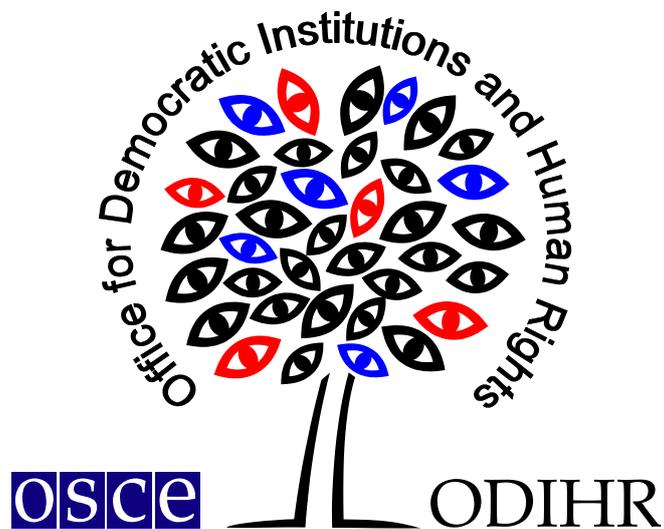


OSCE  
Office for Democratic Institutions and Human Rights

**Report**  
**Monitoring of Freedom of Peaceful Assembly in Selected**  
**OSCE Participating States**  
**(May 2013 – July 2014)**



Warsaw  
17 December 2014



## TABLE OF CONTENTS

<b>LIST OF ABBREVIATIONS .....</b>	<b>6</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>7</b>
<b>CONSOLIDATED RECOMMENDATIONS TO OSCE PARTICIPATING STATES .....</b>	<b>11</b>
<b>INTRODUCTION.....</b>	<b>17</b>
<i>ODIHR's work on the freedom of peaceful assembly and background to the report .....</i>	<i>17</i>
<i>ODIHR's mandate.....</i>	<i>18</i>
<i>Methodology .....</i>	<i>19</i>
<i>Report structure .....</i>	<i>20</i>
<b>SECTION I: THE RIGHT TO ASSEMBLE PEACEFULLY: MAIN DEFINITIONS AND SCOPE OF LEGAL FRAMEWORK .....</b>	<b>21</b>
<i>The right to assemble peacefully: main definitions and scope of the legal framework - international standards and good practice.....</i>	<i>21</i>
<i>The right to assembly peacefully: main definitions and scope of the legal framework in selected participating States.....</i>	<i>22</i>
<i>Conclusions and recommendations on main definitions and the scope of the legal framework.....</i>	<i>25</i>
<b>SECTION II: PRIOR RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY AND PROCEDURAL ISSUES.....</b>	<b>27</b>
<b>NOTIFICATION AND AUTHORIZATION REQUIREMENTS.....</b>	<b>27</b>
<i>Notification and/or authorization requirements for assemblies: international standards and good practice .....</i>	<i>27</i>
<i>Notification requirements for assemblies in selected participating States .....</i>	<i>29</i>
<i>Conclusions and recommendations on notification and authorization requirements for assemblies .....</i>	<i>32</i>
<b>RESTRICTIONS IMPOSED BEFORE ASSEMBLIES.....</b>	<b>34</b>
<i>Prior restrictions on assemblies: international standards and good practice .....</i>	<i>34</i>
<i>Prior restrictions on assemblies in selected participating States.....</i>	<i>37</i>
<i>Conclusions and recommendations on restrictions imposed before assemblies .....</i>	<i>41</i>
<b>FACILITATING SIMULTANEOUS ASSEMBLIES, INCLUDING COUNTER-DEMONSTRATIONS.....</b>	<b>43</b>
<i>Facilitating simultaneous assemblies: international standards and good practice .....</i>	<i>43</i>
<i>Facilitating simultaneous assemblies: procedural issues in selected participating States .....</i>	<i>44</i>
<i>Conclusions and recommendations on procedural and related issues and the facilitation of simultaneous assemblies.....</i>	<i>45</i>
<b>DECISION-MAKING AND REMEDIES .....</b>	<b>46</b>
<i>Decision-making and review: international standards and good practice .....</i>	<i>46</i>

	4
<i>Decision-making and review in selected participating States</i> .....	47
<i>Conclusions and recommendations on decision-making and review</i> .....	49
DUTIES AND RESPONSIBILITIES OF THE ORGANIZERS .....	51
<i>Duties and responsibilities of the organizers: international standards and good practice</i> .....	51
<i>Duties and responsibilities of the organizers in selected participating States</i> .....	52
<i>Conclusions and recommendations on the duties and responsibilities of the organizers</i> .....	55
<b>SECTION III: POLICING ASSEMBLIES</b> .....	59
ENGAGEMENT AND COMMUNICATION BY THE POLICE WITH ASSEMBLY ORGANIZERS AND PARTICIPANTS .....	59
<i>Engagement and communication by the police with assembly organizers and participants: international standards and good practice</i> .....	59
<i>Engagement and communication by the police with assembly organizers and participants in selected participating States</i> .....	60
<i>Conclusions and recommendations on engagement and communication by the police with assembly organizers and participants</i> .....	62
CO-OPERATION AND CO-ORDINATION BETWEEN THE POLICE AND OTHER AUTHORITIES .....	64
<i>Co-operation and co-ordination between the police and other authorities: international standards and good practice</i> .....	64
<i>Co-operation and co-ordination between the police and other authorities in selected participating States</i> .....	64
<i>Conclusions and recommendations on the co-operation and co-ordination between the police and other authorities</i> .....	66
POLICING ASSEMBLIES THAT DO NOT COMPLY WITH LEGAL REQUIREMENTS.....	66
<i>Policing assemblies that do not comply with legal requirements: international standards and good practice</i> .....	66
<i>Policing assemblies that do not comply with legal requirements in selected participating States</i> .....	67
<i>Conclusions and recommendations on the policing of assemblies that do not comply with legal requirements in selected participating States</i> .....	69
POLICING DEMONSTRATIONS AND COUNTERDEMONSTRATIONS.....	70
<i>The policing of demonstrations and counterdemonstrations: international standards and good practice</i> .....	70
<i>The policing of demonstrations and counterdemonstrations in selected participating States</i> ..	71
<i>Conclusions and recommendations on policing of demonstrations and counterdemonstrations</i> .....	73
USE OF FORCE, DETENTION AND CONTAINMENT, DISPERSALS .....	75
<i>The use of force, detention and containment, as well as dispersals: international standards and good practice</i> .....	75
<i>Use of force, detention and containment, as well as dispersals in selected participating States</i> .....	77

<i>Conclusions and recommendations on the use of force, detention, containment and dispersals</i> .....	81
<b>SECTION IV: MONITORING AND REPORTING ON FREEDOM OF PEACEFUL ASSEMBLY: ACCESS AND RESTRICTIONS</b> .....	84
<i>Media representatives and independent monitors: international standards and good practice</i> .....	84
<i>Access and restrictions for media and independent monitors in selected participating States</i> .....	85
<i>Conclusions and recommendations on access and restrictions for media and independent monitors</i> .....	86
<b>ANNEX 1: KEY OSCE COMMITMENTS RELEVANT TO ODIHR'S MONITORING MANDATE</b> .....	88
<b>ANNEX 2: KEY OSCE COMMITMENTS ON FREEDOM OF PEACEFUL ASSEMBLY</b> ...	91
<b>ANNEX 3: KEY INTERNATIONAL AND REGIONAL STANDARDS ON FREEDOM OF PEACEFUL ASSEMBLY</b> .....	92
<b>ANNEX 4: ASSEMBLIES MONITORED BY ODIHR BETWEEN 1 MAY 2013 AND 5 JULY 2014</b> .....	95
<b>ANNEX 5: TABLE OF THE PARTICIPATING STATES WHERE ODIHR MONITORED ASSEMBLIES IN THE 2<sup>ND</sup> MONITORING CYCLE</b> .....	98
<b>ANNEX 6: GLOSSARY OF KEY TERMS</b> .....	99
<b>ANNEX 7: ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY</b> .....	103

**LIST OF ABBREVIATIONS**

ACHR	American Convention on Human Rights
DSSS	Workers' Social Justice Party
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
GSEE	General Confederation of Greek Workers
ICCPR	International Covenant on Civil and Political Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MP	Member of Parliament
NGO	Non-governmental Organization
NIS	Nuclear Industry Summit
NSS	Nuclear Security Summit
ODIHR	Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe
OSCE	Organization for Security and Co-operation in Europe
PAME	All-Workers Militant Front
PSP	Public Security Police
UN	United Nations

## EXECUTIVE SUMMARY

1. This report presents the findings of the monitoring of public events undertaken by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in selected OSCE participating States between May 2013 and July 2014 in line with ODIHR's mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly. The monitoring exercise focused on specific events on the basis of set criteria. The main goal of the monitoring was to identify gaps and challenges, as well as examples of good practices, in how participating States meet their commitments on freedom of peaceful assembly. The recommendations contained in this report aim to advance the implementation of these commitments in all OSCE participating States, not just those where ODIHR monitored assemblies.
2. ODIHR is the main OSCE institution concerned with the human dimension of security, tasked with assisting in monitoring the implementation of human dimension commitments (Helsinki 1992). ODIHR's monitoring mandate is based on a number of OSCE commitments (Helsinki 1992, Budapest 1994, Oslo 1998, Maastricht 2003). Moreover, ODIHR serves as a point of contact for information provided by participating States (Rome 1993), and participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999).
3. OSCE participating States are committed to guaranteeing freedom of peaceful assembly to every individual without discrimination (Copenhagen 1990, Paris 1990). This freedom is, moreover, enshrined in a number of international human rights treaties. The main international standards employed in the analysis arise out of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as the case law of the European Court of Human Rights (ECtHR). The report uses the *Guidelines on Freedom of Peaceful Assembly*, jointly published by ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission), as its main benchmark and reference point to assess compliance with international human rights standards.
4. Assemblies were monitored between 1 May 2013 and 5 July 2014 in the following participating States: Albania, Bulgaria, the Czech Republic, France, Greece, Montenegro, the Netherlands, Portugal and Spain. In some participating States, multiple events were observed that took place on the same day or over a period of three days. The observation of one assembly generally also involved the monitoring of any counterdemonstrations, if they took place. A table including all events monitored as part of this project is included in Annex 4 to this report.
5. A total of 10 participating States received communication of ODIHR's intention to monitor assemblies. Of those, nine participating States welcomed and facilitated the ODIHR mission. In its choice of participating States and events to be monitored, ODIHR attempted to ensure geographical balance and the coverage of a variety of different contexts across the OSCE area. To preserve the integrity of the sample, only events selected by ODIHR on the basis of the criteria outlined below were observed.
6. ODIHR monitored 26 assemblies. The monitoring sample included events that, due to their nature, size or complexity, posed particular difficulties for the authorities and the organizers. These relate, *inter alia*, to the expression of views or positions that challenge prevailing opinions, to the presence of counterdemonstrations and the potential of a resulting conflict

between opposing groups, as well as to the need to ensure a balance between respect for the freedom of peaceful assembly and security considerations.

7. The monitoring of the above-mentioned assemblies involved the gathering of first-hand information by observers who were able to witness the conduct of, and interaction among, participants in the assemblies, law-enforcement agents and other relevant state and non-state actors (e.g., representatives of local municipal authorities, journalists, etc.). The observation findings were, whenever possible, complemented by information gathered at meetings with: representatives of the relevant authorities; organizers of, and participants in, assemblies and their legal representatives; civil society organizations; and others who could provide background information on freedom of peaceful assembly and specific information on the monitored events. Secondary sources, including media and NGO reports were also used. Where relevant, information on the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly has been included in this report.
8. In all the participating States where ODIHR monitored assemblies the right to assemble peacefully is recognised in the constitution and/or specific domestic legislation. However, in some of the participating States the legal framework restricts the enjoyment of the right to citizens only, in contravention of international human rights law. Efforts should be made to bring the legislation into full compliance with international human rights standards and OSCE commitments.
9. ODIHR observed that all the participating States under consideration employ a notification system on assemblies, rather than an authorization system. In some participating States, however, the notification requirement is reportedly interpreted or applied as de facto authorization. Most participating States do not provide for spontaneous assemblies in their legislation and some even prohibit unannounced assemblies and sanction their organizers. Many States require the organizer to disclose a significant amount of information in the notification, well beyond the information strictly needed for the facilitation of the assembly.
10. In some participating States assemblies are prohibited at certain public locations or at certain times of the day, effectively giving rise to blanket prohibitions. Since blanket bans on assemblies are likely to be disproportionate in that they fail to take into account the individual circumstances of the assemblies involved, they should be avoided, and other, less intrusive restrictions should be used. In some participating States where ODIHR monitored assemblies, the authorities imposed restrictions on assemblies. Some events were directly or indirectly affected by time, place and manner restrictions on assemblies, or, more generally, by restrictions on access to particular areas based on security considerations. Restrictions imposed in different participating States, which limited the ability of protesters to be within sight and sound of their intended audience, varied in their scope and range. Restrictions on assemblies must only be imposed where there are compelling arguments to do so on grounds that are permissible under OSCE commitments and international human rights standards.
11. ODIHR observed a number of simultaneous assemblies and public events, including demonstrations and related counterdemonstrations. In two cases the counterdemonstrations were banned by the authorities during the pre-assembly notification phase. It is generally good practice to facilitate, as much as possible, the holding of simultaneous assemblies. Where laws or regulations deal explicitly with the issue of simultaneous assemblies, they should not include an automatic prohibition of holding events at the same place and time. In accommodating simultaneous assemblies, emphasis should be placed on practical solutions that can be found through dialogue and negotiation with all parties. Although counterdemonstrations may give rise to public safety and security considerations, the authorities should generally seek to facilitate the holding of an assembly and related counterdemonstrations within sight and sound of one another.

