through Law  
(Venice Commission)

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# Table of Contents

<b>Foreword</b> . . . . .	9
<b>Introduction</b> . . . . .	11
<b>SECTION A. Guidelines on Freedom of Peaceful Assembly</b> . . . . .	14
<b>1. Freedom of Peaceful Assembly</b> . . . . .	15
1.1. Freedom of peaceful assembly	
1.2. Definition of assembly	
1.3. Only peaceful assemblies are protected	
<b>2. Guiding Principles</b> . . . . .	15
2.1. The presumption in favour of holding assemblies	
2.2. The state's positive obligation to facilitate and protect peaceful assembly	
2.3. Legality	
2.4. Proportionality	
2.5. Non-discrimination	
2.6. Good administration	
2.7. The liability of the regulatory authority	
<b>3. Restrictions on Freedom of Assembly</b> . . . . .	17
3.1. Legitimate grounds for restriction	
3.2. Public space	
3.3. Content-based restrictions	
3.4. "Time, place and manner" restrictions	
3.5. "Sight and sound"	
<b>4. Procedural Issues</b> . . . . .	17
4.1. Notification	
4.2. Spontaneous assemblies	
4.3. Simultaneous assemblies	
4.4. Counter-demonstrations	
4.5. Decision-making	
4.6. Review and appeal	
<b>5. Implementing Freedom of Peaceful Assembly Legislation</b> . . . . .	19
5.1. Pre-event planning with law-enforcement officials	

- 5.2. Costs
- 5.3. A human rights approach to policing assemblies
- 5.4. The use of negotiation and/or mediation to de-escalate conflict
- 5.5. The use of force
- 5.6. The liability and accountability of law-enforcement personnel
- 5.7. The liability of organizers
- 5.8. Stewarding assemblies
- 5.9. Monitors
- 5.10. Media access

**SECTION B. Explanatory Notes . . . . . 22**

**1. The Importance of Freedom of Assembly (§1-7) . . . . . 23**

**2. The Regulation of Freedom of Peaceful Assembly . . . . . 25**

- The legal framework (§8)
  - International and regional standards (§8-9)
  - Regulating freedom of assembly in domestic law (§10-13)
- Freedom of assembly in the context of other human rights and freedoms (§14-15)
- Principal definitions and categories of assembly (§16-24)
- Peaceful and non-peaceful assemblies (§25-28)

**3. Guiding Principles (§29) . . . . . 35**

- The presumption in favour of holding assemblies (§30)
- The state’s duty to protect peaceful assembly (§31-34)
- Legality (§35-38)
- Proportionality (§39-45)
- Non-discrimination (§46-60)
  - Groups, unregistered associations and legal entities (§53)
  - Minorities (§54)
  - Non-nationals (§55)
  - Women (§56)
  - Children (§57-58)
  - Persons with disabilities (§59)
  - Law-enforcement personnel and state officials (§60)
- Good administration and transparent decision-making (§61-65)
- Review and appeal (§66)
- The liability of the regulatory authority (§67)

<b>4. Restrictions on Freedom of Assembly (§68)</b> . . . . .	50
Legitimate grounds for restriction (§69-70)	
Public order (§71-73)	
Public safety (§74-75)	
The protection of health (§76-77)	
The protection of morals (§78-79)	
The protection of the rights and freedoms of others (§80-84)	
National security (§85-86)	
Legislation intended to counter terrorism and extremism (§87-91)	
Derogations in times of war or other public emergency (§92-93)	
Types of restriction (§94)	
Content-based restrictions (§94-98)	
“Time, place and manner” restrictions (§99-100)	
“Sight and sound” (§101)	
Restrictions imposed prior to an assembly (“prior restraints”) (§102-104)	
Freedom of association and freedom of peaceful assembly (§105-106)	
Indirect restrictions on freedom of assembly (§107)	
Restrictions imposed during an assembly (§108)	
Sanctions and penalties imposed after an assembly (§109)	
Defences (§110-112)	
<b>5. Procedural Issues.</b> . . . . .	63
Advance notification (§113-117)	
Notification, not authorization (§118-121)	
Simultaneous assemblies (§122)	
Counter-demonstrations (§123-124)	
Exceptions from the notification process (§125)	
Spontaneous assemblies (§126-131)	
Decision-making and review processes (§132-140)	
<b>Part II – Implementing Freedom of Peaceful Assembly legislation.</b> . . . . .	73
<b>Introduction (§141-143)</b> . . . . .	73
<b>6. Policing Public Assemblies (§144)</b> . . . . .	75
A human rights approach to policing (§145-146)	
Training (§147-148)	
Policing assemblies – general principles of good practice (§149-170)	
Use of force (§171-178)	
Liability and accountability (§179-184)	

<b>7. Responsibilities of the Organizer</b> . . . . .	90
The organizer (§185-186)	
Ensuring the peaceful nature of an assembly – principles of good practice (§187-190)	
Stewarding assemblies (§191-196)	
Liability (§197-198)	
<b>8. Monitoring Freedom of Peaceful Assembly (§199-200)</b> . . . . .	94
Independent monitors (§201-205)	
Media (§206-210)	
<b>Annex A – Enforcement of international human rights standards</b> . . . . .	101
<b>Annex B – Cases cited</b> . . . . .	108
<b>Annex C – English-Russian glossary of key terms</b> . . . . .	116
<b>Annex D – Expert Panel composition</b> . . . . .	122
<b>Endnotes</b> . . . . .	125

## Foreword

The right to assemble peacefully, together with freedom of expression and freedom of association, rests at the core of any functioning democratic system. The right to freedom of assembly, as well as its limits, are clearly stated in Article 11 of the European Convention on Human Rights and in the OSCE's 1990 Copenhagen Document. Most national constitutions and fundamental laws echo these documents or establish similar principles.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Commission for Democracy through Law (Venice Commission) have been providing legislative support to OSCE participating states and Council of Europe members to assist them in ensuring that their legislation on freedom of peaceful assembly complies with European and international standards and OSCE commitments. The development of these Guidelines is a cornerstone of this assistance, adding to ODIHR's [LegislationOnline.org](https://legislationline.org) database, where lawmakers can obtain good examples from other countries' legislation that can help them frame their own choices.

Existing international standards certainly offer a clear general framework; however, too little guidance is available to legislators and executive branches on how the exercise of freedom of peaceful assembly may be regulated in practice at the local and national level. Good laws, by themselves, cannot mechanically generate improvements in practice. But even at the legislative level, in a number of cases an inclination towards a so-called command-and-control approach can be identified, as reflected in more regulations, more control and more bureaucratic hurdles. Public demonstrations and rallies, for instance, are not always seen as part of the routine that makes up a pluralistic democracy. In some states, freedom of assembly is still regulated in a way that often results in its de facto denial.

Approaches to regulating the right to freedom of assembly vary greatly across Europe and the OSCE area. Legislators in different countries have chosen a variety of models. These stretch from adopting specific laws to govern the exercise of this fundamental right to introducing provisions across a diverse array of relevant legislation, such as, most importantly, acts pertaining to the police and general administrative law. This prompted ODIHR, together with the Venice Commission, to develop Guidelines aimed at formulating thresholds that should be met by national authorities in their regulation of the right.

This document is the second, revised edition of the ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, which were first published in 2007. The Guidelines are designed for practitioners in many sectors, i.e., drafters of legislation and those implementing it, as well as those affected by the implementation. Recognizing the great diversity of country contexts, the Guidelines do not attempt to provide ready-made solutions but, rather, to clarify key issues and discuss possible ways to address them. Even when the legislative framework is in compliance with European and international standards and OSCE commitments, challenges to the practical implementation of those laws persist in the region.

The Guidelines offer a practical toolkit for legislators and practitioners responsible for implementing laws by drawing on good-practice examples from national legislations in European and OSCE participating States and the case-law of the ECtHR to illustrate the various legislative options used to regulate issues pertaining to the freedom of assembly. The Guidelines are a living instrument. They demarcate parameters for implementation consistent with international standards and illustrate key principles with examples of good practice from individual states. We are pleased to publish these Guidelines and hope they will find many users – drafters of legislation, law-enforcement personnel, municipal-government officials, judges, academics and members of civic organizations – and count on them to contribute their expertise and experience in order to further enrich this document.

*Ambassador Janez Lenarčič,  
Director,  
OSCE Office for Democratic Institutions  
and Human Rights (ODIHR)*

*Gianni Buquicchio,  
President,  
Venice Commission  
of the Council of Europe*

## Introduction

This second edition of the *Guidelines on Freedom of Peaceful Assembly*, together with the Explanatory Notes, was prepared by the Panel of Experts on Freedom of Assembly of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in consultation with the Council of Europe's European Commission for Democracy through Law (Venice Commission).<sup>1</sup> Though set apart here in Section B, the Explanatory Notes constitute an integral part of the Guidelines found in Section A, and should be read in concert with them. The second edition of the Guidelines updates the first, published in 2007, in the light of new case law and by drawing on comments and feedback received by the Panel.

Work on these Guidelines began in 2005, and the initial Guidelines and Explanatory Notes drafted by ODIHR were developed further over the course of four roundtable sessions held in 2006 in Tbilisi, Belgrade, Almaty and Warsaw, respectively. These roundtable sessions brought together about 150 participants from 29 OSCE participating States. The participants came from a diverse range of fields and backgrounds and included law-enforcement officers and representatives of human rights NGOs, government ministers and organizers of assemblies, academics and practicing lawyers. The document benefitted significantly from this wealth of hands-on experience in a broad range of contexts. The first edition of the Guidelines has since provided a basis for a number of Legal Opinions and Legislative Guidelines prepared jointly by the ODIHR Panel and the Venice Commission.<sup>2</sup> Reference to the Guidelines has also been made in case law of the European Court of Human Rights<sup>3</sup> and by UN bodies.<sup>4</sup>

The Guidelines and Explanatory Notes are based on international and regional treaties and other documents related to the protection of human rights,<sup>5</sup> on evolving state practice (as reflected, *inter alia*, in the judgments of domestic courts),<sup>6</sup> and on general

principles of law recognized by the community of nations. They set out a clear minimum baseline in relation to these standards, thereby establishing a threshold that must be met by national authorities in their regulation of freedom of peaceful assembly. This document, however, does not attempt to codify these standards or summarize the relevant case law. Instead, it is illustrated by examples of good practice (measures that have proven successful across a number of jurisdictions or that have demonstrably helped ensure that the freedom to assemble is accorded adequate protection).

The legal regulation of freedom of assembly is a complex matter. A wide range of issues, both procedural and substantive, must be considered so as to best facilitate its enjoyment. Moreover, the approach to regulation varies greatly among OSCE participating States – from the adoption of a single, consolidated law, to the incorporation of provisions concerning peaceful assemblies in a number of different laws (including those governing the powers of law-enforcement agencies, criminal and administrative codes, anti-terrorism legislation and election laws). Recognizing these differences and the great diversity of country contexts involved (particularly in relation to democratic traditions, the rule of law and the independence of the judiciary), this document does not attempt to provide ready-made solutions. It is neither possible nor desirable to draft a single, transferable “model law” that can be adopted by all OSCE participating States. Rather, the Guidelines and the Explanatory Notes seek to clarify key issues and discuss possible ways to address them.

In regulating freedom of assembly, well-drafted legislation is vital in framing the discretion afforded to the authorities.<sup>7</sup> This requires that governments and those involved in the drafting of legislation consult with the individuals and groups affected by new laws or amendments to existing ones (including local human rights organizations) as an integral part of the drafting process. Often, however, it is not the text of the law that is at issue but its implementation. Therefore, while these Guidelines and Explanatory Notes will be of benefit to those involved in the drafting of legislation pertaining to freedom of assembly, they are also aimed at those responsible for implementing such legislation (the relevant administrative and law-enforcement authorities) and those affected by its implementation. The Guidelines and Explanatory Notes are, therefore, primarily addressed to practitioners – drafters of legislation, politicians, legal professionals, police officers and other law-enforcement personnel, local officials, trade unionists, the organizers of and participants in assemblies, NGOs, civil society organizations and those involved in monitoring both freedom of assembly and police practices.

The Explanatory Notes in Section B are not only essential to a proper understanding of Guidelines in Section A, but also provide examples of good practice, which is what makes this document special. Part I of Section B (chapters 1-5) emphasizes the importance of freedom of assembly and sketches its parameters. It outlines the importance

of freedom of assembly (chapter 1), identifies core issues in the regulation of freedom of assembly (chapter 2), sets out a number of guiding principles that should govern its regulation (chapter 3), examines the legitimate grounds for, and types of, restriction (chapter 4), and examines relevant procedural issues (chapter 5). Part II (chapters 6-8) is more practically focused and examines the implementation of freedom of assembly legislation. It covers the policing of public assemblies (chapter 6), the responsibilities of assembly organizers (chapter 7) and the role of the media and independent monitors (chapter 8). Appendix A provides a summary description of a number of regional and international bodies concerned with the enforcement of international human rights standards, while Appendix B provides a list of cases cited. A Glossary of Terms defining the major concepts used in both the Guidelines and Explanatory Notes (with English-Russian translation) is contained in Appendix C.

These Guidelines and Explanatory Notes can be downloaded from the ODIHR and Venice Commission websites, as well as from [Legislationline.org](http://legislationline.org), ODIHR's online legislative database ([www.legislationline.org](http://www.legislationline.org)), where national legislation on public assemblies and other related legal materials can also be found.

This second edition of the Guidelines and the Explanatory Notes remains a living document, so ODIHR and the Venice Commission continue to welcome comments and suggestions, which should be addressed to [assembly@odihr.pl](mailto:assembly@odihr.pl).

## **SECTION A**

# Guidelines on Freedom of Peaceful Assembly

## 1. Freedom of Peaceful Assembly

- 1.1 Freedom of peaceful assembly** is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. Assemblies may serve many purposes, including the expression of diverse, unpopular or minority opinions. The right can be an important strand in the maintenance and development of culture, such as in the preservation of minority identities. The protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together.
- 1.2 Definition of assembly.** For the purposes of the Guidelines, an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.

This definition recognizes that, although particular forms of assembly may raise specific regulatory issues, all types of peaceful assembly – both static and moving assemblies, as well as those that take place on publicly or privately owned premises or in enclosed structures – deserve protection.

- 1.3 Only peaceful assemblies are protected.** An assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. The term “peaceful” should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.

## 2. Guiding Principles

- 2.1 The presumption in favour of holding assemblies.** As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of this freedom should be clearly and explicitly established in law.
- 2.2 The state’s positive obligation to facilitate and protect peaceful assembly.** It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the state should always seek to facilitate and protect public assemblies at the organizers’ preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.

**2.3 Legality.** Any restrictions imposed must have a formal basis in law and be in conformity with the European Convention on Human Rights and other international human rights instruments. To this end, well-drafted legislation is vital in framing the discretion afforded to the authorities. The law itself must be compatible with international human rights standards and be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, as well as the likely consequences of any such breaches.

**2.4 Proportionality.** Any restrictions imposed on freedom of assembly must be proportional. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.

The principle of proportionality requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event, such as re-locating assemblies to less central areas of a city.

A blanket application of legal restrictions tends to be over-inclusive and, thus, will fail the proportionality test, because no consideration has been given to the specific circumstances of the case.

**2.5 Non-discrimination.** Freedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly the relevant authorities must not discriminate against any individual or group on any grounds.

The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; and to persons without full legal capacity, including persons with mental illnesses.

**2.6 Good administration.** The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this must be clearly stated in law. The regulatory authority should ensure that the general public has adequate access to reliable information about its procedures and operation. Organizers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should have the opportunity to make oral and written representations directly to the regulatory authority. The regulatory process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in

writing to the event organizer, with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the date provided in the notification for the assembly.

- 2.7 The liability of the regulatory authority.** The regulatory authorities must comply with their legal obligations and should be accountable for any failure – procedural or substantive – to do so. Liability should be gauged according to the relevant principles of administrative law and judicial review concerning the misuse of public power.

### 3. Restrictions on Freedom of Assembly

- 3.1 Legitimate grounds for restriction.** The legitimate grounds for restriction are prescribed in international and regional human rights instruments. These should not be supplemented by additional grounds in domestic legislation.
- 3.2 Public space.** Assemblies are as legitimate uses of public space as commercial activity or the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions.
- 3.3 Content-based restrictions.** Assemblies are held for a common expressive purpose and, thus, aim to convey a message. Restrictions on the visual or audible content of any message should face a high threshold and should only be imposed if there is an imminent threat of violence.
- 3.4 “Time, place and manner” restrictions.** A wide spectrum of possible restrictions that do not interfere with the message communicated is available to the regulatory authority. Reasonable alternatives should be offered if any restrictions are imposed on the time, place or manner of an assembly.
- 3.5 “Sight and sound”.** Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within “sight and sound” of their target audience.

### 4. Procedural Issues

- 4.1 Notification.** It is not necessary under international human rights law for domestic legislation to require advance notification about an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation. Prior notification should, therefore, only be required where its purpose is to enable

the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require the organizer of an assembly to submit a notice of intent rather than a request for permission.

The notification process should not be onerous or bureaucratic. The period of notice should not be unnecessarily lengthy, but should still allow adequate time for the relevant state authorities to make the necessary plans and preparations to satisfy their positive obligations, and for the completion of an expeditious appeal to (and ruling by) a court should any restrictions be challenged.

If the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able proceed with their activities according to the terms presented in their notification and without restriction.

- 4.2 **Spontaneous assemblies.** Where legislation requires advance notification, the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable. Such an exception would only apply in circumstances where the legally established deadline cannot be met. The authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.
- 4.3 **Simultaneous assemblies.** Where notification is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as best as possible. The prohibition of a public assembly solely on the basis that it is due to take place at the same time and location as another public assembly will likely be a disproportionate response where both can be reasonably accommodated. The principle of non-discrimination requires, further, that assemblies in comparable circumstances do not face differential levels of restriction.
- 4.4 **Counter-demonstrations.** Counter-demonstrations are a particular form of simultaneous assembly in which the participants wish to express their disagreement with the views expressed at another assembly. The right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate. Indeed, demonstrators should respect the rights of others to demonstrate as well. Emphasis should be placed on the state's duty to protect and facilitate each event where counter-demonstrations are organized or occur, and the state should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within "sight and sound" of one another.

- 4.5 Decision-making.** The regulatory authorities should ensure that the decision-making process is accessible and clearly explained. The process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizers, with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the date for the assembly provided in the notification.
- 4.6 Review and appeal.** The right to an effective remedy entails the right to appeal the substance of any restrictions or prohibitions on an assembly. An initial option of administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be a mechanism for appeal to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. A final ruling, or at least relief through an injunction, should, therefore, be given prior to the date for the assembly provided in the notification.

## **5. Implementing Freedom of Peaceful Assembly Legislation**

- 5.1 Pre-event planning with law-enforcement officials.** Wherever possible, and especially in cases of large assemblies or assemblies related to controversial issues, it is recommended that the organizer discuss with the law-enforcement officials the security and public-safety measures that are to be put in place prior to the event. Such discussions might, for example, cover the deployment of law-enforcement personnel, stewarding arrangements and particular concerns relating to the policing operation.
- 5.2 Costs.** The costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities. The state must not levy any additional financial charge for providing adequate policing. Organizers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event.
- 5.3 A human rights approach to policing assemblies.** The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. In particular, the state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law-enforcement officials must also protect participants of

a peaceful assembly from any person or group (including *agents provocateurs* and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way.

- 5.4 The use of negotiation and/or mediation to de-escalate conflict.** If a stand-off or other dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. Such dialogue – although not always successful – can serve as a preventive tool to help avoid the escalation of conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force.
- 5.5 The use of force.** The use of force must be regulated by domestic law, which should set out the circumstances that justify its use (including the need to provide adequate prior warnings) and the level of force acceptable to deal with various threats. Governments should develop a range of responses that enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations where other more peaceful interventions have failed.
- 5.6 The liability and accountability of law-enforcement personnel.** If the force used is not authorized by law, or more force was used than necessary in the circumstances, law-enforcement personnel should face civil and/or criminal liability, as well as disciplinary action. Law-enforcement personnel should also be held liable for failing to intervene where such intervention might have prevented other officers from using excessive force. Where it is alleged that a person is physically injured by law-enforcement personnel or is deprived of his or her life, an effective, independent and prompt investigation must be conducted.
- 5.7 The liability of organizers.** Organizers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. The organizers should not be liable for the actions of individual participants or for the actions of non-participants or *agents provocateurs*. Instead, there should be individual liability for any individual who personally commits an offence or fails to carry out the lawful directions of law-enforcement officials.
- 5.8 Stewarding assemblies.** It is recommended that the organizers of assemblies be encouraged to deploy clearly identifiable stewards to help facilitate the holding of the event and ensure compliance with any lawfully imposed restrictions. Stewards do not have the powers of law-enforcement officials and should not use force but, instead, should aim to obtain the co-operation of assembly participants by means of persuasion.

- 5.9 Monitors.** The independent monitoring of public assemblies provides a vital source of information on the conduct of assembly participants and law-enforcement officials. This information may be used to inform public debate and, usefully, can also serve as the basis for dialogue among government, local authorities, law-enforcement officials and civil society. NGOs and civil society organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies.
- 5.10 Media access.** The role of the media as a public watchdog is to impart information and ideas on matters of public interest – information that the public also has a right to receive. Media reports can thus provide an otherwise absent element of public accountability for both organizers of assemblies and law-enforcement officials. Media professionals should, therefore, be guaranteed as much access as is possible to an assembly and to any related policing operation.

**SECTION B**

Explanatory Notes

## 1. The Importance of Freedom of Assembly

1. Throughout the Guidelines, the term “right to *freedom of peaceful assembly*” is used in preference to that of “the *right to peaceful assembly*”. This emphasizes that any right to assemble is underpinned by a more fundamental freedom, the essence of which is that it should be enjoyed without interference.<sup>8</sup> Participation in public assemblies should be entirely voluntary and uncoerced.<sup>9</sup>
2. Freedom of peaceful assembly is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. It has been recognized as one of the foundations of a functioning democracy. Facilitating participation in peaceful assemblies helps ensure that all people in a society have the opportunity to express opinions they hold in common with others. As such, freedom of peaceful assembly facilitates dialogue within civil society and among civil society, political leaders and government.
3. Freedom of peaceful assembly can serve many purposes, including (but not limited to) the expression of views and the defence of common interests, celebration, commemoration, picketing and protest. The exercise of this freedom can have both symbolic and instrumental significance, and can be an important strand in the maintenance and development of culture and the preservation of minority identities. It is complemented by other rights and freedoms, such as freedom of association,<sup>10</sup> the right to establish and maintain contacts within the territory of a state,<sup>11</sup> freedom of movement,<sup>12</sup> the right to cross international borders,<sup>13</sup> freedom of expression<sup>14</sup> and freedom of thought, conscience and religion.<sup>15</sup> As such, freedom of assembly is of fundamental importance for the personal development, dignity and fulfilment of every individual and for the progress and welfare of society.<sup>16</sup>

4. The protection of the right to freedom of assembly also underpins the realization of both social and economic rights (including employment and labour interests) and so-called "third generation" rights (such as the right to a healthy environment). Article 12 of the EU Charter, for example, emphasizes the particular importance of the right to freedom of peaceful assembly and association in relation to political, trade union and civic matters.<sup>17</sup> Furthermore, those who seek to defend and advance socio-economic and developmental interests (properly regarded as indivisible from civil and political rights) can also rely upon the right to organize, as recognized in both Article 5 of the European Social Charter<sup>18</sup> and in the ILO Convention concerning Freedom of Association and Protection of the Right to Organise (Co87).<sup>19</sup> The interpretation of national labour laws should be consistent with these standards.
5. With appropriate media coverage, public assemblies communicate with local and national audiences and with the world at large. In countries where the media are limited or restricted, freedom of assembly is vital for those who wish to draw attention to local issues. This communication potential underlines the importance of freedom of assembly in effecting change.
6. Public assemblies often have increased prominence and significance in the context of elections, when political parties, candidates and other groups and organizations seek to publicize their views and mobilize support (see para. 107).<sup>20</sup> Legal measures that are potentially more restrictive than the normal regulatory framework governing freedom of assembly should not be necessary to regulate assemblies during or immediately after an election period, even if there is heightened tension. On the contrary, the general law on assemblies should be sufficient to cover assemblies associated with election campaigns, an integral part of which is the organization of public events.<sup>21</sup> Open and free political expression is particularly valued in the human rights canon.
7. In addition to serving the interests of democracy, the ability to freely assemble is also crucial to creating a pluralistic and tolerant society in which groups with different and possibly conflicting, backgrounds, beliefs, practices or policies can exist peacefully together. In circumstances where the right to freedom of thought, conscience and religion is also engaged, the role of the authorities "is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other".<sup>22</sup> Furthermore, the European Court of Human Rights has held that in creating a pluralistic, broadminded and tolerant society, "although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: A balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position."<sup>23</sup>

## 2. The Regulation of Freedom of Peaceful Assembly

### The legal framework

8. **International and regional standards:** The sources of law identified in this section are among the most important treaties to which ODIHR refers when conducting reviews of legislation. The international and regional standards concerning freedom of assembly derive mainly from two legal instruments: the International Covenant on Civil and Political Rights (ICCPR)<sup>24</sup> and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),<sup>25</sup> and their optional protocols and protocols, respectively. The American Convention on Human Rights is also of particular relevance to member countries of the Organization of American States.<sup>26</sup> Other relevant treaties include the UN Convention on the Rights of the Child, the Charter of Fundamental Rights of the European Union and the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention).<sup>27</sup> The key provisions in relation to the right to freedom of peaceful assembly are reproduced below.

#### **Article 20(1), Universal Declaration of Human Rights**

*Everyone has the right to freedom of peaceful assembly and association.<sup>28</sup>*

#### **Article 21, International Covenant on Civil and Political Rights**

*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, the protection of public health or morals or the protection of the rights and freedoms of others.*

#### **Article 15, Convention on the Rights of the Child**

- 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*
- 2. No restrictions may be placed on the exercise of these rights 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.*

**Article 11, European Convention on Human Rights**

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and 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.*

**Article 15, American Convention on Human Rights**

*The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.*

**Article 12, Charter of Fundamental Rights of the European Union**

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.*

2. *Political parties at Union level contribute to expressing the political will of the citizens of the Union.*

**Article 12, Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention)**

1. *Everyone shall have 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, public order, public health or morals, or for the protection of the rights and freedoms of others.*

*This Article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or by members of the law enforcement or administrative organs of the State.*

**OSCE Copenhagen Document 1990**

*[The participating States reaffirm that]:*

*9.2 [E]veryone 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.*

9. The significance of these treaties and documents derives, in part, from the jurisprudence developed by their respective monitoring bodies – the UN Human Rights Committee,<sup>29</sup> the European Court of Human Rights and the Inter-American Commission on Human Rights.<sup>30</sup> This body of case law is integral to the interpretation of these standards and should be fully understood by those charged with implementing domestic laws on freedom of assembly. It is recommended, therefore, that governments ensure that accurate translations of key cases are made widely available.<sup>31</sup>
10. **Regulating freedom of assembly in domestic law:** Freedom of peaceful assembly should be accorded constitutional protection, which ought, at a minimum, to contain a positive statement of both the right and the obligation to safeguard it. There should also be a constitutional provision that guarantees fair procedures in the determination of the rights contained therein. Constitutional provisions, however, cannot provide for specific details or procedures. Moreover, where a constitution does not expressly articulate the principles of legality and proportionality, constitutional provisions relating to freedom of assembly that are of a general nature can, without further clarification, afford excessively wide discretion to the authorities and increase the possibility of abuse.
11. While there is no requirement that participating States enact a specific law on freedom of assembly, such legislation can greatly assist in protecting against arbitrary interference with the right to freedom of peaceful assembly.<sup>32</sup> Any such domestic legislation should confer broadly framed protection on freedom of assembly, and narrowly define those types of assembly for which some degree of regulation may be justified. It cannot be overemphasized that, in an open society, many types of assembly do not warrant any form of official regulation. The provisions of a specific law can also serve as a guide for sound decision-making by regulatory authorities.

Consequently, many states or municipal authorities have enacted specific legislation, in addition to constitutional guarantees, dealing with public assemblies.<sup>33</sup> The purpose of such legislation should never be to inhibit the enjoyment of the constitutional right to freedom of peaceful assembly but, rather, to facilitate and ensure its protection. In this light, it is vital that any specific law should avoid the creation of an excessively regulatory or bureaucratic system. This is a real risk in many countries and has been raised as a particular concern by the Venice Commission.<sup>34</sup> Well-drafted legislation, however, can help ensure that freedom of assembly is not over-regulated.

12. Domestic laws regulating freedom of assembly must be consistent with the international instruments ratified by the state in question. Domestic laws should also be drafted, interpreted and implemented in conformity with relevant international and regional jurisprudence and good practice. The enforcement of such laws will depend significantly upon the existence of an impartial and adequately trained police service and an independent judiciary.
13. Furthermore, the rule of law demands legal stability and predictability. Amendments introduced as a response to particular events, for example, often result in partial and piecemeal reforms that are harmful to the protection of rights and to the overall coherence of the legislative framework. Those involved in the drafting of legislation should always consult with those most closely involved in its implementation and with other interested individuals and groups (including local human rights organizations). Such consultation should be considered an integral part of the drafting process. To this end, it may be helpful to place a statutory duty upon the relevant regulatory authority to keep the law under review in light of practice and to make considered recommendations for reform if necessary.

### **Freedom of peaceful assembly in the context of other rights and freedoms**

14. It is also essential that those involved in drafting and implementing laws pertaining to freedom of assembly give due consideration to the interrelation of the rights and freedoms contained in the international and regional standards. The imposition of restrictions on the right to freedom of peaceful assembly also potentially encroaches on the rights to freedom of association, expression and thought, conscience and religion. Where issues under these other rights are also raised, the substantive issues should be examined under the right most relevant to the facts (the *lex specialis*), and the other rights should be viewed as subsidiary (the *lex generalis*).<sup>35</sup> Significantly, the European Court of Human Rights has stated that the ECHR is to be read as a whole and that the application of any individual Article must be in harmony with the overall spirit of the Convention.<sup>36</sup>

15. The imperative of adopting a holistic approach to freedom of assembly is underscored by the “destruction of rights” provisions contained in Article 30 of the Universal Declaration of Human Rights (UDHR), Article 5 of the ICCPR and Article 17 of the ECHR.<sup>37</sup> As detailed further in paragraph 96, for example, participants in public assemblies whose advocacy of national, racial or religious hostility constitutes incitement to discrimination, hatred or violence will forfeit the protection of their expressive rights under the ECHR and ICCPR.

**Article 30, Universal Declaration of Human Rights**

*Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.*

**Article 5, International Covenant on Civil and Political Rights**

*(1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*

**Article 17, European Convention on Human Rights**

*Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.*

**Principal definitions and categories of assembly**

**For the purposes of the Guidelines, an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.<sup>38</sup>**

16. An assembly, by definition, requires the presence of at least two persons. Nonetheless, an individual protester exercising his or her right to freedom of expression, where the protester’s physical presence is an integral part of that expression, should

also be afforded the same protections as those who gather together as part of an assembly.

17. A range of different activities are protected by the right to freedom of peaceful assembly, including static assemblies (such as public meetings, mass actions, “flash mobs”,<sup>39</sup> demonstrations, sit-ins and pickets)<sup>40</sup> and moving assemblies (such as parades, processions, funerals, pilgrimages and convoys).<sup>41</sup> These examples are not exhaustive, and domestic legislation should frame the types of assembly to be protected as broadly as possible (as demonstrated by the extracts from the laws in Kazakhstan and Finland, below). Recent case law demonstrates the variety of new forms of protest to which the right to freedom of assembly has been held to extend. These include mass processions by cyclists<sup>42</sup> and drive-slow protests by motorists,<sup>43</sup> and the case law confirms that the right to freedom of expression includes the choice of the form in which ideas are conveyed, without unreasonable interference by the authorities – particularly in the case of symbolic protest activities.<sup>44</sup>
  
18. The question of at which point an assembly can no longer be regarded as a temporary presence (thus exceeding the degree of tolerance presumptively to be afforded by the authorities towards all peaceful assemblies) must be assessed according to the individual circumstances of each case.<sup>45</sup> Nonetheless, the touchstone established by the European Court of Human Rights is that demonstrators ought to be given sufficient opportunity to manifest their views.<sup>46</sup> Where an assembly causes little or no inconvenience to others, then the authorities should adopt a commensurately less stringent test of temporariness (see, further, paras. 39-45 in relation to proportionality). The extracts below also serve to highlight that the term “temporary” should not preclude the erection of protest camps or other non-permanent constructions.

**Article 1, Decree of the President in force of Law “On the procedure of organization and conduct of peaceful assemblies, mass meetings, processions, pickets and demonstrations in the Republic of Kazakhstan” (1995)**

*... the forms of expression of public, group and personal interests and protest referred to as assemblies, meetings, processions and demonstrations shall also include hunger strikes in public places and putting up yurts, tents and other constructions, and picketing.*

**Section 11, Assembly Act, Finland (1999, as amended 2001)**

*In a public meeting, banners, insignia, loudspeakers and other regular meeting equipment may be used and temporary constructions erected. In this event, the arranger shall see to it that no danger or*

*unreasonable inconvenience or damage is thereby caused to the participants, bystanders or the environment.*

19. These Guidelines apply to assemblies held in public places that everyone has an equal right to use (including, but not limited to, public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths).<sup>47</sup> In particular, the state should always seek to facilitate public assemblies at the organizers' preferred location, where this is a public place that is ordinarily accessible to the public (see paras. 39-45, in relation to proportionality).
20. Participants in public assemblies have as much a claim to use such sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic).<sup>48</sup> This principle has been clearly stated by both the European Court of Human Rights and the Inter-American Commission on Human Rights' Special Rapporteur for Freedom of Expression:

**Balcik v. Turkey (2007), paragraph 52,**

**and Ashughyan v. Armenia (2008), paragraph 90:**

*Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic and, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the ECHR is not to be deprived of all substance.*

**Inter-American Commission on Human Rights:**

**Report of the Office of the Special Rapporteur for Freedom of Expression (2008), paragraph 70:**

*Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Office of the Special Rapporteur is therefore concerned about the existence*

*of criminal provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and of any kind) or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected interests such as the life or liberty of individuals.*

21. Other facilities ordinarily accessible to the public that are buildings and structures – such as publicly owned auditoriums, stadiums or buildings – should also be regarded as legitimate sites for public assemblies, and will similarly be protected by the rights to freedom of assembly and expression.<sup>49</sup>
22. The right to freedom of peaceful assembly has also been held to cover assemblies on private property.<sup>50</sup> However, the use of private property for assemblies raises issues that are different from the use of public property. For example, prior notification (other than booking the venue or seeking the permission of the owner of the premises) is not required for meetings on private property.<sup>51</sup>
23. In general, property owners may legitimately restrict access to their property to whomsoever they choose.<sup>52</sup> Nonetheless, there has been a discernable trend towards the privatization of public spaces in a number of jurisdictions, and this has potentially serious implications for assembly, expression and dissent.<sup>53</sup> The state may, on occasion, have a positive obligation to ensure access to privately owned places for the purposes of assembly or expression. In the case of *Appleby and Others v. the United Kingdom* (2003), a case concerning freedom of expression in a privately owned shopping centre, the European Court of Human Rights stated that the effective exercise of freedom of expression “may require positive measures of protection, even in the sphere of relations between individuals.”<sup>54</sup> Freedom of assembly in privately owned spaces may be deserving of protection where the essence of the right has been breached.

**Extract from *Appleby and Others v. the United Kingdom* (2003), paragraph 47:**

*Where ... the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights.*

*The corporate town, where the entire municipality was controlled by a private body, might be an example.*

24. Planning regulations and architectural design can also serve to constrict the availability of public places or make them entirely inaccessible for the purposes of freedom of assembly. For example, physical security installations that serve to prevent speakers from coming within close proximity of particular locations (particularly those of symbolic importance) may sometimes constitute an indirect but disproportionate blanket restriction on freedom of assembly, much like direct prohibitions on assemblies at designated locations (see paras. 43, 89 and 102).<sup>55</sup> Similarly, urban landscaping (including the erection of fences and fountains, the narrowing of sidewalks, streets and roads, or the planting of trees and shrubs) can potentially restrict the use of public space for assemblies. Urban-planning procedures should, therefore, allow for early and widespread consultation. Urban-planning laws might also usefully require that specific consideration be given to the potential impact of new designs on freedom of assembly.

#### **Peaceful and non-peaceful assemblies**

25. Peaceful assemblies: Only peaceful assembly is protected by the right to freedom of assembly. The European Court of Human Rights has stated that “[i]n practice, the only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organizers and participants *intended* to use violence.”<sup>56</sup> Participants must also refrain from using violence (though the use of violence by a small number of participants should not automatically lead to the categorization as non-peaceful of an otherwise peaceful assembly – see para. 164). An assembly should, therefore, be deemed peaceful if its organizers have professed peaceful intentions, and this should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in that particular event themselves intend to use, advocate or incite imminent violence.<sup>57</sup>
26. The term “peaceful” should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote,<sup>58</sup> and even include conduct that temporarily hinders, impedes or obstructs the activities of third parties.<sup>59</sup> Thus, by way of example, assemblies involving purely passive resistance should be characterized as peaceful.<sup>60</sup> Furthermore, in the course of an assembly, “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed

by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour".<sup>61</sup>

27. The spectrum of conduct that constitutes "violence" should be narrowly construed but may exceptionally extend beyond purely physical violence to include inhuman or degrading treatment<sup>62</sup> or the intentional intimidation or harassment of a "captive audience".<sup>63</sup> In such instances, the destruction of rights provisions may also be engaged (see para. 15).
28. If this fundamental criterion of peacefulness is met, it triggers the positive obligations entailed by the right to freedom of peaceful assembly on the part of the state authorities (see paras. 31-34,104 and 144-145). It should be noted that assemblies that survive this initial test (and are thus, *prima facie*, deserving of protection) may still legitimately be restricted on public-order or other legitimate grounds (see chapter 4).

### 3. Guiding Principles

29. Respect for the general principles discussed below must inform all aspects of the drafting, interpretation and application of legislation relating to freedom of assembly. Those tasked with interpreting and applying the law must have a clear understanding of these principles. To this end, three principles – the presumption in favour of holding assemblies, the state’s duty to protect peaceful assembly, and proportionality – should be clearly articulated in legislation governing freedom of assembly.

#### **The presumption in favour of holding assemblies**

30. As a basic and fundamental right, freedom of assembly should be enjoyed without regulation insofar as is possible. Anything not expressly forbidden in law should, therefore, be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of the freedom should be clearly and explicitly established in law. In many jurisdictions this is achieved by way of a constitutional guarantee, but it can also be stated in legislation specifically governing the regulation of assemblies (see the extracts from the Law in Armenia and the Constitution of Romania, below). Such provisions should not be interpreted restrictively by the courts or other authorities.<sup>64</sup> Furthermore, it is the responsibility of the state to put in place adequate mechanisms and procedures to ensure that the enjoyment of the freedom is practical and not unduly bureaucratic. The relevant authorities should assist individuals and groups who wish to assemble peacefully. In particular, the state should always seek to facilitate and protect public assemblies at the organizer’s preferred location, and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded in any way.

**Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, Republic of Armenia (2008)**

*1. The objective of this law is to create the necessary conditions for citizens of the Republic of Armenia, foreign citizens, stateless persons (hereafter referred to as "citizens") and legal persons to exercise their right to conduct peaceful and weaponless meetings, assemblies, rallies and demonstrations as set forth in the Constitution and international treaties. The exercise of this right is not subject to any restriction, except in cases prescribed by law and that are necessary in a democratic society in the interests of national security or public security, for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others. This article does not prevent the imposition of lawful restrictions on the exercise of these rights by police and state bodies.*

**Article 39, Constitution of Romania 1991 (as amended, 2003)**

*Public meetings, processions, demonstrations or any other assembly shall be free and may be organized and held only peacefully, without arms of any kind whatsoever.*

**The state's duty to protect peaceful assembly**

31. The state has a positive duty to actively protect peaceful assemblies (see "The liability and accountability of law-enforcement personnel"),<sup>65</sup> and this should be expressly stated in any relevant domestic legislation pertaining to freedom of assembly and police and military powers. This positive obligation requires the state to protect the participants of a peaceful assembly from any persons or groups (including *agents provocateurs* and counter-demonstrators) that attempt to disrupt or inhibit them in any way.
32. The importance of freedom of assembly for democracy was emphasized in paragraph 2. In this light, the costs of providing adequate security and safety measures (including traffic and crowd management, and first-aid services)<sup>66</sup> should be fully covered by the public authorities.<sup>67</sup> The state must not levy any additional financial charge for providing adequate and appropriate policing.<sup>68</sup> Furthermore, organizers of public assemblies should not be required to obtain public-liability insurance for their events. Similarly, the responsibility to clean up after a public assembly should lie with the municipal authorities.<sup>69</sup> To require assembly organizers to pay such costs would create a significant deterrent for those wishing to enjoy their right

to freedom of assembly and might actually be prohibitive for many organizers. As such, imposing onerous financial requirements on assembly organizers is likely to constitute a disproportionate prior restraint.

**Article 10, Law on Public Assemblies, Republic of Moldova (2008)**

*(4). Public authorities will undertake actions necessary to ensure the provision of the services solicited by the organizers and the services that are normally provided by subordinated bodies and by publicly administered enterprises.*

**Article 20, Law on Public Assemblies, Republic of Moldova (2008)**

*(3). Local public authorities cannot charge the organizers for services provided that are services normally provided by subordinated bodies and by publicly administered enterprises.*

**Article 18, Law of the Russian Federation on Rallies, Meetings, Demonstrations, Marches and Picketing (2004)**

*[T]he maintenance of public order, regulation of road traffic, sanitary and medical service with the objective of ensuring the holding of the public event shall be carried out on a free basis [by the authorities].*

33. The state's duty to protect peaceful assembly is of particular significance where the persons holding or attempting to hold an assembly are espousing a view that is unpopular, as this may increase the likelihood of hostile opposition. However, potential disorder arising from hostility directed against those participating in a peaceful assembly must not be used to justify the imposition of restrictions on peaceful assembly. In addition, the state's positive duty to protect peaceful assemblies also extends to simultaneous opposition assemblies (often known as counter-demonstrations).<sup>70</sup> The state should, therefore, make available adequate policing resources to facilitate demonstrations and related simultaneous assemblies within "sight and sound" of one another (see paras. 122-124). The principle of non-discrimination requires, further, that assemblies in comparable circumstances do not face differential levels of restriction.
34. The duty to protect peaceful assembly also requires that law-enforcement officials be appropriately trained to deal with public assemblies and that the culture and ethos of the law-enforcement agencies adequately prioritizes the protection of human rights (see paras. 147-148 and 178).<sup>71</sup> This not only means that they should be skilled in techniques of crowd management to minimize the risk of

harm to all concerned but, also, that they should be fully aware of and understand their responsibility to facilitate as far as possible the holding of peaceful assemblies.

### **Legality**

35. Any restrictions imposed must have a formal basis in primary law, as must the mandate and powers of the restricting authority.<sup>72</sup> The law itself must be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also to foresee the likely consequences of any such breach.<sup>73</sup> The incorporation of clear definitions in domestic legislation is vital to ensuring that the law remains easy to understand and apply, and that regulation does not encroach upon activities that ought not to be regulated. Definitions, therefore, should neither be too elaborate nor too broad.
36. While this foreseeability requirement does not mean that a single consolidated law on freedom of assembly need be enacted, it does at least require consistency among the various laws that might be invoked to regulate freedom of assembly. Any law that regulates freedom of peaceful assembly should not duplicate provisions already contained in other legislation, as this would reduce the overall consistency and transparency of the legislative framework.
37. The more specific the legislation, the more precise the language used ought to be. Constitutional provisions, for example, will be less precise than primary legislation because of their general nature.<sup>74</sup> In contrast, legislative provisions that confer discretionary powers on the regulatory authorities should be narrowly framed and should contain an exhaustive list of the grounds for restricting assemblies (see para. 69). Clear guidelines or criteria should also be established to govern the exercise of such powers and limit the potential for arbitrary interpretation.<sup>75</sup>
38. To aid certainty, any prior restrictions should be formalized in writing and communicated to the organizer of the event within a reasonable time-frame (see, further, para. 135). Furthermore, the relevant authorities must ensure that any restrictions imposed during an event are in full conformity with the law and consistent with established jurisprudence. Finally, the imposition after an assembly of sanctions and penalties that are not prescribed by law is not permitted.

### **Proportionality**

39. Any restrictions imposed on freedom of assembly must pass the proportionality test.<sup>76</sup> "The principle of proportionality is a vehicle for conducting a balancing ex-

ercise. It does not directly balance the right against the reason for interfering with it. Instead, it balances the nature and extent of the interference against the reason for interfering."<sup>77</sup> The extent of the interference should cover only the purpose that justifies it.<sup>78</sup> Moreover, given that a wide range of interventions might be suitable, the least intrusive means of achieving the legitimate purpose should always be given preference.<sup>79</sup>

40. The regulatory authority must recognize that it has authority to impose a range of restrictions, rather than viewing the choice as simply between non-intervention or prohibition (see, further, Time, Place and Manner Restrictions, in paras. 99-100). 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 achieved absent the restriction. The principle of proportionality thus requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event (such as relocating assemblies to less central areas of a city).<sup>80</sup>

**Extract from Article 7(I)-(II), Law of the Republic of Azerbaijan on Freedom of Assembly (1998)**

*I. No restrictions shall be placed on the exercise of the right to freedom of assembly 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.*

*II. Restriction of the freedom of assembly provided for in part I of the present Article must be proportionate to pursued goals. To reach the goal such a restriction must not exceed necessary and sufficient limits.*

41. The principle of proportionality requires that there be an objective and detailed evaluation of the circumstances affecting the holding of an assembly. Furthermore, where other rights potentially conflict with the right to freedom of peaceful assembly, decisions by the regulatory authorities should be informed by a parallel analysis of the respective rights at stake (bearing in mind that the limitations or qualifications permitted may not be identical for these other rights). In other words, there should be a full assessment of each of the rights engaged, examining the proportionality of any interference potentially caused by the full protection of the right to freedom of peaceful assembly.<sup>81</sup>

42. The European Court of Human Rights has further held that the reasons adduced by national authorities to support any claim of proportionality must be “relevant and sufficient”,<sup>82</sup> “convincing and compelling”<sup>83</sup> and based on “an acceptable assessment of the relevant facts”<sup>84</sup>.<sup>85</sup> Mere suspicion or presumptions cannot suffice.<sup>86</sup> This is particularly the case where the assembly concerns a matter of public interest or where political speech is involved.
43. Consequently, the blanket application of legal restrictions – for example, banning all demonstrations during certain times, or in particular locations or public places that are suitable for holding assemblies – tends to be over-inclusive. Thus, they will fail the proportionality test, because no consideration has been given to the specific circumstances in each case.<sup>87</sup> Legislative provisions that limit the holding of assemblies to only certain specified sites or routes (whether in central or remote locations) seriously undermine the communicative purpose of freedom of assembly, and should be regarded as a prima facie violations of the right. Similarly, the regulation of assemblies in residential areas or of assemblies at night time should be handled on a case-by-case basis rather than being specified as prohibited categories of assemblies.
44. The time, place and manner of individual public assemblies can, however, be regulated to prevent them from unreasonably interfering with the rights and freedoms of other people (see chapter 4). This reflects the need for a proper balance to be struck between the rights of persons to express their views by means of assembly and the interest of not imposing unnecessary burdens on the rights of non-participants.
45. If, having regard for 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.<sup>88</sup> Any alternative must be such that the message that the protest seeks to convey is still capable of being effectively communicated to those to whom it is directed – in other words, within “sight and sound” of the target audience (see para. 33 and Simultaneous Assemblies in paras. 122-124).<sup>89</sup>

**Article 13(4)-13(5), Law of the Republic of Armenia on Conducting Meetings, Assemblies, Rallies and Demonstrations (2008)**

*4. Should the authorized body find during the consideration of notification that there are grounds to prohibit the conduct of a mass public event pursuant to paragraph 2 or the last paragraph of part 1 of this Article, the authorized body shall offer the organizer other dates (in the place and at the time specified in the notification) or other hours (in the place and on the date specified in the notification) for conducting a mass public event or other conditions concerning the form of the event.*

*Any date proposed by the authorized body shall be no more than two days after the date proposed by the organizer.*

*Any time proposed by the authorized body shall be the same as proposed by the organizer, or within three hours' difference.*

*5. Should the authorized body find, during consideration of the notification, that there are sufficient grounds to prohibit the conducting of a mass public event ... the authorized body shall offer the organizer another place for conducting the mass public event (on the date and time specified in the notification).*

*Any place proposed by the authorized body shall meet the reasonable requirements of the organizer, specifically with regard to the possibility of participation of the estimated number of participants (provided the notification contains such information). Proposed places should not include areas outside the selected community and, in the case of Yerevan, areas outside selected districts. The proposed place shall be as close as possible to the place specified in the notification.*

**Non-discrimination**

46. Freedom of peaceful assembly is to be enjoyed equally by all persons. The principle that human rights shall be applied without discrimination lies at the core of the interpretation of human rights standards. Article 26 of the ICCPR and Article 14 of the ECHR require that each state secure the enjoyment of the human rights recognized in these treaties for all individuals within its jurisdiction without discrimination.<sup>90</sup>

47. Article 14 of the ECHR does not provide a freestanding right to non-discrimination but complements the other substantive provisions of the Convention and its Protocols. Thus, Article 14 is applicable only where the facts at issue (or arguably, the grounds of restriction) fall within the ambit of one or more of the other Convention rights.<sup>91</sup> OSCE participating States and parties to the ECHR are encouraged to ratify Protocol 12 (see below), which contains a general prohibition of discrimination.<sup>92</sup> Additionally, Article 5 of the Convention on the Elimination of all forms of Racial Discrimination requires States Parties to prohibit and eliminate racial discrimination.

**Article 26 ICCPR**

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

**Article 5, Convention on the Elimination of all forms of Racial Discrimination**

*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:*

*... (d) Other civil rights, in particular;*

*... (ix) The right to freedom of peaceful assembly and association;*

**Article 14 ECHR**

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

**Protocol 12 ECHR, Article 1 – General prohibition of discrimination**

*1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

*2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.*

**Article 21, Charter of Fundamental Rights of the European Union:**

*Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

48. Any discrimination based on grounds such as sex, "race", colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. Moreover, the failure of the state to prevent or take steps in response to acts of discrimination committed by private individuals may also constitute a breach of the right to freedom from discrimination.<sup>93</sup>
49. Importantly, Article 26 of the ICCPR has been interpreted to include sexual orientation in the reference to non-discrimination on grounds of "sex".<sup>94</sup> Article 13 of the Amsterdam Treaty also provides for the European Union to "undertake necessary actions to fight discrimination based on ... sexual orientation", and Article 21(2) of the EU Charter of Fundamental Rights prohibits "any discrimination on any ground", including on the basis of sexual orientation.<sup>95</sup> Both Principle 20 of the *Yogyakarta Principles*<sup>96</sup> and the *Committee of Ministers Recommendation on measures to combat discrimination on grounds of sexual orientation*<sup>97</sup> are also directly relevant in this regard.
50. The regulatory authority must not impose more onerous preconditions on some persons wishing to assemble than on others whose cases are similar.<sup>98</sup> The regulatory authority may, however, treat differently persons whose situations are significantly different.<sup>99</sup> Article 26 of the ICCPR guarantees all persons equality before the law and equal protection of the law. This implies that decisions by the authorities concerning freedom of assembly must not have a discriminatory impact, and so both direct and indirect discrimination are prohibited.<sup>100</sup> Furthermore, the law-enforcement authorities have an obligation to investigate whether discrimination is a contributory factor to any criminal conduct that occurs during an assembly (such as participants being physically attacked).<sup>101</sup>
51. Attempts to prohibit and permanently exclude assemblies organized by members of one ethnic, national or religious group from areas predominantly occupied by

members of another group may be deemed to promote segregation, and would be contrary to the *UN Convention on the Elimination of All Forms of Racial Discrimination*, Article 3 of which affirms that “[p]arties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

52. This following section highlights some of the key human rights provisions that protect the freedom of peaceful assembly by particular sections of society whose freedoms are sometimes not adequately protected.
53. **Groups, unregistered associations and legal entities:** Freedom of peaceful assembly can be exercised by both individuals and corporate bodies (as, for example, provided in the extract from the Bulgarian Law on Gatherings, Meetings and Manifestations, below).<sup>102</sup> In order to ensure that freedom of peaceful assembly is protected in practice, states should remove the requirement of mandatory registration of any public organization and guarantee the right of citizens to set up formal and informal associations. (See Freedom of Association and Freedom of Assembly, in paras. 105-106).

**Article 2, Bulgarian Law on Gatherings, Meetings and Manifestations (1990)**  
*Gatherings, meetings and manifestations can be organized and held by [individuals], associations, political and other social organizations.*

54. **Minorities:** The freedom to organize and participate in public assemblies should be guaranteed to members of minority and indigenous groups. Article 7 of the Council of Europe Framework Convention on National Minorities (1995) provides that “[t]he Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.”<sup>103</sup> Article 3(1), UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) also states that “[p]ersons belonging to minorities may exercise their rights... individually as well as in community with other members of their group, without any discrimination.”<sup>104</sup> As noted in paragraph 7, “democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.”<sup>105</sup>
55. **Non-nationals (stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists):** International human rights law requires that non-nationals

“receive the benefit of the right of peaceful assembly”.<sup>106</sup> It is important, therefore, that the law extends freedom of peaceful assembly not only to citizens, but that it also includes stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists. Note, however, that Article 16 of the ECHR provides that “[n]othing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.” The application of Article 16 should be confined to speech activities by non-nationals that directly burden national security. There is no reason to stop non-nationals from participating in an assembly that, for example, challenges domestic immigration laws or policies. The increase in transnational protest movements also underscores the importance of facilitating freedom of assembly for non-nationals.<sup>107</sup>

56. **Women:** Under Article 3 of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), States Parties are obliged to take all appropriate measures to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.<sup>108</sup>
57. **Children:** Like adults, children have legitimate claims and interests. Freedom of peaceful assembly provides them with a means of expressing their views and contributing to society. Article 15 of the UN Convention on the Rights of the Child requires States Parties to recognize the right of children to organize and participate in peaceful assemblies.<sup>109</sup>

**Article 15, UN Convention on the Rights of the Child**

1. *States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*
2. *No restrictions may be placed on the exercise of these rights 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.*

58. In light of the important responsibilities of the organizers of public assemblies (see paras. 185-198), the law may set a certain minimum age for organizers, having due regard to the evolving capacity of the child (see the examples from the Finland Assembly Act and the Law on Public Assemblies of the Republic of Moldova, below). The law may also provide that minors may organize a public event only if their parents or legal guardians consent to their doing so.

**Section 5, Finland's Assembly Act (1999): *Right to arrange public meetings***

*...A person who is without full legal capacity but who has attained 15 years of age may arrange a public meeting, unless it is evident that he/she will not be capable of fulfilling the requirements that the law imposes on the arranger of a meeting. Other persons without full legal capacity may arrange public meetings together with persons with full legal capacity.*

**Law on Public Assemblies of the Republic of Moldova (2008)**

*Article 6, Organizers of assemblies ...*

*(2) Minors of age 14 and persons declared to have limited legal capacity can organize public assemblies together with persons with full legal capacity.*

*Article 7, Participants in assemblies*

*(1) Everyone is free to actively participate and assist at the assembly.*

*(2) Nobody can be obliged to participate or assist at an assembly against his/her will.*

59. **Persons with disabilities:** The UN Convention on the Rights of Persons with Disabilities similarly emphasizes the need to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities...”<sup>110</sup> The international standards provide that “[e]very person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in ... the International Covenant on Civil and Political Rights, and in other relevant instruments.”<sup>111</sup> All individuals should thus be facilitated in the enjoyment of their freedom to peacefully assemble, irrespective of their legal capacity.
60. **Law-enforcement personnel and state officials:** The ECHR permits “lawful restrictions on the exercise of these rights by members of the armed forces, of the police, or of the administration of the State”.<sup>112</sup> Any such restrictions must be designed to ensure that the responsibilities of those in the services concerned are properly discharged and that any need for the public to have confidence in their neutrality is maintained.<sup>113</sup> The definition of neutrality is central. Neutrality should not be interpreted so as to unnecessarily restrict the freedom to hold and express an opinion. Legislation should not, therefore, restrict the freedom of assembly of law-enforcement personnel (including the police and the military) or state officials unless the reasons for restriction are directly connected with their service duties,

and then only to the extent absolutely necessary in light of considerations of professional duty.

### **Good administration and transparent decision-making**

61. The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in law.<sup>114</sup> It is important to have a properly mandated decision-making authority, as those officials who have to bear the risk of taking controversial decisions about assemblies often come under intense public pressure (potentially leading to decisions that do not adhere to or reflect the human rights principles set out in these Guidelines). In some jurisdictions, it may be appropriate for decisions about regulating assemblies to be taken by a different body from the authority tasked with enforcing the law. This separation of powers can assist those enforcing the law, by rendering them less amenable to pressure to change an unfavourable decision. In jurisdictions where there are diverse ethnic and cultural populations and traditions, it might be helpful if the regulatory authority is broadly representative of those different backgrounds.<sup>115</sup>
62. The officials responsible for making decisions concerning the regulation of the right to freedom of assembly should be fully aware of and understand their responsibilities in relation to the human rights issues bearing upon their decisions. To this end, such officials should receive periodic training in relation to the implications of existing and emerging human rights case law. The regulatory authority must also be adequately staffed and resourced, so as to enable it to effectively fulfil its obligations in a way that enhances co-operation between the organizer and authorities.
63. The regulatory authority should ensure that the general public has adequate access to reliable information relating to public assemblies,<sup>116</sup> as well as about its procedures and operation. Many countries already have legislation specifically relating to access to information, open decision-making and good administration, and these laws should be applicable to the regulation of freedom of assembly.
64. Procedural transparency should ensure that freedom of peaceful assembly is not restricted on the basis of imagined risks or even real risks which, if opportunities were given, could be adequately addressed prior to the assembly. In this regard, the authorities should ensure that its decisions are as well-informed as possible. Domestic legislation could, for example, require that a representative of the decision-making authority attend any public assembly in relation to which substantive human rights concerns have been raised (irrespective of whether or not any restrictions were actually imposed). Organizers of public assemblies and those whose

rights and freedoms will be directly affected by an assembly should also have an opportunity to make oral and written representations directly to the regulatory authority (see Decision-making and review processes in paras. 132-140). It is of note that Article 41 of the Charter of Fundamental Rights of the European Union provides that everyone has the right to good administration.

**Article 41, Charter of Fundamental Rights of the European Union**

1. *Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.*
2. *This right includes:*
  - *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
  - *the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
  - *the obligation of the administration to give reasons for its decisions.*

65. Laws relating to freedom of assembly should outline a clear procedure for interaction between event organizers and the regulatory authorities. This should set out appropriate time limits, working backwards from the date of the proposed event, and should allow adequate time for each stage in the regulatory process
66. **Review and appeal:** An initial option of administrative review (see para. 137) can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be an opportunity to appeal the decision of the regulatory authority to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. A final ruling should, therefore, be given prior to the date of the assembly in the notification. In the absence of the possibility of a final ruling, the law should provide for the possibility of interim relief by injunction. This requirement is examined further in Chapter 5 "Procedural Issues" (Decision-making and review processes, paras. 132-140) and in Annex A, "Enforcement of international human rights standards".
67. **The liability of the regulatory authority:** The regulatory authorities must comply with their legal obligations and should be accountable for any failure – procedural or substantive – to do so whether before, during or after an assembly. Liability

should be gauged according to the relevant principles of administrative or criminal law or judicial review concerning the misuse of public power.

**Article 183, Moldova's Penal Code (2002)**

**Violation of the right to freedom of assembly**

*Violation of the right to public assembly by illegal actions to impede an assembly or by constraining participation is liable to a fine or imprisonment for up to 2 years.*

**Article 67, Moldova's Contraventions Code (2008)**

**Violation of the right to freedom of assembly**

*Impeding the organization and carrying out of assemblies, as well as putting obstacles in the way of or constraining participation in the assembly, will be sanctioned by a fine.*

## 4. Restrictions on Freedom of Assembly

68. While international and regional human rights instruments affirm and protect the right to freedom of peaceful assembly, they also allow states to impose certain limitations on that freedom. This chapter examines the legitimate grounds for the imposition of restrictions on public assemblies and the types of limitation which can be imposed.

### Legitimate grounds for restriction

69. The legitimate grounds for such restrictions are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation<sup>117</sup> nor loosely interpreted by the authorities.<sup>118</sup>
70. The regulatory authorities must not raise obstacles to freedom of assembly unless there are compelling arguments to do so. Applying the guidance below should help the regulatory authorities test the validity of such arguments. The legitimate aims discussed in this section (as provided in the limiting clauses in Article 21 of the IC-CPR and Article 11 of the ECHR) are not a licence to impose restrictions, and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.
71. **Public order:** The inherent imprecision of this term<sup>119</sup> 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 are legitimate grounds for prohibiting a peaceful assembly.<sup>120</sup> 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.<sup>121</sup> The European Court of Human Rights has noted that “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour”.<sup>122</sup>
72. An assembly that the organizers intend to be peaceful may still legitimately be restricted on public-order grounds in certain circumstances. Such restrictions should only be imposed when there is evidence that participants will themselves use or incite imminent, lawless and disorderly action and that such action is likely to occur. This approach is designed to extend protection to controversial speech and political criticism, even where this might engender a hostile reaction from others (see, further, content-based restrictions in paras. 94-98).<sup>123</sup>

73. Compelling and demonstrable evidence is required demonstrating that those organizing or participating in the particular event will themselves use violence. In the event that there is evidence of potential violence, the organizer must be given a full and fair opportunity for rebuttal by submitting evidence that the assembly will be peaceful.
74. **Public safety:** There is a significant overlap between public-safety considerations and those concerning the maintenance of public order. Particular public-safety concerns might arise, for example, when assemblies are held outside daylight hours, or when moving vehicular floats form part of an assembly. In such instances, extra precautionary measures should generally be preferred to restriction.
75. The state has a duty to protect public safety, and under no circumstances should this duty be assigned or delegated to the organizer of an assembly. However, the organizer and stewards may assist in ensuring the safety of members of the public. An assembly organizer could counter any claims that public safety might be compromised by his or her event by, for example, ensuring adequate stewarding (see paras. 191-196).
76. **The protection of health:** In the rare instances in which a threat to persons' health might be an appropriate basis for restricting of one or more public assemblies, those restrictions should not be imposed unless other similar concentrations of individuals are also restricted. Thus, before a restriction may be justified based on the need to protect public health, similar restrictions should also have been applied to attendance at school, concerts, sports events and other such activities at which people ordinarily gather.
77. Restrictions might also be justified on occasions where the health of participants in an assembly becomes seriously compromised. In the case of *Cisse v. France* (2002), for example, the intervention of the authorities was justified on health grounds, given that the protesters had reached a critical stage during a hunger strike, and were confined in unsanitary conditions. Again, however, such reasoning should not be relied upon by the authorities to pre-emptively break up peaceful assemblies, even where a hunger strike forms part of the protest strategy.
78. **The protection of morals:** The main human rights treaties that protect freedom of assembly (the ICCPR and ECHR) are "living instruments" and are thus attuned to diverse and changing moral values. Measures purporting to safeguard public morals must, therefore, be tested against an objective standard of whether they meet a pressing social need and comply with the principle of proportionality.<sup>124</sup> Indeed, it is not sufficient for the behaviour in question merely to offend morality – it

must be behaviour that is deemed criminal and has been defined in law as such (see para. 35).<sup>125</sup>

79. Moreover, the protection of morals should not ordinarily be regarded as an appropriate basis for imposing restrictions on freedom of assembly.<sup>126</sup> Reliance on such a category can too easily lead to the regulation of content and discriminatory treatment. Restrictions will violate the right to freedom of peaceful assembly unless they are permissible under the standards governing the regulation of content (see paras. 94-98) and non-discrimination (paras. 46-60).<sup>127</sup>
80. **The protection of the rights and freedoms of others:** The regulatory authority has a duty to strike a proper balance between the important freedom to peacefully assemble and the competing rights of those who live, work, shop, trade and carry on business in the locality affected by an assembly. That balance should ensure that other activities taking place in the same space may also proceed if they themselves do not impose unreasonable burdens.<sup>128</sup> Temporary disruption of vehicular or pedestrian traffic is not, of itself, a reason to impose restrictions on an assembly.<sup>129</sup> Nor is opposition to an assembly sufficient, of itself, to justify prior limitations. 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 upon the rights and freedoms of others.<sup>130</sup> This is particularly so given that freedom of assembly, by definition, constitutes only a temporary interference with these other rights.
81. While business owners and local residents do not normally have a right to be consulted in relation to the exercise of fundamental rights<sup>131</sup> where their rights are engaged, it is good practice for organizers and law-enforcement agencies to discuss with the affected parties how the various competing rights claims might best be protected to the mutual satisfaction of all concerned (see para. 134, in relation to negotiation and mediated dialogue).
82. Where the regulatory authority restricts an assembly for the purpose of protecting the competing rights and freedoms of others, the body should state:
- The nature of any valid rights claims made;
  - How, in the particular context, these rights might be infringed (outlining the specific factors considered);
  - How, precisely, the authority's decision mitigates against any such infringement (the necessity of the restrictions); and
  - Why less intrusive measures could not be used.

83. Rights that might be claimed by non-participants affected by an assembly (although these need not be rights enumerated in the ICCPR or ECHR)<sup>132</sup> potentially include: the right to privacy (protected by Article 17 of the ICCPR and Article 8 of the ECHR)<sup>133</sup> the right to peaceful enjoyment of one's possessions (protected by Article 1 of Protocol 1 of the ECHR),<sup>134</sup> the right to liberty and security of person (Article 9 of the ICCPR and Article 5 of the ECHR),<sup>135</sup> and the right to freedom of movement (Article 12 of the ICCPR and Article 2 of Protocol 4 of the ECHR).<sup>136</sup> It may also be that restrictions on freedom of assembly could be justified to protect the right of others to freedom of expression and to receive information (Article 19 of the ICCPR and Article 10 of the ECHR),<sup>137</sup> or to manifest their religion or belief (Article 18 of the ICCPR and Article 9 of the ECHR).<sup>138</sup> Nonetheless, no restrictions should be imposed on freedom of assembly on the grounds of protecting the rights of others unless the requisite threshold has been satisfied in relation to these other rights. Indeed, anyone seeking to exercise the right to freedom of assembly in a way that would destroy the rights of others already forfeits his or her right to assemble by virtue of the destruction of rights clause in Article 5 of the ICCPR and Article 17 of the ECHR (see para. 15).
84. Assessing the impact of public events on the rights of others must take due consideration of the frequency of similar assemblies before the same audience. While a high threshold must again be met, the cumulative impact on a "captive audience" of numerous assemblies (for example, in a purely residential location) might constitute a form of harassment that could legitimately be restricted to protect the rights of others. Repeated, albeit peaceful, demonstrations by particular groups might also in certain circumstances be viewed as an abuse of a dominant position (see paras. 7 and 54), legitimately restricted to protect the rights and freedoms of others.<sup>139</sup> The principle of proportionality requires that, in achieving this aim, the least onerous restrictions possible should be used (see paras. 39-45).<sup>140</sup>
85. **National security:** The issue of national security is often given too wide an interpretation in relation to freedom of assembly. The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights limit reliance on national-security grounds to justify restrictions of freedom of expression and assembly.

**“National Security”, Part VI, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights**

*29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.*

*30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.*

*31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.*

*32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.*

86. Similarly, Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information establishes clear parameters for the imposition of restrictions on freedom of expression in the interests of national security.<sup>141</sup>

**Principle 6, Johannesburg Principles on National Security, Freedom of Expression and Access to Information**  
**Expression That May Threaten National Security**

*Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:*

- (a) the expression is intended to incite imminent violence;*
- (b) it is likely to incite such violence; and*
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.*

**Legislation intended to counter terrorism and extremism**

87. Efforts to tackle terrorism or extremism and to enhance security must never be invoked to justify arbitrary action that curtails the enjoyment of fundamental human

rights and freedoms. The International Commission of Jurists 2004 Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (the Berlin Declaration)<sup>142</sup> emphasized that “the odious nature of terrorist acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights”. Similarly, both the Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis (2007)<sup>143</sup> and the OSCE manual *Countering Terrorism, Protecting Human Rights* (2007)<sup>144</sup> caution against the imposition of undue restrictions on the exercise of freedom of expression and assembly during crisis situations.

88. Principle 8 of the Berlin Declaration is of particular relevance:

**Principle 8, Berlin Declaration of the International Commission of Jurists on Upholding Human Rights and the Rule of Law in Combating Terrorism**

*In the implementation of counter-terrorism measures, States must respect and safeguard fundamental rights and freedoms, including freedom of expression, religion, conscience or belief, association, and assembly, and the peaceful pursuit of the right to self-determination, as well as the right to privacy, which is of particular concern in the sphere of intelligence gathering and dissemination. All restrictions on fundamental rights must be necessary and proportionate.*

89. Counter-terrorism measures pose a number of particular challenges to the right to freedom of peaceful assembly. Commonly, emergency legislation is introduced to increase police stop-and-search powers, and it may also extend the time period allowed for administrative detention without charge. Other examples of exceptional measures include the proscription of particular organizations and the criminalization of expression of support for them, the creation of offences concerning provocation to or advocacy of extremism and/or terrorism,<sup>145</sup> the designation of specific sites or locations as prohibited areas (see paras. 24 and 43), increased penalties for participation in unlawful assemblies, and the imposition of border controls to prevent entry to individuals deemed likely to demonstrate and cause disturbances to public order. All of these have a detrimental impact on the right to freedom of peaceful assembly, and all must be shown to be necessary and strictly proportionate (see General Principles in chapter 2).<sup>146</sup>

90. Any such extraordinary pre-emptive measures should be transparent and based on corroborated evidence,<sup>147</sup> have time limits and be subject to independent or judicial review. Specifically, the unilateral suspension of the Schengen Agreement to enable the re-imposition of border controls in anticipation of large-scale assemblies should not permit disproportionate or blanket restrictions on the freedom of movement of those travelling to participate in or observe an assembly.<sup>148</sup>
91. Domestic legislation designed to counter terrorism or extremism should narrowly define the terms “terrorism” and “extremism” so as not to include forms of civil disobedience and protest, the pursuit of certain political, religious or ideological ends, or attempts to exert influence on other sections of society, the government or international opinion. Furthermore, any discretionary powers afforded to law-enforcement officials should be narrowly framed and include adequate safeguards to reduce the potential for arbitrariness.<sup>149</sup>

### **Derogations in times of war or other public emergency**

92. Under Article 4 of the ICCPR and Article 15 of the ECHR, in times of war or public emergency threatening the life of the nation, states may take measures derogating from their obligation to guarantee freedom of assembly. They may do so only to the extent strictly required by the exigencies of the situation and provided that such measures are not inconsistent with their other obligations under international law.<sup>150</sup> The crisis or emergency must be one that “affects the whole population and constitutes a threat to the organized life of the community of which the State is composed”.<sup>151</sup> The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights state, further, that neither “[i]nternal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation” nor “[e]conomic difficulties” can justify derogations under Article 4.<sup>152</sup>
93. A public emergency must be both proclaimed to the citizens in the state concerned<sup>153</sup> and notification provided to other States Parties to the ICCPR through the intermediary of the UN Secretary-General (Article 4(3) of the ICCPR), the Secretary General of the Council of Europe (Article 15(3) of the ECHR) and the Secretary General of the OSCE (Paragraph 28.10 of the Moscow Meeting of the Conference on the Human Dimension, 1991). Derogations should also have time limits.