12. In some participating States the legislation expressly provides for a prompt decision-making by the respective authorities and opportunities for challenging the decision in an independent court. However, there are also reported practices when the organizers' access to an effective remedy is hampered by delayed decision-making or communication of such decisions by the responsible authorities. In some participating States there are no legal avenues to challenge prior restrictions or conditions imposed on assemblies. The organizer of an assembly should not be compelled or coerced to accept restrictions, and he/she should have an opportunity to challenge them.
13. In the majority of the participating States where ODIHR monitored assemblies, specific legal provisions exist describing the duties and responsibilities of organizers in relation to the holding of an assembly and ensuring public order. Legislation in some participating States ensures the presence of assembly stewards during gatherings and the maintenance of public order. Especially for large or controversial assemblies, it is a good practice to ensure adequate stewarding of public events and good communication between stewards, law enforcement officials, and other relevant state bodies. However, any requirement to provide stewarding during assemblies may in no way detract from the positive obligation of the state to protect the safety and security of assembly participants and other individuals present.
14. A failure to comply with relevant legal requirements on notification of assemblies and on organizing and holding assemblies may result in civil, administrative, or criminal liability for the organizers, depending on the jurisdiction. In such situations, the competent authorities may impose fines on organizers or, in some cases, prison sentences. In some jurisdictions, legislation places directly administrative or criminal liability on the organizer for the unlawful conduct of others, in contravention of international standards. Any sanctions or fines imposed after an assembly should strictly adhere to the principle of proportionality. The risk of a heavy and disproportionate fine or other penalty may, in itself, inhibit the enjoyment of freedom of peaceful assembly. Importantly, the amount of fines imposed on organizers of assemblies should also be in line with the proportionality principle. Organizers or assembly stewards should not be held liable for failure to perform their responsibilities if they do not personally violate existing laws governing all participants in an assembly.
15. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with organizers of assemblies prior to the events. In general, the approach adopted by police forces was to share limited information on their security preparations with assembly organizers, including when assemblies were considered to be at a higher risk. In many cases, communication was considered to be adequate by both police and assembly organizers. However, during some assemblies, ODIHR monitors observed limited communication between the police and the assembly organizers and participants, whereas better communication could have contributed to the de-escalation of tensions. Generally it was widely recognized that good communication facilitated the work of the police and the enjoyment of the freedom of peaceful assembly by participants at public events.
16. Most assemblies that occurred in violation of applicable laws but were otherwise peaceful, as observed by ODIHR, were accommodated and facilitated by law enforcement personnel as long as they remained peaceful, in line with international standards. Violent or unlawful acts by participants in otherwise peaceful protests were dealt with individually and did not lead to the termination of the assembly. However, in some cases peaceful assemblies ended with group arrests.
17. In most assemblies observed by ODIHR, limited or no interventions were observed involving detentions or the use of force. This was generally the case also during assemblies that presented specific challenges in relation to the maintenance of public order and the protection of participants. In some individual situations observed by ODIHR, however, the containment

and arrests of assembly participants appeared overly restrictive and not in line with the proportionality principle, in contravention of international standards. Efforts should be made to ensure that the use of force by law-enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality.

18. During monitoring deployments, ODIHR observers were not restricted in their ability to observe assemblies or to gather information. In the vast majority of cases, both before and after assemblies, ODIHR was able to secure the meetings it had requested with the local authorities of participating States where monitoring was conducted. Co-operation and the exchange of information were usually good or very good. ODIHR observers were able to carry out their activities unhindered and in some cases were granted access to cordoned-off areas or areas where other movement restrictions were in place. ODIHR did not directly observe any restrictions imposed by state officials on the activities of journalists during monitored assemblies. The promotion and facilitation of independent observation of assemblies by participating States is a good practice in line with OSCE commitments.
19. ODIHR wishes to thank the authorities of the participating States where the monitoring took place for their openness and co-operation and for their assistance in organizing, and willingness to take part in, meetings for the purpose of gathering information. ODIHR is grateful to the many organizations and individuals who shared information about their experiences as organizers of, or participants in, assemblies or, more broadly, about freedom of peaceful assembly in their respective countries. The monitoring exercise could not have been carried out successfully without the able support of research consultants, security experts and interpreters hired in all the participating States where monitoring took place.

## CONSOLIDATED RECOMMENDATIONS TO OSCE PARTICIPATING STATES

*On the main definitions and scope of the legal framework regulating the exercise of freedom of peaceful assembly*

1. To establish in law a presumption in favour of holding peaceful assemblies in clear and explicit terms;
2. To ensure that the freedom of peaceful assembly of everyone under the jurisdiction of participating States, including non-citizens, is protected in law;
3. To ensure the broadest possible protection in law of all expressive activities within the scope of the right to freedom of peaceful assembly, including peaceful assemblies that do not have an identifiable organizer;
4. To ensure that adequate legal safeguards exist to prevent the use of “emergency” measures as a basis to unduly restrict the free enjoyment of the exercise of freedom of peaceful assembly.

*On notification requirements for assemblies*

5. To ensure that the right to freedom of peaceful assembly is protected for everyone, irrespective of the number of participants of the assembly;
6. To ensure that notification requirements are only imposed when necessary to facilitate freedom of assembly or necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others and only to allow the regulation of assemblies to the minimum extent necessary;
7. To ensure that the notification process is prompt and not unduly bureaucratic and that the lack of notification or minor infringements of the notification process do not result in automatic prohibition or dispersal of an otherwise peaceful assembly;
8. To ensure that the advance notification period is not unnecessarily lengthy and that the notification requirements are not unduly burdensome (the requested information should merely contain the date, time, duration and location or itinerary of the assembly, and the name, address and contact details of the organizer);
9. To recognize and expressly provide in the law for spontaneous assemblies where timely notification is not possible or practicable (such as in cases where an assembly responds to an event that could not reasonably have been anticipated); such assemblies should be exempt from the requirement for prior notification;
10. To treat organizer consultation and negotiation as voluntary and to refrain from imposing a requirement (formally or informally) that the organizers must negotiate the time, place, manner or other aspects of the assembly with the authorities and to ensure that the requirements for prior notification are not applied in a way which amounts to a requirement for prior authorisation;
11. To require that the primary regulatory body give a prompt official response to the initial notification and that the regulatory body must communicate with all state organs involved in the regulatory process, including the relevant law-enforcement agencies.

*On restrictions imposed before assemblies*

12. To ensure that restrictions on assemblies are only imposed on grounds that are expressly identified as legitimate under OSCE commitments and international human rights law (necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others);
13. To ensure that any restrictions on assemblies have a basis in primary law and strictly adhere to the principle of proportionality, ensuring in particular that restrictions are narrowly tailored to meet the specific and legitimate aims pursued by the authorities and are necessary in a democratic society;
14. To refrain from imposing blanket restrictions on assemblies, which are likely to be disproportionate, and ensure that each assembly is assessed individually; to this end, to remove provisions from the law that can operate as blanket legislative provisions that ban assemblies at specific times or in specific public places;
15. To remove or amend restrictions in the law that are too vague and can therefore result in an overly restrictive and/or arbitrary application of the law;
16. To generally refrain from imposing content-based restrictions on assemblies unless these can be compellingly justified by intentional incitement to violence resulting in an imminent threat of violence or by a message constituting advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence;
17. To ensure that security or other considerations do not disproportionately limit the ability of assembly participants to convey their message within sight and sound of their intended target audience;
18. To ensure that, where security or other considerations may result in time, place and manner restrictions on assemblies, these are, whenever possible, previously discussed with the organizers of assemblies and that suitable alternatives consistent with the sight-and-sound principle are proposed.

*On facilitating simultaneous assemblies*

19. To ensure that provisions regulating assemblies and other public events taking place simultaneously and in the same or adjacent locations are based on the presumption that, whenever possible, all assemblies should be accommodated; in particular, to ensure that there are no provisions prohibiting public events from taking place at the same time and at the same place when they can be reasonably accommodated;
20. In relation to assemblies and corresponding counterdemonstrations, to ensure that no automatic restrictions are in place preventing them from taking place within sight and sound of each other; any restrictions imposed on assemblies should be narrowly tailored and should only be based on legitimate grounds based on objective evidence under international human rights law;
21. To ensure that, when two public events cannot be accommodated in the same location, the organizers are encouraged to engage in a dialogue with each other to find a mutually satisfactory solution;
22. To ensure that, in the pre-assembly phase, organizers of assemblies are not compelled, coerced, or otherwise subjected to pressure 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.

*On decision-making and remedies*

23. To ensure that the regulation of assemblies is conducted in a transparent manner, giving the organizers timely notice of prompt regulatory decisions with justified reasons and recourse to a prompt and effective remedy through administrative and/or judicial review;
24. To ensure that any administrative review procedure is sufficiently prompt to enable judicial review by an independent and impartial court to take place once administrative remedies have been exhausted, prior to the date of the assembly indicated in the notification;
25. To ensure that any restriction placed on an assembly is communicated in a timely manner in writing to the organizers of the assembly, including a detailed explanation of the reasons behind each restriction;
26. To ensure that assembly organizers are not compelled to accept, and are able to challenge in court, the substance of any restriction before the date of the assembly, irrespective of the legal form of the incorporating document.

*On duties and responsibilities of the organizers*

27. To ensure that the official duty to maintain public order during assemblies, including by protecting participants, is clearly defined in the law and is understood by law-enforcement officers and policymakers at all levels, as a central responsibility of the state;
28. To ensure that assembly organizers are not held responsible for the maintenance of public order - which would essentially ask them to replace law-enforcement bodies - and assembly organizers and participants are not held liable for the unlawful conduct of other people;
29. To ensure that the role of assembly stewards, in law and in practice, is clearly defined as the role of facilitators assisting organizers in managing events and to ensure that a requirement to have stewards present during an assembly is only imposed on a case-by-case basis when justified by the size or nature of the assembly. Assembly stewards should not be tasked with government functions that directly pertain to the maintenance of public order during assemblies;
30. To ensure that the duties of the organizers of assemblies are limited to making reasonable efforts to meet legal requirements for assemblies which include making reasonable efforts so that their assemblies are peaceful and that lawful instructions by law-enforcement officials are obeyed;
31. To ensure that insurance requirements, fees to cover the costs of clean-up after assemblies or costs of other additional public services (such as policing and medical services) are not imposed on the organizers of assemblies;
32. To ensure that any sanctions applied against organizers who fail to comply with legal requirements for assemblies are proportionate. Where there is no genuine criminal activity punishable by other laws, a violation of these requirements should be addressed by fines of a proportionate amount, allowing for the imposition of minor sanctions where the offence is of a minor nature;

33. To ensure that laws do not contain vague and broadly defined offences that confer excessive discretion upon law-enforcement officials or that enable the imposition of excessive and disproportionate sanctions on protesters.

*On engagement and communication by the police with assembly organizers and participants*

34. To ensure that effective communication is established between assembly organizers, participants and police forces before and during assemblies in order to create mutual understanding, avoid unnecessary confrontation, reduce tension, prevent violence or to stop any disruptive or unlawful incidents quickly should they break out;
35. To ensure that the police appoint easily accessible liaison officers, or other appropriate intermediaries, whom organizers can contact before or during an assembly;
36. To ensure that those exercising their right to assemble are not compelled to negotiate with the authorities, unless this is necessary and proportionate, and that generally their participation in any such process is entirely optional and voluntary;
37. To adopt a “no surprises” approach in policing assemblies by disclosing as much planning as possible to the organizers; whenever possible, this approach may also extend to dialogue and communication with all involved groups, including potentially violent groups at the pre-assembly stage;
38. To hold post-event debriefing of law enforcement officials (particularly after non-routine events) with the involvement of willing assembly organizers as a standard practice.

*On co-operation and co-ordination between the police and other authorities*

39. To ensure effective co-ordination and co-operation between the various authorities and agencies involved in the facilitation of the exercise of freedom of peaceful assembly;
40. To ensure effective co-ordination among the various law-enforcement units and uniform application of the relevant codes governing police behaviour in the context of facilitating assemblies;
41. To explore ways to share experiences and good practices among the various agencies and authorities regarding facilitating peaceful assemblies, both nationally and internationally.

*On policing assemblies that do not comply with legal requirements*

42. To ensure that peaceful assemblies are not dispersed merely because they do not comply with formal legal requirements for assemblies; such assemblies should be facilitated by police and other competent authorities;
43. To ensure that police restrictions on such peaceful assemblies are only imposed on grounds that are legitimate and necessary under OSCE commitments and international human rights law, to protect national security or public safety, public order, public health or morals (when behaviour is deemed criminal and has been defined in law as such) or the rights and freedoms of others.

*On policing demonstrations and counterdemonstrations*

44. To ensure that police authorities facilitate assemblies and counterdemonstrations within sight and sound of each other to the extent possible and adequate policing resources are made available to that effect;
45. To facilitate all simultaneous assemblies (including peaceful counter-demonstrations) to the extent possible, while protecting the right to assemble and the security of all peaceful protesters by deploying an adequate number of properly trained law enforcement personnel to this end;
46. To ensure that potential disorder arising from hostility directed against those participating in a peaceful assembly is not used to justify the imposition of restrictions on the peaceful assembly;
47. In particular, whenever possible, to ensure that any measures taken to physically separate demonstrators and counter-protesters or onlookers, including by creating buffer zones, interfere as little as possible with the ability of assembly participants to be within sight and sound of one another or their intended audience;
48. To take adequate measures to protect the safety and security of all assembly participants, demonstrators and counter-demonstrators alike, as well as of onlookers; such measures should place emphasis on allowing opposing groups to demonstrate close to each other, albeit separated physically.

*On the use of force, detention, kettling and dispersals*

49. To ensure that the use of force by law-enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality and is consistent with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
50. To ensure that rules on the use of force by law-enforcement officials policing assemblies are established, in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and made public;
51. In particular, to ensure that less-than-lethal weapons, including chemical irritants and other chemical crowd control agents, are only used when necessary and proportionate to maintain public order or to achieve other legitimate aims; the use of such weapons should be strictly regulated and subjected to regular review;
52. To ensure that officers equipped with less-than-lethal weapons are properly trained in their use; their training should incorporate international human rights principles on the use of force;
53. To ensure that any decision to disperse an assembly is taken in line with the principles of necessity and proportionality; the order to disperse is clearly communicated (audible and clearly worded warnings) and explained so as to obtain, as far as possible, the understanding and compliance of the assembly participants and sufficient time is given for the participants to disperse safely and of their own accord;
54. To ensure that individual participants in assemblies are only detained when there are reasonable grounds for the deprivation of liberty and without resorting to excessive use of force during arrests; mass arrests should be avoided;
55. To ensure that crowd-control strategies relying on containment (kettling or corralling) are only employed when necessary to prevent serious damage or injury and when no alternative

police tactics that would be less restrictive of the rights to liberty and the freedom of movement can be employed;

56. To ensure that police tactics place emphasis on de-escalating tension and deploy large numbers of police officers in riot gear only when necessary on the basis of a specific risk assessment;
57. To provide training to law-enforcement officials on the use of force and on facilitating assemblies with a strong emphasis on crowd management and crowd-control measures consistent with OSCE commitments and human rights standards;
58. To ensure that law-enforcement agencies are adequately trained, resourced and equipped (including with non-lethal technologies) so as to best enable restrained and proportionate policing of people exercising their freedom of assembly.

*On access and restrictions for journalists and assembly monitors*

59. To allow and actively facilitate the independent monitoring of assemblies by international and local observers without imposing undue limitations on their activities;
60. To expressly recognize and guarantee the right of civil society actors to monitor, record and report on the policing of assemblies;
61. To ensure that both traditional and citizen journalists are able to provide coverage of public assemblies, including the actions of the police, without official hindrance, except under rare circumstances where resources, such as time and space, are limited; in particular, to ensure that access is provided to the greatest extent possible to assembly monitors and journalists, to all locations where they may carry out their activities;
62. To ensure that journalists and assembly monitors are not detained by the police a result of mass arrests or their lack of credentials; they should not be arrested as a result of their failure to leave an area once a dispersal order is given unless their presence would unduly interfere with police action.

## INTRODUCTION

### *ODIHR's work on the freedom of peaceful assembly and background to the report*

20. Freedom of peaceful assembly is a fundamental human right that 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 that they hold in common with others. Peaceful assemblies are a barometer to identify the level of a state's commitment to an open and transparent society, and they underscore the social importance of public debate. When duly protected and facilitated, freedom of peaceful assembly offers a viable opportunity for minority and marginalized groups, including those with unpopular ideas, to express their views publicly. This, in turn, serves an important end by allowing a greater degree of political participation to groups that may otherwise face limitations in their participation in formal democratic institutions.
21. Freedom of peaceful assembly enshrines a direct form of engagement for the expression, promotion or protection of values or opinions, thereby fostering dialogue among different stakeholders or groups. Assemblies play an important role by allowing the population to express grievances and influence public policy. One prime example of this is the response to the austerity policies and measures that have been implemented in several countries in recent years, bringing many people, especially the young, out onto the streets to voice their concerns.
22. This fundamental freedom is closely interlinked with other important rights and liberties, such as freedom of association, freedom of movement, freedom of expression, freedom of thought, conscience, religion or belief and the right to participate in the conduct of public affairs. Moreover, it is closely tied to the promotion of economic, social and cultural rights.
23. Freedom of peaceful of assembly is protected by a number of international human rights standards, including Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>1</sup> OSCE participating States have committed themselves to guaranteeing it to every individual without discrimination (Copenhagen 1990, Paris 1990).<sup>2</sup>
24. ODIHR, often in co-operation with the Council of Europe, has been active in assisting participating States in promoting full respect for the freedom of peaceful assembly. As part of this work, ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission) developed jointly the Guidelines on Freedom of Peaceful Assembly,<sup>3</sup> which aim to clarify the obligations that states have in relation to the freedom of peaceful assembly and to provide examples of good practice in meeting such obligations.
25. In addition, ODIHR, often jointly with OSCE field operations, has provided assistance to civil society actors in a number of participating States to build their capacity to systematically monitor public assemblies. The reports that have been produced by NGOs as part of these

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<sup>1</sup> For a full list, please see a compilation of relevant international and regional standards in Annex 3. The report relies heavily on jurisprudence of the European Court on Human Rights (ECtHR), given its applicability to all participating States under consideration.

<sup>2</sup> Please see a compilation of the relevant OSCE commitments in Annex 2. In this context, participating States set out to facilitate a more balanced participation of women and men in political and public life. See OSCE Ministerial Council Decision No. 7/09, "Women's Participation in Political and Public Life", Athens, 2 December 2009, <http://www.osce.org/mc/40710?download=true>.

<sup>3</sup> OSCE/ODIHR and Council of Europe's European Commission for Democracy through Law, *Guidelines on Freedom of Peaceful Assembly. Second edition*, (Warsaw/Strasbourg: ODIHR, 2010), hereinafter "*The Guidelines*", <<http://www.osce.org/odihhr/73405>>.

exercises have been used to engage in a dialogue with the local authorities, to identify examples of good practice to be promoted and to address gaps and challenges in the regulation and policing of assemblies.<sup>4</sup> Building on these country-monitoring projects, ODIHR produced a Handbook on Monitoring Freedom of Peaceful Assembly,<sup>5</sup> which sets out the methodology for the observation of public assemblies with a view to assessing compliance with human rights principles.

26. In order to support participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been monitoring public assemblies across the OSCE area since 2011. The results of the first monitoring cycle were published in a thematic report on 9 November 2012.<sup>6</sup> The second monitoring cycle, between 1 May 2013 and 5 July 2014 covered 10 participating States. It focused on specific events that, due to their nature, size or complexity, entailed particular challenges for the authorities and the organizers. Monitoring was carried out by ODIHR observers in line with the Office's mandate, and the key findings of the monitoring are included in this thematic report. The main goal of the monitoring was to identify gaps and challenges, as well as examples of good practice, in how participating States meet their obligations regarding the freedom of peaceful assembly.

### *ODIHR's mandate*

27. ODIHR is the principal OSCE institution dealing with the human dimension, one of the three dimensions of the OSCE's comprehensive approach to security. ODIHR is mandated, among other issues, to assist in the monitoring of the implementation of OSCE human dimension commitments. Its monitoring mandate is based on a number of OSCE commitments.<sup>7</sup> Notably, the 2003 Maastricht Document reaffirms the participating States' commitment to make "[f]ull use [...] of ODIHR's monitoring capacity, and [to promote] operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis [...] in order to have the fullest picture of developments".
28. ODIHR serves as a point of contact for information provided by participating States in accordance with OSCE commitments (Rome 1993), and participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999).
29. The ultimate goal of ODIHR's assembly monitoring activities is to advise and assist in meeting relevant OSCE human dimension commitments in all OSCE participating States, not just those where ODIHR has monitored assemblies. ODIHR stands ready to offer additional support to participating States, *inter alia*, in the form of legal opinions, the exchange of good practices and targeted training courses to promote and enhance the enjoyment of freedom of peaceful assembly in the OSCE area.<sup>8</sup>

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<sup>4</sup> Such activities were carried out in Armenia, Georgia, Kazakhstan, Moldova and Serbia.

<sup>5</sup> OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2011), <<http://www.osce.org/odihr/82979>>.

<sup>6</sup> "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2011–June 2012", OSCE/ODIHR, 9 November 2012, <<http://www.osce.org/odihr/97055>>.

<sup>7</sup> For a compilation of these commitments, please see Annex 1 to this report.

<sup>8</sup> An overview of the tools developed by ODIHR to aid the work of governments and civil society in the area of freedom of peaceful assembly can be found in Annex 7.

## Methodology

30. A total of 10 participating States received communication of ODIHR's intention to carry out assembly monitoring. They included Albania, Bulgaria, the Czech Republic, France, Greece, Montenegro, the Netherlands, Portugal, the Russian Federation and Spain. ODIHR regrets that the Russian Federation was not ready to facilitate the monitoring of assemblies, as indicated by ODHR. In the remaining nine participating States public assemblies were monitored between 1 May 2013 and 5 July 2014. In addition to the particular assemblies that were chosen for monitoring, any related counterdemonstrations and parallel assemblies were, as a general rule, also observed.
31. Monitoring focused on assemblies that could present specific challenges for the authorities and/or the organizers due to their nature, size and/or complexity. In its choice of participating States and events to be monitored, ODIHR also attempted to ensure geographical balance and the coverage of a variety of different contexts across the OSCE area.
32. These challenges included, *inter alia*, assemblies convened by minority groups espousing views or positions that are unpopular with, or are seen as controversial by, mainstream society. They also included the presence of counterdemonstrations and the potential of a resulting conflict between opposing groups, as well as the need to ensure a balance between safety and security considerations, on the one hand, and respect for freedom of peaceful assembly, on the other.
33. The fact that the monitoring focused on one or more related events in each participating State implies that the monitoring findings cannot be used to draw any comprehensive conclusions of the situation of freedom of peaceful assembly in any of the participating States covered in this report. Rather, the report looks at a series of case studies to identify and highlight some of the common trends and patterns related to the enjoyment of freedom of peaceful assembly observed across the OSCE area. Due to space constraints, the thematic sections only select illustrative examples based on events in some of the participating States included in the monitoring. This selection should not be interpreted as an exhaustive overview of issues that arose in relation to each particular topic and in all participating States covered in the report.
34. The monitoring of assemblies involved the gathering of first-hand information by ODIHR observers who witnessed the conduct of, and interaction among, participants in assemblies, law-enforcement agents and other relevant state and non-state actors (e.g., representatives of local self-government bodies etc.).<sup>9</sup> Monitoring teams always included ODIHR staff trained in assembly-monitoring techniques and/or members of the OSCE/ODIHR Panel of Experts on the Freedom of Assembly.<sup>10</sup> As part of the monitoring missions, local consultants and security experts were employed to conduct background research in preparation for the monitoring exercise.
35. The observation focused on events and activities that took place in public spaces in the run-up to and during assemblies. It should be noted that, following an assembly, further actions by the state and its officials might affect the enjoyment of the right to freedom of assembly or other human rights (for instance, imposing sanctions on the organizers or assembly

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<sup>9</sup> For a full description of the assembly-monitoring methodology employed by ODIHR, see OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly*, *op. cit.*, note 5.