### **Types of restriction**

94. **Content-based restrictions:** Speech and other forms of expression will normally enjoy protection under Article of the 19 ICCPR and Article 10 of the ECHR. In gen-

eral, therefore, the regulation of public assemblies should not be based upon the content of the message they seek to communicate. As the European Court of Human Rights has recently stated, it is “unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities’ own view of the merits of a particular protest”.<sup>154</sup> This principle is explicitly reflected in the extract from the Netherlands’ Public Assemblies Act, cited below. Any restrictions on the visual or audible content of any message displayed or voiced should therefore face heightened (sometimes referred to as “strict” or “anxious”) scrutiny, and only be imposed if there is an imminent threat of violence. Moreover, criticism of government or state officials should never, of itself, constitute a sufficient ground for imposing restrictions on freedom of assembly; the European Court of Human Rights has often emphasized that the “limits of permissible criticism are wider with regard to the government than in relation to a private citizen”.<sup>155</sup>

**Section 5, the Netherlands’ Public Assemblies Act, (1988)**

*3. A condition, restriction or prohibition may not relate to the religion or belief to be professed, or the thoughts or feelings to be expressed.*

95. Whether behaviour constitutes the intentional incitement of violence is a question that must inevitably be assessed based on the particular circumstances.<sup>156</sup> Some difficulty arises where the message concerns unlawful activity, or where it could be construed as inciting others to commit non-violent but unlawful acts. Expressing support for unlawful activity can, in many cases, be distinguished from disorderly conduct and, therefore, should not face restriction on public-order grounds. The touchstone must be, again, the existence of an imminent threat of violence.<sup>157</sup>
96. While expression should normally still be protected, even if it is hostile or insulting to other individuals, groups or particular sections of society, the law should still prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>158</sup> Specific instances of hate speech “may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.”<sup>159</sup> Even then, resort to such speech by participants in an assembly does not, of itself, necessarily justify the dispersal of all persons participating in the event, and law-enforcement officials should take

measures (such as arrest) only against the particular individuals involved (either during or after the event).

97. Where the insignia, uniforms, emblems, music, flags, signs or banners to be displayed or played during an assembly conjure memories of a painful historical past, this should not, of itself, be reason to interfere with the right to freedom of peaceful assembly to protect the rights of others.<sup>160</sup> On the other hand, where such symbols are intrinsically and exclusively associated with acts of physical violence, the assembly might legitimately be restricted to prevent the reoccurrence of such violence or to protect the rights of others.
98. The wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited, so long as the mask or costume is not worn for the purpose of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct.<sup>161</sup>
99. **“Time, place and manner” restrictions:** The types of restriction that might be imposed on an assembly relate to its “time, place, and manner”. This phrase originates from jurisprudence in the United States, and captures the sense that a wide spectrum of possible restrictions that do not interfere with the message communicated is available to the regulatory authority (see “Proportionality” in paras. 39-45). In other words, rather than the choice between non-intervention and prohibition, the authorities have recourse to many “mid-range” limitations that might adequately serve the purpose(s) they seek to achieve (including the prevention of activity that causes damage to property or harm to persons). These limitations can relate to changes to the time or place of an event, or the manner in which the event is conducted. An example of “manner” restrictions might relate to the use of sound-amplification equipment or lighting and visual effects. In this case, regulation may be appropriate because of the location or time of day for which the assembly is proposed.
100. The regulatory authority must not impose restrictions simply to pre-empt possible disorder or interference with the rights of others. The fact that restrictions can be imposed during an event (and not only before it takes place) enables the authorities to avoid imposing onerous prior restrictions and to ensure that restrictions correspond with and reflect the situation as it develops. This, however, in no way implies that the authorities can evade their obligations in relation to good administration (see paras. 61-67) by simply regulating freedom of assembly by administrative fiat. Furthermore, (as discussed in paras. 134 and 157) the use of negotiation and/or me-

diation can help resolve disputes around assemblies by enabling law-enforcement authorities and the event organizer to reach agreement on any necessary limitations.

101. **“Sight and sound”**: Given that there are often a limited number of ways to effectively communicate a particular message, the scope of any restrictions must be precisely defined. In situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should always aim to facilitate the assembly within “sight and sound” of its object or target audience (see paras. 33, 45 and 123).
102. **Restrictions imposed prior to an assembly (“prior restraints”)**: These are restrictions on freedom of assembly either enshrined in legislation or imposed by the regulatory authority prior to the date of the event provided in the notification. Such restrictions should be concisely drafted so as to provide clarity for both those who have to follow them (assembly organizers and participants) and those tasked with enforcing them (the police or other law-enforcement personnel). They can take the form of time, place and manner restrictions or outright prohibitions. However, blanket legislative provisions, which ban assemblies at specific times or in particular locations, require much greater justification than restrictions on individual assemblies.<sup>162</sup> Given the impossibility of taking account of the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation, as well as their application, may be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated, “[s]weeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”<sup>163</sup>
103. The organizer of an assembly should not be compelled or coerced either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.
104. Prohibition of an assembly 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. 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. Where a state body has unlawfully prohibited an action, the state bears legal responsibility.

105. **Freedom of association and freedom of peaceful assembly:** Since the right to assemble presumes the active presence of others for its realization, restrictions of freedom of association (Article 22 of the ICCPR and Article 11 of the ECHR) will often undermine the right to assemble. Freedom of association encompasses the ability of groups of individuals to organize collectively and to mobilize in protest against the state and/or other interests. Restrictions on the right to freedom of association that might undermine freedom of assembly include requiring formal registration before an association can lawfully assemble, prohibiting the activities of unregistered groups, prescribing the scope of an association's mandate,<sup>164</sup> rejecting registration applications, disbanding or prohibiting an association, or imposing onerous financial preconditions.
106. Like freedom of peaceful assembly, the right to associate is essential to the effective functioning of democracy and civil society, and such restrictions to the freedom of peaceful association can, therefore, rarely be justified. Furthermore, while the right to associate – within a political party, a trade union or other civic body – may logically precede the organization of public assemblies (see para. 53), the right to freedom of peaceful assembly should never be made contingent upon registration as an association.<sup>165</sup> As the European Court of Human Rights stated in *Stankov and the United Macedonian Organisation ILINDEN v. Bulgaria* (2001) that “while past findings of national courts which have screened an association are undoubtedly relevant in the consideration of the dangers that its gatherings may pose, an automatic reliance on the very fact that an organization has been considered anti-constitutional – and refused registration – cannot suffice to justify under Article 11(2) of the Convention a practice of systematic bans on the holding of peaceful assemblies”.<sup>166</sup>
107. **Indirect restrictions on freedom of assembly:** Restrictions that have the effect of burdening freedom of assembly should not be imposed on other rights unless there is a compelling justification for doing so. It is noteworthy that restrictions imposed on other rights often indirectly impact upon the enjoyment of the right to freedom of peaceful assembly, and should, therefore, be taken into consideration when assessing the extent to which a state has met its positive obligations to protect freedom of assembly.<sup>167</sup> For example, restrictions on liberty and freedom of movement within the territory of a state (Article 12 of the ICCPR, Article 5 of the ECHR and Article 2 of Protocol 4 of the ECHR), and across international borders can prevent or seriously delay participation in an assembly.<sup>168</sup> Similarly, restrictions that impact upon a state's obligation to hold free elections (under Article 25 of the ICCPR<sup>169</sup> and Article 3, Protocol 1 of the ECHR) such as the detention of political activists or the exclusion of particular individuals from electoral lists,<sup>170</sup> can also indirectly curtail the right to freedom of assembly.

108. **Restrictions imposed during an assembly:** The role of the police or other law-enforcement personnel during an assembly will often be to enforce any prior restrictions imposed in writing by the regulatory body. No additional restrictions should be imposed by law-enforcement personnel unless absolutely necessary in light of demonstrably changed circumstances. On occasion, however, the situation on the ground may deteriorate (participants, for example, might begin using or inciting violence), and the authorities may have to impose further measures to ensure that other relevant interests are adequately safeguarded. In the same way that reasons must be adduced to demonstrate the need for prior restrictions, any restrictions imposed in the course of an assembly must be just as rigorously justified. Mere suspicions will not suffice, and the reasons must be both relevant and sufficient. In such circumstances, it will be appropriate for other civil authorities (such as an ombudsman's office) to have an oversight role in relation to the policing operation, and law-enforcement personnel should be accountable to an independent body. Furthermore, as noted in paras. 37 and 91, unduly broad discretionary powers afforded to law-enforcement officials may breach the principle of legality, given the potential for arbitrariness. The detention of participants during an assembly (on grounds that they have committed administrative, criminal or other offences) should meet a high threshold, given the right to liberty and security of person and the fact that any interference with freedom of assembly is inevitably time sensitive. Detention should be used only in the most pressing situations, when failure to detain would result in the commission of serious criminal offences.
109. **Sanctions and penalties imposed after an assembly:** The imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to or during an assembly. For example, the European Court of Human Rights has held that prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate. Any isolated outbreak of violence should be dealt with by way of subsequent prosecution or other disciplinary action instead of by prior restraint.<sup>171</sup> It is noteworthy, however, that the Human Rights Committee and the European Court of Human Rights have on several occasions found subsequent sanctions to constitute disproportionate interference with the right to freedom of assembly or expression.<sup>172</sup> As with prior restraints, the principle of proportionality also applies to liability arising after the event. Any penalties specified in the law should, therefore, allow for the imposition of minor sanctions where the offence concerned is of a minor nature.
110. **Defences:** Anyone charged with an offence relating to an assembly must enjoy the right to a fair trial. All provisions that create criminal or administrative liability must comply with the principle of legality (see paras. 35-38). Furthermore, organizers of and participants in assemblies should benefit from a "reasonable excuse" de-

fence. For example, the organizer of an assembly should not face prosecution for either underestimating or overestimating the number of expected participants in an assembly if this estimate was made in good faith. Similarly, a participant in an assembly should not be held liable for anything done under the direction of a law-enforcement official<sup>173</sup> or for taking part in an unlawful assembly if the participant was not aware of the unlawful nature of the event. Furthermore, if there are reasonable grounds for non-compliance with the notification requirement, then no liability or sanctions should adhere.

111. Individual participants in any assembly who themselves do not commit any violent act should not be prosecuted, even if others in the assembly become violent or disorderly. As stated in the decision in *Ezelin v. France* (1991), "[i]t is not 'necessary' in a democratic society to restrict those freedoms in any way unless *the person in question* has committed a reprehensible act when exercising his rights."<sup>174</sup>
112. Organizers of assemblies should not be held liable for the failure to perform their responsibilities if they have made reasonable efforts to do so. Furthermore, organizers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organizers did not intend or directly participate in. Holding the organizers of an event liable would be a manifestly disproportionate response, since this would imply that organizers are imputed to have responsibility for acts by other individuals (including possible *agents provocateurs*) that could not have been reasonably foreseen.

## 5. Procedural Issues

### Advance notification

113. It is not necessary under international human rights law for domestic legislation to require advance notification about an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation.<sup>175</sup> Prior notification should, therefore, only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.
114. The UN Human Rights Committee has held that a requirement to give prior notice of an assembly, while a *de facto* restriction on freedom of assembly, is compatible with the permitted limitations laid down in Article 21 of the ICCPR.<sup>176</sup> Similarly, the European Commission on Human Rights stated in *Rassemblement Jurassien* (1979) that: "Such a procedure is in keeping with the requirements of Article 11(1), if only in order that the authorities may be in a position to ensure the peaceful nature of the meeting, and accordingly does not as such constitute interference with the exercise of the right."<sup>177</sup>
115. It is good practice to require notification only when a substantial number of participants are expected or only for certain types of assembly. In some jurisdictions there is no notice requirement for small assemblies (see the extracts from the laws in Moldova and Poland, below), or where no significant disruption of others is reasonably anticipated by the organizers (such as might require the redirection of traffic).<sup>178</sup> Furthermore, individual demonstrators should not be required to provide advance notification to the authorities of their intention to demonstrate.<sup>179</sup> Where a lone demonstrator is joined by another or others, the event should be treated as a spontaneous assembly (see paras. 126-131).

**Article 3, Moldova's Law on Public Assemblies (2008): Definitions**

*"Assemblies with a small number of participants" are public assemblies that gather less than 50 persons.*

**Article 12(5), Moldova's Law on Public Assemblies (2008): Exceptions from notification**

*It is not obligatory to notify local public authorities in the case of assemblies with a small number of participants.*

**Article 6, Poland’s Law on Assemblies (1990)**

1. *Assemblies organized in the open in areas accessible to unspecified individuals, hereinafter referred to as “public assemblies”, must be reported in advance to the commune authority with competence *ratione loci* for the site of the assembly.*
2. *If the assembly is to be held in the neighbourhood of a diplomatic representation/mission, consular offices, special missions or international organizations, which are covered by diplomatic immunities and privileges, the commune authority is obliged to notify the responsible Police commander and the Ministry of Foreign Affairs.*
3. *The commune council may specify areas where the organization of an assembly does not require notification.*

116. Any notification process should not be onerous or bureaucratic, as this would undermine the freedom to assemble by discouraging those who might wish to hold an assembly. Furthermore, the period of notice should not be unnecessarily lengthy (normally no more than a few days prior to the event), but should still allow adequate time for the relevant state authorities to plan and prepare (for example, by deploying police officers, equipment, etc.),<sup>180</sup> for the regulatory body to give a prompt official response to the initial notification, and for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged. While laws may legitimately specify a minimum period of advance notification for an assembly, any maximum period for notification should not preclude advance planning for assemblies. When a certain time limit is set out in the law, it should only be indicative.
117. The official receiving the notice should issue a receipt, explicitly confirming that the organizers of the assembly are in compliance with applicable notice requirements (see the example from Moldova, below). The notice should also be communicated immediately to all state organs involved in the regulatory process, including the relevant law-enforcement agencies.

**Article 10(3), Moldova’s Law on Public Assemblies (2008)**

- 10(3) The local public administration authority shall register the prior declaration and issue to the organizer a stamped copy, which should contain the number, date and hour of registration of the declaration.*

118. **Notification, not authorization:** Any legal provisions concerning advance notification should require the organizers to submit a notice of the intent to hold an assembly, but not a request for permission.<sup>181</sup> A permit requirement is more prone to abuse than a notification requirement, and may accord insufficient value to the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful. It is significant that, in a number of jurisdictions, permit procedures have been declared unconstitutional.<sup>182</sup>
119. Nonetheless, a permit requirement based on a legal presumption that a permit for the use of a public place will be issued (unless the regulatory authorities can provide evidence to justify a denial) can serve the same purpose as advance notification.<sup>183</sup> Those countries in which a permit is required are encouraged to amend domestic legislation so as to require only notification.<sup>184</sup> Any permit system must clearly prescribe in law the criteria for issuance of a permit. In addition, the criteria should be confined to considerations of time, place and manner, and should not provide a basis for content-based regulation. As emphasized in paragraphs 94-98, the authorities must not deny the right to assemble peacefully simply because they disagree with the merits of holding an event for the organizers' stated purpose.<sup>185</sup>
120. There should be provision in law that, in the event of a failure on the part of the authorities to respond promptly to notification for an event, the organizers of a public assembly may proceed with the activities according to the terms provided in the notification without restriction (see the example from the Armenian law, below). Even in countries where authorization, rather than notification, is still required, authorization should be presumed granted if a prompt response is not given.

**Article 12, Armenia's Law on Conducting Meetings, Assemblies, Rallies and Demonstrations (2008)**

*1. The authorized body shall consider the notification within 72 hours of receiving it, in the order in which notifications have been received.*

...

*8. Should the authorized body not issue a decision prohibiting the convention of the mass public event within 72 hours of receiving the notification, the organizers shall have the right to conduct the mass public event on the terms and conditions set forth in the notification.*

121. If more people than anticipated by the organizers gather at an assembly for which notification has been given, the relevant law-enforcement agencies should facilitate the assembly so long as the participants remain peaceful (see also Defences, in paras. 110-112).
122. **Simultaneous assemblies:** All persons and groups have an equal right to be present in public places to express their views. Where notification is submitted for two or more assemblies for the same place and time, the events should be held together if they can be accommodated.<sup>186</sup> If this is not possible (due, for example, to lack of space), the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities may seek to resolve the issue by adopting a random method of allocating the events to particular locations, so long as this does not discriminate between different groups. This may, for example, be a “first come, first served” rule, although the abuse of such a rule (where notification about an assembly is deliberately submitted early to block access to other events) should not be allowed. The authorities may even hold a ballot to determine which assembly should be held in the location provided in the notification (see the example from the law in Malta, below). A prohibition against conducting public events in the same place and at the same time of another public event where they can both be reasonably accommodated is likely to be a disproportionate response.

**Article 5(3), Malta’s Public Meetings Ordinance (1931)**

*When two or more persons, whether as individuals or on behalf of an association, simultaneously give notice of their intention of holding a meeting in the same locality and at the same time, preference shall be given to the person whose name is extracted in a draw held by the Commissioner of Police or any other Police officer deputed by him.*

123. **Counter-demonstrations:** Persons have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at another public assembly.<sup>187</sup> On such occasions, the coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly. Such related simultaneous assemblies should be facilitated so that they occur within sight and sound of their target in so far as this does not physically interfere with the other assembly (see paras. 33, 45 and 101).
124. Nonetheless, as clearly stated in the European Court of Human Rights case of *Plattform ‘Ärzte für das Leben’ v. Austria* (1988), “the right to counter-demon-

strate cannot extend to inhibiting the exercise of the right to demonstrate".<sup>188</sup> Thus, because each person or group has a right to express their views undisturbed by others, counter-demonstrators may not disrupt the activities of those who do not share their views. Emphasis should be placed on the state's duty to prevent disruption of the main event where counter-demonstrations are organized.<sup>189</sup> Furthermore, a clear question is raised where the intention of the organizers of a counter-demonstration is specifically to prevent the other assembly from taking place – effectively, to deny the rights of others. In such cases, Article 5 of the IC-CPR and Article 17 of the ECHR may be engaged, and the counter-demonstration will not enjoy the protection afforded according to the right to freedom of peaceful assembly (see para. 15).

### Exceptions from the notification process

125. It will be up to the legislature in each jurisdiction to determine whether there should be any specific exceptions from the notification process. Exceptions must not be discriminatory in effect and should be targeted towards a class of assembly rather than a class of organizer.
126. **Spontaneous assemblies:** A spontaneous assembly is generally regarded as one organized in response to some occurrence, incident, other assembly or speech, where the organizer (if there is one) is unable to meet the legal deadline for prior notification, or where there is no organizer at all. Such assemblies often occur around the time of the triggering event, and the ability to hold them is important because delay would weaken the message to be expressed.<sup>190</sup>
127. While the term "spontaneous" does not preclude the existence of an organizer of an assembly, spontaneous assemblies may also include gatherings with no identifiable organizer. Such assemblies are coincidental and occur when a group of persons gathers at a particular location with no prior advertising or invitation. These are often the result of some commonly held knowledge or knowledge disseminated via the Internet about a particular event (such as a visit by a foreign head of state).<sup>191</sup> Numbers may be swelled by passers-by who choose to join the assembly, although it is also possible that, once a crowd begins to gather, mobilization can be achieved by various forms of instantaneous communication (telephone, text message, word of mouth, the Internet, etc). Such communication should not, of itself, be interpreted as evidence of prior organization. Where a lone demonstrator is joined by another or others, the gathering should be treated similarly to a spontaneous assembly.

**Moldova's Law on Public Assemblies (2008):****Article 3, Main definitions**

*For the purposes of this Law: (...) a spontaneous assembly shall mean an assembly, that has been initiated and organized as a direct and immediate response to social events and which, in the opinion of participants, cannot be postponed and, as a result, for which the usual notification procedure is not possible...*

**Article 12, Exceptions from notification**

*(1) In the cases of spontaneous assemblies, notification is allowed without formal written conformation or within the provided 5 days prior the organization of the assembly; it is sufficient to communicate the place, data, time, scope and the organizers*

*(2) The organizers exercise the right to spontaneous assembly provided in (1) with good-faith and inform the local public authorities immediately about their intention as it becomes known in order to facilitate the provision of the necessary services by the local public authorities.*

**Article 10(1), Armenia's Law on Conducting Meetings, Assemblies, Rallies and Demonstrations (2008)**

*With the exception of spontaneous public events, mass public events may be conducted only after notifying the authorized body in writing.*

**Section 6(2)(b), Northern Ireland's Public Processions Act (1998)**

*Where notification is not "reasonably practicable" notification should be given "as soon as it is reasonably practicable."*

128. Spontaneous assemblies should be lawful and are to be regarded as an expectable (rather than exceptional) feature of a healthy democracy. Of course, the ability of the organizers of an assembly to meet a deadline for prior notification will depend on how early the deadline is set (and these requirements vary significantly among participating States). Laws regulating freedom of assembly should explicitly provide either for exemption from prior-notification requirements for spontaneous assemblies (where giving advance notice is impracticable) or for a shortened notification period (whereby the organizer must notify the authorities as soon as is practicable). Such an exception would only apply in circumstances where an organizer is unable to meet the legally established deadline.<sup>192</sup> It is appropriate that organizers should inform the authorities of their intention to hold an assembly as

early as possible. Only in this way can the authorities reasonably be expected to fulfil their positive obligations to protect the assembly, maintain public order and uphold the rights and freedoms of others.

129. The European Court of Human Rights has clarified what it considers should constitute such “special circumstances” (i.e., when the right to hold spontaneous events may override the obligation to give prior notification). These circumstances arise “if an immediate response to a current event is warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete”.<sup>193</sup>
130. Whether a specific organizer was unable to meet the deadline for prior notification or whether a delay in holding the assembly would have rendered its message obsolete are questions of fact and must be decided according to the particular circumstances of each case. For example, even within a sustained, long-running protest campaign (which might ordinarily suggest that timely notification would be possible) there may be events of urgent or special significance to which an immediate response by way of a spontaneous assembly would be entirely justified.
131. Even where no such exemption for spontaneous assemblies exists in the law, the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature. The European Court of Human Rights has stated that “a decision to disband such assemblies ‘solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly’.”<sup>194</sup>

### **Decision-making and review processes**

132. The regulatory authority should make publicly available a clear explanation of the decision-making procedures. It should fairly and objectively assess all available information to determine whether the organizers and participants in an assembly for which they have received notification are likely to conduct the event in a peaceful manner and to ascertain the probable impact of the event on the rights and freedoms of non-participant stakeholders. In doing so, it may be necessary to facilitate meetings with the event organizers and other interested parties.
133. The regulatory authority should also ensure that any relevant concerns raised are communicated to the event organizers, who 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 organizers 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.

134. The organizers of an assembly, the designated regulatory authorities, law-enforcement officials and other parties whose rights might be affected by an assembly should make every effort to reach mutual agreement on the time, place and manner of an assembly. If, however, agreement is not possible and no obvious resolution emerges, negotiation or mediated dialogue may help reach a mutually agreeable accommodation in advance of the date provided in the notification for the assembly. Genuine dialogue between relevant parties can often yield a more satisfactory outcome for everyone involved than formal recourse to the law. The facilitation of negotiations or mediated dialogue can usually best be performed by individuals or organizations not affiliated with either the state or the organizer. The presence of these parties' legal representatives may also assist in facilitating discussions between the organizers of the assembly and law-enforcement authorities. Such a dialogue is usually most successful in establishing trust between parties if it is begun at the earliest possible opportunity. While not always successful, it serves as a preventive tool to help avoid the escalation of conflict or the imposition of arbitrary or unnecessary restrictions.
135. Any restrictions placed on an assembly should be communicated in writing to organizers of the event, with a brief explanation of the reason for each restriction (noting that these explanations must correspond with the permissible grounds enshrined in human rights law and as interpreted by the relevant courts). The burden of proof should be on the regulatory authority to show that the restrictions imposed are reasonable in the circumstances.<sup>195</sup> Such decisions should also be communicated to the organizers within a reasonable time-frame – *i.e.*, sufficiently in advance of the date of a proposed event to allow the decision to be appealed to an independent tribunal or court before the date provided in the notification for the event.
136. The regulatory authority should publish its decisions so that the public has access to reliable information about events taking place in the public domain. This might be done, for example, by posting decisions on a dedicated website.<sup>196</sup>
137. The organizers of an assembly should have recourse to an effective remedy through a combination of administrative and judicial review. The availability of effective administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. Any administrative review procedures must be sufficiently prompt to enable judicial review to take place once administrative remedies have been exhausted, prior to the date of the assembly provided in the notification.

138. Ultimately, the organizers of an assembly should be able to appeal the decision of the regulatory authority to an independent court or tribunal. This should be a *de novo* review, empowered to quash the contested decision and to remit the case for a new ruling. The burden of proof and justification should remain on the regulatory authorities. Any such review must also be prompt, so that the case is heard and the court ruling published before the date for the planned assembly (see para. 66). This makes it possible to hold the assembly if the court invalidates the restrictions.<sup>197</sup> To expedite this process, the courts should be required to give priority to appeals concerning restrictions on assemblies. The law may also provide for the option of granting organizers injunctory relief. That is, in the case that a court is unable to hand down a final decision prior to the planned assembly, it should have the power to issue a preliminary injunction. The issuance of an injunction by the court in the absence of the possibility of a final ruling must necessarily be based on the court's weighing of the consequences of such an issuance.

**Article 14(2), Georgia's Law on Assemblage and Manifestations (1997, as amended 2009)**

*A decision of a local governance body forbidding the holding of an assemblage or manifestation may be appealed in a court. The court shall hand down a final decision within two working days.*

**Article 7, Kyrgyz Republic's Law on the Right of Citizens to Assemble Peacefully, without Weapons, and to Freely Conduct Meetings and Demonstrations (2002)**

*... A decision of bodies of local State administration or local self-government... is subject to court appeal, and shall be considered by the court within 24 hours if less than 48 hours remains before the planned public assembly.*

139. The parties and the reviewing body should have access to the evidence on which the regulatory authority based its initial decision (such as relevant police reports, risk assessments or other concerns or objections raised). Only then can the proportionality of the restrictions imposed be assessed fully. If such access is refused by the authorities, the parties should be able to obtain an expeditious judicial review of the decision to withhold the evidence.<sup>198</sup> The disclosure of information enhances accessibility and transparency, as well as the prospects for the co-operative and early resolution of any contested issues.

140. It is good practice for the regulatory authority to have a legal obligation to keep the regulatory framework under review and to make recommendations for its improvement. It is also good practice for the regulatory authority to submit an annual report on its activity (including relevant statistics on, for example, the number of assemblies for which it received notification and the number that were restricted) to an appropriate supervisory body, such as a national human rights institution, ombudsman or parliament.<sup>199</sup> At the very least, the regulatory authority should publish annual statistics and make these accessible to the public.<sup>200</sup>

## **PART II**

# Implementing Freedom of Peaceful Assembly Legislation

## **Introduction**

141. Part I of these Guidelines focused on the parameters of freedom of assembly and the drafting of legislation consistent with international human rights standards. These earlier sections addressed the substantive grounds for restriction and the procedures that accord priority to the freedom to assemble. The implementation of freedom of assembly legislation, however, brings with it different challenges. If laws are to provide more than mere paper guarantees, and if rights are to be practical and effective rather than theoretical or illusory, the implementation by domestic law-enforcement agencies of laws relating to freedom of assembly must also meet exacting standards. These standards are the subject of this second section.
142. The socio-economic, political and institutional context in which assemblies take place often impacts upon the success of steps taken to implement the law. It is vital to note, however, that the presence of certain socio-economic or political factors does not, of itself, make violence at public assemblies inevitable. Indeed, violence can often be averted by the skilful intervention of law-enforcement officials, municipal authorities and other stakeholders, such as monitors and stewards. Measures taken to implement freedom of assembly legislation should, therefore, neither unduly impinge on the rights and freedoms of participants or other third parties nor further aggravate already tense situations by being unnecessarily confrontational. Such interventions must, instead, aim to minimize potential harm. The guiding principles outlined in chapter 3 (including non-discrimination and good administration) are of particular relevance at the implementation stage.
143. Furthermore, the law-enforcement agencies and judicial system in participating States play a crucial role in the prevention of violence and the apprehension and

prosecution of offenders. It was often emphasized during the roundtable sessions that were part of the drafting of the first edition of these Guidelines that the independence of both law-enforcement personnel and the judiciary from the influence of partisan interests or, in the particular case of the judiciary, from interference by the executive branch must be assured. Law-enforcement personnel in some jurisdictions have, in the past, failed to intervene to protect peaceful assemblies. States are urged to implement measures (including policy-development and targeted recruitment initiatives) to increase trust and confidence in the law-enforcement and justice systems.<sup>201</sup>

## 6. Policing Public Assemblies

144. The diversification of protest tactics and new modes of communication undoubtedly present challenges for the policing of public assemblies. Nonetheless, the role of law-enforcement officials goes beyond recognizing the existence of fundamental rights and includes positively safeguarding those rights (see paras. 31-34 and 104).<sup>202</sup> This obligation derives from the state's general duty to secure to everyone within their jurisdiction the rights and freedoms defined in the ECHR.<sup>203</sup>

### A human rights approach to policing

145. A human rights approach to policing assemblies first requires that the authorities consider their duty to facilitate the enjoyment of the right to freedom of peaceful assembly. The state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence.<sup>204</sup> More broadly, the state also has a positive obligation to protect the right to life (Article 6 of the ICCPR, Article 2 of the ECHR) and the right to freedom from inhuman or degrading treatment (Article 7 of the ICCPR, Article 3 of the ECHR). These rights enshrine some of the most basic values protected by international human rights law, from which no derogation is permitted.<sup>205</sup> The policing of assemblies must also be informed by the principles of legality, necessity, proportionality and non-discrimination (see chapter 3).

146. **The rights of law-enforcement personnel should be recognized:** In the fulfilment of their obligation to protect human rights, law-enforcement personnel should plainly also pay regard to the rights, health and safety of police officers and other law-enforcement personnel. The nature of their job may place them in difficult and dangerous situations, in which they have to make split-second judgments based upon uncertain and rapidly evolving information. On occasion, law-enforcement officers may suffer the emotional, physical and behavioural consequences of post traumatic or critical-incident stress. In such cases, law-enforcement agencies should have recourse to skilled mental-health professionals to facilitate confidential individual debriefings.<sup>206</sup>

### Training

147. Governments must ensure that law-enforcement officials receive adequate training in the policing of public assemblies. Training should equip law-enforcement agencies to act in a manner that avoids escalation of violence and minimizes conflict, and should include "soft skills", such as negotiation and mediation. Training

should also include relevant human rights issues<sup>207</sup> and should cover the control and planning of policing operations, emphasizing the imperative of minimizing recourse to force to the greatest extent possible.<sup>208</sup> In this way, training can help ensure that the culture and ethos of law-enforcement agencies adequately prioritizes a human-rights-centred approach to policing.

148. The UN Code of Conduct for Law Enforcement Officials, together with other relevant international human rights standards,<sup>209</sup> should form the core of law-enforcement training. Domestic legislation should also provide standards that will guide the actions of law-enforcement personnel, and such provisions should be covered in the preparation and planning for major events. A “diversity awareness” perspective should be integrated into the development and implementation of law-enforcement training, policy and practice.

**Extract from OSCE Guidebook on Democratic Policing (2008): Use of Force paragraph 72 (references omitted)**

*72. Police officers should be trained in proficiency standards in the use of force, “alternatives to the use of force and firearms, including the peaceful settlement of conflict, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as technical means, with a view to limiting the use of force and firearms.” Practical training should be as close to reality as possible. Only officers whose proficiency in the use of force has been tested and who demonstrate the required psychological skills should be authorized to carry guns.*

**Extract from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2nd General Report: 210 Training of law enforcement personnel**

*59. ... the CPT wishes to emphasise the great importance it attaches to the training of law enforcement personnel (which should include education on human rights matters - cf. also Article 10 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). There is arguably no better guarantee against the ill-treatment of a person deprived of his liberty than a properly trained police or prison officer. Skilled officers will be able to carry out successfully their duties without having recourse to ill-treatment and to cope with the presence of fundamental safeguards for detainees and prisoners.*

*60. In this connection, the CPT believes that aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement personnel and that, during training, considerable emphasis should be placed on developing interpersonal communication skills, based on respect for human dignity. The possession of such skills will often enable a police or prison officer to defuse a situation which could otherwise turn into violence, and more generally, will lead to a lowering of tension, and raising of the quality of life, in police and prison establishments, to the benefit of all concerned.*

### **Policing assemblies – general principles of good practice**

149. Law-enforcement agencies should be proactive in engaging with assembly organizers: Officers should seek to send clear messages that inform crowd expectations and reduce the potential for conflict escalation.<sup>211</sup> Furthermore, there should be a point of contact within the law-enforcement agency whom protesters can contact before or during an assembly. These contact details should be widely advertised.<sup>212</sup>
150. **The policing operation should be characterized by a policy of “no surprises”:** Law-enforcement officers should allow time for people in a crowd to respond as individuals to the situation they face, including any warnings or directions given to them.<sup>213</sup>
151. **Law-enforcement command structures should be clearly established:** Clearly identifiable command structures and well-defined operational responsibilities enable proper co-ordination between law-enforcement personnel, and between law-enforcement agencies and the assembly organizers, as well as helping to ensure accountability for operational decisions.
152. **Inter-agency communication should be ensured:** It is imperative that law-enforcement officials and the representatives of regulatory authorities and other public-safety agencies (fire and ambulance services, for example) are able to communicate with one another and exchange data during public assemblies. As chapter 7 emphasizes, it is also vital that the organizers of an assembly do everything within their power to assist these agencies in responding to emergencies or criminal conduct. Thorough inter-agency contingency planning can help ensure that lines of communication are maintained.<sup>214</sup>

153. **Law-enforcement personnel should be clearly and individually identifiable:** When in uniform, law-enforcement personnel must wear or display some form of identification (such as a nameplate or number) on their uniform and/or headgear and not remove or cover this identifying information or prevent persons from reading it during an assembly.
154. Intrusive anticipatory measures should not be used: Unless a clear and present danger of imminent violence actually exists, law-enforcement officials should not intervene to stop, search or detain protesters en route to an assembly.<sup>215</sup>
155. **Powers to intervene should not always be used:** The presence of police (or other law-enforcement) powers to intervene in or disperse an assembly, or to use force, does not mean that such powers should always be exercised to enforce the law. Where an assembly occurs in violation of applicable laws, but is otherwise peaceful, non-intervention or active facilitation may sometimes be the best way to ensure a peaceful outcome. In many cases, the dispersal of an event may create more law-enforcement problems than its accommodation and facilitation, and overzealous or heavy-handed policing is likely to significantly undermine police-community relationships. Furthermore, the policing costs of protecting freedom of assembly and other fundamental rights are likely to be significantly lower than the costs of policing disorder borne of repression. Post-event prosecution for violations of the law remains an option.
156. The response of law-enforcement agencies must be proportionate: A wide range of options are available to the relevant authorities, and their choice is not simply one between non-intervention or the enforcement of prior restrictions and termination or dispersal.
157. **Using mediation or negotiation to de-escalate tensions during an assembly:** If a stand-off or dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. As noted in paragraph 142, such interventions can significantly help avert the occurrence of violence. The Municipality of Warsaw, for example, deploys civil servants with previous experience in dealing with assemblies who may be present at an assembly and who can facilitate communication between the organizers and law-enforcement officials.<sup>216</sup> (See para. 134, regarding the use of negotiation and/or mediation to help resolve disputes in advance of assemblies).
158. **Law-enforcement officials should differentiate between participants and non-participants:** The policing of public assemblies should be sensitive to the possible presence of “non-participants” (such as accidental bystanders or observers) in the

vicinity of an assembly.<sup>217</sup> See, further, the discussion of “kettling”<sup>218</sup> in paragraph 160.