<sup>10</sup> The OSCE/ODIHR Panel of Experts on the Freedom of Assembly was established in 2006 and consists of 10 independent experts from OSCE participating States, selected on the basis of their expertise, experience, integrity and objectivity. The ODIHR Panel advises and consults with ODIHR on the promotion of freedom of peaceful assembly in the OSCE area.

participants, including their arrest and detention). These events fall beyond the scope of this monitoring exercise, and no attempt was made to gather systematic information about them. However, information is provided regarding the small number of cases in which ODIHR monitors observed arrests at an assembly.

36. Although assembly monitoring places particular emphasis on the gathering of first-hand information, the monitors' observations were, whenever possible, complemented by information gathered at meetings with representatives of the relevant authorities, assembly organizers, civil society organizations, lawyers and others who could provide background information on freedom of peaceful assembly and specific information on the monitored events. In the context of the monitoring exercise, 64 such meetings were held.
37. Where relevant, information on the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly has been included in this report. However, the report does not strive to provide a full-scale comprehensive analysis of the degree to which the relevant laws comply with international standards and OSCE commitments. For such a comprehensive analysis, OSCE participating States are encouraged to request a legal review from ODIHR.
38. ODIHR monitoring teams generally attempted to communicate and/or hold meetings with the main groups involved in organizing assemblies and potential counterdemonstrations, with the exception of groups that had advocated violence during the monitored assembly or had been involved in violent activities in the past. Such communication took place both before and after assemblies.
39. ODIHR wishes to thank the authorities of the participating States where the monitoring took place for their openness and co-operation and for their assistance in organizing, and willingness to take part in, meetings for the purpose of gathering information. ODIHR is grateful to the many organizations and individuals who shared information about their experiences as organizers of, or participants in, assemblies or, more broadly, about freedom of peaceful assembly in their respective countries.

### *Report structure*

40. The report is organized thematically based on standards relevant for freedom of peaceful assembly. The *Guidelines* constitute the main benchmark for the assessment of compliance with international human rights standards and examples of good practice.<sup>11</sup> The report also draws on the good practices identified by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his thematic reports.
41. The various sections and subsections of this report begin with a preliminary discussion of international standards and generally accepted good practices and are followed by a description of findings from the monitoring exercise that illustrate some of the key issues involved. Each subsection ends with conclusions and recommendations that could be relevant to all OSCE participating States. This structure is meant to facilitate an assessment of domestic law and practice, as documented and observed by ODIHR, against relevant international human rights standards and OSCE commitments.

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<sup>11</sup> The UN Special Rapporteur has stated that he considers these guidelines to be the most advanced set of good practices available. "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, footnote 7.

## SECTION I: THE RIGHT TO ASSEMBLE PEACEFULLY: MAIN DEFINITIONS AND SCOPE OF LEGAL FRAMEWORK

*The right to assemble peacefully: main definitions and scope of the legal framework -international standards and good practice*

42. The freedom of peaceful assembly is enshrined in key international and regional human rights treaties and expressly recognized in OSCE human dimension commitments. This right is guaranteed to everyone without discrimination. Numerous international and regional human rights instruments, as well as OSCE commitments, contain prohibitions of discrimination both in general and in relation to specific groups. Moreover, it is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is enjoyed in practice and is not subject to unduly restrictive or bureaucratic regulation.<sup>12</sup> This includes enacting and implementing laws regulating the exercise of this right that are fully in line with international human rights standards.
43. 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, demonstrations, sit-ins, and pickets), and moving assemblies (such as parades, processions, funerals, and certain forms of pilgrimages and convoys). Domestic legislation should frame the types of assembly to be protected as broadly as possible.<sup>13</sup>
44. The ECtHR has recognized that the freedom of peaceful assembly can be exercised by both individuals and corporate bodies.<sup>14</sup> An assembly, by definition, requires the intentional presence of at least two people for a common expressive purpose.<sup>15</sup> Nonetheless, individual protesters exercising their right to freedom of expression, where their physical presence is an integral part of that expression, should also be afforded the same protections as those who gather as part of an assembly.<sup>16</sup>
45. Only peaceful assemblies are protected by the right to freedom of assembly. In determining whether a demonstration is peaceful, the ECtHR has focused on the intentions of the organizers. It has held that: “[T]he right to peaceful assembly is secured to everyone who has the intention of organizing a peaceful demonstration [...] [T]he possibility of violent counterdemonstrations or the possibility of extremists with violent intentions [...] joining the demonstration cannot as such take away that right.”<sup>17</sup>
46. Participants must also refrain from using violence.<sup>18</sup> The spectrum of conduct that constitutes violence should be narrowly construed but may exceptionally extend beyond purely physical violence or the intentional intimidation or harassment of a captive audience.<sup>19</sup> The assessment of the impact of public events on the rights of others must take due consideration of the

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<sup>12</sup> *The Guidelines, op. cit.*, note 3, para. 2.2.

<sup>13</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 17.

<sup>14</sup> See *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979) and *Christians against Racism and Fascism v. The United Kingdom* (1980).

<sup>15</sup> *The Guidelines, op. cit.*, note 3, para. 1.2.

<sup>16</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 16.

<sup>17</sup> *Christians against Racism and Fascism v. The United Kingdom* (1980).

<sup>18</sup> The Strasbourg Court has differentiated between disturbance and violence. In *Taranenko v. Russia* (2014) it opined that pushing past a guard is not considered to be violence. Para. 93.

<sup>19</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 28. In *Vona v. Hungary* (2013), the ECtHR upheld the decision of the national courts to dissolve an association on account that it repeatedly relied on paramilitary marches in Roma neighbourhoods advocating racially motivated policies which were capable of intimidating Roma and, especially in view of the location of the parades, affected their rights.

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) may constitute a form of harassment where the assembly could be legitimately restricted to protect the rights of others.<sup>20</sup>

47. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (hereinafter, “UN Special Rapporteur”) and the OSCE/ODIHR Panel of Experts on the Freedom of Peaceful Assembly (hereinafter, the “ODIHR Panel of Experts”) consider as a good practice, and thus call upon states to establish in their law (either in their constitution or laws governing peaceful assemblies), a clear and explicit presumption in favour of holding assemblies, according to which the peaceful intentions of individuals and groups wishing to assemble should be presumed.<sup>21</sup> This presumption also means that unclear legal provisions should be clarified, but in the absence of clarity, such provisions should be interpreted in favour of those wishing to exercise their right to freedom of peaceful assembly.<sup>22</sup> It should be highlighted that participants in a gathering do not cease to enjoy freedom of assembly if, as a result of sporadic or scattered violent acts, incidents occur that jeopardize public safety and order, as long as the majority remain peaceful.<sup>23</sup>

*The right to assembly peacefully: main definitions and scope of the legal framework in selected participating States*

48. All participating States where ODIHR monitored assemblies recognize the right to assemble peacefully in the constitution and/or specific domestic legislation. For example, the constitutions of Albania, Bulgaria, the Czech Republic, Greece, Montenegro, Portugal and Spain guarantee the freedom of peaceful assembly.<sup>24</sup> Similarly, the Constitution of the Netherlands recognizes the “right of assembly and demonstration”.<sup>25</sup> Although France’s Constitution and Declaration of the Rights of Man and of the Citizen do not include a provision that clearly protects the right to assemble peacefully, according to some commentators the protection of freedom of expression guaranteed to all in the Declaration is understood by the legislator and courts to protect the right to freedom of peaceful assembly, which is interpreted as *lex specialis* to freedom of expression.<sup>26</sup> In the case of Albania, Czech Republic, Greece, Portugal and Spain, specific domestic legislation also stipulates that

<sup>20</sup> *Ibid.*, para. 84.

<sup>21</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 26, <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf)>; *The Guidelines*, Guiding Principle 2.1.

<sup>22</sup> “Summary of the Human Rights Council high-level panel discussion to commemorate the twentieth anniversary of the adoption of the Vienna Declaration and Programme of Action”, United Nations Human Rights Council, A/HRC/23/29, 1 May 2013, paras. 49 and 50, <[http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/SummaryHLPaneldiscussionVDPA\\_item5.pdf](http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/SummaryHLPaneldiscussionVDPA_item5.pdf)>.

<sup>23</sup> ECtHR, decision on admissibility, *Ziliberg v. Moldova*, 4 May 2004: “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>24</sup> Article 47(1), Constitution of Albania; Article 43(1), Constitution of Bulgaria; Article 19(1), Charter of Fundamental Rights and Freedoms of the Czech Republic; Article 11(1), Constitution of Greece; Article 52, Constitution of Montenegro; Article 45, Constitution of Portugal; Article 21(1), Constitution of Spain.

<sup>25</sup> Article 9, Constitution of the Netherlands.

<sup>26</sup> Prof. Dr. Anne Peters and Dr. Isabelle Ley, “Comparative Study: Freedom of Peaceful Assembly in Europe”, European Commission for Democracy through Law, March 2014, p. 26, <[http://www.venice.coe.int/files/Assemblies\\_Report\\_12March2014.pdf](http://www.venice.coe.int/files/Assemblies_Report_12March2014.pdf)>.

individuals have the right to assemble peacefully “without arms”.<sup>27</sup> France’s Act on the Freedom of Assembly also provides protection for the right to assemble.<sup>28</sup>

49. The Bulgarian Law on Gatherings, Meetings and Manifestations recognizes that freedom of peaceful assembly can be exercised not only by individuals but also by organizations.<sup>29</sup> The Public Assembly Act in Montenegro allows individuals or groups of citizens or legal entities to organize assemblies.<sup>30</sup>
50. Several countries restrict freedom of assembly to citizens in their legal framework. Greece’s Constitution and Act 794/1971 provide only for “Greeks” to have the right to assemble peacefully.<sup>31</sup> Similarly, Bulgaria’s Constitution and the Law on Gatherings, Meetings and Manifestations also refer to citizens.<sup>32</sup> Furthermore, Article 3 and Article 4 of the Law limit the categories of those allowed to express their views and those who will not be prosecuted for participating in an assembly to citizens.<sup>33</sup> The assembly laws in the Czech Republic and Portugal also refer only to citizens.<sup>34</sup> In contrast, Albania’s Law on Demonstrations expressly recognizes that everyone has the right to organize and participate in peaceful assemblies.<sup>35</sup>
51. Some of the participating States where assemblies were monitored define what constitutes an assembly in their legislation. Albania’s Law on Demonstrations defines demonstrations as “assemblies, manifestations, meetings and marches of a peaceful nature and without arms in which groups of persons express their views and demands about problems in which they are interested and also include urgent demonstrations”.<sup>36</sup> This seems to cover most forms of static and mobile assemblies. However, the definition does not cover spontaneous assemblies, as Article 2(6) stipulates that “[w]hen groups of people assemble in a spontaneous manner and do not infringe public order, their activity is not included in the definition of a demonstration”.<sup>37</sup>
52. The Act on the Right of Assembly of the Czech Republic lists those gatherings that are not considered assemblies under the law. These are: a) assemblies of individuals engaged in activities pertaining to the public authorities, which are guided by other legal instruments; b) assemblies related to the provision of services; and c) other assemblies that do not serve the purposes defined in the Act, such as to exchange information, voice an opinion and participate in the resolution of public and other common issues by expressing one’s views.<sup>38</sup>
53. The Act 794/1971 of Greece defines public assemblies as assemblies organized in advance in order to allow participants to express commonly held beliefs or opinions, to promote common requests or to attend lectures.<sup>39</sup> Public assemblies that take place solely for the performance of religious ceremonies or for participation in divine worship or for the fulfilment of general commercial or recreational purposes or for the attendance of a public

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<sup>27</sup> Article 1(1), Law on Demonstration of Albania; Articles 1(1) and 7(3), Act on the Right of Assembly of the Czech Republic; Article 1(1), Act 794/1971 of Greece; Article 1(1), Decree Law 406/74 of Portugal, Article 1(1), Organic Law 9/1983 of Spain

<sup>28</sup> Article 1, 1881 Act on Freedom of Assembly of France.

<sup>29</sup> Article 2, Law on Gatherings, Meetings and Manifestations of Bulgaria, 1990: “Gatherings, meetings and manifestations can be organized and held by citizens, associations, political and other social organizations.”

<sup>30</sup> Article 5, Public Assembly Act of Montenegro, 2005.

<sup>31</sup> Article 11(1), Constitution of Greece.

<sup>32</sup> Article 43(1), Constitution of Bulgaria; Article 2, Law on Gatherings, Meetings and Manifestations of Bulgaria, 1990.

<sup>33</sup> Articles 3 and 4, Law on Gatherings, Meetings and Manifestations of Bulgaria, 1990.

<sup>34</sup> Article 1, Act 84/1990 of the Czech Republic; Article 45, Constitution of Portugal; Article 1, Decree Law 406/74 of Portugal.

<sup>35</sup> Article 1, Law on Demonstrations of Albania.

<sup>36</sup> *Ibid.*, Article 2(5).

<sup>37</sup> *Ibid.*, Article 2(6).

<sup>38</sup> Article 2, Act on the Right of Assembly of the Czech Republic.

<sup>39</sup> Article 1(2), Act 794/1971 of Greece.

spectacle or sporting event or other activities are not subject to the Act and are governed by different legislation.<sup>40</sup>

54. The Public Assembly Act of Montenegro defines a public assembly as any organized gathering of more than 20 people held in a public place for the purpose of expressing political, social and other beliefs and interests.<sup>41</sup> The Spanish assembly law defines an assembly as the “concerted and temporary gathering of more than 20 people, with a specific purpose”.<sup>42</sup>
55. Bulgaria, France, the Netherlands and Portugal do not define assemblies in their national legislation. France’s highest judicial court has concluded that, within the meaning of France’s 1881 Act on Freedom of Assembly, public meetings involve an intentional gathering of people in a public or private place that is accessible to the public.<sup>43</sup> French law differentiates between public meetings and demonstrations: a demonstration takes place on public roads, whereas public meetings cannot be held on public roads and take place in private or public facilities accessible to the public.<sup>44</sup>
56. None of the participating States where ODIHR monitored assemblies acknowledge in their legislation that assemblies can take place without an identifiable organizer. Moreover, legislation on assemblies does not establish explicitly a presumption in favour of holding peaceful assemblies.
57. National legislation in all participating States where ODIHR monitored assemblies, with the exception of the Netherlands, contains detailed provisions regulating the exercise of the right to assemble peacefully. In the Netherlands, pursuant to the Law on Public Demonstrations, conditions under which assemblies can be held or prohibited are regulated by local bylaws adopted and implemented by local governments. In these bylaws, the city council in question establishes, at a minimum, rules regarding cases in which a preceding notification for gatherings and demonstrations in public places is required and rules regarding the moment in time at which the notification has to be made, the information to be given with the notification, and the provision of a receipt to the person submitting the notification.<sup>45</sup>
58. In case of emergencies and severe disturbances, or the fear that such incidents are going to occur, the Law on Local Communities in the Netherlands gives the mayor specific powers including the power to take any measures deemed necessary for the maintenance of public order in the town, to keep persons or groups away from places or objects and to require persons to report at given times at a specific place.<sup>46</sup> Mayors are further empowered to establish temporary security zones where the police have additional powers to stop and search individuals.<sup>47</sup>
59. Several towns affected by the Nuclear Security Summit (NSS) and Nuclear Industry Summit (NIS), including The Hague and Amsterdam, issued such an emergency decree to prevent disturbances of public order before and during the NSS authorized by Article 176 of the Law on Local Communities.<sup>48</sup> The emergency ordinances justified the necessity of the measures

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<sup>40</sup> *Ibid.*, Article 1(3).

<sup>41</sup> Article 3, Public Assembly Act of Montenegro.

<sup>42</sup> Article 1(2), Organic Law 9/1983 of Spain.

<sup>43</sup> Cass. Crim 14 March 1903, Du Haglouet, Rec. Dalloz 1903 I, p. 168. Quoted by Melina Garcin, In: Prof. Dr. Anne Peters and Dr. Isabelle Ley, “Comparative Study: Freedom of Peaceful Assembly in Europe”, European Commission for Democracy through Law, March 2014, p. 26, <[http://www.venice.coe.int/files/Assemblies\\_Report\\_12March2014.pdf](http://www.venice.coe.int/files/Assemblies_Report_12March2014.pdf)>.

<sup>44</sup> *Ibid.*

<sup>45</sup> Article 4, Law on Public Demonstrations of the Netherlands.

<sup>46</sup> Articles 172 and 176, Law on Local Communities of the Netherlands.

<sup>47</sup> *Ibid.* Article 151.b.

<sup>48</sup> Emergency Ordinance NSS Amsterdam 2014, issued by the mayor of Amsterdam on 19 March 2014, in effect between 20<sup>th</sup> and 26<sup>th</sup> March 2014; Ordinance to Maintain Public Order and for the Prevention of Danger (NSS 2014),

with the presence of a large number of heads of state, government leaders and delegates, as well as representatives of international organizations prior to and during the NSS and the need for additional security measures.<sup>49</sup> The ordinances create areas where entry is restricted and prohibit certain behavior during the time of the NSS, such as flying drones. (Please see more details in the chapter on prior restrictions).

*Conclusions and recommendations on main definitions and the scope of the legal framework*

60. It is positive that in all participating States where ODIHR monitored assemblies the right to assemble peacefully is recognized in the constitution or specific domestic legislation. International human rights law requires that non-nationals “receive the benefit of the right of peaceful assembly”.<sup>50</sup> It is therefore important that the law does not limit the exercise of freedom of peaceful assembly to citizens only, but that it also affords this right to stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists.<sup>51</sup> As stated by the UN Special Rapporteur, “peaceful assemblies are an important tool for allowing the voices of otherwise excluded groups to be heard”.<sup>52</sup> The inclusiveness of the Albanian law in this regard is an example of good practice.
61. Participating States have to be conscious of the fact that the restrictive language of their national legal framework regulating freedom of peaceful assembly, even if currently not applied in practice, can impact on future practice or legitimize restrictive or repressive practices in other jurisdictions. Efforts should be made to bring the legislation into full compliance with OSCE commitments and other applicable international human rights standards.
62. Lack of clarity in the definition of assemblies in domestic legislation can be problematic in certain circumstances. This is the case in Bulgaria since notification requirements and the duties of organizers differ depending on whether an assembly is considered to be a “gathering”, a “meeting” or a “manifestation”. Therefore, organizers need guidance on what requirements and duties apply to their particular assembly.
63. In the age of modern information and telecommunication technologies, where digital tools are relied on for social mobilization and advocacy and therefore increasingly used to organize assemblies, assemblies without identifiable organizers are becoming widespread. Therefore, participating States should also accommodate, protect and facilitate, to the greatest extent possible, peaceful assemblies that have no clearly identifiable organizers.
64. In the Netherlands, the fact that the main conditions regarding the freedom of peaceful assembly are regulated in local bylaws that may differ from town to town and the fact that the mayor of each town has the power to issue emergency decrees affecting the exercise of the freedom of peaceful assembly can lead to uncertainties for assembly organizers regarding the relevant rules they need to abide by and can also impair foreseeability of the legal consequences of one’s action. Whereas national security and public order are legitimate

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issued by the mayor of The Hague on 5 February 2014, in effect between 22<sup>nd</sup> and 25<sup>th</sup> March 2014.

<sup>49</sup> Officials referred to the NSS as the most extensive security operation ever organized in the Netherlands involving the deployment of about 13,000 police officers a day. Decision of the mayor of The Hague on the restriction of the assembly “March to the World Forum Congress Center”, 19 March 2014. A copy of the decision has been provided to ODIHR.

<sup>50</sup> “General Comment No. 15: The Position of Aliens under the Covenant”, United Nations Human Rights Committee, 11 April 1986.

<sup>51</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 55.

<sup>52</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/26/29, 14 April 2014, para. 25.

grounds to limit the freedom of peaceful assembly, there should be adequate safeguards to ensure that mayors do not use their powers to unduly limit the exercise of this right.

65. Recommendations for participating States:

- to establish in law a presumption in favour of holding peaceful assemblies in clear and explicit terms;
- to ensure that the freedom of peaceful assembly of everyone under the jurisdiction of participating States, including non-citizens, is protected in law;
- to ensure the broadest possible protection in law of all expressive activities within the scope of the right to freedom of peaceful assembly, including peaceful assemblies that do not have an identifiable organizer;
- to ensure that adequate legal safeguards exist to prevent the use of “emergency” measures as a basis to unduly restrict the free enjoyment of the exercise of freedom of peaceful assembly.

## SECTION II: PRIOR RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY AND PROCEDURAL ISSUES

### NOTIFICATION AND AUTHORIZATION REQUIREMENTS

*Notification and/or authorization requirements for assemblies: international standards and good practice*

66. The right to freedom of peaceful assembly includes both the protection of the individual against arbitrary restrictions on his or her rights by public authorities and the positive obligations on the state to secure the effective enjoyment of those rights.<sup>53</sup>
67. Although not necessary under international human rights law,<sup>54</sup> a requirement to give prior notice of an assembly may be compatible with permitted limitations under the ICCPR.<sup>55</sup> The purpose of a notification system is to enable the competent authorities to make necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.<sup>56</sup> It is a good practice to require notification only when a substantial number of participants are expected or only for certain types of assemblies.<sup>57</sup> This is to allow police to make advance preparations for large assemblies. In the opinion of the UN Special Rapporteur, another good practice is to pass legislation allowing spontaneous assemblies to be held, which should be exempted from prior notification.<sup>58</sup>
68. The UN Special Rapporteur also considers that a notification should be subject to a proportionality assessment.<sup>59</sup> Any 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>60</sup> A permit requirement is generally more prone to abuse than a notification requirement, and it could devalue the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful.<sup>61</sup> Where permit systems are in place, there must be a legal presumption that permits will be granted promptly. In addition, permit systems must clearly prescribe in law the criteria for the issuance of a permit, which should be confined to considerations of time, place and manner, and should not provide a basis for content-based regulation.<sup>62</sup>
69. The notification process itself should not be bureaucratic, as this discourages those who might wish to hold an assembly and therefore undermines the freedom of assembly. Furthermore,

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<sup>53</sup> *Plattform "Ärzte für das Leben" v. Austria* (1988) 13 E.H.R.R. 204 para. 32.

<sup>54</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 113.

<sup>55</sup> UN Human Rights Committee, *Kivenmaa v. Finland* (1994).

<sup>56</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 113; "Report on the Situation of Human Rights Defenders in the Americas", Inter-American Commission on Human Rights, OEA/Ser.L/V/II.124, para. 57.

<sup>57</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 115.

<sup>58</sup> "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 29. The Special Representative of the Secretary-General on human rights defenders, Hina Jilani, also encouraged States "to consider in exceptional circumstances that defenders, with the aim of protesting human rights violations, should have the possibility of responding immediately to an event by holding public, peaceful assemblies". "Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani", United Nations General Assembly, A/61/312, 5 September 2006, para. 97.

<sup>59</sup> *Ibid.*, para. 28.

<sup>60</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 118.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, para. 119.

the period for the filing of a notice prior to an assembly should not be unnecessarily lengthy, but should still allow adequate time prior to the notified date of the assembly for the relevant state authorities to plan and prepare for the event, for the regulatory body to provide 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.<sup>63</sup> When a certain time limit is established by law, it should only be indicative<sup>64</sup> and should not result in the automatic prohibition of an assembly when not met.

70. The receiving authority should promptly issue a receipt explicitly confirming that the organizers of the assembly are in compliance with applicable notice requirements, and the notice should be communicated immediately to all state organs involved in the regulatory process, including the relevant law-enforcement agencies.<sup>65</sup> Should the organizers not hear from the authority prior to the designated time for holding the assembly, it should be assumed that the said assembly does not present any problem.<sup>66</sup>
71. Furthermore, notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated.<sup>67</sup> The organizers should send a single notification to a designated primary authority, and should not be required to notify multiple authorities (e.g., one or several municipal authorities, as is sometimes done in the case of parades, and/or law-enforcement agencies).<sup>68</sup> The primary authority should communicate the details of the notification to all relevant bodies.<sup>69</sup>
72. In this regard, the UN Special Rapporteur believes that the organizers should be able to notify the designated primary authority, in the simplest and fastest way, that a peaceful assembly will be held by filling out, for instance, a clear and concise form that is available in the main local language(s) spoken in the country, preferably online to avoid uncertainties and possible delays in postage. The notification should simply contain information regarding the date, time, duration and location or itinerary of the assembly, and the name, address and contact details of the organizer.<sup>70</sup>
73. It is generally inappropriate to impose a requirement (formally or informally) that the organizers negotiate the time, place, manner or other aspects of the assembly with the authorities. Such a requirement would be tantamount to restricting the planned assembly and would need to pass the strict test of necessity and proportionality. The UN Special Rapporteur also warned against authorities proposing an alternative time and place for an assembly when processing a notification, as this would also be imposing restrictions on the right to freedom of peaceful assembly and should satisfy the aforementioned test.<sup>71</sup>

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<sup>63</sup> *Ibid.*, para. 116.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*, para. 117.

<sup>66</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 58.

<sup>67</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 115.

<sup>68</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 52.

<sup>69</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 117; “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 52.

<sup>70</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 53.

<sup>71</sup> *Ibid.*, para. 56.