159. **Law-enforcement officials should differentiate between peaceful and non-peaceful participants:** Neither isolated incidents of sporadic violence nor the violent acts of some participants in the course of a demonstration are themselves sufficient grounds to impose sweeping restrictions on peaceful participants in an assembly.<sup>219</sup> Law-enforcement officials should not, therefore, treat a crowd as homogenous in detaining participants or (as a last resort) forcefully dispersing an assembly.<sup>220</sup> See, further, the discussion of “kettling” in paragraph 160.
160. **Strategies of crowd control that rely on containment (a tactic known in the United Kingdom as “kettling”) must only be used exceptionally:** Such strategies tend to be indiscriminate, in that they do not distinguish between participants and non-participants, or between peaceful and non-peaceful participants. While it is undoubtedly the case that allowing some individuals to cross a police line while, at the same time, preventing others from doing so can exacerbate tensions, an absolute cordon permitting no egress from a particular area potentially violates individual rights to liberty and freedom of movement.<sup>221</sup> As noted by the United Kingdom’s Joint Committee on Human Rights, “it would be a disproportionate and unlawful response to cordon a group of people and operate a blanket ban on individuals leaving the contained area, as this fails to consider whether individual circumstances require a different response”.<sup>222</sup>

**Section 108, District of Columbia, United States, First Amendment Rights and Police Standards Act (2004)**

***Use of police lines***

*No emergency area or zone will be established by using a police line to encircle, or substantially encircle, a demonstration, rally, parade, march, picket line, or other similar assembly (or subpart thereof) conducted for the purpose of persons expressing their political, social, or religious views except where there is probable cause to believe that a significant number or percentage of the persons located in the area or zone have committed unlawful acts (other than failure to have an approved assembly plan) and the police have the ability to identify those individuals and have decided to arrest them; provided, that this section does not prohibit the use of a police line to encircle an assembly for the safety of the demonstrators.*

161. **Protocols for the stop and search, detention or arrest of participants should be established:** It is of paramount importance that states establish clear and prospective protocols for the lawful stop and search or arrest of participants in assemblies. Such protocols should provide guidance as to when such measures are appropriate and when they are not, how they should be conducted, and how individuals are to be dealt with following arrest. In drafting these protocols, regard should be paid to international jurisprudence concerning the rights to private and family life, to liberty and to freedom of movement. While mass arrests are to be avoided, there may be occasions involving public assemblies when numerous arrests are deemed necessary. However, large numbers of participants should not be deprived of their liberty simply because the law-enforcement agencies do not have sufficient resources to effect individual arrests – adequate resourcing forms part of the positive obligation of participating States to protect the right to assemble (see paras. 31-34 and 104).<sup>223</sup> The retention of fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences must be strictly limited by law.<sup>224</sup>
162. **Detention conditions must meet minimum standards:** Where individuals are detained, the authorities must ensure adequate provision for first aid, basic necessities (water and food), the opportunity to consult with lawyers, and the separation of minors from adults, and male from female detainees. Detainees must not be ill-treated while being held in custody.<sup>225</sup> Where detention facilities are inadequate to deal with the number of individuals, arrested individuals must be freed, unless doing so would pose a threat to public safety. Procedures must be established to limit the duration of detention to a strict minimum.
163. **Facilitating peaceful assemblies that do not comply with the requisite preconditions or that substantially deviate from the terms of notification:** If the organizers fail or refuses to comply with any requisite preconditions for the holding of an assembly (including valid notice requirements and necessary and proportionate restrictions based on legally prescribed grounds), they might face prosecution. The European Court of Human Rights has stated that “a decision to disband” such assemblies “solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.<sup>226</sup> Such events may include “flash mobs” (defined in note 39) the *raison d’être* of which demands an element of surprise that would be defeated by prior notification. Such assemblies should still be accommodated by law-enforcement authorities as far as possible. If a small assembly is scheduled to take place and, on the day of the event, turns into a significantly larger assembly because of an unexpectedly high turnout, the assembly should be accommodated by law-enforcement authorities and should be treated as being lawful so long as

it remains peaceful. As stated in Basic Standard 4 of Amnesty International's "Ten Basic Human Rights Standards for Law Enforcement Officials",<sup>227</sup> law-enforcement personnel should "[a]void using force when policing unlawful but non-violent assemblies".

164. **Policing peaceful assemblies that turn into non-peaceful assemblies:** Assemblies can change from being peaceful to non-peaceful and, thus, forfeit the protection afforded under human rights law (see paras. 25-28). Such assemblies may thus be terminated in a proportionate manner. However, the use of violence by a small number of participants in an assembly (including the use of inciteful language) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly, and any intervention should aim to deal with the particular individuals involved rather than dispersing the entire event.
165. **Dispersal of assemblies:** So long as assemblies remain peaceful, they should not be dispersed by law-enforcement officials. Indeed, the dispersal of assemblies should be a measure of last resort and should be governed by prospective rules informed by international standards. These rules need not be elaborated in legislation but should be expressed in domestic law-enforcement guidelines, and legislation should require that such guidelines be developed. Guidelines should specify the circumstances that warrant dispersal and who is entitled to issue dispersal orders (for example, only police officers of a specified rank and above).
166. Dispersal should not occur unless law-enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm (including by, for example, quieting hostile onlookers who threaten violence) and unless there is an imminent threat of violence.<sup>228</sup>

**Extract from Section 107, District of Columbia, United States, First Amendment Rights and Police Standards Act (2004):**

*(d) The [police] shall not issue a general order to disperse to participants in a[n]... assembly except where:*

*(i) A significant number or percentage of the assembly participants fail to adhere to the imposed time, place, and manner restrictions, and either the compliance measures set forth in subsection (b) of this section have failed to result in substantial compliance or there is no reasonable likelihood that the measures set forth in subsection (b) of this section will result in substantial compliance;*

*(2) A significant number or percentage of the assembly participants are engaging in, or are about to engage in, unlawful disorderly conduct or violence toward persons or property; or*

*(3) A public safety emergency has been declared by the Mayor that is not based solely on the fact that the First Amendment assembly is occurring, and the Chief of Police determines that the public safety concerns that prompted the declaration require that the... assembly be dispersed.*

*(e)(i) If and when the [police] determines that a[n]... assembly, or part thereof, should be dispersed, the [police] shall issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.*

*(2) Except where there is imminent danger of personal injury or significant damage to property, the MPD shall issue multiple dispersal orders and, if appropriate, shall issue the orders from multiple locations. The orders shall inform persons of the route or routes by which they may disperse and shall state that refusal to disperse will subject them to arrest.*

*(3) Whenever possible, MPD shall make an audio or video recording of orders to disperse.*

167. Dispersal should not, therefore, result where a small number of participants in an assembly act in a violent manner. In such instances, action should be taken against those particular individuals. Similarly, if *agents provocateurs* infiltrate an otherwise peaceful assembly, the authorities should take appropriate action to remove the *agents provocateurs* rather than terminating or dispersing the assembly or declaring it to be unlawful (see paras. 131 and 163, regarding the facilitation of peaceful assemblies, even where the organizers have not complied with the requisite pre-conditions established by law).

168. If dispersal is deemed necessary, the assembly organizers and participants should be clearly and audibly informed prior to any intervention by law-enforcement per-

sonnel. Participants should also be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law-enforcement officials intervene further. Third parties (such as monitors, journalists and photographers) may also be asked to disperse, but they should not be prevented from observing and recording the policing operation (see Chapter 8: Monitoring Freedom of Peaceful Assembly and “Use of force”, in paras. 171-178).

169. **Photography and video recording (by both law-enforcement personnel and participants) should not be restricted, but data retention may breach the right to private life:** During public assemblies the photographing or video recording of participants by law-enforcement personnel is permissible. However, while monitoring individuals in a public place for identification purposes does not necessarily give rise to interference with their right to private life,<sup>229</sup> the recording of such data and the systematic processing or permanent nature of the record created and retained might give rise to violations of privacy.<sup>230</sup> Moreover, photographing or making video recordings of assemblies for the purpose of gathering intelligence can discourage individuals from enjoying the freedom to assemble and should, therefore, not be done routinely. The photographing or video recording of the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law-enforcement agencies should be subject to prior judicial scrutiny.<sup>231</sup> Law-enforcement agencies should develop and publish a policy related to their use of overt filming/photography at public assemblies.<sup>232</sup>
170. Post-event debriefing of law-enforcement officials (particularly after non-routine events) should become standard practice: Debriefing might usefully address a number of specific issues, including human rights, health and safety, media safety, community impact, operational planning and risk assessment, communications, command and decision-making, tactics, resources and equipment, and future training needs. Event organizers should be invited to participate in debriefing sessions held by law-enforcement officials after the assembly.

### **Use of force**

171. The inappropriate, excessive or unlawful use of force by law-enforcement authorities can violate fundamental freedoms and protected rights, undermine police-community relationships, and cause widespread tension and unrest. The use of force should, therefore, be regulated by domestic law.<sup>233</sup> Such provisions should set out the circumstances that justify the use of force (including the need to provide adequate prior warnings) as well as the level of force acceptable to deal with various threats.

172. Governments should develop a range of means of response that enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations. Moreover, law-enforcement officers ought to be provided with self-defence equipment, such as shields, helmets, fire-retardant clothing, and bullet-proof vests and transport in order to decrease the need for them to use weapons of any kind.<sup>234</sup> This, again, emphasizes the requirement that the state provide adequate resources for its law-enforcement agencies in satisfaction of its positive duty to protect freedom of peaceful assembly.
173. International standards give detailed guidance regarding the use of force in the context of dispersal of both unlawful, non-violent and unlawful, violent assemblies. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that “[i]n the dispersal of assemblies that are unlawful but *non-violent*, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”<sup>235</sup> The UN Basic Principles also stipulate that “[i]n the dispersal of *violent* assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary ....”<sup>236</sup>
174. The right to life (Article 6 of the ICCPR, Article 2 of the ECHR) covers not only intentional killing, but also instances where the use of force results in the deprivation of life. Its protection entails “a stricter and more compelling test of necessity”, stipulating that “the force used must be strictly proportionate to the achievement of the permitted aims”.<sup>237</sup> When assessing the use of force by law-enforcement officials, the European Court of Human Rights has applied the evidential standard, “beyond reasonable doubt”.<sup>238</sup> The burden of proof “rests on the Government to demonstrate with convincing arguments that the use of force was not excessive”,<sup>239</sup> and “proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact...”.<sup>240</sup> What will be judged to be a reasonable action or reaction requires an objective and real-time evaluation of the totality of circumstances.<sup>241</sup>
175. The OSCE *Guidebook on Democratic Policing*<sup>242</sup> was published as a reference source for good policing practice and internationally adopted standards. The following reproduces those principles most closely related to the use of force in the context of freedom of peaceful assembly.

**Extract from OSCE Guidebook on Democratic Policing (2008): Use of Force paras.9, 65-74 (references omitted)**

9. ... [D]emocratic policing requires that the police simultaneously stand outside of politics and protect democratic political activities and processes (e.g. freedom of speech, public gatherings, and demonstrations). Otherwise, democracy will be threatened.

...

65. Policing in a democratic society includes safeguarding the exercise of democratic activities. Therefore, police must respect and protect the rights of freedom of speech, freedom of expression, association, and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law. "In the event of unlawful but non-violent assemblies, law enforcement officials must avoid the use of force or, where this is not possible, limit its use to the minimum ..."

66. In dispersing violent assemblies, firearms may be used only when less dangerous means prove ineffective and when there is an imminent threat of death or of serious injury. "Firing indiscriminately into a violent crowd is never a legitimate or acceptable method of dispersing it."

67. The police must have as their highest priority the respect for and the protection of life. This principle has particular applications for the use of force by police.

68. While the use of force is often indispensable to proper policing – in preventing a crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders police officers must be committed to the principle that the use of force must be considered as an exceptional measure, which must not be executed arbitrarily, but must be proportionate to the threat, minimizing damage and injury, and used only to the extent required to achieve a legitimate objective.

69. Law enforcement officials may not use firearms or lethal force against persons except in the following cases: to act in legitimate "self-defence or the defence of others against the imminent threat of death or serious injury; to prevent the perpetration of a particularly serious crime involving grave threat to life; to arrest a person presenting such a danger and resisting their authority; or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."70. If forced to use firearms, "law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the

*warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”*

*71. Law enforcement officials must ensure that assistance and medical aid are rendered to any injured or affected person at the earliest possible moment and that relatives or close friends of the injured or affected person are notified at the earliest possible moment.*

...

*73. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities. (See also paragraph 89.)*

*74. The disproportionate use of force has to be qualified as a criminal offence. Instances of the use of force must therefore be investigated to determine whether they met the strict guidelines...*

176. The following principles should underpin all occasions when force is used in the policing of public assemblies:

- Where pepper spray or other irritant chemicals may be used, decontamination procedures must be set out;<sup>243</sup>
- The use of attenuated energy projectiles (AEPs), baton rounds or plastic/rubber bullets, water cannon and other forceful methods of crowd control must be strictly regulated;<sup>244</sup>
- Under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene; and
- The use of force should trigger an automatic and prompt review process after the event. It is good practice for law-enforcement officials to maintain a written and detailed record of force used (including weapons deployed).<sup>245</sup> Moreover, where injuries or deaths result from the use of force by law-enforcement personnel, an independent, open, prompt and effective investigation must be established (see, Liability and accountability in paras. 179-184).

177. It is vital that governments and law-enforcement agencies keep the ethical issues associated with the use of force, firearms and emerging technologies constantly under review.<sup>246</sup> Standards concerning the use of firearms are equally applicable to the use of other potentially harmful techniques of crowd management, such as batons, horses, tear gas or other chemical agents, and water cannon.

**Section 15(2), Hungary's Act XXXIV on the Police (1994):**

*Of several possible and suitable options for Police measures or means of coercion, the one which is effective and causes the least restriction, injury or damage to the affected person shall be chosen.*

**Extract from: United States Department of Justice Principles for Promoting Police<sup>247</sup>**

*Policing requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from a risk of imminent harm. Police officers should use only an amount of force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officers and others.[...]When the use of force is reasonable and necessary, officers should, to the extent possible, use an escalating scale of options and not employ more forceful means unless it is determined that a lower level of force would not be, or has not been, adequate. The levels of force that generally should be included in the agency's continuum of force include: verbal commands, use of hands, chemical agents, baton or other impact weapon, canine, less-than-lethal projectiles, and deadly force.*

178. Public-order policies and training programmes should be kept under review to incorporate lessons learnt, and regular refresher courses should be provided to law-enforcement officials. These standards should be circulated as widely as possible, and monitoring of their implementation should be performed by an independent overseer, with investigative powers to compel witnesses and documentation and who publishes periodic reports.

**Liability and accountability**

179. Law-enforcement officials should be liable for any failure to fulfil their positive obligations to protect and facilitate the right to freedom of peaceful assembly. Moreover, liability should also extend to private agencies or individuals acting on behalf of the state; the European Court of Human Rights has stated that "the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention".<sup>248</sup>

180. The compliance of law-enforcement officials with international human rights standards should be closely monitored.<sup>249</sup> It is good practice for an independent oversight mechanism to review and report on any large-scale or contentious policing operation relating to public assemblies. In Northern Ireland, for example, human rights experts from the police-oversight body (the Policing Board) have routinely monitored all elements of police operations related to controversial assemblies.<sup>250</sup> A police-complaints mechanism should be established where none exists, with a range of potential resolutions at its disposal. In certain cases, there may also be a monitoring role for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.<sup>251</sup>
181. Where a complaint is received regarding the conduct of law-enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the actions of law-enforcement officers, an "effective official investigation" must be conducted.<sup>252</sup> The core purpose of any investigation should be to secure the effective implementation of domestic laws that protect the right to life and bodily integrity, and in those cases involving state agents or entities, to ensure their accountability for deaths or physical injuries occurring under their responsibility. The particular form of investigation required to achieve those purposes may vary according to the circumstances.<sup>253</sup>
182. If the force used is not authorized by law or more force was used than necessary in the circumstances, law-enforcement officers should face civil and/or criminal liability, as well as disciplinary action. The relevant law-enforcement personnel should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force.
183. An applicant complaining of a breach of the right to life need only show that the authorities did not do all that could reasonably be expected in the circumstances to avoid the risk.<sup>254</sup> Where allegations are made against law-enforcement officials in relation to inhuman or degrading treatment or torture, the European Court of Human Rights will conduct "a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place".<sup>255</sup>
184. Specific definitions of terms such as "self defence" – subject to important qualifications (such as a reasonableness test, and requirements that an attack was actual or imminent and that there was no other less forceful response available) – should be contained in domestic criminal law.

**Paragraph 21.2 of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991**

*(OSCE) participating States are urged to 'ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments.'*

**Paragraph 7 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

*'[G]overnments shall ensure that the arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.'*<sup>256</sup>

**Extract from Report of the Special Commission of Experts on the Demonstrations, Street Riots and Police Measures in September-October 2006, in Budapest, Hungary (February 2007) at p.11**

*The Commission recommends that the Government draft a bill that ensures the possibility of legal remedy in case of unlawful riot control actions or in case police officers, acting individually or in groups, infringe the requirement of proportionality.*

## 7. Responsibilities of the Organizer

### The organizer

185. The organizer is the person or persons with primary responsibility for the assembly. It is possible to define the organizer as the person in whose name prior notification is submitted. As noted in paragraph 127, it is also possible for an assembly not to have any identifiable organizer.

**Article 5, Montenegro's Public Assembly Act (2005)**

*The organizer of a peaceful assembly is any legal or physical entity (henceforth referred to as: the organizer) which, in line with this Act, organizes, holds and supervises the peaceful assembly. Peaceful assembly under paragraph 1 of this article can also be organized by a group of citizens, or more than one legal entity.*

186. Organizers of assemblies should co-operate with law-enforcement agencies to ensure that participants in their assemblies comply with the law and the terms of any submitted notification. There should be clarity as to who precisely is involved in the organization of any assembly, and it can be assumed that the official organizer is the person or persons in whose name prior notification is submitted. This need not be a legal entity and could, for example, be a committee of individuals or an informal organization (see also paras. 53 and 105-106).<sup>257</sup>

### Ensuring the peaceful nature of an assembly – principles of good practice

187. **Pre-event planning with law-enforcement officials:** Where possible, it is good practice for the organizer(s) to agree with the law-enforcement officials about what security and public-safety measures are being put in place prior to the event. Such discussions can, for example, cover stewarding arrangements (see paras. 191-196) and the size, positioning and visibility of the police deployment. Discussions might also focus upon contingency plans for specific locations (such as monuments, transport facilities or hazardous sites) or upon particular concerns of the police or the organizer(s). For example, the organizer may fear that a heavy police presence in a particular location would be perceived by participants as unnecessarily confrontational, and might thus request that the police maintain a low visibility.

**Article 30, Slovenia's Act on Public Assembly (2004)**

**Police assistance**

*When as regards the nature of the gathering or event or as regards the circumstances in which the gathering or event is held ... there exists a possibility that police measures will be necessary, the police, in agreement with the organizer, shall determine the number of police officers necessary for assisting in the maintenance of the public order at the gathering or event. In the event of such, the ranking police officer shall come to an agreement with the leader on the method of co-operation.*

*In the instances specified in the previous paragraph, the organizer of the gathering or event is obliged also to co-operate with the police regarding the planning of measures for the maintenance of order at the gathering or event.*

188. An example of legislation from outside the OSCE region, in South Africa, provides a useful model of good practice, in that it specifically requires a signed contract detailing the duties and responsibilities of both the police and the demonstrators.

**South Africa's Regulation of Gatherings Act, No 205 (1993)**

*The Act states that the peaceful exercise of the right to assemble is the joint responsibility of the convenor (organiser) of the event, an authorised member of the police and a responsible officer of the local authority. Together, these three parties form a 'safety triangle' with joint responsibility for ensuring order and safety at public events. The success of the safety triangle is based upon collective planning and co-ordination between the three parties and a willingness to negotiate and compromise where disputes arise.<sup>258</sup>*

189. **Risk Assessment:** Organizers – in co-operation with relevant law-enforcement and other agencies (such as fire and ambulance services) – should consider what risks are presented by their assembly and how they would deal with them should they materialize. The imposition by law of mandatory risk assessments for all open-air public assemblies would, however, create an unnecessarily bureaucratic and complicated regulatory regime that would unjustifiably deter groups and individuals from enjoying their freedom of peaceful assembly.

190. **Responsibility to obey the lawful directions of law-enforcement officials:** The law on assemblies might legitimately place organizers (as well as participants) under a duty to obey the lawful orders of law-enforcement officials. Refusal to do so may entail liability (see paras. 197-198).

### Stewarding assemblies

191. Stewards and marshals (the terms are often used interchangeably) are individuals who assist the organizers of an assembly in managing the event.<sup>259</sup> Laws governing freedom of assembly may provide for the possibility of organizers being assisted by volunteer stewards. For example, while the police may have overall responsibility for public order, organizers of assemblies are encouraged to deploy stewards during the course of a large or controversial assembly. Stewards are persons, working in co-operation with the assembly organizers, with a responsibility to facilitate the event and help ensure compliance with any lawfully imposed restrictions.
192. Stewards do not have the powers of law-enforcement officials and cannot use force, but should rather aim to obtain the co-operation of assembly participants by means of persuasion. Their presence can provide reassurance to the public and help set the mood of an event. The primary role of stewards is to orient the public and provide it with explanations and information to identify potential risks and hazards before and during an assembly. In cases of public disorder, the stewards (and organizers) should have the responsibility to promptly inform the relevant law-enforcement officials. Law-enforcement agencies should work in partnership with event stewards, and each must have a clear understanding of their respective roles.
193. **Training, briefing and debriefing:** Stewards should receive appropriate training and a thorough briefing before the assembly takes place (in particular, stewards should be familiar with the geography of the area in which the assembly is being held), and it is the responsibility of the organizers to co-ordinate the stewarding operation. For larger events, a clear hierarchy of decision-making should be established and stewards must be able to communicate with one another and with the organizers at all times during an assembly. As with law-enforcement officials (see para. 170), it is important that stewards – together with the event organizers – hold a thorough post-event debriefing and evaluation after any non-routine assembly.
194. **Identification:** It is desirable that stewards be clearly identifiable (e.g., through the wearing of special bibs, jackets, badges or armbands).
195. **Requirement to steward certain assemblies:** Under some circumstances, it may be legitimate to impose on organizers the condition that they arrange a certain

level of stewarding for their gathering. However, such a condition should only be imposed as the result of a specific assessment and never by default. Otherwise, it would likely violate the proportionality principle.<sup>260</sup> Any requirement to provide stewarding in no way detracts from the positive obligation of the state to provide adequately resourced policing arrangements. Stewards are not a substitute for the adequate presence of law-enforcement personnel and law-enforcement agencies must still bear overall responsibility for public order. Nonetheless, efficient stewarding can help reduce the need for a heavy police or military presence at public assemblies.

196. In some jurisdictions, it is commonplace for professional stewards or private security firms to be contracted and paid to provide stewarding for assemblies. However, there should never be a legal obligation upon organizers to pay for stewarding arrangements. To impose such a cost burden would seriously erode the essential essence of freedom of assembly and undermine the core responsibility of the state to provide adequate policing.

### **Liability**

197. Organizers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful, but they should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organizers should not be liable for the actions of individual participants or of stewards not acting in accordance with the terms of their briefing.<sup>261</sup> Instead, individual liability should arise for any steward or participant if they commit an offence or fail to carry out the lawful directions of law-enforcement officials.
198. The organizers may wish to take out public-liability insurance for their event. Insurance, however, should not be made a condition of freedom of assembly, as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom of assembly. Moreover, if an assembly degenerates into serious public disorder it is the responsibility of the state – not the organizers or event stewards – to limit the damage caused. In no circumstances should the organizers of a lawful and peaceful assembly be held liable for disruption caused to others.

## 8. Monitoring Freedom of Peaceful Assembly

199. The right to observe public assemblies is part of the more general right to receive information (a corollary of the right to freedom of expression).<sup>262</sup> In this regard, the safeguards guaranteed to the media are particularly important.<sup>263</sup> However, freedom to monitor public assemblies should not only be guaranteed to all media professionals<sup>264</sup> but also to others in civil society, such as human rights activists, who might be regarded as performing the role of social watchdogs and whose aim is to contribute to informed public debate.<sup>265</sup>
200. The monitoring of public assemblies provides a vital source of independent information on the activities of both participants and law-enforcement officials that may be used to inform public debate and serve as the basis for dialogue between state and local authorities, law-enforcement officials and civil society.

### Independent monitors

201. For the purposes of these Guidelines, monitors are defined as non-participant third-party individuals or groups whose primary aim is to observe and record the actions and activities taking place at public assemblies. Independent monitoring may be carried out by local NGOs, human rights defenders,<sup>266</sup> domestic ombudsman offices or national human rights institutions; or by international human rights organizations (such as Human Rights Watch or Amnesty International) or intergovernmental networks (such as the Council of Europe, the OSCE or the UN Office of the High Commissioner for Human Rights).<sup>267</sup> Such individuals and groups should, therefore, be permitted to operate freely in the context of monitoring freedom of assembly.
202. Monitoring public assemblies can be a difficult task, and the precise role of monitors will depend on why, and by whom, they have been deployed.<sup>268</sup> Monitors may, for example, be tasked with focusing on particular aspects of an assembly, such as:
- The policing of an assembly (to consider whether the state is fulfilling its positive obligations under human rights law);
  - Whether parties adhere to a prior agreement about how an assembly is to be conducted;
  - Whether any additional restrictions are imposed on an assembly during the course of the event;
  - Any instances of violence or use of force, by participants or by law-enforcement personnel;
  - The interaction between participants in an assembly and an opposing assembly; and

- The conduct of participants in a moving assembly that passes a sensitive location.
203. Monitors will usually write up the findings of their observations in a report, and this may be used to highlight issues of concern to the state authorities. The report can thus serve as the basis for dialogue and engagement on such matters as the effectiveness of the current law and the extent to which the state is respecting its positive obligations to protect freedom of peaceful assembly. Monitoring reports may also be used to engage with the relevant law-enforcement agencies or with the municipal authorities and might highlight areas where further training, resources or equipment may be needed.
204. Independent monitoring reports may also be a useful resource for informing international bodies, such as the Council of Europe, the OSCE and the United Nations, of the level of respect and protection for human rights in a particular country (see Appendix A, Enforcement of international human rights standards).
205. ODIHR has developed a training programme for monitoring freedom of assembly that has been used to support the work of human rights defenders in a number of countries in Europe and Central Asia. ODIHR has also developed a handbook for monitoring freedom of assembly that further elaborates on the theory and practice of independent monitoring.<sup>269</sup> The following section, which is drawn from the training pack, highlights some of the ethical issues for monitors.

### **Principles and Standards in Monitoring**

*Monitoring is an ethically based activity that aims to increase protection of, and respect for human rights. Monitors have to work to high standards to ensure that their observations and reports are respected and can stand scrutiny. The following principles have been drawn from the experiences of monitors working in a diverse range of contexts and environments*

1. *Monitoring is a tool to defend and protect human rights and monitors should respect the human rights of all parties. Monitors should adhere to the principle of 'do no harm'.*
2. *Monitors must show respect for the law. They should obey the lawful instructions from the police and emergency services. Monitors should also bear in mind that the witnessing of illegal activities (by the police, demonstrators or others) might require them to give evidence at a later date.*

3. *Monitors must maintain their independence throughout the process. Monitors should ensure their independence is not compromised by their location, dress or demeanour. They should not actively participate in a demonstration / picket / protest. Monitors may introduce themselves to participants but should not voice opinions on events and activities*
4. *Monitors should remain neutral. Monitors are citizens, with their own rights and responsibilities, however, when monitoring it is important to maintain a neutral position. Monitors should not advise parties on the ground or voice opinions about the actions of any party.*
5. *The work of monitors should be visible. They should have a form of identification available at all times. Monitoring is a transparent and open practice and it is hoped that the visible presence of monitors will have a positive impact on respect for human rights and deter acts of aggression and violence.*
6. *Monitors will generally work as part of a team. They should have an agreed plan of action, a chain of command, and an agreed means of communication with other team members. They should have an agreed public location (café, train station, etc.) for rendezvous after the event.*
7. *Monitors should be mindful of their own safety. Monitors should ideally work in pairs (although this is not always necessary or practical) and at times it may be necessary for monitors to withdraw from a location or from public space entirely if they have concerns for their personal safety.*
8. *Despite the provisos specified above, monitors should also remember their social responsibilities as citizens and there may be times when an individual may consider it necessary to intervene in a particular situation. The monitoring team should discuss such eventualities as part of its general preparation.*
9. *Monitors should never act in a way that will discredit the larger monitoring team. Monitors should never consume alcohol or other illegal drugs or substances before or during events.*
10. *Monitors should not offer any formal opinions to the media or other agencies during the assembly. Any comments should be limited to identification of their role as independent human rights monitors.*
11. *The monitoring team should verbally debrief as soon as possible at the end of an event. Written reports should ideally be prepared within twenty-four hours of the end of an event from notes made at the time.*

*12. Monitors reports should be accurate and impartial. Monitors should ensure that their reports are based on what they have seen and heard. They must resist any efforts to influence their report. They should not report hearsay.*

## Media

206. The media perform a pre-eminent role in a state governed by the rule of law. The role of the media as public watchdogs is to impart information and ideas on matters of public interest – information that the public also has a right to receive.<sup>270</sup>
207. Media professionals, therefore, have an important role to play in providing independent coverage of public assemblies. The OSCE Representative on Freedom of the Media has noted that “uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech”.<sup>271</sup>
208. Furthermore, “[a]ssemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances to the attention of the public.”<sup>272</sup> Media reports and footage thus provide an important element of public accountability, both for organizers of events and law-enforcement officials. As such, the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.

### **Article 17, Moldova’s Law on Public Assemblies (2008): Observance of Assemblies**

- (1) Any person can make video or audio recording of the assembly.*
- (2) Access for the press is ensured by the organizers of the assembly and by the public authorities.*
- (3) Seizure of technical equipment, as well as of video and audio recordings of assemblies, is only possible in accordance with the law.*

209. There have, however, been numerous instances where journalists have been restricted from reporting at public assemblies and occasions on which journalists have been detained and/or had their equipment damaged.<sup>273</sup> As a result, the OSCE Representative on Freedom of the Media issued a special report on handling the media during political demonstrations; the following excerpt highlights its recommendations.<sup>274</sup>

**OSCE Representative on Freedom of the Media, Special Report:  
Handling of the media during political demonstrations, Observations  
and Recommendations (June 2007)**

*There have been a number of instances recently where journalists have received particularly harsh treatment at the hands of law-enforcers while covering public demonstrations. This has highlighted the need to clarify the modus operandi of both law enforcement agencies and journalists at all public events, in order that the media is able to provide coverage without hindrance.*

*Both law-enforcers and journalists have special responsibilities at a public demonstration. Law-enforcers are responsible for ensuring that citizens can exercise their right to peaceful assembly, for protecting the rights of journalists to cover the event regardless of its legal status, and for curbing the spread of violence by peaceful means. Journalists carry the responsibility to be clearly identified as such, to report without taking measures to inflame the situation, and should not become involved in the demonstration itself.*

*Law-enforcers have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations, and journalists have a right to expect fair and restrained treatment by the police. This flows from the role of law-enforcers as the guarantor of public order, including the right to free flow of information, and their responsibility for ensuring the right to freedom of assembly.*

**Recommendations**

- 1. Law enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations. Journalists have a right to expect fair and restrained treatment by the police.*
- 2. Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behaviour vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an over-reaction is not repeated in the future and should send a strong signal that such behaviour will not be tolerated.*

*3. There is no need for special accreditation to cover demonstrations except under circumstances where resources, such as time and space at certain events, are limited. Journalists who decide to cover 'unsanctioned demonstrations' should be afforded the same respect and protection by the police as those afforded to them during other public events.*

*4. Wilful attempts to confiscate, damage or break journalists' equipment in an attempt to silence reporting is a criminal offence and those responsible should be held accountable under the law. Confiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship and as such is a practice prohibited by international standards. The role, function, responsibilities and rights of the media should be integral to the training curriculum for law-enforcers whose duties include crowd management.*

*5. Journalists should identify themselves clearly as such, should refrain from becoming involved in the action of the demonstration and should report objectively on the unfolding events, particularly during a live broadcast or webcast. Journalists' unions should agree on an acceptable method of identification with law enforcement agencies and take the necessary steps to communicate this requirement to media workers. Journalists should take adequate steps to inform and educate themselves about police measures that will be taken in case of a riot.*

*6. Both law enforcement agencies and media workers have the responsibility to act according to a code of conduct, which should be reinforced by police chiefs and chief editors in training. Police chiefs can assist by ensuring that staff officers are informed of the role and function of journalists. They should also take direct action when officers overstep the boundaries of these duties. Media workers can assist by remaining outside the action of the demonstration and clearly identifying themselves as journalists.*

210. In addition, the Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis underline that not only is media coverage "crucial in times of crisis by providing accurate, timely and comprehensive information", but that "media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of

tolerance and understanding between different groups in society". The following extracts are particularly relevant in relation to media coverage of freedom of peaceful assembly:

**Extracts from: Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis**

*"Member States should assure to the maximum extent the safety of media professionals – both national and foreign. The need to guarantee the safety, however, should not be used by member States as a pretext to limit unnecessarily the rights of media professionals such as their freedom of movement and access to information." (paragraph 2);*

*"Military and civilian authorities in charge of managing crisis situations should provide regular information to all media professionals covering the events through briefings, press conferences, press tours or other appropriate means..." (paragraph 11);*

*"National governments, media organisations, national or international governmental and non-governmental organisations should strive to ensure the protection of freedom of expression and information in times of crisis through dialogue and co-operation" (paragraph 27);*

*"Non-governmental organisations and in particular specialised watchdog organisations are invited to contribute to the safeguarding of freedom of expression and information in times of crisis in various ways, such as:*

- *Maintaining help lines for consultation and for reporting harassment of journalists and other alleged violations of the right to freedom of expression and information;*
- *Offering support, including in appropriate cases free legal assistance, to media professionals facing, as a result of their work, lawsuits or problems with public authorities;*
- *Co-operating with the Council of Europe and other relevant organisations to facilitate exchange of information and to effectively monitor possible violations." (paragraph 30).*

## Annex A – Enforcement of international human rights standards

Where states fail to fulfil their human rights obligations, the role of human rights defenders, civil society organizations (CSOs) and NGOs (both domestic and international) becomes especially important. Such individuals and groups – together with national institutions, such as ombudspersons or national human rights institutions (NHRIs) – perform a vital task in seeking to ensure that rights are enforced in practice and that something is learned as a result of any failures. While such organizations will inevitably have different priorities, skills and experience, organizational capacities and resources, their respective strengths can be harnessed so as to make the protection of the right to freedom of assembly practical and effective.