*Notification requirements for assemblies in selected participating States*

74. All participating States where ODIHR observed assemblies have notification rather than authorization requirements. Some participating States specify that authorization is not required. In Spain, the Constitution and relevant legislation state that no authorization is required.<sup>72</sup> Similarly, Portugal's Constitution specifies that no authorization is required.<sup>73</sup> In the Czech Republic, the Act on the Right of Assembly says that "an assembly does not require any prior consent".<sup>74</sup>
75. The length of advance notification varies from 24 hours to 10 days. Notification must be given 48 hours in advance in Greece and Portugal.<sup>75</sup> In Albania, the notification period is three days in advance of the assembly.<sup>76</sup> Article 5 para. 3 of the Law on Demonstrations of Albania further provides that if a notice is incomplete, revisions may be made within a period of 24 hours before the start of the demonstration. French law stipulates that authorities are to receive notification at least three days prior to the start of demonstrations on public roads.<sup>77</sup> Laws in Montenegro and the Czech Republic require notification five days in advance.<sup>78</sup> Finally, Spanish law requires that notification be submitted to the relevant authorities 10 days in advance.<sup>79</sup> Bulgaria has different notification periods for different types of assemblies. Notification must be provided for outdoor "gatherings" or "meetings" at least 48 hours in advance and for "manifestations" at least 72 hours in advance.<sup>80</sup>
76. In the Netherlands, the notification period differs from town to town. In Amsterdam, notification is only required 24 hours in advance, while the authorities in Almelo need 48 hours' notice, and the authorities in The Hague require four days' notice. There are also differences in how weekend days are counted in the notification period. For example, the authorities in The Hague count weekends, whereas the authorities in Amsterdam do not count non-working days in the notice period.<sup>81</sup>
77. A number of participating States allow for a reduced notification period under urgent circumstances, e.g., the Czech Republic in "justified cases".<sup>82</sup> However the possible justifications and the reduced notification period are not further specified. When urgent circumstances are present, the notification period is three hours in Albania, 24 hours in Spain, and 24 hours for gatherings or meetings and 48 hours for manifestations in Bulgaria.<sup>83</sup> However, what constitutes urgent or exceptional circumstances is not specified in the law.
78. Among the participating States where ODIHR monitored assemblies only the Czech law specifies the maximum notification period, which is six months prior to the date of the assembly.<sup>84</sup>

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<sup>72</sup> Article 21, Constitution of Spain; Article 3(1), Organic Law 9/1983 of Spain.

<sup>73</sup> Article 45, Constitution of Portugal.

<sup>74</sup> Article 1(4), Act on the Right of Assembly of the Czech Republic.

<sup>75</sup> Article 2(1), Decree Law 406/74 of Portugal; Article 3(4), Act 794/1971 of Greece.

<sup>76</sup> Article 5(1), Law on Demonstrations of Albania.

<sup>77</sup> Article L.211-2, France's Code of Homeland Security, Vol. II, Title I, Chap. I, Sect. 1.

<sup>78</sup> Article 5, Act on the Right of Assembly of the Czech Republic; Article 6, Public Assembly Act of Montenegro.

<sup>79</sup> Article 8, Organic Law 9/1983 of Spain.

<sup>80</sup> Articles 8, 11, Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>81</sup> Interview with state interlocutors, 21 March 2014.

<sup>82</sup> Article 5, Act on the Right of Assembly of the Czech Republic.

<sup>83</sup> Article 7, Law on Demonstrations of Albania; Article 8, Organic Law 9/1983 of Spain; Articles 8 and 11, Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>84</sup> A notification submitted by the organizer more than six months prior to the date of the assembly is not taken into consideration. Article 5(2), Act on the Right of Assembly of the Czech Republic.

79. Some participating States do not require notification for certain types of assemblies. In Spain, the Constitution mandates notification only for assemblies in places of public transit.<sup>85</sup> As described in the previous chapter, in Montenegro and Spain, assemblies, by definition, consist of at least 20 participants, which suggest that smaller assemblies could gather without following the law's procedural requirements.<sup>86</sup> However, the respective legislation in both countries is silent about such smaller assemblies.
80. None of the participating States where ODIHR monitored assemblies provide for spontaneous assemblies explicitly in their legislation.<sup>87</sup> The Law on Demonstrations in Albania, as mentioned above, specifically states that spontaneous assemblies are not covered by the law. The Constitution of Montenegro guarantees freedom of peaceful assembly "with prior notification of the competent authority".<sup>88</sup>
81. Some participating States prohibit all or some unannounced assemblies and subject their organizers to various sanctions. Montenegro's Public Assembly Act stipulates that unannounced assemblies shall be banned<sup>89</sup> and the organizers of such assemblies may be fined.<sup>90</sup> In Greece, the Assembly Act does not protect "gatherings that take place randomly and without preparation". The provision also gives the police the discretion to prohibit or disperse such an assembly.<sup>91</sup> The organizers may face three months' imprisonment and a fine if proper notification for an assembly is not provided. The Act of the Right of Assembly in the Czech Republic states that an assembly held without prior notification shall be dispersed should there be a reason based on which it could have been banned if notified.<sup>92</sup> Organizers may be fined for failing to comply with the notification requirements.<sup>93</sup> In the Netherlands, mayors may prohibit an assembly if the required notification was not given on time or if the required details were not provided on time.<sup>94</sup> (Please see more details in the chapters on prior restrictions and duties and responsibilities of the organizers.)
82. The information that must be provided along with the notification for an assembly varies from country to country. The organizer of a demonstration in France, for example, must notify the purpose, date, time, location, and the route of the demonstration.<sup>95</sup> Under Albanian law, the organizer of an assembly is required to disclose a significant amount of information in the notice, namely the identity and address of the organizers; the purpose of the demonstration; the date, place and hour when it is scheduled to start and end; the approximate number of participants and stewards; and a list of people who will speak at the assembly.<sup>96</sup> The organizers of assemblies in Greece must inform the police of the nature of the assembly; the time, date, exact location and/or route of the assembly; and the organizer's address.<sup>97</sup> In the Czech Republic, the organizer must list the purpose, date, location or route, time, and the expected number of participants of the assembly, as well as his/her personal details. Moreover, the organizer has to inform the authorities of the measures that will be put in place

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<sup>85</sup> Article 21(2), Constitution of Spain: "In the cases of meetings in places of public transit and of demonstrations, prior notification shall be given to the authorities."

<sup>86</sup> Article 1(2), Organic Law 9/1983 of Spain; Article 3, Public Assembly Act of Montenegro.

<sup>87</sup> Czech law however regulates the broader category of unannounced assemblies. Article 15, Act on the Right of Assembly of the Czech Republic.

<sup>88</sup> Article 52, Constitution of Montenegro.

<sup>89</sup> Article 11(1), Public Assembly Act of Montenegro. "The authorized body shall make the decision to ban the peaceful assembly if: 1) it is not timely and properly reported."

<sup>90</sup> Article 31, Public Assemblies Act of Montenegro.

<sup>91</sup> Article 1(4), Act 794/1971 of Greece.

<sup>92</sup> Article 12(3), Act on the Right of Assembly of the Czech Republic.

<sup>93</sup> Article 14(1), Act on the Right of Assembly of the Czech Republic.

<sup>94</sup> Article 5, Public Assemblies Act of the Netherlands.

<sup>95</sup> Article L.211-2, France's Code of Homeland Security, Vol. II, Title I, Chap. I, Sect. 1.

<sup>96</sup> Article 5.2, Law on Demonstrations of Albania.

<sup>97</sup> Article 5, Act 794/1971 of Greece.

to ensure that the assembly takes place in accordance with the law, in particular, the number of stewards to be used to facilitate the assembly.<sup>98</sup> Similarly, in Bulgaria, whereas the Law on Gatherings, Meetings and Manifestations only requires that information be provided about the organizer, the objective, the time, and the place/route of the assembly,<sup>99</sup> the notification form used in connection with the monitored events in Sofia requests information on measures planned by the organizer to avoid violations of public order.<sup>100</sup>

83. In Montenegro, the notification must contain information on the purpose of the assembly, the location, the day and time, information about the organizer or his/her representative(s), the number of stewards and the anticipated number of participants.<sup>101</sup> In Spain, the notification should specify the following information: personal details about the organizer (or his/her representative(s)); the venue, the date, the time and the expected duration of the assembly; the purpose of the assembly; the planned itinerary; and envisaged security measures.<sup>102</sup> In Portugal, the written notification should include the time, place/route and objective of the assembly, as well as the personal details of the organizers, of whom there should be at least three.<sup>103</sup> Both in The Hague and in Amsterdam the organizers have to inform the authorities about his or her personal details, purpose, date and location of the assembly, the expected number of participants and measures that will be taken by the organizer to ensure an orderly course of the assembly.<sup>104</sup>
84. Whereas in most participating States the notification is provided on a specific form, ODIHR was informed by interlocutors in Lisbon (Portugal) that an e-mail communication is sufficient, and no form is required.<sup>105</sup> In Athens (Greece), interlocutors from the police noted that it is sufficient for an organizer to post information about the assembly online.<sup>106</sup>
85. In some of the participating States where ODIHR monitored assemblies, assembly organizers commented that the notification process they had gone through was in effect an authorization procedure. In Podgorica (Montenegro), some state interlocutors interpreted the notification requirement as de facto authorization.<sup>107</sup> Mayors in the Netherlands are empowered to impose conditions or restrictions on an assembly. The organizer of one of the assemblies ODIHR monitored in The Hague gave an account of a long and cumbersome negotiation process with the mayor's office, the lack of a written record of the negotiated terms and the delayed receipt of the written decision of the mayor.<sup>108</sup> In Bulgaria, the organizer of the Sofia Pride march had to negotiate and obtain a so-called letter of agreement from the municipality, which – as they were reportedly told by the municipality – was a precondition to be able to erect a stage and receive police protection for the assembly. Moreover, several entities were involved that had to approve certain aspects of the assembly, e.g., a certificate had to be obtained by the organizer regarding the safety of the stage.<sup>109</sup>
86. In the run-up to the 1 May 2014 assemblies in France, trade unions had engaged in an exchange with the police prefect on several aspects of the assembly. The organizers informed ODIHR that, in general, during such exchange the prefect can ask the organizers to change the time, date, location or itinerary of the assembly if the police deem that is a threat to public

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<sup>98</sup> Article 5 (3), Act on the Right of Assembly of the Czech Republic.

<sup>99</sup> Articles 8 and 11, Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>100</sup> Notification of the seventh annual Sofia Pride march. On file with ODIHR.

<sup>101</sup> Article 7, Public Assembly Act of Montenegro.

<sup>102</sup> Article 9, Organic Law 9/1983 of Spain.

<sup>103</sup> Articles 2 and 3, Decree Law 406/74 of Portugal.

<sup>104</sup> A copy of the notification forms have been provided to ODIHR by the respective authorities.

<sup>105</sup> Interview with representatives of the Lisbon City Hall, 3 June 2013.

<sup>106</sup> Interview with representatives of the Attica General Police Directorate, 30 April 2013.

<sup>107</sup> Interview with representatives of the City Hall of Podgorica, 18 October 2013.

<sup>108</sup> Interview with the organizer and lawyer of the Stop the NSS march, 21 March 2014.

<sup>109</sup> Interview with the organizer of the Sofia Pride march, 20 June 2014.

order. Once an agreement is reached, both sides sign a document summarizing the conditions agreed upon.<sup>110</sup>

*Conclusions and recommendations on notification and authorization requirements for assemblies*

87. The fact that notification, rather than authorization systems, are used in all the participating States where ODIHR monitored assemblies is positive, as notification systems are preferable and less prone to abuse. However, it is a matter of concern that, in some participating States, notifications of assemblies are interpreted as requests for authorization, in some cases requiring a negotiated agreement between the authorities and the organizers. The ECtHR has repeatedly noted that the purpose of notification requirements must be to allow the authorities to take reasonable and appropriate measures to guarantee the smooth conduct of any assembly, meeting or other gathering, and that, while the authorities may use notification requirements to ensure protection of the rights of others or to prevent disorder or crime,<sup>111</sup> they should not “represent a hidden obstacle to the freedom of peaceful assembly protected by the Convention”.<sup>112</sup>
88. Imposing notification requirements only on organizers of large assemblies and assemblies that are likely to require advance preparation by the state authorities (either to facilitate freedom of assembly or to protect public order, public safety, and the rights and freedoms of others) contributes to limiting the regulation of assemblies to the minimum extent necessary.<sup>113</sup> Therefore, the regulations in Spain and Montenegro requiring notification only for assemblies with a minimum of 20 participants represent a good practice. However, it is important that gatherings of fewer people also be afforded the same protection as larger assemblies and the legislation in Spain and Montenegro is unclear whether such protection is afforded to such small gatherings.
89. In cases where two or more notifications are submitted regarding the organization of an assembly in the same place and at the same time, several participating States use the first-come-first-served principle. In such cases, the practice of limiting the maximum advance notification time, such as in the Czech Republic, could contribute to limiting the risk of reserving places in advance in order to prevent others from demonstrating. At the same time, a time span that is too narrow could limit advance planning and the dissemination of information about the assembly, which can be burdensome, especially when organizing more complex or bigger events.
90. Most participating States do not provide for spontaneous assemblies in their legislation, which leaves the question open as to how such assemblies are dealt with under the law and in practice. It is of concern that some of participating States, such as Albania and , Montenegro, seem to prohibit unannounced assemblies and subject their organizers to sanctions regardless of the individual circumstances (such as peaceful conduct of the assembly participants, lack of disturbance of public order or that the assembly is as an urgent response to an event). This is not consistent with international standards.<sup>114</sup>

<sup>110</sup> Interview with organizers from trade unions, 30 April 2014.