There are a variety of options that may be available in any given context. This annex provides an overview of only the main regional and international mechanisms through which a failure to adhere to these Guidelines might be exposed and/or challenged. Interstate procedures (such as those available under the ICCPR and ECHR) are not examined.

As emphasized in chapter 8, “Monitoring Freedom of Peaceful Assembly”, wherever possible, the starting point should be dialogue among government, local authorities, law-enforcement officials and civil society. Reports issued by independent monitors, human rights defenders, NGOs and media professionals can, certainly, provide an impetus for such discussions. Nonetheless, complaints of human rights violations should not be based exclusively on reports in mass media, and should be corroborated wherever possible. See:

- “Guidelines on International Human Rights Fact-Finding Visits and Reports (The Lund-London Guidelines)”, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund University, June 2009, at: <<http://www.factfinding-guidelines.org/guidelines.html>>; and
- Julie Mertus, “Considerations for Human Rights Fact Finding by NGOs”, at: <<http://academic3.american.edu/~mertus/HR%20fact-finding.htm>>.

### **Legislative Support: The OSCE / ODIHR and Venice Commission**

ODIHR’s primary task in the field of legislative assistance is to respond to requests from participating States and to ensure the consistency of such responses. Assistance generally involves a review of draft legislation in areas covered by the human dimension to ensure compliance with international standards, particularly OSCE commitments. ODIHR also provides states with good practices that have been culled from years of experience of working with a number of countries. Such practices and

sample legislation may serve as a source of inspiration for lawmakers in other parts of the OSCE region.

With regard to legislative assistance in the area of freedom of assembly, ODIHR, through its Panel of Experts on Freedom of Assembly, provides advice to OSCE participating States on draft legislation pertaining to this field. The advice is solicited through an official request from the authorities of the participating State in question or the respective OSCE field operation. In exceptional cases, comments are released on legislation in force, but only when there is a prospect for reform and an attested political will to engage in a reform process. The comments seek to help the OSCE participating States meet their international obligations (whether they are embodied in legally binding standards or politically binding commitments).

Moreover, the assessment of compliance with standards takes into account various parameters, including those that characterize the legal system, the legal culture and the institutional setup of a particular country. This requires the collection of information on the issues addressed or affected by the legal provisions under consideration. See:

- ODIHR website, "Legislative support", at:  
<<http://www.osce.org/odihr/13431.html>>.

The Venice Commission's primary task is to give impartial legal advice to individual countries that are drafting or revising constitutions or laws on legislation that is important for the democratic functioning of institutions. Generally, a request for an opinion is made by the state itself. The Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council Europe, and the Secretary General, or any international organization or body participating in the Venice Commission's work, may also request an opinion. The Commission's working method when providing opinions is to appoint a working group of rapporteurs (primarily from among its own members), which advises national authorities in the preparation of the relevant law. After discussions with the national authorities and stakeholders in the country, the working group prepares a draft opinion on whether the legislative text meets the democratic standards in its field and on how to improve it on the basis of common experience. The draft opinion is discussed and adopted by the Venice Commission during a plenary session, usually in the presence of representatives from the country in question. After the opinion's adoption it becomes public and is forwarded to the requesting body. Although its opinions are generally reflected in the adopted legislation, the Venice Commission does not impose its solutions but, instead, adopts a non-directive approach based on dialogue. For this reason, as a rule, the working group, visits the country concerned and meets with the different political actors involved in the issue in order to ensure the most objective view of the situation possible. See:

- Council of Europe website, Venice Commission, at: [http://www.venice.coe.int/site/main/Presentation\\_E.asp](http://www.venice.coe.int/site/main/Presentation_E.asp).

## **UN Treaty-Based Mechanisms**

### **The Human Rights Committee (ICCPR)**

States Parties to the ICCPR must initially report one year after acceding to the Covenant, and thereafter whenever the Committee requests (usually every four years). The Committee examines each report and makes recommendations to the State Party by way of “concluding observations”. Where the state in question is also a party to the first Optional Protocol to the ICCPR, an individual communication (petition) may be lodged with the UN Human Rights Committee by individuals (not organizations or associations)<sup>275</sup> who claim a violation by the State Party of Article 21, ICCPR (or other Covenant right). See:

- “How to Complain to the UN Human Rights Treaty System, at: <http://www.bayefsky.com/unts/index.html>).
- Office of the UN High Commissioner for Human Rights website, “Human Rights Bodies”, at: <http://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>, for information on the other UN Treaty based bodies, including the Committee on the Elimination of Racial Discrimination (CERD) and the Committee against Torture(CAT); and
- Office of the UN High Commissioner for Human Rights website, “Model questionnaires for communications/complaints”, at: <http://www2.ohchr.org/english/bodies/question.htm>.

## **UN Charter-Based Mechanisms**

### **Universal Periodic Review**

The UN Human Rights Council is mandated to undertake a review of the human rights record of each UN Member State once every four years. This process – called “Universal Periodic Review” (UPR) – is designed to facilitate interactive discussion between the state under review and other UN Member States. Reviews are based upon state submissions (and states are encouraged to engage in “a broad consultation process at the national level with all relevant stakeholders” in preparing their submissions), reports by independent human rights experts and groups, and information from other stakeholders (including NGOs and national human rights institutions). NGOs can attend the UPR Working Group sessions and can make comments at meetings of the Human Rights Council when the “outcome report” of the review is considered. Outcome reports adopted by the Working Group provide the basis for subsequent reviews, and the Council will decide on appropriate measures if a Member State persists in failing to co-operate. See:

- Office of the UN High Commissioner for Human Rights website, “Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism, at: <<http://www.ohchr.org/EN/HRBodies/UPR/Documents/TechnicalGuideEN.pdf>>.

### **The Human Rights Council Complaints Procedure**

This confidential complaints procedure (the successor to the “1503 Procedure”) is designed to address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms. Communications are examined by two working groups – the Working Group on Communications and the Working Group on Situations. See:

- Office of the UN High Commissioner for Human Rights website, “Human Rights Council Complaints Procedure”, at: <<http://www2.ohchr.org/english/bodies/chr/complaints.htm>>; and
- Office of the UN High Commissioner for Human Rights website, “Communications”, at: <<http://www2.ohchr.org/english/bodies/chr/special/communications.htm>>.

### **Special Procedures of the Human Rights Council**

See:

- Working Group on Arbitrary Detention, Office of the UN High Commissioner for Human Rights website, at: <<http://www2.ohchr.org/english/issues/detention/index.htm>>;
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Office of the UN High Commissioner for Human Rights website, at: <<http://www2.ohchr.org/english/issues/opinion/index.htm>>;
- Special Rapporteur on freedom of religion or belief, Office of the UN High Commissioner for Human Rights website, at: <<http://www2.ohchr.org/english/issues/religion/index.htm>>; and
- Special Rapporteur on the situation on human rights defenders, (complaints procedure),<sup>276</sup> Office of the UN High Commissioner for Human Rights website, at: <<http://www2.ohchr.org/english/issues/defenders/index.htm>>.

### **The European Court of Human Rights**

For those OSCE participating States that are High Contracting Parties to the ECHR, Article 1 of the ECHR requires states to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention (irrespective of nationality or place of residence – see paragraph 55 of the Explanatory Notes). Where the state fails to fulfil

its Convention obligations, Article 13 of the ECHR – which guarantees the right to an effective remedy – entails a personal right to the exercise by the state of its supervisory powers.<sup>277</sup> In this regard, the competent national authority must be able to deal with the substance of the relevant Convention complaint and to grant appropriate relief.<sup>278</sup> There is “no obligation to have recourse to remedies which are inadequate or ineffective,”<sup>279</sup> and the burden is upon the government to demonstrate that any unused remedies “were accessible, were capable of providing redress in respect of the applicant’s complaints and offered reasonable prospects of success”.<sup>280</sup> This underscores the imperative of a legal culture committed to the rule of law and of an independent judiciary.

Given that the timing of an assembly will often be critical to its message, the notion of an effective remedy also implies the possibility of obtaining an appeal ruling before the time of the planned event.<sup>281</sup> *Post-hoc* review will normally be regarded as inadequate, and laws governing the regulation of freedom of peaceful assembly should provide for an expedited review and appeal process.

Under Article 34 of the ECHR, any person, NGO or group of individuals<sup>282</sup> claiming to be the victim of a violation by a High Contracting Party, may submit an application to the European Court of Human Rights within 6 months of the final decision taken in the domestic proceedings (Article 35(1) ECHR). The application must demonstrate *prima facie* grounds that there has been a breach of the Convention so as not to be deemed manifestly ill-founded under Article 35(3).<sup>283</sup>

An applicant to the European Court of Human Rights should initially appeal any claimed violation of Convention rights in the relevant national courts, adhering to any formal requirements and time-limits laid down in domestic law. Applicants must also use “any procedural means that might prevent a breach of the Convention”.<sup>284</sup> Thus, where any concerns arising in relation to a notified assembly can reasonably be addressed and/or accommodated by an organizer of an assembly (without undermining the event or its message), pre-event liaison can serve to prevent later breaches of the Convention (but see paragraph 103 of the Explanatory Notes, above, which emphasizes that an organizer of an assembly should not be compelled or coerced into accepting any alternatives proposed by the authorities). In addition, it will be important for civil society groups to monitor the implementation of general and specific enforcement measures stipulated by the Committee of Ministers. See:

- European Court of Human Rights website, “Application pack: Documentation for persons wishing to apply to the European Court of Human Rights”, at: <<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/>>.

## The Inter-American Commission and Inter-American Court on Human Rights

Under Article 44 of the American Convention on Human Rights (adopted in 1969 and came into force in 1978), any person, group or NGO legally recognized in one or more of the Member States of the Organization of American States (OAS) can lodge a petition complaining of a violation of the Convention by a State Party. Petitioners must exhaust domestic remedies and lodge their petition within 6 months of being notified of the final domestic judgment. Article 47 of the Convention provides that the petition/communication must state facts that “tend to establish” a violation, must not be manifestly groundless or obviously out of order, and must not be substantially the same as one previously studied by the Commission or by another international organization. On examining such a petition, the Commission can carry out an investigation, if necessary and advisable. The Commission may also request that states provide any pertinent information and, if requested, shall hear oral statements or receive written statements from parties concerned (Article 48 (d) and (e)).

The Commission also has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter (Article 41). This promotional mandate includes the preparation of such studies or reports as it considers advisable, and the Commission can request the governments of Member States to supply it with information on any measures adopted. The Commission also carries out specialized work in certain thematic areas, including that done by the the Special Rapporteur on Freedom of Expression, and there is a separate unit on human rights defenders. The Commission can conduct *in loco* visits (as it did, for example, to Honduras in August 2009 to observe the human rights situation in the context of the *coup d'état* of June 28, 2009).

Only States Parties and the Commission can submit a case to the Court (Article 61). The Court's contentious jurisdiction must have been recognized by States Parties before a case can be heard (Article 62(3)). On finding a violation, the Court can rule that the measure or situation that constituted the breach be remedied and that fair compensation be paid (Article 63(1)). The judgment of Court is final and not subject to appeal (Article 67) and is binding on States Parties in cases to which they are parties (Article 68(1)). See:

- Inter-American Commission on Human Rights website, “Petitions”, at: <[https://www.cidh.oas.org/cidh\\_apps/instructions.asp?gc\\_language=E](https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E)>; and
- Inter-American Commission on Human Rights website, “Publications” (country reports, annual reports, and resolutions), at: <<http://www.cidh.oas.org/publi.eng.htm>>.

## The Council of Europe, Office of the Commissioner for Human Rights

The Council of Europe Commissioner for Human Rights is a non-judicial institution, and thus unable to act upon individual complaints. Nonetheless, the Commissioner's office

seeks to encourage Council of Europe Member States to adopt reform measures where human rights violations have been identified. The Commissioner seeks to maintain a dialogue with Member States and evaluates the on-the-ground human rights situation through official country missions. The Commissioner also provides advice on the protection of human rights and may provide opinions on draft laws and specific practices (either on the request of national bodies or on his/her own initiative). See:

- Council of Europe website, "Commissioner for Human Rights: Contact us", at: <[http://www.coe.int/t/commissioner/Office/contact\\_en.asp](http://www.coe.int/t/commissioner/Office/contact_en.asp)>; and
- Council of Europe website, "Commissioner for Human Rights: Human Rights Comment", at: <[http://www.coe.int/t/commissioner/Media/HRCComment\\_en.asp](http://www.coe.int/t/commissioner/Media/HRCComment_en.asp)>.

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## Annex C: English-Russian glossary of key terms

English term	English definition	Russian term	Russian definition
<b>Accountability</b>	An obligation to explain one's actions to another person or organization.	<b>Ответственность</b>	Обязательство объяснить собственные действия другому лицу или организации.
<b>Assembly</b>	The intentional and temporary presence of a number of individuals in an open-air public place for a common purpose.	<b>Собрание</b>	Намеренное и временное присутствие группы лиц на общественной территории вне помещения с какой-либо общей целью.
<b>Authorization</b>	The act of authorizing; permission (expressly provided in writing).	<b>Разрешение; Санкция</b>	Акт санкционирования, разрешение (ясно выраженное в письменной форме).
<b>Blanket</b> (e.g. ban, restriction)	Effective or applicable in all instances.	<b>Всеобъемлющая норма</b>	Решение, которое действует или подлежит применению во всех случаях.
<b>"Clear and present danger" test</b>	A doctrine that allows the imposition of restrictions only when participants in an assembly incite imminent lawless action and such action is likely to occur.	<b>Анализ на выраженное присутствие непосредственной опасности</b>	Принцип, который позволяет применение ограничений лишь в тех случаях, когда участники собрания призывают к немедленным незаконным действиям, и когда существует реальная опасность совершения таких действий.
<b>Content neutrality</b> (principle of)	A principle that only allows the restriction of expression without regard to the content or communicative impact of the message conveyed.	<b>Нейтральный подход к содержанию</b> (принцип)	Принцип, согласно которому запрещается ограничение свободы выражения мнения лишь на основании его содержания или коммуникативного воздействия.
<b>Content-based restrictions</b>	A restriction that limits expression on the basis of the message it conveys.	<b>Ограничения на содержание</b>	Ограничение на выражение мнения в связи с его содержанием.
<b>Counter-demonstration</b>	An assembly that is convened to express disagreement with the views expressed at another public assembly, and takes place at, or almost at, the same the same time and place as the one it disagrees with.	<b>Собрание в знак несогласия с другим собранием</b>	Собрание, которое созывается с целью выразить несогласие с взглядами, выражаемыми на другом публичном собрании, и совпадающее или практически совпадающее по времени и месту проведения с этим собранием.

<b>Data retention</b>	The storage or preservation of recorded information, regardless of its format or the media on which it may be recorded.	<b>Хранение данных</b>	Хранение или архивирование записанной информации, независимо от вида информации или носителя, на которых она записана.
<b>Demonstration</b>	An assembly or procession held to express the point of view of the participants.	<b>Общественное выступление</b>	Публичное собрание или процессия, которые проводятся с целью выражения точки зрения участников.
<b>Derogation</b>	A partial repeal of a norm.	<b>Временное отступление государства от выполнения взятых на себя международных обязательств</b>	Частичный отказ от выполнения нормы.
<b>Dispersal</b>	A formal requirement that participants in an assembly leave the site of the assembly, with the threat of the use of force by the authorities.	<b>Разгон</b>	Официальное требование к участникам собрания покинуть место собрания под угрозой применения властями силы.
<b>Disruption</b>	An interruption of the normal course of action.	<b>Прерывание; Срыв</b>	Вмешательство, приводящее к нарушению нормального хода мероприятия.
<b>Human rights defender</b>	Individuals, groups or other organs of society that work or act to promote and protect universally recognized human rights and fundamental freedoms.	<b>Защитник прав человека</b>	Лица, группы или иные общественные институты, которые работают или действуют в целях продвижения и защиты общепризнанных прав человека и основных свобод.
<b>Liability</b>	An enforceable legal obligation.	<b>Правовая ответственность</b>	Правовое обязательство, выполнение которого может быть истребовано в судебном порядке.
<b>Monitor</b>	<i>see Observer</i>	<b>Монитор</b>	<i>См. Наблюдатель</i>
<b>National security</b>	The quality or state of being capable of resisting hostile or destructive acts from inside or outside a state.	<b>Национальная безопасность</b>	Качество или состояние способности противостоять враждебным или деструктивным действиям внутри или извне страны.
<b>Non-lethal weapons</b>	A weapon that is designed to incapacitate the target rather than kill or seriously injure.	<b>Специальные несмертельные средства</b>	Оружие, предназначенное для того, чтобы обезвредить цель, а не убить или серьезно ранить.

<b>Non-nationals</b>	Those who are not citizens of a given state.	<b>Неграждане</b>	Те, кто не являются гражданами данного государства.
<b>Notification</b>	A notice that provides information on an upcoming assembly and does not constitute a request for permission.	<b>Уведомление</b>	Извещение, которое содержит информацию о планируемом собрании и не является просьбой о разрешении.
<b>Observer</b>	Someone who watches and reports on the progress of an assembly from a neutral point of view.	<b>Наблюдатель</b>	Лицо, которое занимается наблюдением за ходом собрания и сообщает о происходящем с нейтральной точки зрения.
<b>Organizer</b>	The person or persons with primary responsibility for an assembly.	<b>Организатор</b>	Лицо или лица, несущие основную ответственность за собрание.
<b>Parade</b>	see <i>Procession</i> .	<b>Парад</b>	См. <i>Шествие</i> .
<b>Participant</b>	A person intentionally and voluntarily present at an assembly who supports the message of the assembly.	<b>Участник</b>	Лицо, которое намеренно и добровольно присутствует на собрании и поддерживает выражаемое на нем мнение.
<b>Peaceful enjoyment of one's possessions (right to)</b>	The right to protection of property and against its deprivation.	<b>Мирное обладание своим имуществом</b>	Право на защиту собственности и от посягательств на нее.
<b>Penalty</b>	A punishment established by law for its breach.	<b>Мера наказания</b>	Установленное законом наказание за нарушение закона.
<b>Peremptory norm</b>	A fundamental principle of international law considered to have acceptance among the international community of states as a whole. Peremptory norms do not require consent and cannot be violated by any state.	<b>Императивная норма</b>	Основной принцип международного права, который считается общепринятым в международном сообществе государств в целом. Императивные нормы не требуют согласия, и ни одно государство не имеет права их нарушать.
<b>Permit</b>	The formal grant of permission by a regulatory authority to hold an assembly.	<b>Разрешение</b>	Официальное согласие уполномоченного органа на проведение собрания.
<b>Presumption in favor of holding assemblies</b>	The presumption that an assembly may proceed in the absence of well-founded justifications for the imposition of restrictions or for preventing the assembly from occurring.	<b>Презумпция в пользу проведения собрания</b>	Предположение о том, что, при отсутствии обоснованных причин для наложения ограничения или запрета на проведение данного собрания, такое собрание может состояться.

<b>Prior restraint</b>	Restrictions imposed in advance of an event.	<b>Предварительное ограничение</b>	Ограничение, наложенное до проведения собрания.
<b>Procession</b>	A gathering that moves along public thoroughfares. A procession may involve the use of vehicle or other conveyances.	<b>Шествие; Процессия</b>	Вид собрания, характеризующийся движением вдоль дорог общего пользования. Процессия может включать использование транспортных и иных средств передвижения.
<b>Proportionality (principle of)</b>	The principle requiring that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.	<b>Соразмерности (принцип)</b>	Принцип требующий, чтобы при применении властями мер для достижения законной цели, предпочтение всегда отдавалось мерам, предусматривающим наименьший уровень вмешательства.
<b>Protection of health and morals</b>	The notion refers to public health and public morals.	<b>Охрана здоровья и нравственности</b>	Это понятие относится к здоровью населения и общественной морали.
<b>Protection of rights and freedoms of others</b>	The prevention of major interference with the conflicting rights and freedoms of others.	<b>Защита прав и свобод других лиц</b>	Предотвращение серьезного вмешательства в осуществление прав и свобод других лиц.
<b>Public order</b>	Security in public places.	<b>Общественный порядок</b>	Безопасность в публичных местах.
<b>Public safety</b>	A broad notion involving the protection of the population at large from various kinds of significant damage, harm, or danger, including emergencies.	<b>Общественная безопасность</b>	Широкое понятие, включающее защиту населения в целом от разных видов серьезного ущерба, вреда или опасности, включая защиту в чрезвычайных ситуациях.
<b>Public space</b>	A space where everyone is free to come and leave without restriction (e.g., streets or parks).	<b>Общественное место</b>	Территория или место, доступ к которому и выход с которого открыт для всех без ограничения (к примеру, улицы, парки и т.д.).
<b>Rally</b>	A static demonstration.	<b>Митинг</b>	Общественное выступление, которое происходит на одном месте
<b>"Reasonable excuse" defence</b>	A defence applicable where failure to comply was not willful but a matter of impossibility.	<b>Защита на основании наличия объективных препятствий к соблюдению закона</b>	Принцип защиты, применимый там, где несоблюдение закона произошло не по свободной воле, а в связи с невозможностью его соблюдения.

<b>Regulatory authority</b>	The authority responsible for taking decisions about public assemblies.	<b>Орган регулирования</b>	Орган, ответственный за принятие решений в отношении публичных собраний.
<b>Riot control</b>	Measures taken to control an act of public violence by an unruly mob.	<b>Действия по пресечению массовых беспорядков</b>	Меры пресечения насильственных действий, совершаемых вышедшей из-под контроля толпой.
<b>Risk assessment</b>	An assessment of possible risks or problems associated with an assembly and the development of a plan of action to counter such risks.	<b>Оценка риска</b>	Оценка возможных рисков или проблем, связанных с собранием, и разработка плана действий для противодействия этим рискам.
<b>Sanction</b>	A coercive measure intended to ensure compliance with the law.	<b>Мера принуждения</b>	Принудительные меры, направленные на обеспечение соблюдения закона.
<b>Simultaneous assemblies</b>	An assembly that takes place at the same time and place as another one, but which has no relationship to the other event.	<b>Одновременные собрания</b>	Собрание, которое проходит в то же время и в том же месте, что и другое собрание, и выражаемые на этом собрании мнения не противоречат идеям, выражаемым в ходе другого собрания.
<b>Sit-in</b>	A static demonstration in which participants seat themselves in a particular place and refuse to move.	<b>Сидячее общественное выступление</b>	Общественное выступление, участники которого усаживаются в определенном месте и отказываются его покинуть.
<b>Spontaneous assembly</b>	An assembly that takes place as an urgent response to an event or item of news.	<b>Стихийное собрание</b>	Собрание, которое проходит без предварительного уведомления.
<b>Steward; marshal</b>	A person, working in cooperation with assembly organizer(s), with a responsibility to facilitate an event and help ensure compliance with any lawfully imposed restrictions.	<b>Распорядитель (на собрании)</b>	Лицо, работающее совместно с организатором (организаторами) собрания, в обязанности которого входит содействие проведению собрания и оказание помощи по обеспечению соблюдения любых законных ограничений.
<b>Supporter</b>	Someone who is in the close proximity of the assembly and shares the views expressed.	<b>Сочувствующее лицо</b>	Любое лицо, которое находится в непосредственной близости от собрания и разделяет выражаемые на нем взгляды.
<b>Unlawful assembly</b>	An assembly that proceeds in non-compliance with the law regulating assemblies.	<b>Собрание с несоблюдением закона</b>	Собрание, которое проходит не в соответствии с законом, регулирующие собрания.

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<b>Use of force</b>	The exertion of physical force as a means of compulsion or coercion.	<b>Применение силы</b>	Применение физической силы как средства принуждения или подавления.
<b>Violence</b>	Illegal or abusive exertion of physical force.	<b>Насилие</b>	Незаконное или чрезмерное применение физической силы.

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## **Annex D – Expert Panel composition**

### **Neil JARMAN (Panel Chairperson; United Kingdom)**

Neil Jarman is Director of the Institute for Conflict Research in Belfast, United Kingdom. His academic interest is primarily in peacebuilding activity and conflict mitigation, with specific focus on public assemblies and their policing, and community-based responses to violence and public disorder. He is the author of numerous publications on issues such as policing public order, human rights and conflict resolution, and combating hate crime.

### **Thomas BULL (Sweden)**

Thomas Bull is a Professor of Constitutional Law at Uppsala University, in Uppsala, Sweden. He specializes on issues of freedom of speech, freedom of assembly and freedom of association, as well as in comparative constitutional law in those areas. He is the author of a number of books on these subjects. He has also published works on administrative, criminal and European law.

### **Nina BELYAEVA (Russian Federation)**

Nina Belyaeva is Head of the Public Policy Department of the State University – Higher School of Economics, in Moscow, Russia. Her academic interests focus on the legal environment for the public participation of civil society and legal forms of citizen-government interaction. She is the principal author of the Russian Law on Public Associations of 1995. Being a recognized practitioner and organizer of innovative forms of NGO activities, Dr. Belyaeva is also Chairperson of the Board of “We – the citizens!”, an international coalition of NGOs, and President of Interlegal, an international foundation for political and legal research. She has participated in numerous working groups on Russian federal and regional legislation regulating the activities of public associations and NGOs, as well as many international expert groups created by CIVICUS, the World Bank and the EU aimed at compiling good practices and elaborating model legislation in the field of civil society and relations between civil society and state authorities.

### **David GOLDBERGER (United States)**

David Goldberger is Professor Emeritus of Law at the Ohio State University. He teaches a course on the First Amendment to the US Constitution, and has taught a survey course on the US Constitution and a course on lawyering skills. His academic writings have focused primarily on the scope of the right to freedom of speech under the US Constitution. Prior to becoming an academic, he was legal director of the American

Civil Liberties Union, Illinois Division. Mr. Goldberger specializes in free-speech cases. Through the years, his clients have included, among others, anti-Vietnam War demonstrators, the National Socialist Party of America, the Communist Party of Illinois and the Ku Klux Klan. He has also represented political candidates for state and county office from major political parties in the United States.

#### **Michael HAMILTON (United Kingdom)**

Michael Hamilton is an Associate Professor in the Legal Studies Department at the Central European University, in Budapest, Hungary. He teaches in the Human Rights and Comparative Constitutional Law programmes, including courses on freedom of expression and assembly. Before moving to Budapest, Dr. Hamilton was Co-Director of the Transitional Justice Institute at the University of Ulster, in Belfast, United Kingdom. His research has focused on the legal regulation and mediation of public protest, particularly parade disputes in Northern Ireland (where he was Human Rights Advisor to the Strategic Review of Parading).

#### **Muatar S. KHAIDAROVA (Tajikistan)**

Muatar S. Khaidarova is Director/Senior Legal Consultant of the Affiliate Office of the International Center for Not-for-Profit Law in Tajikistan and Chairwoman of the NGO "Society and Law". She has authored a number of publications on the right to freedom of association, access to information, and religion and the law. Her main interests and responsibilities include: the comparative analysis and review of legislation on freedom of association; consultation for foreign and international NGOs on various legal matters; providing technical legal assistance to various stakeholders with respect to current and proposed laws and regulations on human rights protection, including preparation of comment letters, participation in drafting sessions, and identification of good practices; the development and implementation of various training activities for NGOs and NGO lawyers within Tajikistan; supporting the development and dissemination of publications on human rights; developing and maintaining appropriate contacts with local officials who affect and/or cooperate with civil society actors and act as a liaison between the Tajik government and key civil society actors.

#### **Serghei OSTAF (Moldova)**

Serghei Ostaf is Director of the Resource Center for Human Rights (CReDO) – a non-profit organization that advocates for democratic change in Moldova. He is involved in human rights advocacy work in Moldova, as well as advocacy activities with the Council of Europe, UN human rights bodies and OSCE/ODIHR, through presenting research and shadow reports, and bringing human rights cases to national courts and the Euro-

pean Court of Human Rights. His current activities include advocating for the adoption of democratic public policies by the government of Moldova, and consulting on the effective implementation of such policies through legal and institutional mechanisms.

**Vardan POGHOSYAN (Armenia)**

Vardan Poghosyan is the founder of Democracy – an Armenian think-tank focusing on legal and political research. He is also Legal Advice Programme Leader with GTZ in Armenia. His primary academic interest is in constitutional and administrative law, as well as in comparative political systems. Mr. Poghosyan participated in a number of legislative drafting projects in Armenia, including membership in the Working Group on Drafting the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, as well as participating in the drafting of constitutional amendments of 2005, the Law on Administrative Procedure and the Code of Administrative Court Procedure.

**Alexander VASHKEVICH (Belarus)**

Alexander Vashkevich is an Associate Professor in the Department of International Law at Belarus State University in Minsk, Belarus. A former Justice of the Constitutional Court of Belarus, he now teaches Comparative Constitutional Law and European Human Rights Law and has published extensively on human rights issues. Dr. Vashkevich is Head of the Working Group on the Analysis of Belarusian Domestic Legislation and Practice with the ECHR and Case Law of the European Court of Human Rights.

**Yevgeniy A. ZHOVTIS (Kazakhstan)**

Yevgeniy A. Zhovtis, a Kazakh human rights activist, is Director of the Kazakhstan International Bureau for Human Rights and Rule of Law, an NGO, as well as a member of the Board of Directors of the Interlegal Foundation. He has an extensive track record as a defence lawyer. His primary interest is in civil liberties.

**Andrzej RZEPLIŃSKI (Poland) (to June 2009)**

Andrzej Rzepliński is a Professor of Law at the Warsaw University's Faculty of Applied Social Sciences and Rehabilitation. He specialized in the fields of basic rights and freedoms, crimes of totalitarian regimes, and police and security service law, as well as in penology, and has published extensively on those topics. He was a member of the Board of Directors of the Helsinki Foundation for Human Rights, the International Helsinki Federation for Human Rights, the Polish Section of the International Commission of Jurists. He is an expert of the Council of Europe in training of judges and monitoring freedom of expression. In December 2008 he was appointed as a judge to the Constitutional Tribunal of Poland.

## Endnotes

- <sup>1</sup> See CDL-AD(2005)040 "Opinion on the OSCE/ODIHR Guidelines for Drafting Laws Pertaining to Freedom of Assembly", adopted by the Venice Commission of the Council of Europe at its 64th Plenary Session, Venice, 21-22 October 2005.
- <sup>2</sup> These Opinions can be found at: <<http://www.legislationline.org>> and <[http://www.venice.coe.int/site/dynamics/N\\_Opinion\\_ef.asp?L=E](http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E)>.
- <sup>3</sup> See, for example, *Oya Ataman v. Turkey* (2006), para.16 (referring to the Venice Commission's Opinion on the then-draft Guidelines); and *Gillan and Quinton v. UK* (2010), para.47 (a request for referral to the Grand Chamber was pending at the time of writing).
- <sup>4</sup> See, for example, "Note by the Secretary-General on Human rights defenders: Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms" (A/62/225 Sixty-second session), paras. 91-92, regarding the monitoring role performed by the Office of the High Commissioner for Human Rights (OHCHR) during the April 2006 protests in Nepal. Also see UN Doc. A/HRC/7/28/Add.3, "Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Mission to Serbia, including Kosovo" (4 March 2008), para.111 (see. Further, note 33).
- <sup>5</sup> Principally, the relevant standards contained in the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and the jurisprudence of the United Nations Human Rights Committee and the European Court of Human Rights, respectively.
- <sup>6</sup> Including the constitutional courts of OSCE participating States and other states.
- <sup>7</sup> As the United Kingdom Joint Committee on Human Rights has recently stated, it is better "to draft legislation itself in sufficiently precise terms so as to constrain and guide police discretion, rather than to rely on decision makers to exercise a broad discretion compatibly with human rights." See Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest* (Volume 1) (London: HMSO, HL Paper 47-I; HC 320-I, 23 March 2009), pp.21-22 and para.76 (and repeated in Recommendation 4).
- <sup>8</sup> See, for example, *Bączkowski and Others v. Poland* (2006), para. 25: "The Constitution clearly guaranteed the freedom of assembly, not a right. It was not for the State to create a right to assembly; its obligation was limited to securing that assemblies be held peacefully."
- <sup>9</sup> Tajik law, for example, defines a "participant" in terms of his or her support for the aims of the event.
- <sup>10</sup> Article 22 of the ICCPR and Article 11 of the ECHR. See *Indirect Restrictions on Freedom of Assembly* in para. 107.
- <sup>11</sup> Article 17, Council of Europe Framework Convention on National Minorities, which draws upon paras. 32.4 and 32.6 of the Copenhagen Document of the CSCE.
- <sup>12</sup> Article 12 of the ICCPR and Article 2 of Protocol 4 of the ECHR.
- <sup>13</sup> For example, *Djavit An v. Turkey* (2003); *Foka v. Turkey* (2008). Also see *Indirect Restrictions on Freedom of Assembly* in para.107.
- <sup>14</sup> Article 19(2) and (3) of the ICCPR and Article 10 of the ECHR. Freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers. The European Court of Human Rights has recognized that freedom of assembly and freedom of expression are often, in practice,

closely associated. 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; and *Öllinger v. Austria* (2006), para. 38.