<sup>111</sup> See *Sergey Kuznetsov v. Russia* (2009), para. 42, *Bukta and Others v. Hungary* (2007), para. 35; *Oya Ataman v. Turkey* (2007), para. 39; *Rassemblement Jurassien Unité v. Switzerland*, N.8191/78, Commission decision of 10 October 1979, DR 17, p. 119; and also *Plattform “Ärzte für das Leben” v. Austria*, 21 June 1988, paras. 32 and 34.

<sup>112</sup> *Éva Molnár v. Hungary* (2009), para 37.

<sup>113</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 119.

<sup>114</sup> The ECtHR has ruled that there are circumstances when an immediate response in the form of a demonstration might be justified. When there is no illegal conduct by the assembly participants, justifying the decision of dispersal solely on the lack of notification amounts to a disproportionate restriction on freedom of peaceful assembly. *Bukta and*

91. Spontaneous assemblies in response to pressing events are a critically important means of expression. They may take place as an immediate response to some triggering event, where the organiser (if there is one) is unable to meet the deadline for prior notification, however the ability to hold these assemblies is important because delay would make the message obsolete.<sup>115</sup> Spontaneous assemblies also occur when one or more groups of persons gather, with no prior advertising or invitation, often as a result of commonly held knowledge about a particular event, including when disseminated via the Internet or other forms of instantaneous communication.<sup>116</sup> Spontaneous assemblies should be lawful and should be regarded as an expected, rather than exceptional, feature of a healthy democracy.<sup>117</sup> The authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.<sup>118</sup>
92. The practice in Albania, Bulgaria, the Czech Republic and Spain to allow for a reduced notification period in urgent or exceptional circumstances is positive. However, the failure to explicitly define these circumstances in statutes or regulations might lead to abuse and arbitrary application of the law.
93. The requirement in Albania to provide a complete list of speakers at an assembly may place a disproportionate burden on the organizer. Another potentially unduly restrictive practice can be observed in the Netherlands, where a mayor can ban an assembly if the required notification or required details are not provided on time. This problem is compounded with the issue discussed earlier regarding the foreseeability of relevant rules that are laid down in local bylaws potentially stipulating a wide range of differing conditions. Similarly, allowing an assembly to be banned because of late or improper notification in Montenegro is not a good practice.
94. The notification requirement to submit information on the security measures put in place by the organizer, which is stipulated by national law in the Czech Republic and used in practice in Sofia, Amsterdam and The Hague may place a disproportionate burden on the exercise of the freedom of peaceful assembly, as the maintenance of public order is the responsibility of the state. (Please see further details at the chapter describing the duties and responsibilities of the organizer). The same applies to the legal requirement in Portugal to have at least three organizers.
95. Recommendations for participating States:
- to ensure that the right to freedom of peaceful assembly is protected for everyone, irrespective of the number of participants of the assembly;
  - to ensure that notification requirements are only imposed when necessary to facilitate freedom of assembly or necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others and only to allow the regulation of assemblies to the minimum extent necessary;
  - to ensure that the notification process is prompt and not unduly bureaucratic and that the lack of notification or minor infringements of the notification process do not result in automatic prohibition or dispersal of an otherwise peaceful assembly;

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*Others v. Hungary* (2007), para. 36.

<sup>115</sup> *Bukta and Others v. Hungary* (2007), para. 32; *Éva Molnár v. Hungary* (2008), para. 38. See also the *Guidelines, op. cit.*, note 3, Explanatory Notes, para. 126.

<sup>116</sup> *Ibid.*, para. 127.

<sup>117</sup> *Ibid.*, para. 128.

<sup>118</sup> *The Guidelines, op. cit.*, note 3, principle 4.2.

- to ensure that the advance notification period is not unnecessarily lengthy and that the notification requirements are not unduly burdensome (the requested information should merely contain the date, time, duration and location or itinerary of the assembly, and the name, address and contact details of the organizer);
- to recognize and expressly provide in the law for spontaneous assemblies where timely notification is not possible or practicable (such as in cases where an assembly responds to an event that could not reasonably have been anticipated); such assemblies should be exempt from the requirement for prior notification;
- to treat organizer consultation and negotiation as voluntary and to refrain from imposing a requirement (formally or informally) that the organizers must negotiate the time, place, manner or other aspects of the assembly with the authorities and to ensure that the requirements for prior notification are not applied in a way which amounts to a requirement for prior authorisation;
- to require that the primary regulatory body give a prompt official response to the initial notification and that the regulatory body must communicate with all state organs involved in the regulatory process, including the relevant law-enforcement agencies.

## RESTRICTIONS IMPOSED BEFORE ASSEMBLIES

96. The freedom of peaceful assembly is not an absolute right. International and regional human rights instruments allow states to impose certain, narrowly construed limitations. This chapter examines the grounds for the imposition of restrictions on public assemblies. Restrictions taken following an assembly, such as punitive measures, are discussed in the chapter on the duties and responsibilities of the organizers.<sup>119</sup>

### *Prior restrictions on assemblies: international standards and good practice*

97. OSCE participating States are committed to guaranteeing the right to freedom of peaceful assembly, ensuring that any restriction that may be placed on this right be prescribed by law and be consistent with international standards (Copenhagen 1990). According to Article 21 of the ICCPR, restrictions on freedom of peaceful assembly must be 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. Any restrictions imposed must have a basis in primary law, as must the mandate and powers of the restricting authority (principle of legality).<sup>120</sup> Furthermore, they must be proportionate to the achievement of a legitimate aim. Given that a wide range of interventions might be suitable, the least restrictive means of achieving a legitimate purpose should always be given preference.<sup>121</sup> Any restriction must not only have a basis in domestic law, but the domestic law must be sufficiently precise and accessible to enable the individual to foresee, to a degree that is reasonable under the circumstances, the consequences that a given action may entail.<sup>122</sup>

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<sup>119</sup> For the ECtHR, the term “restrictions” within the meaning of Article 11(2) of the ECHR must be interpreted as including measures taken following a meeting. *Ezelin v. France* (1991), para. 39.

<sup>120</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 35.

<sup>121</sup> *Ibid.*, para. 39.

<sup>122</sup> *Ezelin v. France* (1991), para. 45.

98. Any restriction needs to be narrowly tailored to accommodate the relevant and legitimate concerns raised in every case. It follows that general bans on the holding of assemblies (for instance, forbidding all assemblies to be held in central areas or during peak hours) are contrary to freedom of assembly.<sup>123</sup> As stated by the UN Special Rapporteur, “only ‘certain’ restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception”.<sup>124</sup> Indeed, “blanket bans are intrinsically disproportionate and discriminatory measures.”<sup>125</sup> The UN Special Rapporteur holds as best practice “laws governing freedom of assembly [that] both avoid blanket time and location prohibitions, and provide for the possibility of other less intrusive restrictions”.<sup>126</sup>
99. The legitimate grounds for restriction are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation, nor loosely interpreted by the authorities.<sup>127</sup> The regulatory authorities must not raise obstacles to freedom of assembly unless there are compelling arguments to do so and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.<sup>128</sup>
100. Since speech and other forms of expression enjoy human rights protection, restrictions on assemblies should not be based on the content of the message they seek to communicate. Based on the ICCPR, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence<sup>129</sup> or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law<sup>130</sup> should be deemed unlawful. Even then, the use of such speech by participants in an assembly does not of itself necessarily justify the dispersal of the event, and law-enforcement officials should take measures (such as arrest) only against the particular individuals involved (either during or after the event).<sup>131</sup>
101. So-called time, place and manner restrictions do not interfere with the message communicated and involve a wide array of possibilities available to the regulatory authority.<sup>132</sup> Such limitations, rather than involving a choice between non-intervention and prohibition, relate to necessary changes to the time or place of an event – without preventing access to the target audience – or the manner in which it is conducted.<sup>133</sup>
102. Importantly, if there is a proper basis for imposing time or place restrictions on assemblies, suitable alternative times or places should be identified. Any alternative must be such that the message that the assembly seeks to convey can be effectively communicated to those to whom it is directed, in other words, within “sight and sound” of the target audience.<sup>134</sup> However, the organizer of an assembly should not be compelled or coerced to accept

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<sup>123</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, paras. 109-112; ECtHR, *Ezelin v. France* (1991), para. 53.

<sup>124</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 16

<sup>125</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para.63.

<sup>126</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 39.

<sup>127</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 69.

<sup>128</sup> *Ibid.*, para. 70.

<sup>129</sup> Article 20, ICCPR.

<sup>130</sup> Article 5, ICCPR.

<sup>131</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 96.

<sup>132</sup> *Ibid.*, para. 99.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*, para. 45.

whatever alternative(s) the authorities propose. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.<sup>135</sup>

103. Restrictions based on public-order grounds should not be imposed where there is only a hypothetical or an unsubstantiated risk of public disorder or the mere presence of a hostile audience.<sup>136</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>137</sup> Evidence of disorder at an organizer's previous assembly should not, in and of itself, be grounds to automatically prevent an organizer from organizing a subsequent assembly.<sup>138</sup>
104. There can be a significant overlap between public order and public safety considerations (which may arise, for instance, in relation to the use of vehicles at assemblies).<sup>139</sup> In rare cases, restrictions on assemblies may also be justified on public-health grounds.<sup>140</sup> The protection of morals should not ordinarily be regarded as an appropriate basis for imposing restrictions on freedom of assembly. Reliance on such a category can too easily lead to the regulation of content (see below) and discriminatory treatment.<sup>141</sup>
105. While security risks may be a reason for refusing to permit an individual or association to exercise its right to freedom of assembly, such a restriction must be justified by reference to the specific risks posed by the individual or associations; it is not enough for the state to refer merely to the security situation in the specific area.<sup>142</sup> The Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR limit reliance on national-security grounds to justify restrictions of freedom of expression and assembly.<sup>143</sup>
106. The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of others in the location affected by an assembly.<sup>144</sup> Given the need for respect for diversity 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>145</sup>
107. Temporary disruption of vehicular or pedestrian traffic and opposition to an assembly are not, of themselves, sufficient to justify restrictions on assemblies.<sup>146</sup> The ECtHR has stated that "any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for the public authorities to show a

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<sup>135</sup> *Ibid.*, para. 103.

<sup>136</sup> *Ibid.*, para. 71.

<sup>137</sup> *Ibid.*

<sup>138</sup> See Supreme Court of the United States, *Kunz v. New York*, 340 U.S. 290, 294, 15 January 1951: "The court below has mistakenly derived support for its conclusion from the evidence produced at the trial that appellant's religious meetings had, in the past, caused some disorder. There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence."

<sup>139</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 74.

<sup>140</sup> In such cases, similar restrictions should also apply to attendance at schools, concerts, sporting events, etc. Restrictions may also be justified where the health of participants in an assembly becomes seriously compromised (e.g., during a hunger strike). See *The Guidelines*, Explanatory Notes, paras. 76-77.

<sup>141</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 79.

<sup>142</sup> *Yesilgoz v. Turkey* (2005), para. 30 (French only).

<sup>143</sup> Based on the Principles national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation, its territorial integrity or political independence and cannot be invoked to prevent merely local or relatively isolated threats to law and order. Moreover, they must be adequate safeguards and effective remedies against abuse. United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985). <<http://www1.umn.edu/humanrts/instree/siracusaprinciples.html>>.