- <sup>15</sup> Article 18 of the ICCPR and Article 9 of the ECHR.
- <sup>16</sup> See, "Joint Statement on Racism and the Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression", available at: <[http://www.osce.org/documents/rfm/2000/11/195\\_en.pdf](http://www.osce.org/documents/rfm/2000/11/195_en.pdf)>. Also see Helen Fenwick, "The Right to Protest, the Human Rights Act and the Margin of Appreciation" *Modern Law Review*, Vol. 62, No. 4, July 1999, pp. 491-492-3.
- <sup>17</sup> See, for example, *Enerji Yapi-Yol Sen v. Turkey* (2009, in French only), in which the Grand Chamber of the European Court of Human Rights acknowledged that, in participating in a national one-day strike action, trade-union members had been exercising their right to freedom of peaceful assembly. Moreover, while the right to strike is not absolute, a ban prohibiting all public servants or employees from taking such action was disproportionate and did not meet a pressing social need.
- <sup>18</sup> As revised (STE No.163) 3 May 1996.
- <sup>19</sup> The International Labour Conference has pointed out in a resolution adopted at its 54th Session, in 1970, that the right of assembly (among others) is "essential for the normal exercise of trade union rights". See, "Freedom of association and collective bargaining: Resolution of 1970 concerning trade union rights and their relation to civil liberties" (Document No. (ILOLEX): 251994C16). For a concrete example, see Committee of Experts on the Application of [ILO] Conventions and Recommendations (CEACR), "Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention", 1948 (No. 87) Malawi (ratification: 1999; Document No. (ILOLEX): 062006MWI087, published 2006): "The Committee notes the ... violent police repression of a protest march by tea workers in September 2004 as well as issues previously raised by the Committee on the right to strike. ... [F]reedom of assembly and demonstration constitutes a fundamental aspect of trade union rights and ... the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order..."
- <sup>20</sup> For example, a number of cases have been communicated to Moldova by the European Court of Human Rights in relation to the regulation of the election-related protests in 2009. See, *Popa (Radu) v. Moldova* (Application no. 29837/09); *Mocanu (Sergiu) v. Moldova* (Application no. 24163/09); *Stati and Marinescu v. Moldova* (Application no.19828/09); *Mătăsar v. Moldova* (Application no. 20253/09). Similarly, *Sultanov (Vidadi) v. Azerbaijan* (Application no. 21672/05).
- <sup>21</sup> See, for example, OSCE/ODIHR Panel on Freedom of Assembly and European Commission for Democracy through Law (Venice Commission) "Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely hold Rallies and Demonstrations", Strasbourg/Warsaw, 27 June 2008, Opinion-Nr.: FOA - KYR/111/2008), available at: <<http://www.legislationline.org/download/action/download/id/824/file/test.pdf>>. Also see OSCE Election Observation Mission, Kyrgyz Republic, "Presidential Election, 23 July 2009: Statement of Preliminary Findings and Conclusions", p.3; UN Human Rights Committee, "Concluding Observations of the Human Rights Committee: Republic of Moldova" CCPR/C/MDA/CO/2, 4 November 2009, para.8(d). noting that against the backdrop of violence at post-election demonstrations in April 2009, "[t]

he State party should: ... (d) Ensure respect for the right to freedom of assembly in accordance with article 21 of the Covenant, including through the enforcement of the 2008 Law on Assemblies and put in place safeguards, such as appropriate training, to ensure that such violation of human rights by its law enforcement officers do not occur again.”; and UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: Azerbaijan” CCPR/C/AZE/CO/3, 13 August 2009, paras.16-17.

- <sup>22</sup> Barankevich v. Russia (2007), para.30. In such circumstances, Article 11 should be interpreted in light of Article 9 (see Barankevich, paras. 20 and 44). The Court further stated, in para.31: “It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority.”
- <sup>23</sup> See, *inter alia*, Bączkowski and Others v. Poland (2007), para.63; Hyde Park and others v. Moldova (No.1) (2009), para.28; Hyde Park and others v. Moldova (No.2) (2009), para.24; Hyde Park and others v. Moldova (No.3) (2009), para.24; Chassagnou and Others v. France [GC] (1999), para.112; Christian Democratic People’s Party v. Moldova (Application no. 28793/02, judgment of 14 February 2006), para.64; and Young, James and Webster v. the United Kingdom (1981), para.63.
- <sup>24</sup> The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is a declaration rather than a binding treaty. The International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, were adopted in 1966 to give effect to the principles enunciated in the Declaration. Together, the three documents constitute the International Bill of Human Rights. The ICCPR sets out universally accepted minimum standards in the area of civil and political rights. The obligations undertaken by states ratifying or acceding to the Covenant are meant to be discharged as soon as a state becomes party to the ICCPR. The implementation of the ICCPR by its States Parties is monitored by a body of independent experts – the UN Human Rights Committee. All States Parties are obliged to submit regular reports to the Committee on how the rights are being implemented. In addition to the reporting procedure, Article 41 of the Covenant provides for the Committee to consider interstate complaints. Furthermore, the First Optional Protocol to the ICCPR gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by States Parties to the Protocol. See, further, Annex A.
- <sup>25</sup> The ECHR is the most comprehensive and authoritative human rights treaty for the European region. The treaty has been open for signature since 1950. All Member States of the Council of Europe are required to ratify the Convention within one year of the state’s accession to the Statute of the Council of Europe. The ECHR sets forth a number of fundamental rights and freedoms, and parties to it undertake to secure these rights and freedoms to everyone within their jurisdiction. Individual and interstate petitions are dealt with by the European Court of Human Rights in Strasbourg. At the request of the Committee of Ministers of the Council of Europe, the Court may also give advisory opinions concerning the interpretation of the ECHR and the protocols thereto. See Annex A.
- <sup>26</sup> As provided by Article 44 of the American Convention, “Any person or group of persons, or any nongovernmental entity legally recognized in one or more member States of the Organization [of American States], may lodge petitions with the [Inter-American] Commission [on Human Rights] containing denunciations or complaints of violation of this Convention by a State Party.” See Annex A.

- <sup>27</sup> The CIS Convention was opened for signature on 26 May 1995 and came into force on 11 August 1998. It has been signed by six of the 11 CIS member States (Armenia, Belarus, Kyrgyzstan, Moldova, Russia and Tajikistan) and ratified by Belarus, the Kyrgyz Republic, the Russian Federation and Tajikistan. See, for example, Decision on the Competence of the [European] Court [of Human Rights] to Give an Advisory Opinion concerning “the coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights” (2 June 2004).
- <sup>28</sup> See Article 29 of the UDHR for the general limitations clause.
- <sup>29</sup> See Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edition). (Kehl: N.P. Engel, 2005) pp. 481-494; Sarah Joseph, Jenny Schultz, and Melissa Castan, *The International Covenant on Civil and Political Rights* (2nd edition) (New York: OUP, 2004) pp. 568-575.
- <sup>30</sup> See, for example, the Organization of American States, “Annual Report of the Office of the Special Rapporteur for Freedom of Expression” (2005), Chapter 5, “Public Demonstrations as an exercise of freedom of expression and freedom of assembly Available online at: <<http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1> ; U.N. Doc. A/62/225 Human Rights Defenders: Note by the Secretary-General, 13 August 2007, Section D, pp.8-14: “Monitoring the right to protest at the regional level: jurisprudence and positions of regional mechanisms.” Available online at: <http://www.unhcr.org/refworld/pdfid/4732dbaf2.pdf>>.
- <sup>31</sup> For example, following the judgment of the European Court of Human Rights (ECtHR) in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), the Bulgarian Ministry of Justice sent the judgment of the ECtHR, translated into Bulgarian, and accompanied by a circular letter, to the mayors of the cities concerned. In order to inform the courts and the public of the new binding interpretation of the law, the court also posted the Bulgarian translation of the judgment on its website, at <http://www.mjeli.government.bg/>. See also Human Rights Information Bulletin, No.64, 1 December 2004 – 28 February 2005, pp. 49-50. (ISSN 1608-9618 H/Inf (2005) 3), available at: [http://www.coe.int/T/E/Human\\_Rights/hrib64e.pdf](http://www.coe.int/T/E/Human_Rights/hrib64e.pdf).
- <sup>32</sup> See, for example, *Mkrtchyan v. Armenia* (2007), para. 39, in relation to the requisite quality of any such law if it is to meet the foreseeability standard.
- <sup>33</sup> Ukraine, for example, requested a review of its Draft Law on Organizing and Conducting Peaceful Events. See “Joint Opinion of ODIHR and the Venice Commission on the order of organizing and conducting peaceful events in Ukraine” (14 December 2009) CDL-AD(2009)052; Opinion no. 556/2009; ODIHR Opinion-Nr:FOA-UKR/144/2009. Available at: <[http://www.legislationline.org/download/action/download/id/2908/file/144\\_FOA\\_UKR\\_14%20DEC09\\_en.pdf](http://www.legislationline.org/download/action/download/id/2908/file/144_FOA_UKR_14%20DEC09_en.pdf)>. The need for clear legislation governing public assemblies has also been recognized in Kosovo: See: “Report of the Special Representative on the situation of human rights defenders, Hina Jilani, op. cit. note 4, para.111: “At the time of the visit, the Kosovo Assembly had recently adopted a law on public assembly, which was in the legal office of UNMIK for examination. The Special Representative was later informed that the law could not be promulgated because legislation in this area is not within the competency of the Kosovo Assembly. The legislation in force on freedom of assembly is therefore a law adopted in 1981 under the former Socialist Federal Republic of Yugoslavia. ... [T]he Special Representative urges the authorities to adopt adequate legislation on freedom of peaceful assembly. Adequate legislation and its scrupulous implementation are fundamental to preventing the reoccurrence of the tragic incidents that happened on 10 February 2007. The Special Representative suggests

using the Guidelines on Freedom of Peaceful Assembly published by the Office for Democratic Institutions and Human Rights (ODIHR) of OSCE to draft and implement legislation in this area. She further refers to the recommendations of her reports to the General Assembly of 2006 and 2007, which focus on freedom of peaceful assembly and the right to protest in the context of freedom of assembly.”

<sup>34</sup> Op. cit., note 1, Point 12.

<sup>35</sup> See, for example, *Ezelin v. France* (1991), para.35. Thus, if the right to freedom of peaceful assembly is considered to be the *lex specialis* in a given case, it would not be plausible for a court to find a violation of the right to freedom of expression if it had already established, on the same facts, that there had been no violation of the right to freedom of peaceful assembly. This question was touched upon by Mr. Kurt Herndl in his dissenting opinion in the case of *Kivenmaa v. Finland* (1994) CCPR/C/50/D/412/1990, para. 3.5.

<sup>36</sup> *Otto-Preminger-Institut v. Austria* (1994), para. 47.

<sup>37</sup> See, for example, *Vajnai v. Hungary* (2008), paras, 20-26 (discussing the Article 17 jurisprudence, and finding that the application in this case did not constitute an abuse of the right of petition for the purposes of Article 17). Similarly, Article 17 was not engaged in the cases of *Soulas v. France* (2008, in French only), or *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia* (1999), para. 77. These cases can be contrasted with *Glimmerveen and Hagenbeek v. the Netherlands* (1979); *Garaudy v. France* (2003); and *Lehideux and Isorni v. France* (1998).

<sup>38</sup> Also see Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, op.cit., note 29, p.373: “The term ‘assembly’ is not defined but rather presumed in the Covenant. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional right. It is beyond doubt that not every assembly of individuals requires special protection. Rather, only intentional, temporary gatherings of several persons for a specific purpose are afforded the protection of freedom of assembly.” Further, in *Kivenmaa v. Finland* Communication No. 412/1990, para.7.6, the Human Rights Committee stated that “public assembly is understood to be the coming together of more than one person for a lawful purpose in a public place that others than those invited also have access to”.

<sup>39</sup> A flash mob occurs when a group of people assemble at a location for a short time, perform some form of action, and then disperse. While these events are planned and organized, they do not involve any formal organization or group. They may be planned using new technologies (including text messaging and Twitter). Their *raison d’être* demands an element of surprise, which would be defeated by prior notification.

<sup>40</sup> See (generally) the decisions of the German Constitutional Court in relation to roadblocks in front of military installations. BVerfGE 73,206, BVerfGE 92,1 and BVerfGE 104,92. Note, however, that the blocking of public roads as a protest tactic can be restricted in certain circumstances under Article 11(2) – see, for example, *Lucas v. UK* (2003, admissibility), where the European Court of Human Rights declared inadmissible the application of a demonstrator at Faslane naval base in Scotland (where protesters against Trident nuclear submarines blocked a public road) after her conviction for a breach of the peace.

<sup>41</sup> In *Christians Against Racism and Fascism (CARAF)* (1980), the European Commission accepted “that the freedom of peaceful assembly covers not only static meetings, but also public processions” (p.148, para. 4). This understanding has been relied upon in a number of subse-

quent cases, including *Plattform "Ärzte für das Leben" v. Austria* (1988) and *Ezelin v. France* (1991). In the latter, it was stated that the right to freedom of assembly "is exercised in particular by persons taking part in public processions". (Commission, para. 32). Also see David Mead, "The Right to Peaceful Process under the European Convention on Human Rights – A Content Study of Strasbourg Case Law", 4 *European Human Rights Law Review*, (2007) pp. 345-384.

- <sup>42</sup> In *Poznan, Poland*, for example, authorities refused to recognize the "Great Bike Ride", by a "critical mass" group of cyclists, as a public assembly within the meaning of Article 7(2)(3) of the Polish Assemblies Act and Article 57 of the Constitution of Poland. It thus treated the ride as an "other event" under Article 65 of the Road Traffic Act (requiring the organizer to obtain an administrative ruling granting consent). See Adam Bodnar and Artur Pietryka, *Freedom of Assembly from the Cyclist's Perspective* (Helsinki Foundation for Human Rights, 18 September 2009), referring to the Polish Constitutional Tribunal judgment of 18 January 2006 (K21/05), relating to the Equality parade in Warsaw, where the Tribunal distinguished between assemblies (organized to express a point of view) and competitions or races (recreational events with no political or communicative importance). Also see *Kay v. Metropolitan Police Commissioner* [2008] UKHL 69, holding that a critical mass cycle ride with no pre-determined route could be construed as a procession "customarily held" (and thus within the exemption from prior notification under the United Kingdom's Public Order Act of 1986). Lord Phillips (para.25) identified three possible alternative constructions of the notification requirement in the Act: "(i) The notification obligation does not apply to a procession that has no predetermined route; (ii) There is no obligation to give notice of a procession that has no predetermined route because it is not reasonably practicable to comply with section 11(1); or (iii) The notification obligation is satisfied if a notice is given that states that the route will be chosen spontaneously."
- <sup>43</sup> *Barraco v. France* (2009, in French only).
- <sup>44</sup> *Women and Waves v. Portugal* (2009). It is worth noting, however, that the European Commission of Human Rights previously held, in *Anderson v. UK* (Application No. 33689/96, decision of 27 October 1997, admissibility), that "there is ... no indication ... that freedom of assembly is intended to guarantee a right to pass and re-pass in public places, or to assemble for purely social purposes anywhere one wishes".
- <sup>45</sup> See, for example, *Çiloğlu and Others v. Turkey* (2007, in French only) in which the European Court of Human Rights noted that unlawful weekly sit-ins (every Saturday morning for over three years) of around 60 people in front of a high school in Istanbul, to protest against plans to build an F-type prison, had become an almost permanent event that disrupted traffic and clearly caused a breach of the peace: "In view of the length and number of previous demonstrations, the Court considered that the authorities had reacted within the margin of appreciation afforded to States in such matters. It therefore held, by five votes to two, that [dispersal resulted in] no violation of Article 11." Also see *Cisse v. France* (2002), in which the evacuation of a church in Paris that a group of 200 illegal immigrants had occupied for approximately two months was held to constitute an interference (albeit justified on public health grounds, para.52) with the applicant's right to freedom of peaceful assembly (paras.39-40). In the case of *Friedl v. Austria* (1992) the European Commission – in finding the applicant's Article 11 complaint to be inadmissible – did not rule on whether a camp of (on average) 50 homeless persons with tables and photo stands that lasted approximately one week "day and night" before being dispersed fell within the definition of "peaceful assembly" under Article 11(1) of the ECHR. The Commission noted that it had previously held that a demonstration by means of repeated sit-ins blocking a public road did fall within the ambit of Article 11(1), although, ultimately,

the demonstration was legitimately restricted on public order grounds (*G v. the Federal Republic of Germany*, 1989, admissibility). In 2008, the Hungarian Constitutional Court rejected a petition that sought a finding of “unconstitutional omission” because the law failed to adequately secure the protection of the right to free movement and the right to transport against “extreme forms” of practising the right of assembly. The Constitutional Court held that, while freedom of movement may be violated by events “practically without time limits”, such events were “not protected by Article 62(1) of the Constitution, as they cannot be regarded as ‘assemblies’. This term, as used in the Constitution, clearly refers to ‘joint expressions of opinions within fixed time limits.’” The Court noted that, while organizers might not know in advance how long an assembly would actually last (and this could be “several days”), the time-frame must still be set out in notification. An organizer may then subsequently “file an additional notification in order to have the duration of the event extended”. (Decision 75/2008, (V.29.) AB). Also worth noting is the United Kingdom case concerning Aldermaston Women’s Peace Camp, which, over the past 23 years, had established a camp on government-owned land, close to the Atomic Weapons Establishment. The women camped out there on the second weekend of every month, during which time they held vigils, meetings and distributed leaflets. In the United Kingdom case of *Tabernacle v. Secretary of State for Defence* [2009], a 2007 by-law that attempted to prohibit camping in tents, caravans, trees or otherwise in “controlled areas” was held to violate the appellant’s rights to freedom of expression and assembly. The court noted that the particular manner and form of this protest (the camp) had acquired symbolic significance inseparable from its message. Also see *Lucas v. UK* (2003, admissibility), *op. cit.*, note 40.

<sup>46</sup> *Patyi and Others v. Hungary* (2008) *cf.* *Éva Molnár v. Hungary* (2008), para.42, and *Barraço v. France* (2009, in French only). In finding a violation of Article 11 of the ECHR in the case of *Balcik and Others v. Turkey* (2007), the European Court of Human Rights noted that it was “particularly struck by the authorities’ impatience in seeking to end the demonstration”.

<sup>47</sup> This draws on the United States doctrine of the “public forum”. See, for example, *Hague v. Committee for Industrial Organization*, 307 US 496 (1939).

<sup>48</sup> In *Patyi and Others v. Hungary* (2008), paras.42-43, for example, the European Court of Human Rights rejected the Hungarian government’s arguments relating to potential disruption to traffic and public transport, *op. cit.*, note 46 (*cf.* *Éva Molnár v. Hungary*, 2008). For further argument against the prioritization of vehicular traffic over freedom of assembly, see Nicholas Blomley, “Civil Rights Meets Civil engineering: Urban Public Space and Traffic Logic”, *Canadian Journal of Law and Society*, Vol. 22, No. 2,, 2007, pp. 55-72.

<sup>49</sup> See, for example, *Acik v. Turkey* (2009) (detention of student for protest during a speech by a university chancellor; violation of Articles 3 and 10 of the ECHR); *Cisse v. France* (2002); *Barankevich v. Russia* (2007), para.25: “The right to freedom of assembly covers both private meetings and meetings in public thoroughfares ...”. The use of such buildings may be subject to health and safety regulations and to anti-discrimination laws. Also see the discussion of “quasi-public space” in the report by the UK Joint Committee on Human Rights, “Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1)”, *op. cit.*, note 7, pp.16-17 “Public and Private Space” .

<sup>50</sup> See, for example, *Djavit An v. Turkey* (2003), para. 56; *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979), p.119.

<sup>51</sup> Public order and criminal laws also apply to assemblies on private property, enabling appropriate action to be taken if assemblies on private property harm other members of the public.

- <sup>52</sup> The owner of private property has much greater discretion to choose whether to permit a speaker to use his or her property than the government has in relation to publicly owned property. Compelling the owner to make his or her property available for an assembly may, for example, breach the owner's rights to private and family life (Article 8 of the ECHR) or to peaceful enjoyment of their possessions (Article 1 of Protocol 1 of the ECHR).
- <sup>53</sup> See, for example, Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York: The Guilford Press, 2003); Margaret Kohn, *Brave New Neighbourhoods: The Privatization of Public Space* (New York: Routledge, 2004); Kevin Gray and Susan Gray, "Civil Rights, Civil Wrongs and Quasi-Public Space", *European Human Rights Law Review* 46 [1999]; Ben Fitzpatrick and Nick Taylor, "Trespassers Might be Prosecuted: The European Convention and Restrictions on the Right to Assemble", *European Human Rights Law Review*, 292 [1998]; Jacob Rowbottom, "Property and Participation: A Right of Access for Expressive Activities", 2 *EHRLR* 186-202 [2005].
- <sup>54</sup> *Appleby v. United Kingdom* (2003), para.39, citing *Özgür Gündem v. Turkey* (2000), paras.42-46, and *Fuentes Bobo v. Spain* (2000), para.38. It is noteworthy that the applicants in *Appleby* cited relevant case law of Canada (para.31) and the United States (paras. 25-30 and 46). The Court considered (a) the diversity of situations obtaining in contracting states; (b) the choices that must be made in terms of priorities and resources (noting that the positive obligations "should not impose an impossible or disproportionate burden on the authorities"); and (c) the rights of the owner of the shopping centre under Article 1 of Protocol 1. In *Cisse v. France* (2002), *op. cit.*, note 45, the applicable domestic laws stated that "Assemblies for the purposes of worship in premises belonging to or placed at the disposal of a religious association shall be open to the public. They shall be exempted from [certain requirements], but shall remain under the supervision of the authorities in the interests of public order."
- <sup>55</sup> See, for example, Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Places* (New York: Cambridge University Press, 2009), pp. 130-132: "In recent years, local and national officials have altered the architectures and landscapes of public places in ways that may limit spatial contestation." Zick also discusses architectural designs that limit the scope for communicative interaction with those inside the buildings concerned (for example, by incorporating few or no windows on lower floors).
- <sup>56</sup> In *Cisse v. France* (2002), para.37 [emphasis added]. Also see *G v. The Federal Republic of Germany* (1989), in which the European Commission stated that peaceful assembly does not cover a demonstration where the organizers and participants have violent intentions that result in public disorder.
- <sup>57</sup> *Christian Democratic People's Party v. Moldova* (No.2) (2010), para.23: "The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities." There have been a number of applications to the European Court of Human Rights relating to the response of the Turkish authorities to an anti-Turkish demonstration on 19 July 1989 (the 15th anniversary of the Turkish intervention in Cyprus). The Turkish government argued that the "violent character" of the demonstration placed it outside the scope of Article 11 protection. While apparently not accepting that Article 11 was inapplicable, the Court nonetheless found that, having regard to the wide margin of appreciation to be afforded to the authorities, the interference with the applicants' right to freedom of assembly was not disproportionate. See *Protopapa v. Turkey* (2009) at paras.107-111; *Christodoulidou v. Turkey* (2009) at paras.72-76; *Olymbiou v. Turkey* (2009), paras.120-124; *Papi v. Turkey* (2009), paras.111-115; *Strati v. Turkey* (2009), paras.121-125; and *Vrahimi v. Turkey* (2009), paras.117-121. The Court relied heavily

upon an earlier report of the European Commission on Human Rights in *Chrysostomos and Papachrysostomou v. Turkey* (1993), paras.109-110 (note, however, the dissenting opinion of Mr. E. Busuttil in this case). The Commission pointed to evidence of violence contained in a report by the UN Secretary General and video footage and photographs showing that demonstrators had “forced their way into the UN buffer zone...”, “broken through a wire barrier maintained by UNFICYP, and destroyed an UNFICYP observation post”, and then broken “through the line formed by UNFICYP soldiers.”

- <sup>58</sup> Plattform “Ärzte für das Leben” v. Austria (1988), para. 32, which concerns a procession and open-air service organized by anti-abortion protesters. Similarly, the European Court has often stated that, subject to Article 10(2), freedom of expression “...is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”; *Handyside v. The United Kingdom* (1976), para.49. Applied in *Incal v. Turkey* (1998), para.46; *Otto-Preminger-Institut v. Austria* (1994), para.49, and joint dissenting judgment, para.3; *Müller and Others v. Switzerland* (1988), para.33; *Observer and Guardian v. United Kingdom* (1991), para.59; *Chorherr v. Austria* (1993, Commission) para.39.
- <sup>59</sup> See BVerfGE 69,315(360) regarding roadblocks in front of military installations. See Fn.3: “Their sit-down blockades do not fall outside the scope of this basic right just because they are accused of coercion using force.” See, further, Quint, *Civil Disobedience and the German Courts*, op. cit., note 40.
- <sup>60</sup> If a narrower definition of “peaceful” than this were to be adopted, it would mean that the scope of the right would be so limited from the outset, that the limiting clauses (such as those contained in Article 11(2) of the ECHR) would be virtually redundant.
- <sup>61</sup> *Ziliberberg v. Moldova* (2004, admissibility).
- <sup>62</sup> See, for example, the Northern Ireland case of *In re E (a child)* [2008] UKHL 66. There is a “minimum level of severity” that must be met before behaviour can be deemed “inhuman or degrading” for the purposes of Article 3 of the ECHR. This will depend on all circumstances of the case including duration of treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Also see Nowak, *UN Covenant on Civil and Political Rights*, ICCPR Commentary, op. cit., note 29, pp. 486-487.
- <sup>63</sup> See, for example, recent funeral protest cases in the United States, such as *Phelps-Roper v. Taft*, 2007 US Dist. LEXIS 20831 (ND Ohio, March 23, 2007). As Manfred Nowak states, “In accordance with the customary meaning of this word, peaceful means the absence of violence in its various forms, in particular armed violence in the broadest sense. For example, an assembly loses its peaceful character when persons are physically attacked or threatened, displays smashed, furniture destroyed, cars set afire, rocks or Molotov cocktails thrown or other weapons used. ... So-called ‘sit-ins’ or blockades are peaceful assemblies, so long as their participants do not use force ...”. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, op. cit., note 29, p. 487. Also see David Kretzmer, “Demonstrations and the Law”, 19(1) *Israel Law Review*, No. 47, 1984, pp. 141-3, proposing that the limits of “pickets as harassment” be guided by the following principles: “(i) Pickets outside the office of a public figure cannot be regarded as harassment; (ii) Pickets outside the office or place of business of non-public figures may only be regarded as harassment if they exceed the bounds of reasonableness as regards duration and time; (iii) Pickets outside the residence of a public figure may not be regarded as ‘harassment’ unless they exceed the boundaries ... as to duration, occasion, time and alter-

native avenues." Also see the Interim Report of the Strategic Review of Parading in Northern Ireland (2008), p.50, available at: <http://cain.ulst.ac.uk/issues/parade/srp/srp290408interim.pdf>.

- <sup>64</sup> *Rassemblement Jurassien & Unité Jurassien v. Switzerland* (1979), pp. 93 and 119; *Christians Against Racism and Facism v. UK (CARAF)* (1980), p.148; *G v. The Federal Republic of Germany* (1989), p.263; *Anderson et al v. UK* (1997), and *Rai Almond and "Negotiate Now" v. the United Kingdom*, (1995), p.146.
- <sup>65</sup> See, for example, *Plattform Ärzte für das Leben v. Austria* (1988).
- <sup>66</sup> See, for example, *Balçık and Others v. Turkey* (2007), para.49, in which the European Court of Human Rights suggests that state provision of such preventive measures is one of the purposes of prior notification.
- <sup>67</sup> In *Gülec v. Turkey* (1998), the European Court of Human Rights emphasized the importance of law-enforcement personnel having appropriate resources: "gendarmes used a very powerful weapon because they did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province ...is in a region in which a state of emergency has been declared." See, further, Chapter 6 "Policing Public Assemblies".
- <sup>68</sup> In *Barankevich v. Russia* (2007), para.33, for example, the European Court of Human Rights was critical of the fact that there was "no indication that an evaluation of the resources necessary for neutralizing the threat [posed by violent counter-demonstrators] was part of the domestic authorities' decision-making process".
- <sup>69</sup> See, for example, OSCE/ODIHR Panel on Freedom of Assembly and European Commission for Democracy through Law (Venice Commission) "Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely hold Rallies and Demonstrations", op. cit., note 21, para. 37.
- <sup>70</sup> See, for example, *Öllinger v. Austria* (2006).
- <sup>71</sup> See, for example, Mary O'Rawe, "Human Rights and Police Training in Transitional Societies: Exporting the Lessons of Northern Ireland.", *Human Rights Quarterly*, Vol. 27, No. 3, August 2005, pp. 943-968; Mary O'Rawe, "Transitional Policing Arrangements in Northern Ireland: The Can't and the Won't of the Change Dialectic", *Fordham International Law Journal*, Vol. 26, No. 4, April 2003, pp.1015-1073.
- <sup>72</sup> See *Hyde Park v. Moldova (No.2)* (2009). In this case, it was emphasized that the reasons for restrictions must be provided only by the legally mandated authority. The European Court of Human Rights noted that the reasons cited by the Municipality for restrictions on a demonstration were not compatible with the relevant Assemblies Act, and it was not sufficient that compatible reasons were later given by the Court: The Courts were not the legally mandated authority to regulate public assemblies and could not legally exercise this duty either in their own name or on behalf of the local authorities.
- <sup>73</sup> See *Hashman and Harrup v. UK* (1999), where a condition was imposed on protesters not to behave *contra bonos mores* (i.e., in a way that is wrong rather than right in the judgment of the majority of fellow citizens). This was held to violate Article 10 of the ECHR because the condition imposed was not sufficiently precise so as to be "prescribed by law". In *Gillan and Quinton v. the United Kingdom* (2010), the European Court of Human Rights reiterated (in para.77) that "the law must indicate with sufficient clarity the scope of any ... discretion conferred on the competent authorities and the manner of its exercise". In this case, the Court found that,

since the police powers under the “Terrorism Act of 2000” to stop and search an individual for the purpose of looking for articles that could be used in connection with terrorism were “neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse”, they were not, therefore, “in accordance with the law” (paras.76-87). Also see *Steel and Others v. UK* (1998), and *Mkrtchyan v. Armenia* (2007), paras.39-43 (relating to the foreseeability of the term “prescribed rules” in Article 180.1 of the Code of Administrative Offences. In the latter case, the Armenian government unsuccessfully argued that these rules were prescribed by a Soviet Law that had approved, inter alia, the Decree on “Rules for Organizing and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the USSR” of 28 July 1988. Also see, for example, *Connolly v. General Construction Company*, 269 U.S. 385, 46 S.Ct. 126 (1926): “A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue.”

<sup>74</sup> See European Court of Human Rights, *Rekvényi v. Hungary* (1999), para 34.

<sup>75</sup> See, for example, *Gillan and Quinton v. the United Kingdom* (2010), discussed further in note 73 ( a request for referral to the Grand Chamber was pending at the time of writing).

<sup>76</sup> See, for example, *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979).

<sup>77</sup> David Feldman, *Civil Liberties & Human Rights in England and Wales*, 2nd ed., (Oxford: Oxford University Press, 2002), p.57. (Emphasis added).

<sup>78</sup> David Hoffman and John Rowe, *Human Rights in the UK: An Introduction to the Human Rights Act 1998* (2nd ed.) (Harlow: Pearson Education Ltd., 2006), p.106. Importantly, the only purposes or aims that may be legitimately pursued by the authorities in restricting freedom of assembly are provided for by Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11(2) of the ECHR. Thus, the only objectives that may justify the restriction of the right to peaceably assemble are the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.

<sup>79</sup> As such, for example, the dispersal of assemblies must only be used a measure of last resort (see, further, paras.165-168 and 173).

<sup>80</sup> See, for example, Republic of Latvia Constitutional Court, Judgment in the matter No. 2006-03-0106 (23 November 2006), paras.29.1 and 32 (English translation): “(29.1)...The extensive prohibitions in the very centre of the city essentially restricts the right of the persons to hold meetings, processions and pickets ... (32) ... In the case law of Germany, it is recognized that the institutions of power shall put up with any disturbance of traffic which it is not possible to avoid when realizing freedom of assembly. If protesting is envisaged to take place in the centre, then it is not possible to make the procession move through the outskirts so that it does not disrupt the movement of traffic...” (emphasis added).

<sup>81</sup> See, for example, *Campbell v. MGN Ltd* (2004), paras.16-20, per Lord Nicholls. For detailed discussion of parallel analysis (in relation to Articles 8 and 10 of the ECHR), see, further, Helen Fenwick and Gavin Phillipson, *Media Freedom under the Human Rights Act* (Oxford: Oxford University Press, 2006) pp.700-706. Also see the Hungarian Constitutional Court’s approach when confronted with a conflict between two fundamental rights (note 140).

<sup>82</sup> See, for example, *Makhmudov v. Russia* (2007), para.65.

<sup>83</sup> *Ibid.*, at para.64.

- <sup>84</sup> Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (2001), para. 87. Also see United Communist Party of Turkey and Others v. Turkey (1998), para. 47.
- <sup>85</sup> See the Brokdorf decision of the Federal Constitutional Court of Germany, BVerfGE 69,315 (353, 354).
- <sup>86</sup> See, for example, Christian Democratic Peoples' Party v. Moldova (2006), para.71. Similarly, Rosca, Secareanu and Others v. Moldova (2008), para.40 (citing the Christian Democratic Peoples' Party case).
- <sup>87</sup> See, for example, Republic of Latvia Constitutional Court, Judgment in the matter No. 2006-03-0106 (23 November 2006), para.29.3 (English translation): "The state may not prohibit holding meetings, processions and pickets at foreign missions; only these activities shall not be too noisy and aggressive. However, even in these cases ... this issue shall be solved on the level of application of legal norms" (emphasis added). While the Court noted (in para.28.1) that s.22(2) Vienna Convention on International Diplomatic Relations (1961) requires host states "to undertake all the adequate measures to protect premises of the mission from any kind of breaking in or incurring losses and to avert any disturbance of peace of the mission or violation of its respect", it concluded (in para.28.3) that there "is no norm which assigns the state with the duty of fully isolating foreign diplomatic and consular missions from potential processions, meetings or pickets". Also see David Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Era* (Oxford: Hart Publishing, 2010), pp.101-2.
- <sup>88</sup> Rai, Almond and "Negotiate Now" v. United Kingdom (1995, admissibility).
- <sup>89</sup> See, for example, Republic of Latvia Constitutional Court, Judgment in the matter No. 2006-03-0106 (23 November 2006), para.29.3 (English translation): "The state has the duty not only to ensure that a meeting, picket or a procession takes place, but also to see to it that freedom of speech and assembly is effective, namely – that the organized activity shall reach the target audience."
- <sup>90</sup> See, further, "General Comment 18: Non-Discrimination", UN Human Rights Committee, UN Doc. CCPR General Comment 18, (1989).
- <sup>91</sup> See for example, Haas v. Netherlands (2004), para.41. In light of judgement of the European Court of Human Rights in Thlimmenos v. Greece (2000), Robert Wintemute argues that the interpretation of Article 14 of the ECHR should be broadened to include "two access routes", so that not only the opportunity denied, but also the ground for its denial, could be deemed to fall "within the ambit" of another Convention right, and so engage Article 14. See Robert Wintemute, "Within the Ambit: How big is the 'gap' in Article 14 European Convention on Human Rights? Part 1", *European Human Rights Law Review*, No. 4 (2004), 366-382.
- <sup>92</sup> See, for example, Sejdić and Finci v. Bosnia and Herzegovina (2009), the first case in which the European Court of Human Rights found a violation of Protocol 12, holding (in para. 55) that "Notwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see the Explanatory Report to Protocol No. 12, para.18)."
- <sup>93</sup> See Opuz v. Turkey (2009), paras.184-191 (here, in relation to domestic violence). Many problems have arisen specifically in relation to assemblies organized by Lesbian, Gay, Bisexual and Transgender (LGBT) groups. See, further, Bączkowski and Others v. Poland (2007), where the Court found there to be a violation of Article 14 in conjunction with Article 11 of the ECHR. Also see Applications nos. 4916/07, 25924/08 and 14599/09 by Nikolay Aleksandrovich Alekseyev against Russia, lodged on 29 January 2007, 14 February 2008 and 10 March 2009,

respectively. At the time of writing, members of the organizational committee of the Belgrade Pride Parade (which was to have been held on 20 September 2009) have challenged, inter alia, the alleged failure of state organs in Serbia to take all reasonable measures to prevent private acts of discrimination against the applicants. Also see Council of Europe, Parliamentary Assembly, Recommendation 211 (2007) on Freedom of Assembly and Expression for Lesbians, Gays, Bisexuals and Transgendered Persons, 26 March 2007, available at: <<https://wcd.coe.int/ViewDoc.jsp?id=1099699&Site=Congress&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679>>, and the related “Explanatory Report: Freedom of Assembly and Expression for Lesbian, Gay, Bisexual and Transgendered Persons”, Congress of Local and Regional Authorities, Council of Europe, 26-28 March 2007, available at: <[https://wcd.coe.int/ViewDoc.jsp?Ref=CPL\(13\)9PART2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CPL(13)9PART2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679)>. Furthermore, see UN General Assembly, “Human rights defenders: Note by the Secretary-General” (report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, in accordance with General Assembly resolution 60/161), UN Doc. A/61/312, 5 September 2006, para.71; Human Rights Council, “Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani”, UN Doc. A/HRC/4/37, 24 January 2007, para. 96, available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/104/17/PDF/G0710417.pdf?OpenElement>>; Human Rights Council, “Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received”, UN Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 454. Also, “ILGA, LGBT Rights - Freedom of Assembly: diary of events by country (August 2008)”, available at: <[http://www.ilga-europe.org/media\\_library/lgbt\\_rights\\_freedom\\_of\\_assembly\\_diary\\_of\\_events\\_by\\_country\\_august\\_2008](http://www.ilga-europe.org/media_library/lgbt_rights_freedom_of_assembly_diary_of_events_by_country_august_2008)>.

<sup>94</sup> See *Nicholas Toonen v. Australia*, UN Human Rights Committee, No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (04/04/94), para.8.7; *Kozak v Poland* (2010), para.92.

<sup>95</sup> Article 21 of the Charter of Fundamental Rights of the European Union provides that “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.” [2000] C364/01, available at: <[http://www.europarl.eu.int/charter/pdf/text\\_en.pdf](http://www.europarl.eu.int/charter/pdf/text_en.pdf)>.

<sup>96</sup> Principle 20, “Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity” (<http://www.yogyakartaprinciples.org/>) provides that: “Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities. States shall: Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity; Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities; Under no circumstances impede the exercise of the rights to peaceful assembly

and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights; Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection." Also see the accompanying "Jurisprudential annotations", available at: <<http://www.yogyakartaprinciples.org/yogyakarta-principles-jurisprudential-annotations.pdf>>.

<sup>97</sup> "Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity" (adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies) provides that: "III. Freedom of expression and peaceful assembly... 14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity; 15. Member states should ensure that law-enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly; 16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order; 17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons."

<sup>98</sup> In part, this was the argument raised by the applicants in *Baczowski and Others v. Poland* (2007) and (2006, admissibility). The applicants stated that they were treated in a discriminatory manner, first because organizers of other public events in Warsaw in 2005 had not been required to submit a "traffic organization plan" and, second, because they had been refused permission to organize the March for Equality and related assemblies because of the homosexual orientation of the organizers.

<sup>99</sup> *Thlimmenos v. Greece* (2000), para.44.

<sup>100</sup> Indirect discrimination occurs when an ostensibly non-discriminatory provision in law affects certain groups disproportionately.

<sup>101</sup> *Nachova and Others v. Bulgaria* [GC] (2005), para.161.

<sup>102</sup> See *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979), p. 119, and *Christians against Racism and Fascism v. the United Kingdom* (1980), p. 148. Similarly, the right to freedom of thought, conscience and religion can be exercised by a church body or an association with religious and philosophical objectives, *ARM Chappell v. UK* (1987), p.246.

<sup>103</sup> Also see Article 17 of the Framework Convention on National Minorities: "(1) The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage; (2) The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels."

- <sup>104</sup> Adopted by GA Res 47/135, 18 December 1992.
- <sup>105</sup> See *Hyde Park v. Moldova No.1* (2009), para.28, citing *Young, James and Webster v. the United Kingdom*, 13 August 1981, para.63, Series A no. 44, and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, para.112, ECHR 1999-III). Similarly, see *Hyde Park v. Moldova No.2* (2009), para.24; *Hyde Park v. Moldova No.3* (2009), para.24.
- <sup>106</sup> UN Human Rights Committee, General Comment 15, The position of aliens under the Covenant.
- <sup>107</sup> See, further, Donatella della Porta, Abby Peterson and Herbert Reiter (eds.), *The Policing of Transnational Protest* (Surrey: Ashgate, 2006).
- <sup>108</sup> Article 7(c), CEDAW also safeguards the right of women to participate in NGOs and associations concerned with the public and political life of the country. Also see *Opuz v. Turkey* (2009), op. Cit., note 93.
- <sup>109</sup> Article 15, Convention on the Rights of the Child.
- <sup>110</sup> Article 1, UN Convention on the Rights of Persons with Disabilities.
- <sup>111</sup> Principle 1 (5), United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, United Nations General Assembly resolution 46/119.
- <sup>112</sup> Article 11(2), European Convention for the Protection of Human Rights and Fundamental Freedoms. See, for example, *Demir and Baykara v. Turkey* (2008), para.109: "The Convention makes no distinction between the functions of a Contracting State as holder of public power and its responsibilities as employer. Article 11 is no exception to that rule. On the contrary, paragraph 2 in fine of this provision clearly indicates that the State is bound to respect freedom of assembly and association, subject to the possible imposition of 'lawful restrictions' in the case of members of its armed forces, police or administration (see *Tüm Haber Sen and Çınar...*). Article 11 is accordingly binding upon the 'State as employer', whether the latter's relations with its employees are governed by public or private law ...". Also see *Enerji Yapi-Yol Sen v. Turkey* (2009, in French only), op. cit., note 17.
- <sup>113</sup> See *Ahmed and Others v. United Kingdom* (1998); *Rekvényi v. Hungary* (1999).
- <sup>114</sup> See *Hyde Park v. Moldova No.1* (2009), at para.31, op cit., note 72. "It is true that new reasons for rejecting Hyde Park's application to hold an assembly were given by the courts during the subsequent judicial proceedings. However, sections 11 and 12 of the Assemblies Act give exclusive authority to the local authorities to authorise or not assemblies." Similarly, *Hyde Park v. Moldova No.2* (2009), para.27; *Hyde Park v. Moldova No.3* (2009), para.27.
- <sup>115</sup> See, for example, the Parades Commission in Northern Ireland, whose members are appointed in accordance with Schedule 1 of the Public Processions (NI) Act 1998, and which, as a body, must be as representative as is possible of the community as a whole (para.2[3] of Schedule 1).
- <sup>116</sup> See, for example, "Joint Statement on Racism and the Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression", op. cit., note 16. One example of good practice is provided by the Northern Ireland Parades Commission, which publishes details of all parades and related protests in Northern Ireland for which notification has been given categorized according to the towns in which they are due to take place. See, further, <<http://www.paradescommission.org>>. Also see, for example, the records maintained by the Strathclyde Police in Scotland relating to the policing of public processions, available at: <

clydepoliceauthority.gov.uk/images/stories/CommitteePapers/FullAuthority2009/FA1October2009/item%206%20-%20review%20of%20police%20resources%20deployed%20at%20marches%20and%20parades.pdf>.

- <sup>117</sup> That the authorities should not supplement the legitimate aims, particularly with arguments based on their own view of the merits of a particular protest, see *Hyde Park v. Moldova No.3* (2009), para.26.
- <sup>118</sup> This point has recently been emphasized by the Council of Europe's Committee of Ministers. See recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies, para.16, *op cit.*, note 97.
- <sup>119</sup> In the *Brokdorf* decision of the German Federal Constitutional Court (1985) (1 BvR 233, 341/81), for example, "public order" was understood as including the totality of unwritten rules, obedience to which is regarded as an indispensable prerequisite for an orderly communal human existence within a defined area according to social and ethical opinions prevailing at the time.
- <sup>120</sup> For example, *Makhmudov v. Russia* (2007).
- <sup>121</sup> *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para.94.
- <sup>122</sup> See, further, *Ezelin v. France* (1991) and *Ziliberberg v. Moldova* (2004).
- <sup>123</sup> See, for example, *Christian Democratic People's Party v. Moldova* (No. 2) (2010), para.27. Finding a violation of Article 11 of the ECHR, the European Court of Human Rights stated that "the applicant party's slogans, even if accompanied by the burning of flags and pictures, was a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova".
- <sup>124</sup> *Norris v. Ireland* (1988), paras.44-46. It is noteworthy that "public morals" as a legitimate ground for limiting freedom of assembly is not synonymous with the moral views of the holders of political power. See Judgment of the Polish Constitutional Tribunal, 18th January 2006, K 21/05, Requirement to Obtain Permission for an Assembly on a Public Road (English translation), available at: <[http://www.trybunal.gov.pl/eng/summaries/documents/K\\_21\\_05\\_GB.pdf](http://www.trybunal.gov.pl/eng/summaries/documents/K_21_05_GB.pdf)>.
- <sup>125</sup> See, for example, *Hashman and Harrup v. UK* (1999), regarding the common law of offence of behaviour deemed to be "contra bones mores".
- <sup>126</sup> For criticism of a legislative provision relating to morality, see: <<http://www.bahrainrights.org/node/208>; <http://hrw.org/english/docs/2006/06/08/bahrai13529.htm>>. Manfred Nowak's commentary on the ICCPR cites assemblies near or passing "holy locations or cemeteries" (in relation to morality) or "natural-protection or water-conservation grounds" (in relation to public health) as particular examples. See Nowak, UN Covenant on Civil and Political Rights, *op. cit.*, note 29, p. 493.
- <sup>127</sup> See, for example, Tania Groppi, "Freedom of thought and expression, General Report, Political Structure and Human Rights", citing the Constitutional Court of Hungary (European Union Meeting, Union of Turkish Bar, Ankara 16-18 April 2003), p.6, available at: <[http://www.unisi.it/ricerca/dip/dir\\_eco/COMPARATO/groppi4.doc](http://www.unisi.it/ricerca/dip/dir_eco/COMPARATO/groppi4.doc)>. See, for example, Hungarian Constitutional Court, Decision no. 21/1996 (V.17.) [ABH 1997] 74, p. 84.
- <sup>128</sup> Also see note 45 (and accompanying text in para.18) regarding "temporariness". In the United States' case of *Schneider v. State*, 308 U.S. 147 (1939), it was held that there was a right to leaf-

let even though the leafleting caused litter. In *Collin v. Chicago Park District*, 460 F.2d 746 (7th Cir. 1972), it was held that there was a right to assemble in open areas that park officials had designated as picnic areas. In *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Österreich* (2003), the European Court of Justice held that allowing a demonstration that blocked the Brenner Motorway between Germany and Italy for almost 30 hours was not a disproportionate restriction on the free movement of goods under Article 28 of the EC Treaty). The Court provided three reasons: (1) the disruption was a relatively short duration and on an isolated occasion; (2) measures were taken to limit the disruption caused; and (3) excessive restrictions on the demonstration could have deprived the demonstrators of their rights to expression and assembly, and indeed possibly caused greater disruption. The Austrian authorities determined that they had to allow the demonstration to go ahead because the demonstrators were exercising their fundamental rights of freedom of expression and freedom of assembly under the Austrian constitution. Also see *Commission v. France* (1997), which concerned protests by French farmers directed against agricultural products from other EU Member States. The Court held that, by failing to adopt all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French government had failed to fulfil its obligations under Article 30 of the EC Treaty, in conjunction with Article 5 of the Treaty.

- <sup>129</sup> *Éva Molnár v. Hungary* (2008), para.34: “The Court notes that restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others, with a view to preventing disorder and maintaining the orderly circulation of traffic.” As Nicholas Blomley argues, “traffic logic serves to reconstitute public space ... Public space is not a site for citizenship, but a mere ‘transport corridor’”. See Nicholas Blomley, “Civil Rights Meet Civil Engineering: Urban Public Space and Traffic Logic,” *op. cit.*, note 48, p. 64. Also see Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Places*, *op. cit.*, note 55.
- <sup>130</sup> See, for example, *Ashughyan v. Armenia* (2008), para.90. Similarly, see *Balçık and Others v. Turkey* (2007), para.49; *Oya Ataman v. Turkey* (2006), para.38; and *Nurettin Aldemir and others v. Turkey* (2007), para.43.
- <sup>131</sup> The UN Declaration on the Rights of Indigenous Peoples includes a right to be consulted on decisions and actions that have an impact on indigenous peoples’ rights and freedoms.
- <sup>132</sup> In so far as other non-Convention rights are concerned, only “indisputable imperatives” can justify the imposition of restrictions on public assemblies. See, for example, *Chassagnou v. France* (1999), para.113: “It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect ‘rights and freedoms’ not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right.” This clearly sets a high threshold: There must be a verifiable impact (“indisputable”) on the lives of others requiring that objectively necessary (“imperative”) steps be taken. It is not enough that restrictions are merely expedient, convenient or desirable.
- <sup>133</sup> The right to “private life” covers the physical and moral integrity of the person (*X and Y v. The Netherlands*, 1985, para. 22), and the state must not merely abstain from arbitrary interference with the individual but also positively ensure effective respect for private life. This can extend even into the sphere of relations between individuals. Where it is claimed that a right to privacy is affected by freedom of assembly, the authority should seek to determine the validity of that claim and the degree to which it should tolerate a temporary burden. The case

of *Moreno Gómez v. Spain* (2004) might give some indication of the high threshold that must first be overcome before a violation of Article 8 can be established.

- <sup>134</sup> See, for example, *Chassagnou and Others v. France* (1999). Also see *Gustafsson v. Sweden* (1996). The right to peacefully enjoy one's possessions has been strictly construed by the European Court of Human Rights so as to offer protection only to proprietary interests. Moreover, for a public assembly to impact on the enjoyment of one's possessions to an extent that would justify the placing of restrictions on it, a particularly high threshold must first be met. Businesses, for example, benefit from being in public spaces and, as such, should be expected to tolerate alternative uses of that space. As previously emphasized, freedom of assembly should be considered a normal and expectable aspect of public life.
- <sup>135</sup> Note, however, that Article 5 of the ECHR is concerned with total deprivation of liberty, not mere restrictions upon movement (which might be covered by Article 2 of Protocol 4). This distinction between deprivation of, and mere restriction upon, liberty has been held to be "one of degree or intensity, and not one of nature or substance". See *Guzzardi v. Italy* (1980), para.92; and *Ashingdane v. the United Kingdom* (1985), para.41. Also see *R (on the application of Laporte) v. Chief Constable of Gloucester Constabulary* [2006] UKHL 55; and *Austin and Saxby v. Commissioner of Police of the Metropolis* [2009] UKHL 5. For critique of the latter judgment, see David Mead, "Of Kettles, Cordons and Crowd Control: *Austin v. Commissioner of Police for the Metropolis* and the Meaning of 'Deprivation of Liberty'", *European Human Rights Law Review*, Issue 3, 2009, pp. 376-394; Helen Fenwick, "Marginalising human rights: breach of the peace, 'kettling', the Human Rights Act and public protest" *Public Law* (2009), pp. 737-765.
- <sup>136</sup> Significantly, however, the right to free movement does not generally refer to the use of public roads but, rather, to the possibility of changing one's place of residence. See, for example, the judgement of the Polish Constitutional Tribunal, Case 21/05, 18 January 2006 (also cited in the decision of the Hungarian Constitutional Court, Decision 75/2008, (V.29.) AB, para.2.3). Also see note 45 and 128.
- <sup>137</sup> *Acik v. Turkey* (2009), para.45: "In the instant case, the Court notes that the applicants' protests took the form of shouting slogans and raising banners, thereby impeding the proper course of the opening ceremony and, particularly, the speech of the Chancellor of Istanbul University. As such, their actions no doubt amounted to an interference with the Chancellor's freedom of expression and caused disturbance and exasperation among some of the audience, who had the right to receive the information being conveyed to them."
- <sup>138</sup> *Öllinger v. Austria* (2006), at para. 46. For such a claim to be upheld would require that the assembly impose a direct and immediate burden on the expressive rights or the exercise of the religious beliefs of others.
- <sup>139</sup> See *Hyde Park v. Moldova No.1* (2009), para.28, citing *Young, James and Webster v. the United Kingdom* (1981), para.63, and *Chassagnou and Others v. France* [GC] (1999). Similarly, *Hyde Park v. Moldova No.2* (2009) para.24, and *Hyde Park v. Moldova No.3* (2009), para.24.
- <sup>140</sup> See the discussion of "parallel scrutiny" in note 81 (and accompanying text). Also see, for example, the Hungarian Constitutional Court, Decision 75/2008, (V.29.) AB, para.2.2 (referring to a previous decision of the Court, ABH 2001, pp. 458-459: "with respect to the prevention of a potential conflict between two fundamental rights: ... the authority should be statutorily empowered to ensure the enforcement of both fundamental rights or, if this is impossible, to ensure that any priority enjoyed by one of the rights to the detriment of the other shall only be of a temporary character and to the extent absolutely necessary."

- <sup>141</sup> The Johannesburg Principles, ARTICLE 19, November 1996 (ISBN 1 870798 48 1).
- <sup>142</sup> Available at: <<http://www.icj.org>>. Similarly, the United Nations Global Counter-Terrorism Strategy, adopted by Member States on 8 September 2006, emphasized, in part IV “that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing”, and that “States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law...”.
- <sup>143</sup> Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers’ Deputies. Available at: <<https://wcd.coe.int/ViewDoc.jsp?id=1188493>>.
- <sup>144</sup> Particularly, Chapter 16 “Freedom of Association and the Right to Peaceful Assembly”, pp.240-150. Available at: <[http://www.osce.org/publications/odihhr/2007/11/28294\\_980\\_en.pdf](http://www.osce.org/publications/odihhr/2007/11/28294_980_en.pdf)>.
- <sup>145</sup> The EU Council Framework Decision on combating terrorism (2008/919/JHA of 28 November 2008 amending Framework Decision 2002/474/JHA) requires that member States criminalize “public provocation to commit a terrorist offence” (including where “such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed”).
- <sup>146</sup> The “Ten Basic Human Rights Standards for Law Enforcement Officials” adopted by Amnesty International also provide that exceptional circumstances, such as a state of emergency or any other public emergency, cannot be used to justify any departure from these standards. AI Index: POL 30/04/98.
- <sup>147</sup> *Makhmudov v. Russia* (2007), para.68.
- <sup>148</sup> See Donatella della Porta, Massimiliano Andretta, Lorenzo Mosca and Herbert Reiter, *Globalization from Below: Transnational Activists and Protest Networks* (Minneapolis: University of Minnesota Press, 2006) pp. 157-8, citing Italian Parliamentary Investigative Commission (IPIC) “Minutes of the Hearing. August 28, 2001”, at <<http://www.camera.it>>. The suspension of the Schengen Agreement on free movement (11-21 July 2001) permitted border checks on people in advance of the G8 Summit in Genoa. A total of 140,000 people were checked, and 2,093 people were refused entry. Also see Lluís Maria de Puig (Rapporteur) “Democratic Oversight of the Security Sector in Member States, Report for the Political Affairs Committee, Parliamentary Assembly of the Council of Europe”, (2 June 2005, Doc. 10567), para.97, available at: <<http://assembly.coe.int/Documents/WorkingDocs/Doc05/EDOC10567.htm>>; and Tony Bunyan, “Protests in the EU: ‘Troublemakers’ and ‘travelling violent offenders’ [undefined] to be recorded on database and targeted” (Statewatch: 2010). Available at: <<http://www.statewatch.org/analyses/no-93-troublemakers-apr-10.pdf>>. See, further, note 168.
- <sup>149</sup> See, for example, *Gillan and Quinton v. the United Kingdom* (2010), in which police stop-and-search powers under section 44 of the United Kingdom’s “Terrorism Act” of 2000 were held not to be “in accordance with the law” for the purposes of Article 8 of the ECHR (the right to private and family life). This was, in part, due to the breadth of the powers (the exercise of which did not require reasonable suspicion on the part of the police officer) and also the lack of adequate safeguards against arbitrariness: “such a widely framed power could be misused against demonstrators and protestors” (see paras. 76-87). Also see note 7, and paragraphs 35-38 (‘Legality’) and paragraph 161 (regarding police stop and search powers).
- <sup>150</sup> Also see para. 25 of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

- <sup>151</sup> See *Lawless v. Ireland* (1961), para.28. Also see Nicole Questiaux, "Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency", UN doc. E/CN.4/Sub.2/1982/15, 27 July 1982. In addition, General Comment No.29 of the UN Human Rights Committee (August 2001) provides examples rights that cannot be derogated from.
- <sup>152</sup> *Siracusa Principles*, paras, 40-41. Annex, UN Doc E/CN.4/1984/4 (1984) <<http://www1.umn.edu/humanrts/instreet/siracusaprinciples.html>>;
- <sup>153</sup> See Article 4(1) of the ICCPR, and the *Cyprus case*, (1958-59) Yearbook of the ECHR 174.
- <sup>154</sup> *Hyde Park and Others v. Moldova No.1* (2009), para.26. Here, an event to protest against Moldova's electronic voting in the Eurovision Song Contest was prohibited on the basis that "the Parliament was not responsible for organising the Eurovision song contest, which took place in Ukraine and the protest was groundless because it concerned past events". In finding a violation of Article 11 of the ECHR, the European Court held that "Such reasons cannot be considered compatible with the requirements of Article 11 of the Convention ...".
- <sup>155</sup> For example, *Incal v. Turkey* (1998), para.54. Also see the Human Rights Committee's Concluding Comments on Belarus [1997], UN doc. CCPR/C/79/Add. 86, para.18, available at: <[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.86.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.86.En?Opendocument)>: "Decree No. 5 of 5 March 1997 imposes strict limits on the organization and preparation of demonstrations, lays down rules to be observed by demonstrators, and bans the use of posters, banners or flags that 'insult the honour and dignity of officials of State organs' or which 'are aimed at damaging the State and public order and the rights and legal interests of citizens.' These restrictions cannot be regarded as necessary in a democratic society to protect the values mentioned in article 21 of the Covenant."
- <sup>156</sup> In the case of *Incal v. Turkey* (1998), for example, the applicant's conviction for helping to prepare a political leaflet that urged the population of Kurdish origins to band together and "set up Neighbourhood Committees based on the people's own strength" was held by the European Court to have violated the applicant's freedom of expression under Article 10. Read in context, the leaflet could not be taken as incitement to the use of violence, hostility or hatred toward other citizens.
- <sup>157</sup> In the case of *Cisse v. France* (2002), the European Court of Human Rights stated (para.50) that "The Court does not share the Government's view that the fact that the applicant was an illegal immigrant sufficed to justify a breach of her right to freedom of assembly, as ... [inter alia] ... peaceful protest against legislation which has been contravened does not constitute a legitimate aim for a restriction on liberty within the meaning of Article 11(2)." In *Tsonev v. Bulgaria* (2006), the European Court of Human Rights found that there was no evidence that merely using the word "revolutionary" (the Bulgarian Revolutionary Youth Party) represented a threat to Bulgarian society or to the Bulgarian State. Nor was there anything in the Party's constitution that suggested it intended to use violence in pursuit of its goals. Also see *Stankov and the United Macedonian Organization* (2001), paras.102-3, and *United Macedonian Organisation Ilinden and Others v. Bulgaria* (2006), para.76. In *Christian Democratic People's Party v. Moldova (No.2)* (2010), para.27, the Court rejected the Moldovan government's assertion that that the slogans "Down with Voronin's totalitarian regime" and "Down with Putin's occupation regime", even when accompanied by the burning of a picture of the President of the Russian Federation and a Russian flag, amounted to calls to violently overthrow the constitutional regime, to hatred towards the Russian people, and to an instigation to a war of aggression against Russia. The Court held that these slogans could not reasonably be considered to be a call for

violence, but rather “should be understood as an expression of dissatisfaction and protest”, as “a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova”.

<sup>158</sup> Article 20(2) of the ICCPR.

<sup>159</sup> Principle 4 of the Council of Europe Committee of Ministers Recommendation No. R(97)20. The Appendix to Recommendation No. R(97) 20 defines “hate speech” as “covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”. See, further, the UN Convention on the Elimination of All Forms of Racial Discrimination, and Resolution (68) 30 of the Committee of Ministers on Measures to be taken against incitement to racial, national and religious hatred. See, for example, the Austrian Constitutional Court judgment of March 16 2007 (B 1954/06) upholding a prohibition on an assembly because (in part) national-socialist slogans had been used at a previous assembly (in 2006) with the same organizer. The Austrian National-Socialist Prohibition Act 1947 prohibited all national-socialist activities. Also see the Holocaust denial cases of Ernst Zündel v. Canada, Communication No.953/2000, UN Doc. CCPR/C/78/D/953/2000 (2003), para.5.5: “The restriction ... served the purpose of protecting the Jewish communities’ right to religious freedom, freedom of expression, and their right to live in a society free of discrimination, and also found support in article 20, paragraph 2, of the Covenant”; and Robert Faurisson v. France, Communication No.550/1993, UN Doc. CCPR/C/58/D/550/1993 (1996), para.9.6 – “Since the statements ... read in their full context, were of a nature as to raise or strengthen anti-semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-semitism.”

<sup>160</sup> See, for example, the “Red Star” case of Vajnai v. Hungary (2008), para.49: “no real and present danger of any political movement or party restoring the Communist dictatorship”. Cf. Lehideux and Isorni v. France (1998). Cf. Lehideux and Isorni v. France (1998); In Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (2001, the Court rejected the Bulgarian government’s assertion that “the context of the difficult transition from totalitarian regimes to democracy, and due to the attendant economic and political crisis, tensions between cohabiting communities, where they existed in the region, were particularly explosive”. Also see Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia (2009). Also see Soulas v. France (2008, in French only): finding no violation of Article 10, the Court’s press release emphasizes that “when convicting the applicants, the domestic courts had underlined that the terms used in the book were intended to give rise in readers to a feeling of rejection and antagonism, exacerbated by the use of military language, with regard to the communities in question, which were designated as the main enemy, and to lead the book’s readers to share the solution recommended by the author, namely a war of ethnic re-conquest”. The issue of “unregistered insignia” is raised in the communicated case of Hmelevschi (Boris) and Moscalev (Vladimir) v. Moldova (Applications nos. 43546/05 and 844/06), with the symbol at issue being red armbands with a black hammer and sickle in a white circle.

<sup>161</sup> See, for example, the Polish Constitutional Court judgment of 10 July 2004 (Kp 1/04); City of Dayton v. Esrati, 125 Ohio App. 3d 60, 707 N.E.2d 1140 (1997).

<sup>162</sup> See, for example, Republic of Latvia Constitutional Court, Judgment in the matter No. 2006-03-0106 (23 November 2006), para.29.1 (English translation): “Inelastic restrictions, which

are determined in legal norms as absolute prohibitions, are very rarely regarded as the most considerate measures.”

<sup>163</sup> See, for example, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para. 97; *Association of Citizens Radko & Paunkovski v. The Former Yugoslav Republic of Macedonia* (2009), para.76.

<sup>164</sup> For example, *Zvozkov v. Belarus* (1039/2001) UN Human Rights Committee, 10 November 2006. 22 B.H.R.C. 114. Also see note 19, emphasizing that freedom of assembly is essential for the normal exercise of trade union rights.

<sup>165</sup> See, for example, “The Guidelines for Review of Legislation Pertaining to Religion or Belief”, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, in consultation with the European Commission for Democracy through Law (Venice Commission). The Guidelines state that “Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organisations. The following are some of the major problem areas that should be addressed: ... It is not appropriate to require lengthy existence in the State before registration is permitted; Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned...”. See, further, *Kimlya and Others v. Russia* (2009). Also see Article 6 of the United Nations “Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief” (UN GA Res.36/55 of 25 November 1981); and “Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities”, prepared under the auspices of the OSCE/ODIHR for the benefit of participants in the 1999 OSCE Review Conference.

<sup>166</sup> *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para.92.

<sup>167</sup> For example, in *Balcik and Others v. Turkey* (2007), para.44: The European Court of Human Rights noted that states must “refrain from applying unreasonable indirect restrictions upon [the right to assemble peacefully]”.

<sup>168</sup> Also see note 148, relating to the suspension of the Schengen Agreement, and note 215, relating to anticipatory measures taken by law-enforcement officials to stop, search and/or detain protesters en route to an assembly. It is worth noting that in the United Kingdom case of *R* (on the application by *Laporte*) (FC) v. Chief Constable of Gloucestershire [2006] HL 55; 2 AC 105, the House of Lords held that the use of police common-law powers to prevent an anticipated breach of the peace (by stopping and searching a bus carrying demonstrators to a protest at an airbase, and escorting the bus back to its point of departure, thereby also detaining those on the bus for several hours) was a disproportionate interference with the applicant’s rights to freedom of assembly and expression (since it was both premature and indiscriminate). Furthermore, the police reliance on their common-law powers to return the bus to London was not prescribed by law: “[I]t is not enough to justify action that a breach of the peace is anticipated to be a real possibility” (para.47). In addition, the UN Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, has observed that human rights defenders “have been prevented from leaving the country by representatives of the authorities at airports or border-crossings. In some of the cases, defenders have not been issued with the documents needed in order to travel. ... A large number of communications on this question have ... been sent to Eastern European and Central Asian States. ... [T]ravel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the Declaration [on Human Rights Defenders] and the recognition in its preamble that individuals, groups and

associations have the right to 'promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels'", UN Doc. A/61/312, op cit., note 93, paras.57-60.

- <sup>169</sup> Also see the Human Rights Committee's General Comment No.25 (1996) on article 25 (Participation in public affairs and the right to vote).
- <sup>170</sup> See, for example, Application no. 15405/04 by Juma Mosque Congregation and Others against Azerbaijan, lodged on 28 April 2004; Tsonev Anguelov v. Bulgaria (2006).
- <sup>171</sup> Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (2001 para. 94).
- <sup>172</sup> For example, Patrick Coleman v. Australia (2006) CCPR/C/87/D/1157/2003, para.7.3 (the Human Rights Committee considered a fine and a five-day custodial sentence to be a disproportionate penalty for making a speech without a permit). Also see Ezelin v. France (1991) (assembly), and Incal v. Turkey (1998) (expression). Also see David Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Era*. op. cit., note 87, pp.104-105.
- <sup>173</sup> An example of such a defence is contained in Sections 6(7) and 6(8), Public Processions (Northern Ireland) Act 1998. There may be a number of ways to provide for the "reasonable excuse" defence in the law, but good practice suggests that words such as "without reasonable excuse" should be clearly identified as a defence to the offence where it applies, and not merely as an element of the offence that would have to be proved or disproved by the prosecution. See "Preliminary Comments on the Draft Law 'On Amendments to Some Legislative Acts of the Republic of Kazakhstan on National Security Issues'", OSCE-ODIHR Opinion-Nr. GEN-KAZ/002/2005, 18 April 2005.
- <sup>174</sup> Para.52. In *Ziliberberg v. Moldova* (2004) (admissibility, p.10), it was stated that "an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour". Also see *Gasparyan v. Armenia* (2009), para.43; *Galstyan v. Armenia* (2008), para.115; *Ashughyan v. Armenia* (2008), para.90. In *Cetinkaya v. Turkey* (Application 75569/01, judgment of 27 June 2006, in French only), the European Court of Human Rights found that the applicant's conviction and fine for mere participation in what the authorities later decided was an "illegal assembly" (in this case, a press conference at which a statement critical of the authorities had been read out) constituted a violation of Article 11.
- <sup>175</sup> Ireland is one example where there is no requirement at all for prior notification for static public assemblies (although organizers will generally notify the appropriate local police station). See, further, Article 40 of the Irish Constitution (*Bunreacht na hÉireann*); Article 24 of the Constitution (Amendment No. 17) Act, 1931 (power to proclaim public meetings); section 28 of the Offences Against the State Act, 1939; and section 21 Criminal Justice (Public Order) Act, 1994 which empowers senior officers of the Garda Síochána to regulate access to a place where an event likely to attract a large assembly of persons is taking, or is about to take, place. Similarly, the Public Order Act 1986 in England and Wales does not require that prior notification be given for open-air public meetings. Also see, in relation to the United States, Nathan W. Kellum, "Permit Schemes: Under Current Jurisprudence, what Permits are Permitted?" *Drake Law Review*, Vol. 56., No. 2, Winter 2008, p. 381.
- <sup>176</sup> See UN Human Rights Committee, *Kivenmaa v. Finland* (1994). Also see the Human Rights Committee's Concluding Comments on Morocco [1999] UN doc. CCPR/79/Add. 113, para.24: "The Committee is concerned at the breadth of the requirement of notification for assemblies

and that the requirement of a receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in article 21 of the Covenant. The requirement of notification should be restricted to outdoor assemblies and procedures adopted to ensure the issue of a receipt in all cases." Available at: <<http://www.unhcr.org/refworld/country,,HRC,,MAR,456d621e2,3ae6b01218,0.html>>.

- <sup>177</sup> *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979), p.119.
- <sup>178</sup> See, further, Neil Jarman and Michael Hamilton, "Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly", *Journal of Human Rights Practice*, Vol. 1, No. 2, 2009, p. 218.
- <sup>179</sup> See, for example, Nathan W. Kellum, "Permit Schemes", op. cit., note 175, p. 425, concluding that "authoritative precedent supports the view that permit schemes should be limited in scope" and "Individuals and small group gatherings should never be subjected to such tedious requirements".
- <sup>180</sup> In *Kuznetsov v. Russia* (2008), the European Court of Human Rights held (in para.43), that "merely formal breaches of the notification time-limit [were] neither relevant nor a sufficient reason for imposing administrative liability". In this case, late notification did not prevent the authorities from adequately preparing for the assembly.
- <sup>181</sup> See *Balçık and Others v. Turkey*, para. 49, in which the European Court of Human Rights suggests that state provision of such preventive measures is one of the purposes of prior notification.
- <sup>182</sup> The Constitutional Court of Georgia has annulled part of a law (Article 8, para 5) that allowed a body of local government to reject a notification (thus, effectively creating a system of prior license rather than prior notification), *Georgian Young Lawyers' Association Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia* (5 November 2002) N2/2/180-183. Also see *Mulundika and others v. The People, Supreme Court, Zambia*, 1 BHRC 199 (10 January 1996); *All Nigeria Peoples Party v. Inspector General of Police* (Unreported, June 24, 2005) (Fed HC (Nig)); and *Rev. Christopher Mtikila v. Attorney-General, High Court of Tanzania at Dodoma, Civil Case No. 5 of 1993*. Vol.1 *Commonwealth Human Rights Law Digest*, 1996, p.11. In the latter case, the Court held that "the requirement of a permit in order to organise a public meeting is unconstitutional for it infringes the right to freedom of peaceful assembly as guaranteed in the Constitution". Furthermore, "in the Tanzanian context this freedom is rendered the more illusory by the stark truth that the power to grant permits is vested in cadres of the ruling party".
- <sup>183</sup> See *Forsyth County, Georgia v. The Nationalist Movement* 505 U.S. 123 (1992). Such a system derives from United States jurisprudence, and approximates a notification system because there is a legal presumption against denial of a permit absent a sufficient showing by the government. Also see Kellum, op. cit., note 175.
- <sup>184</sup> Such reforms have been welcomed by the European Court of Human Rights. See, for example, *Barankevich v. Russia* (2007), para.28: "The Court welcomes the amendment in 2004 of the law on public assemblies, to which the Government referred, whereby the requirement of prior authorisation was replaced by simple notification of the intended assembly."
- <sup>185</sup> *Hyde Park v. Moldova* (No.3) (2009), para.26.
- <sup>186</sup> See, for example, *Hyde Park v. Moldova* No.2 (2009), para.26: "There was no suggestion that the park in which the assembly was to take place was too small to accommodate all the various events planned there. Moreover, there was never any suggestion that the organisers intended

to disrupt public order or to seek a confrontation with the authorities or other groups meeting in the park on the day in question. Rather their intention was to hold a peaceful rally in support of freedom of speech. Therefore, the Court can only conclude that the Municipality's refusal to authorise the demonstration did not respond to a pressing social need."

- <sup>187</sup> See *Öllinger v. Austria* (2006), paras.43-51. This case provides guidance as to the factors potentially relevant to assessing the proportionality of any restrictions on counter-demonstrations. These include whether the coincidence of time and venue was an essential part of the message of the counter-demonstration, whether the counter-protest concerned the expression of opinion on an issue of public interest, the size of the counter-demonstration, whether the counter-demonstrators had peaceful intentions, and the proposed manner of the protest (the use of banners, chanting, etc).
- <sup>188</sup> See European Court of Human Rights, *Plattform "Ärzte für das Leben" v. Austria* (1988), para 32.
- <sup>189</sup> See *Christian Democratic People's Party v. Moldova* (no. 2) (2010), para.28. Here, the Court held that it "was the task of the police to stand between the two groups and to ensure public order ... Therefore, this reason for refusing authorisation could not be considered relevant and sufficient within the meaning of Article 11 of the Convention."
- <sup>190</sup> See the judgment of the Hungarian Constitutional Court, Decision 75/2008, (V.29) AB, which established that the right of assembly recognized in Article 62 para. (1) of the Hungarian Constitution covers both the holding of peaceful spontaneous events (where the assembly can only be held shortly after the causing event) and assemblies held without prior organization. The Court stated that "it is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event". Also see the *Brokdorf* decision of Federal Constitutional Court of Germany, BVerfGE 69,315, p. 353, 354.
- <sup>191</sup> See, for example, *Kivenmaa v. Finland*, Communication No. 412/1990, UN Doc. CCPR/C/50/D/412/1990 (1994), where the Human Rights Committee held that "the gathering of several individuals at the site of the welcoming ceremonies for a foreign head of State on an official visit, publicly announced in advance by the State party authorities, cannot be regarded as a demonstration". As has been noted elsewhere (see, for example, Nowak, UN Covenant on Civil and Political Rights, op. cit., note 29), the dissenting opinion is more persuasive.
- <sup>192</sup> See, further, for example, *Rai and Evans v. United Kingdom* (2009): "The present applicants do not suggest they had insufficient time to apply for the authorisation and, given the subject matter of their demonstration [the ongoing British involvement in Iraq] and the evidence of their prior knowledge and planning, the time-limits set down in the 2005 Act did not constitute an obstacle to their freedom of assembly." Also see Republic of Latvia Constitutional Court, Judgment in the matter No. 2006-03-0106 (23 November 2006), para.30.2 (English translation).
- <sup>193</sup> See *Bukta and Others v. Hungary* (2007), para.32; and *Éva Molnár v. Hungary* (2008), para. 38.
- <sup>194</sup> *Bukta v. Hungary* (2007), para.36. Also see the subsequent decision of the Hungarian Constitutional Court, Decision 75/2008, (V.29) AB, finding that: "...it is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event", Also see, *Oya Ataman v. Turkey* (2006), paras.41 and 43. It is noteworthy that in the case of *Aldemir and Others v. Turkey* (2007), the dissenting opinion of Judges Türmen and Mularoni stated that

“the majority fail ... to provide any guidelines as to the circumstances under which non-compliance with the regulations may justify intervention by the security forces”. Also see *Kuznetsov v. Russia* (2008) and *Biçici v. Turkey* (2010), para.56, (see note 239 regarding excessive use of force in the dispersal of assemblies).

<sup>195</sup> See, for example, *Makhmudov v. Russia* (2007), para.68.

<sup>196</sup> See, for example, the website of the Parades Commission in Northern Ireland, at: <<http://www.paradescommission.org/>>. In *Axen v. Germany* (1983), which related to the issue of fair trial, the European Court of Human Rights considered “that in each case the form of publicity to be given to the ‘judgment’ under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6(1)”.

<sup>197</sup> See *Baczkowski and Others v. Poland* (2007), paras.68-78. Also see the determination of the Constitutional Law of the Russian Federation on the appeal of Alexander Vladimirovich Lashmankin, Denis Petrovich Shadrin and Sergey Mikhailovich Shimovolos against the violation of their Constitutional rights by the provision of Part 5, Article 5 of the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing, Saint-Petersburg (2 April, 2009), affirming that the organizers of a public event were entitled to judicial remedy before the date of the planned event. Also see Republic of Latvia Constitutional Court, Judgment in the matter No. 2006-03-0106 (23 November 2006), paras. 24.4.

<sup>198</sup> See, for example, *Makhmudov v. Russia* (2007), para.68: “In certain instances the respondent Government alone have access to information capable of corroborating or refuting specific allegations. The failure on a Governments’ part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant’s claims.” In this case, “the Government did not corroborate the affirmation with any material or offer an explanation as to why it was not possible to produce evidence substantiating their allegation”. Also see the interlocutory appeal in *Tweed v. Parades Commission for Northern Ireland* [2006] UKHL 53, where the Court held that the need for disclosure (of, inter alia, police reports and an assessment of local circumstances by Authorized Officers of the Parades Commission) “will depend on a balancing of the several factors, of which proportionality is only one, albeit one of some significance”.

<sup>199</sup> Article 14(3) of the “UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” provides that: “The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.”

<sup>200</sup> The European Court of Human Rights has articulated a broader interpretation of the “freedom to receive information”, thereby recognizing a right of access to information. See *Sdružení Jihočeské Matky c. la République tchèque* (2006, judgment in French only).

<sup>201</sup> Also see, for example, the Resolution on the Increase in Racist and Homophobic Violence in Europe, passed by the European Parliament on 15 June 2006, at para. L, which urges Member States to consider whether their institutions of law enforcement are compromised by “institutional racism”.

- <sup>202</sup> See, for example, the Council of Europe's "European Code of Police Ethics" (2001) and related commentary, which sets out good practice principles for Member State governments in preparing their internal legislation and policing codes of conduct.
- <sup>203</sup> See, generally, OSCE Human Dimension Commitments (2nd ed.), Volume 1,,Thematic Compilation, (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2005), pp.7-8.
- <sup>204</sup> Plattform 'Ärzte für das leben' v. Austria (1988), para.32.
- <sup>205</sup> See, for example, Giuliani and Gaggio v. Italy (2009, referred to the Grand Chamber on 1 March 2010), para.204.
- <sup>206</sup> Donatella Della Porta and Herbert Reiter, "The Policing of Global Protest: The G8 at Genoa and its Aftermath", chapter 2 of Della Porta et al., (eds.), op. cit., note 107, p.38. Della Porta and Reiter note that post-Genoa, a one-month course was held by sociologists and psychologists for police deployed in Florence.
- <sup>207</sup> See, for example, Article 15, "UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", which provides that "The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme."
- <sup>208</sup> Issues around police training may be relevant in assessing whether a state has fulfilled its positive obligations under Article 2 of the ECHR. See, for example, McCann v. UK (1995), para.151 See also note 21, citing the Concluding Observations of the UN Human Rights Committee: Republic of Moldova CCPR/C/MDA/CO/2, 4 November 2009, para.8(d).
- <sup>209</sup> For example, the OSCE Guidebook on Democratic Policing, (2nd edition), (Vienna: Organization for Security and Co-operation in Europe, 2008); the UN "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials"; the Council of Europe's "European Code of Police Ethics" (2001); Amnesty International's, "Ten Basic Human Rights Standards for Law Enforcement Officials" (AI Index: POL 30/04/98). The full text of the latter principles (available at: <http://web.amnesty.org/library/index/engpol300041998>) contains further useful explanatory guidance relating to their implementation.
- <sup>210</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): The CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2009, p.83, available at: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>.
- <sup>211</sup> Her Majesty's Chief Inspector of the Constabulary (HMIC), *Adapting to Protest: Nurturing the British Model of Policing* (London: Her Majesty's Chief Inspector of the Constabulary, 2009), p.54. In one United Kingdom example, the Metropolitan Police Service used Bluetooth messaging as a means to communicate with protesters during the Tamil protests in 2009, "explaining the policing approach and stating their intention not to disperse protesters and to allow the protest to continue". See Joint Committee on Human Rights, "Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest?" Follow-up: Government's Response to the Committee's Twenty-Second Report of Session 2008-09 (London: HMSO, HL Paper 45; HC 328, 3 February 2010), p.7.
- <sup>212</sup> Joint Committee on Human Rights, *Demonstrating Respect for Rights? Follow-up* (London: HMSO, HL Paper 141/ HC 522, 14 July 2009), para.14.

- <sup>213</sup> Ralph Crawshaw, *Police and Human Rights: A Manual for Teachers, Resource Persons and Participants in Human Rights Programmes* (2nd Edition) (Leiden: Martinus Nijhoff Publishers, 2009), p.237.
- <sup>214</sup> For example, in *Giuliani and Gaggio v. Italy* (2009), para.12, it was accepted by the parties that the Carabinieri and police officers could not communicate directly among themselves by radio but could only contact the control room.
- <sup>215</sup> A violation of Article 11 of the ECHR was found in the case of *Nisbet Özdemir v. Turkey* (no. 23143/04, judgment of 19 January 2010), where the applicant was arrested while on her way to an unauthorized demonstration at Kadıköy landing stage in Istanbul in February 2003 to protest against the possible intervention of United States forces in Iraq. The Court also found a violation of the investigative obligation under Article 3. Also see notes 135 and 168, referring to *R (on the application by Laporte) (FC) v. Chief Constable of Gloucestershire* [2006] HL 55; 2 AC 105, and UN Doc. A/61/312, op.cit., note 93, paras. 57-60.
- <sup>216</sup> See Article 11, Law on Assemblies, Poland (1990): “(1) The communal authority may delegate its representatives to an assembly; (2) When so requested by the organizer, the communal authority shall, to the extent required and possible, secure police protection under provisions of the Act of 6 April 1990 on the Police (JoL No. 30, item 179) to see to a proper progress of the assembly, and may delegate its representative to attend the assembly; (3) Upon arriving at the site of the assembly, the delegated representatives of the communal authority shall be obliged to produce their authorization to the leader of the assembly.”
- <sup>217</sup> Some Codes of Administrative Offences refer explicitly to “active participation”. Also see *Ziliberg v. Moldova* (2004) (2004, admissibility), p. 11.
- <sup>218</sup> “Kettling” is the term used in the United Kingdom to describe a strategy of crowd management that relies on containment.
- <sup>219</sup> *Ziliberg v. Moldova* (2004, admissibility), p.10, citing *Ezelin v. France* (1989), para. 34.
- <sup>220</sup> See *Solomou and Others v. Turkey* (2008). Here, the European Court of Human Rights found a violation of Article 2 in relation to the shooting of an unarmed demonstrator. The Turkish government argued that the use of force by the Turkish-Cypriot police was justified under Article 2(2) of the ECHR. In rejecting this argument, however, the Court regarded it to be of critical importance that, despite the fact that some demonstrators were armed with iron bars, Mr. Solomou himself was not armed and was peaceful.
- <sup>221</sup> See, further, note 135.
- <sup>222</sup> Joint Committee on Human Rights, op. cit., note 211, paras.28-29.
- <sup>223</sup> Article 9 of the ICCPR and Article 5 of the ECHR protect the right to liberty and security of person. For example, in *Gillan and Quinton v. the United Kingdom* (2010), para.61 (citing *Foka v. Turkey*, 2008, in which the applicant was subjected to a forced search of her bag by border guards), the Court noted that “any search effected by the authorities on a person interferes with his or her private life”. In *Gillan and Quinton*, the Court did not finally determine the issue of whether Article 5 was engaged by the use of police stop-and-search powers under s.44 Terrorism Act 2000. A request for referral to the Grand Chamber in this case was pending at the time of writing. *Guenat v. Switzerland* (1995) was a case involving detention for the purpose of making enquiries (thus falling short of arrest). The police actions were found not to have violated Article 5 of the ECHR. While not every restriction imposed on a person’s liberty will necessarily amount to a deprivation of liberty as stipulated in article 5 of the ECHR, any restrictions must be deemed strictly necessary and be proportionate to the aim being pursued.

See, for example, *Guzzardi v. Italy* (1980), paras. 92-93: “The difference between deprivation of and restriction upon liberty is ... merely one of degree or intensity, and not one of nature or substance.” Moreover, restrictions on liberty may still constitute a violation of the right to freedom of movement protected by Article 12 of the ICCPR and Article 2 of the Fourth Protocol of the ECHR.

<sup>224</sup> See *S. and Marper v. United Kingdom* (2008), in which the blanket and indiscriminate nature of powers concerning the retention of such data led the European Court of Human Rights to find a violation of the right to private and family life.

<sup>225</sup> *Mammadov (Jalaloglu) v. Azerbaijan* (2007).

<sup>226</sup> *Bukta and Others v. Hungary*, (2007), para.36; and *Éva Molnár v. Hungary* (2008), para.36. Also see the judgment of the Hungarian Constitutional Court, Decision 75/2008, (V.29) AB.

<sup>227</sup> AI Index: POL 30/04/98 (see note 209).

<sup>228</sup> Contrast, for example, the Court’s assessment in *Rai and Evans v. United Kingdom* (2009, admissibility) of the “the reasonable and calm manner in which the police ended the demonstration” with the Court’s assessment of the police intervention in *Samüt Karabulut v. Turkey* (2009), paras.37-38, where the Court considered that “the dispersal was quite prompt” and it was “not satisfied that the applicant had sufficient time – together with his fellow demonstrators – to manifest his views” (citing *Oya Ataman*, 2006, paras.41-42; *Balçık and Others v. Turkey*, 2007, para.51, and cf. *Éva Molnár v. Hungary*, 2008, paras.42-43). Also see *Kandzhov v. Bulgaria* (2008), para.73 (finding a violation of Article 10 ECHR): “the applicant’s actions on 10 July 2000 were entirely peaceful, did not obstruct any passers-by and were hardly likely to provoke others to violence ... However, the authorities in Pleven chose to react vigorously and on the spot in order to silence the applicant and shield the Minister of Justice from any public expression of criticism.”

<sup>229</sup> The existence of a reasonable expectation of privacy is a significant, though not conclusive, factor in determining whether the right to private and family life protected by Article 8 of the ECHR is, in fact, engaged. See *P.G and J.H. v. United Kingdom* (2001), para.57. A person’s private life may be engaged in circumstances outside their home or private premises. See, for example, *Herbecq and Another v. Belgium* (1998). In *Friedl v. Austria* (1995), the police photographed a participant in a public demonstration in a public place, confirmed his identity, and retained a record of his details. They did so only after requesting that the demonstrators disperse, and the European Commission held that the photographing did not constitute an infringement of Article 8.

<sup>230</sup> See, for example, *Leander v. Sweden* (1987), para.48; and *Rotaru v. Romania [GC]* (2000), paras.43-44. In *Amann v. Switzerland [GC]* (2000), paras 65-67, the compilation of data by security services was held to constitute an interference with the applicants’ private lives, despite the fact that covert surveillance methods were not used. Also see *Perry v. the United Kingdom* (2003), para.38, and the United Kingdom case of *Wood v. MPC [2009] EWCA Civ 414*. Also see the European Commission of Human Rights decisions in *X v. UK* (1973, admissibility) and *Friedl v. Austria* (1995) regarding the use of photographs.

<sup>231</sup> The confiscation and deletion of video footage has been raised in the pending case of *Matasaru v. Moldova* (Application no.44743/08, lodged on 22 August 2008).

<sup>232</sup> See, for example, the UK case of *Wood v. MPC [2009] EWCA Civ 414*.

<sup>233</sup> Paragraph 13 of Resolution 690 on the “Declaration on the Police” adopted by the Parliamentary Assembly of the Council of Europe in 1979 states that “police officers shall receive clear

and precise instructions as to the manner and circumstances in which they may make use of arms". Similarly, paragraph 1 of the UN "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" provides that governments and law-enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law-enforcement officials. The European Court of Human Rights has noted that "[a]s the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force." See *Giuliani and Gaggio v. Italy* (2009), paras.204-5.

<sup>234</sup> See *Simsek v. Turkey* (2005), para.91. In *Güleç v. Turkey* (1998), the European Court of Human Rights recognized that the demonstration was not peaceful (evidenced by damage to property and injuries sustained by gendarmes). However, the Court stated that "The gendarmes used a very powerful weapon because they did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province ...is in a region in which a state of emergency has been declared" (emphasis added).

<sup>235</sup> Principle 13, "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana (Cuba) from 27 August to 7 September 1990).

<sup>236</sup> *Ibid.*, Principle 14. In the case of *Primov and Others v. Russia* (Application no.17391/06 lodged on 30 May 2006), the European Court of Human Rights has asked the Russian government to provide information in relation to (inter alia) the following questions: "What were the instructions given to the police dispatched to the villages of Usukhchay and Miskindzha on 25 April 2006? What was the legal framework for the police's actions in such situations, especially as regards the use of force and special equipment (such as rubber truncheons, tear gas etc.)? What was the original plan of the police operation? When and why did the police start the active phase of the operation? How many policemen were employed to disperse the rally? Did they use automatic rifles, and, if so, why? How many shots were fired/cartridges used? Where did they aim? Did the police use tear-gas bombs and stun grenades? Did they throw them in the midst of the crowd, as the applicants described? What injuries were received by the demonstrators and policemen? Has there been any official investigation (disciplinary, criminal, etc.) into the police operation (distinct from the investigation into the alleged riot itself), and, if so, what were its results?"

<sup>237</sup> See, for example, *Giuliani and Gaggio v. Italy* (2009), paras.204-205, citing *McCann and Others v. UK*, paras.148-149.

<sup>238</sup> See *Ireland v. the United Kingdom* (1978), para.161.

<sup>239</sup> See *Balçık and Others v. Turkey* (2007), para.28. In this case, the Court found a violation of Article 3 in relation to two applicants; and a Violation of Article 11. The Court held that the Government "failed to furnish convincing or credible arguments which would provide a basis to explain or to justify the degree of force used" (concerning a demonstration for which notification had not been provided, in which the 46 participants refused to obey a police request to disperse, whereupon, after approximately half an hour, the police dispersed the demonstration using truncheons and tear gas). See also *Biçici v. Turkey* (2010), para.50-58 (violation of Article 3 and Article 11 of the ECHR).

- <sup>240</sup> See *Saya and Others v. Turkey* (2008), in which the Court found a violation of Article 3 of the ECHR (both substantively and procedurally, but only in relation to some of the applicants). In this case, the Government “failed to furnish convincing or credible arguments which could provide a basis to explain or to justify the degree of force used against the applicants, whose injuries are corroborated by medical reports”. Also see *Ekşi and Ocak v. Turkey* (2010). In this case, the applicants and approximately 50 others took part in a commemoration ceremony marking the events of “Bloody May Day” (1 May 1977), when 34 people died on Taksim Square in Istanbul. The Court found a violation of Article 3 (regarding their treatment and the ensuing police investigation) and Article 1,1 on the basis that they were ill-treated by police officers during the forced dispersal of their demonstration.
- <sup>241</sup> In this regard, the European Court of Human Rights has held that “the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified ... where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.” (emphasis added). See, for example, *Giuliani and Gaggio v. Italy* (2009), paras.204-205 citing *McCann and Others v. UK*, paras.148-149.
- <sup>242</sup> OSCE, *Guidebook on Democratic Policing*, op. cit., note 209.
- <sup>243</sup> In *Oya Ataman v. Turkey* (2006), the European Court of Human Rights held there to have been no violation of Article 3, but found that there was a violation of Article 11. The case concerned an assembly for which no notification had been given (with 40-50 participants) to protest against plans for “F-type” prisons. The group refused to disperse following a police request, and the police used pepper spray. The Court noted that neither tear gas nor pepper spray were considered chemical weapons under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (1993). It further noted that pepper spray, “used in some Council of Europe Member States to keep demonstrations under control or to disperse them in case they get out of hand ... may produce side-effects such as respiratory problems, nausea, vomiting, irritation etc etc”.
- <sup>244</sup> One example of such guidance is that issued by the Police Service of Northern Ireland, “Service Guidance in relation to the Issue, Deployment and Use of Attenuating Energy Projectiles (Impact Rounds) in Situations of Serious Public Disorder”, available at: <<http://www.serve.com/pfc/policing/plastic/aep06.pdf>>. This document states that “The AEP has not been designed for use as a crowd control technology but has been designed for use as a less lethal option in situations where officers are faced with individual aggressors whether such aggressors are acting on their own or as part of a group” (para.2(4)(a)). Also see Association of Chief Police Officers (ACPO) Attenuating Energy Projectile (AEP) Guidance (Amended 16th May 2005), available at: <<http://www.serve.com/pfc/policing/plastic/aep.pdf>>.
- <sup>245</sup> To ensure comprehensive reporting of uses of non-deadly force, agencies should define “force” broadly. See, further, for example, “Principles for Promoting Police Integrity”, United States Department of Justice (2001), available at: <http://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>, pp.5-6, para.7, “Use of Force Reporting”.
- <sup>246</sup> UN “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, para.1; Also see, for example, *Simsek and Others v. Turkey* (2005), para.91.
- <sup>247</sup> United States Department of Justice, “Principles for Promoting Police Integrity”, op. cit., note 245, paras.1 and 4.

- <sup>248</sup> Solomou and Others v. Turkey (2008), para.46.
- <sup>249</sup> In a number of countries (including Hungary, Sweden, Moldova and the United Kingdom) high-profile inquiries have been instigated in the aftermath of misuse of police powers during public demonstrations. Their recommendations have emphasized, among other things, the importance of narrowly framed powers (see, for example, note 7), and rigorous training of law-enforcement personnel (see paras.147-148) See, for example, "Report of the Special Commission of Experts on the Demonstrations, Street Riots and Police Measures in September-October 2006: Summary of Conclusions and Recommendations" (Budapest: February 2007), available at: <[http://www.gonczolbizottsag.gov.hu/jelentes/gonczolbizottsag\\_jelentes\\_eng.pdf](http://www.gonczolbizottsag.gov.hu/jelentes/gonczolbizottsag_jelentes_eng.pdf)>; and Joint Committee on Human Rights, "Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1)" op. cit., note 7, and Her Majesty's Chief Inspector of the Constabulary, op. cit., note 211. In Moldova, in the aftermath of violence occurring at election-related demonstrations on 6-7 April 2009, a parliamentary commission was established to investigate the causes and effects of the April events. The commission was composed of the deputies and civil society representatives. Its comprehensive report examined the police response during and after the demonstrations and made a number of recommendations aimed at improving policing practices in Moldova.
- <sup>250</sup> For further details, see <[http://www.nipolicingboard.org.uk/index/publications/human-rights-publications/content-previous\\_hr\\_publications.htm](http://www.nipolicingboard.org.uk/index/publications/human-rights-publications/content-previous_hr_publications.htm)>.
- <sup>251</sup> See, for example, the CPT report on its visit to Italy in 2004, published on 17 April 2006, regarding the events that took place in Naples (on 17 March 2001) and in Genoa (from 20 to 22 July 2001), and actions taken in response to the allegations of ill-treatment made against the law-enforcement agencies. The CPT stated that it wished "to receive detailed information on the measures taken by the Italian authorities to prevent the recurrence of similar episodes in the future [relating, for instance, to the management of large-scale public-order operations, training of supervisory and operational personnel and monitoring and inspection systems]".
- <sup>252</sup> See McCann and others v. UK (1995), para.161; Kaya v. Turkey (1998), para.105; Kelly and others v. UK (2001), para.94, Shanaghan v. UK (2001), para.88; Jordan v. UK (2001), para.105; McKerr v. UK (2001), para.111; and McShane v. UK (2002), para.94. Also see Güleç v. Turkey (1998), where the applicant's son was killed by security forces, who fired on unarmed demonstrators (during a spontaneous, unauthorized demonstration) to make them disperse. The European Court of Human Rights found a violation of Article 2 on two grounds: (a) the use of force was disproportionate and not "absolutely necessary", and (b) there was no thorough investigation into the circumstances. The Court stated that "neither the prevalence of violent armed clashes nor the high incidence of fatalities can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into deaths arising out of clashes involving the security forces, or, as in the present case, a demonstration, however illegal it may have been" (para.81). In *Saya and Others v. Turkey* (2008), a Health Workers' Trade Union march on May Day (for which authorization had been obtained) was stopped by police and forcefully dispersed. The applicants were taken into custody and released the next day. The European Court of Human Rights found that there had been a failure to carry out an effective and independent investigation into the allegations of ill-treatment ("Administrative Councils", in this case, were not independent, since they were chaired by governors and composed of local representatives of the executive and an executive officer linked to the very security forces under investigation).

- <sup>253</sup> Kelly and others v. UK (2001), para.94; Shanaghan v. UK (2001), para.88; Jordan v. UK (2001), paras. 107 and 115; and McShane v. UK (2002), para. 94.
- <sup>254</sup> Osman v. UK (1998), para.116.
- <sup>255</sup> Muradova v. Azerbaijan (2009), para.99.
- <sup>256</sup> Also see Simsek and Others v. Turkey (2005), para.91.
- <sup>257</sup> For example, United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (2005).
- <sup>258</sup> This legislation draws upon recommendations contained in the Report of the Goldstone Commission, "Towards Peaceful Protest in South Africa" (Heymann 1992).
- <sup>259</sup> For example, Article 3, "Law on Assemblage and Manifestations in the Republic of Georgia" (1997, as amended 2009) defines separate roles for "Principal", "Trustee", "Organizer", and "Responsible Persons".
- <sup>260</sup> See, for example, Republic of Latvia Constitutional Court, Judgment in the matter No. 2006-03-0106 (23 November 2006), para.34.4 (English translation): "...The requirement to appoint extra keepers of public order in all the cases, when peaceful process of the activity is endangered, exceeds the extent of the collaboration duty of a person."
- <sup>261</sup> See, for example, *Ibid.*, "If too great a responsibility before the activity, during it or even after the activity is laid on the organizer of the activity ... then at other time these persons will abstain from using their rights, fearing the potential punishment and additional responsibilities."
- <sup>262</sup> See, *inter alia*, Castells v. Spain (1992) at para.43; Thorgeir Thorgeirson v. Iceland (1992) at para.63.
- <sup>263</sup> See, for example, Observer and Guardian v. UK (1991), para.59(b).
- <sup>264</sup> The "Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis" (adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies) define "media professionals" (in para.1) as "all those engaged in the collection, processing and dissemination of information intended for the media. The term includes also cameramen and photographers, as well as support staff such as drivers and interpreters."
- <sup>265</sup> The European Court of Human Rights has repeatedly recognized civil society's important contribution to the discussion of public affairs. See, for example, Steel and Morris v. United Kingdom (2005), para.89: "...in a democratic society even small and informal campaign groups, such as London Greenpeace, must be able to carry on their activities effectively and ... there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest...". Also see *Társaság a Szabadságjogokért v. Hungary* (2009), para.36, in which the Hungarian Civil Liberties Union was regarded as performing the role of a "social watchdog".
- <sup>266</sup> Recent examples of such reports include: "Breakdown of Trust – A Report on the Corrib Gas Dispute" (Frontline, 2010), available at: <<http://www.frontlinedefenders.org/node/2527>>; and Freedom of Assembly: Review of the Situation, Russia 2008 (Demos Center, Youth Human Rights Movement, Movement of Civil Actions GROZA, and Interregional Human Rights Group), available at <http://article20.org>. Also see paragraph 3 of the European Union's "Ensuring Protection – European Union Guidelines on Human Rights Defenders": "Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection

and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.” Available at: <<http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>>. Furthermore, Article 5 of the UN “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” provides that: “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully.” Also see Articles 6 and 8(2). As the UN Special Rapporteur on the situation of Human Rights Defenders has remarked: “Social action for the realization of rights is increasingly manifested through collective and public action ... [T]his form of protest or resistance to violations has become most vulnerable to obstruction and repression. Collective action is protected by article 12 of the Declaration on Human Rights Defenders, which recognizes the right to participate, individually or in association with others, in ‘peaceful activities against violations of human rights and fundamental freedoms’ and entitles those ‘reacting against or opposing’ actions that affect the enjoyment of human rights to effective protection under national law. Read together with article 5, recalling the right to freedom of assembly, and article 6 providing for freedom of information and its dissemination, peaceful collective action is a legitimate means of drawing public attention to matters concerning human rights.” See UN Doc. A/HRC/4/37, *op.cit.*, note 93, para.29, available at: Also see OSCE: Human Rights Defenders in the OSCE Region: Challenges and Good Practices (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2008), available at: <[http://www.osce.org/publications/odihhr/2008/12/35711\\_1217\\_en.pdf](http://www.osce.org/publications/odihhr/2008/12/35711_1217_en.pdf)>.

<sup>267</sup> See, for example, “Note by the Secretary-General on Human rights defenders: Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms” (A/62/225 Sixty-second session), paras. 91-92, regarding the monitoring role performed by the OHCHR during the April 2006 protests in Nepal: “The OHCHR monitoring role has been acknowledged as fundamental in containing human rights violations and in documenting those that occurred for accountability purposes.” See, further, Office of the High Commissioner for Human Rights, “The April protests: democratic rights and the excessive use of force, Findings of OHCHR-Nepal’s monitoring and investigations”, Kathmandu, September 2006.

<sup>268</sup> See, for example, Christina Loudes, Handbook on Observations of Pride Marches (Brussels: ILGA-Europe, 2006). Also see Jennifer Prestholdt, Familiar Tools, Emerging Issues: Adapting traditional human rights monitoring to emerging issues (Minneapolis: Center for Victims of Torture, 2004). Available in Russian, Polish, Ukrainian, Kyrgyz and English at: <<http://www.newtactics.org/en/FamiliarToolsEmergingIssues>>.

<sup>269</sup> See, OSCE-ODIHR Handbook on Monitoring Freedom of Peaceful Assembly, publication pending.

<sup>270</sup> See, *inter alia*, Castells v. Spain (1992), para.43; and Thorgeir Thorgeirson v. Iceland (1992), para.63.

<sup>271</sup> Miklos Haraszti (OSCE Representative on Freedom of the Media) “Special Report: Handling of the media during political demonstrations, Observations and Recommendations”, (OSCE, Vienna, June 2007), available at: <[http://www.osce.org/documents/rfm/2007/06/25176\\_en.pdf](http://www.osce.org/documents/rfm/2007/06/25176_en.pdf)>, in English, and at: <[http://www.osce.org/documents/rfm/2007/06/25176\\_ru.pdf](http://www.osce.org/documents/rfm/2007/06/25176_ru.pdf)>, in Russian.

- <sup>272</sup> Justice Thomas Berger, *Justice of the Supreme Court of British Columbia* (1980).
- <sup>273</sup> In the roundtable sessions held during the drafting of the first edition of these Guidelines, evidence was presented that, in some jurisdictions, law-enforcement agencies had destroyed property belonging to media personnel. Such actions must not be permitted.
- <sup>274</sup> *Op. cit.*, note 271.
- <sup>275</sup> Article 2, First Optional Protocol to the ICCPR. See, for example, *J.R.T. v. Canada*, No.104/1981, at para.8(a). In *Lubicon Lake Band v. Canada* No.167/1984, the Committee stated, however, that it had “no objection to a group of individuals, who claim to be similarly affected, collectively to submit a communication about alleged breaches of their rights.”
- <sup>276</sup> The Special Rapporteur has indicated that among her priorities will be “analysis of the obstacles and challenges to defenders’ exercise of the rights set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, particularly freedom of association and freedom of peaceful assembly.” See A/63/288 “Human Rights Defenders’ Note by the Secretary General, 14 August 2008”. Available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/461/09/PDF/N0846109.pdf?OpenElement>>.
- <sup>277</sup> See, for example, *Makhmudov v. Russia* (2007) where the Russian government unsuccessfully argued that the applicant had not exhausted domestic remedies because he had not complained to a prosecutor about an alleged violation of his right to freedom of assembly. Since, in the Russian legal system, the prosecutor was not required to hear representations from a complainant not party to any proceedings, a complaint to a prosecutor was not a remedy to be exhausted. In *Galstyan v. Armenia* (2007), the European Court of Human Rights held that the mere possibility of applying to a prosecutor with a request to lodge a protest with a judge (who may then quash an administrative penalty) was “clearly not an effective remedy for the purposes of Article 35(1) of the Convention since it is not directly accessible to a party and depends on the discretionary powers of a prosecutor.” Furthermore, the provision for a review by the Chairman of a Superior Court who may quash or modify the penalty was regarded merely as a power of review rather than a right to appeal (the wording of the provision did not explicitly state that “an appeal can be lodged against”, which was the wording ordinarily used in Armenia in the context of both criminal and civil procedure) (para.41). In *Hyde Park v. Moldova* (No.1) (2009), in para.31, the Court disregarded the reasons cited for restricting an assembly because they “were contained in decisions given by the courts long after the date planned for the demonstrations.”
- <sup>278</sup> *Bączkowski and Others v. Poland* (2007) in para.79 (although some discretion is afforded in relation to the manner in which Contracting States comply with their obligations under Article 13 of the ECHR).
- <sup>279</sup> *Djavit An v. Turkey* (2003) in paras.28 and 37; *Galstyan v. Armenia* (2007) in para.38: “under Article 35 the existence of remedies which are available and sufficient must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness.”
- <sup>280</sup> *Ibid.* It is noteworthy that applications for retrial or similar extraordinary remedies, remedies which depend on the discretionary powers of public officials, and remedies which have no precise time-limits, have all been found insufficient for the purposes of Article 35(1).
- <sup>281</sup> *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (1998, admissibility); *Balkani v. Bulgaria* (2007); *Bączkowski and Others v. Poland* (2007) in para.82. See also Ap-

plications nos. 4916/07, 25924/08 and 14599/09 by Nikolay Aleksandrovich Alekseyev against Russia lodged on 29 January 2007, 14 February 2008 and 10 March 2009, respectively, arguing that the time-limits for lodging a notice for the proposed event (no earlier than 15 days and no later than 10 days before the date of the event) did not allow him to obtain a final judicial decision on the lawfulness of the ban.

<sup>282</sup> Examples of organizations or groups that have lodged applications relating to freedom of assembly include Christians Against Racism and Fascism, Plattform 'Ärzte für das Leben, Stankov and the United Macedonian Organisation Ilinden.

<sup>283</sup> See generally, Philip Leach, *Taking a Case to the European Court of Human Rights*, 2nd Edition (Oxford: Oxford University Press, 2005). In the case of *Hajibeyli v. Azerbaijan* (2008), for example, the applicant's Article 11 complaint was declared inadmissible since the demonstration in question occurred before the ECHR entered into force in Azerbaijan.

<sup>284</sup> *Djavit An v. Turkey* (2003) in para.28 (citing *Akdivar and Others v. Turkey*, 1996 in paras.65-67).