<sup>144</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 80.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by article 11 of the Convention is not to be deprived of all substance”.<sup>147</sup> As stated by the Spanish Constitutional Court, “in a democratic society, the urban space is not only an area for circulation, but also for participation”.<sup>148</sup>

### *Prior restrictions on assemblies in selected participating States*

108. In some of the participating States where ODIHR monitored assemblies, the authorities imposed restrictions on assemblies. The first section discusses bans and content-based restrictions, while the following section includes some examples of time, place and manner restrictions and blanket bans.<sup>149</sup>

#### *i. Bans on assemblies and content-based restrictions*

109. In Albania, the legitimate grounds for restrictions on the right to peaceful assembly are limited to national security, public security, public safety and the prevention of crime, the safeguarding of health or morals and the defence of the rights and liberties of others.<sup>150</sup>

110. Spain’s Constitution specifies that “the principles relating to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain” and that the authorities may ban assemblies when they have well-founded grounds for expecting “a breach of public order, involving danger to persons or property”.<sup>151</sup> Similarly, Organic Law 9/1983 allows the authorities to impose restrictions, up to a ban, in the event that there are reasonable grounds to believe that a planned assembly will result in a serious disturbance of public order that may threaten human life or property.<sup>152</sup>

111. While Portugal’s assembly law provides that the freedom of assembly is guaranteed when the purpose is not contrary to the law, morals, rights of natural or legal persons or public order and tranquillity, the law also prohibits assemblies that offend the honour and consideration due to sovereign bodies and the Armed Forces.<sup>153</sup>

112. In Greece, the police can prohibit assemblies from taking place if there is a danger to public order or safety, and when this cannot be avoided through other measures.<sup>154</sup>

113. In the Netherlands, in response to a notification, a mayor may impose conditions, restrictions or may forbid a demonstration.<sup>155</sup> Restrictions can only be used for the protection of health,

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<sup>147</sup> *Sergey Kuznetsov v. Russia* (2009), para. 44.

<sup>148</sup> Spanish Constitutional Court, Judgment STC 193/2011, 12 December 2011.

<sup>149</sup> Provisions on restrictions on assemblies in the participating States covered in this report are complex and would merit a separate, exhaustive discussion. In the interest of being concise, this and the following sections will provide only some references to them, focusing mainly on restrictions reported in the participating States during the monitoring period (or that were directly relevant to the observed events).

<sup>150</sup> Article 1(2), Law on Demonstrations of Albania.

<sup>151</sup> Article 10(2), Constitution of Spain.

<sup>152</sup> Article 10, Organic Law 9/1983 of Spain.

<sup>153</sup> Article 1(2), Decree Law 406/74 of Portugal.

<sup>154</sup> Article 6, Act 794/1971 of Greece.

<sup>155</sup> Article 5, Law on Public Demonstrations of the Netherlands.

“in the interest of traffic” and to combat or prevent disorders.<sup>156</sup> Both the Constitution of the Netherlands and the memorandum containing general policy principles for demonstrations during the NSS also authorize the restriction of assemblies “in the interest of traffic”.<sup>157</sup> Based on the latter document, “demonstrations that have the potential to disrupt traffic, traffic safety, the NSS or public order may be terminated by the police immediately by the order of the mayor.”<sup>158</sup>

114. In the Czech Republic, a local authority may ban an assembly if it is deemed to be anti-democratic in its declared purpose.<sup>159</sup> Also, an assembly can be banned when it poses a serious danger to public health, clashes with another previously notified assembly at the same place and time, impedes the delivery of supplies or other transportation or violates regulations in grave breach of the public interest and if it is possible to move the assembly without hampering its purpose.<sup>160</sup>
115. Montenegro’s legislation allows restrictions on freedom of assembly to prevent disorder or the perpetration of a criminal offence and to protect the health, morality or security of people and property.<sup>161</sup> More specifically, a ban is possible if the required notification is not submitted in a proper and timely manner if the assembly is to be held in a place where an assembly cannot be held, if there is an actual danger to the safety of people or property, if a major breach of public order and peace would ensue, or if there is a threat to public health. Moreover, when it comes to the purpose of the assembly, an assembly can be banned if its objectives are aimed at the violation of human rights and freedoms guaranteed by the Constitution or incitement to the use of violence, national, racial, religious or other type of hatred or intolerance.<sup>162</sup>
116. In Bulgaria, a mayor can ban an assembly if it is aimed at the forcible transformation of the constitutionally established order or directed against the territorial integrity of the country or if it endangers public peace, public health or infringes the rights and freedoms of others.<sup>163</sup>
117. Several states restrict bans to those situations where the risk presented is real or imminent and cannot be eliminated by alternative means. Bans are only allowed in Albania where “less strenuous measures” cannot prevent a “real risk” to national security, the prevention of crime, the protection of health or morals or the protection of the rights and freedoms of others.<sup>164</sup> In Bulgaria, “unquestionable information” must evidence that one of the authorized grounds for a ban exists.<sup>165</sup> Greek legislation requires an “imminent” threat to public security or a serious disruption to social and economic life.<sup>166</sup> When the NSS was held in The Hague, assemblies could be banned only in “extreme cases”.<sup>167</sup> In contrast, Spanish law only requires the governing authority to have “reasonable grounds that public disturbances may occur,

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<sup>156</sup> *Ibid.*, Article 2.

<sup>157</sup> Article 9(2), Constitution of the Netherlands; Memorandum on Policy Principles and Tolerance Limits for Government Action and Law Enforcement-NSS 2014.

<sup>158</sup> Memorandum on Policy Principles and Tolerance Limits for Government Action and Law Enforcement-NSS 2014.

<sup>159</sup> Article 10(1), Act on the Right of Assembly of the Czech Republic, “The authority which had received a notification, shall ban the assembly should the declared purpose of such assembly threatens to: (a) deny or suppress personal, political, or other citizen rights for the reasons of their nationality, gender, race, origin, political or other beliefs, religious belief, or social status or instigate hatred or intolerance for the reasons above; (b) commit acts of violence or grave indecency; (c) otherwise violate the constitution and laws.”

<sup>160</sup> Article 10, Act on the Right of Assembly of the Czech Republic.

<sup>161</sup> Article 5(2), Public Assembly Act of Montenegro.

<sup>162</sup> Article 11, Public Assembly Act of Montenegro.

<sup>163</sup> Article 12(2), Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>164</sup> Article 8, Law on Demonstrations of Albania.

<sup>165</sup> Article 12(2), Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>166</sup> Article 11(2), Constitution of Greece; Article 131, Presidential Decree 141/1991 of Greece.

<sup>167</sup> The Netherlands, Ordinance to Maintain Public Order and to Limit Danger (NSS 2014).

endangering persons or property” to prohibit an assembly or to change its time, location, duration and itinerary.<sup>168</sup>

118. Among the assembly laws of the states where ODIHR monitored assemblies, only the Dutch Public Assemblies Act contains a specific provision prohibiting content-based restrictions. Section 5 prohibits a condition, restriction or prohibition imposed by the mayor to relate to religion, belief, thoughts or feelings to be expressed by the assembly.<sup>169</sup>
119. Some assemblies monitored by ODIHR were banned by the regulatory authority or the police. A planned counterdemonstration, for which an official notification had been submitted, by the Albanian Muslim Forum in response to the Tirana Pride events was banned by the police in advance of the events owing to security considerations. Based on the official reasoning given by the police, the counterdemonstration was planned at the same time and place as the Gay Pride ride and Gay Pride march, for which notification had been submitted previously. The Tirana Police suggested two alternative places for the counterdemonstration outside of the “sight and sound” of the Pride events, but these were not accepted by the organizer. As a result, the counterdemonstration was banned.<sup>170</sup>
120. A counterdemonstration by a political group in response to the Podgorica Pride march was banned by the authorities based on the failure to comply with the notification deadline, which is five days prior to the assembly.<sup>171</sup>

*ii. Time, place and manner restrictions on assemblies, including blanket prohibitions in selected participating States*

121. Several participating States prohibit assemblies from taking place near certain buildings or sites. Czech law prohibits assemblies from taking place within 100 metres of legislative bodies, while assemblies in Greece must be no closer than 200 metres from government buildings.<sup>172</sup> A mayor in Portugal may, for security reasons, block assemblies that are planned to take place less than 100 metres from the headquarters of the organs of sovereign power, military or militarized facilities, prisons, diplomatic or consular premises, and the headquarters of political parties.<sup>173</sup>
122. Bulgarian authorities may decide on a case-by-case basis whether the prohibited zone will be fewer than 5 or more than 20 metres away from the National Assembly, the Office of the President or the Council of Ministers or in close proximity to military sites.<sup>174</sup>
123. Montenegro’s Public Assembly Act limits assemblies to locations that are “appropriate for the occasion”.<sup>175</sup> Notwithstanding, assemblies cannot be held near hospitals, kindergartens or primary schools while children are inside or in national parks or protected natural parks except for peaceful assemblies that propagate environmental protection; near monuments if doing so could lead to the destruction of protected cultural objects; on highways or arterial, regional and local roads in a way that could endanger traffic safety; or in other locations if,

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<sup>168</sup> Article 10, Organic Law 9/1983 of Spain.

<sup>169</sup> Article 5(3), Public Assemblies Act of the Netherlands.

<sup>170</sup> Interviews with representatives of the Tirana Police, 16 May 2014, 7 July 2014.

<sup>171</sup> Interview with police representatives in Podgorica, 18 October 2013.

<sup>172</sup> Article 1(5), Act on the Right of Assembly of the Czech Republic; Article 4, Act 794/1971 of Greece.

<sup>173</sup> Article 13, Decree Law 406/74 of Portugal.

<sup>174</sup> Article 7(2), Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>175</sup> Article 9, Public Assembly Act of Montenegro.

considering the time, the number of participants or the nature of assembly, it could seriously jeopardize the movement and work of a large number of people.<sup>176</sup>

124. Bulgarian law imposes restrictions where road traffic is affected. Article 12, para. 1 of the Law on Gatherings, Meetings and Manifestations allows a mayor to propose changes when the time and place of a gathering or meeting might breach road traffic safety.
125. In Portugal, in cases where it is essential in order to ensure the smooth flow of people or traffic, the relevant authorities may change initially planned routes or limit the movement of marches or parades during a demonstration.<sup>177</sup>
126. Another common legislative restriction is to prohibit assemblies during certain times of the day. In Greece, assemblies may not take place during “quiet hours” or extend beyond 23:00.<sup>178</sup> France does not allow static assemblies after 23:00 either.<sup>179</sup> In Bulgaria, assemblies cannot be held between 22:00 and 06:00.<sup>180</sup> In Portugal, processions and parades may only take place on Sundays and holidays, on Saturdays after noon and on other days after 19:30.<sup>181</sup> However, the authorities in Lisbon conveyed that these restrictions are not necessarily applied in practice.<sup>182</sup>
127. In the Netherlands, those who organize or take part in a gathering or a demonstration in the vicinity of a building in use by the International Court of Justice, a diplomatic or a consular mission must refrain from activities that could jeopardize the functioning of such institutions. In order to prevent such activities, the mayor of the municipality in question can provide instructions that those taking part in the gathering or demonstration have to comply with. If such instructions are ignored, the mayor may dissolve the demonstration or gathering.<sup>183</sup>
128. In the Netherlands, the standard notification form contains already general guidelines for conducting an assembly. During the NSS, additional restrictions were put in place. The emergency ordinances of the affected towns closed down certain areas from the general public<sup>184</sup> and demonstrations were not permitted in these areas during the NSS.<sup>185</sup> In The Hague, in two out of the three security rings around the NSS venue, demonstrations were prohibited and in the third the mayor assigned the location for all assemblies and all assemblies had to be static.<sup>186</sup> In addition, a memorandum on policy principles and tolerance limits for government action and law enforcement was issued for the NSS, which lowered the threshold for intervention to prevent minor public-order disturbances.<sup>187</sup>
129. The NSS-related protests monitored by ODIHR were directly or indirectly affected by time, place and manner restrictions on assemblies, or, more specifically, by restrictions on access to particular areas. These restrictions were imposed on security grounds. With the exception of a small notified picket line organized in Amsterdam next to the venue of the NIS, none of the assemblies included in the monitoring sample during the NSS could be organized within sight

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<sup>176</sup> *Ibid.*, Article 10.

<sup>177</sup> Article 6, Decree Law 406/74 of Portugal.

<sup>178</sup> Article 4(3), Act 794/1971 of Greece.

<sup>179</sup> Article 6, France’s Law of 30 June 1881 on Freedom of Assembly.

<sup>180</sup> Article 5, Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>181</sup> Article 4, Decree Law 406/74 of Portugal.

<sup>182</sup> Interview with representatives of the police in Lisbon, 31 May 2013.

<sup>183</sup> Article 9, Law on Public Demonstrations of the Netherlands.

<sup>184</sup> Ordinance to Maintain Public Order and for the Prevention of Danger – NSS 2014, mayor of The Hague, 5 February 2014; Emergency Ordinance NSS Amsterdam 2014, mayor of Amsterdam, 19 March 2014.

<sup>185</sup> Memorandum on Policy Principles and Tolerance Limits for Government Action and Law Enforcement-NSS 2014.

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.* The municipality in Amsterdam issued an addendum to the Memorandum in which it specifically stated that this policy does not apply in Amsterdam but the principle of proportionality and subsidiarity should always apply during police actions.

and sound of the summit's delegates or venue. During the NSS in The Hague, all demonstrations were assigned to take place at the Malieveld, a large grass field located opposite The Hague Central Station surrounded by roads and relatively secluded from by-passers. In addition, all assemblies had to be static.<sup>188</sup> Most organizers did not challenge this restriction and held their planned assemblies at the Malieveld and some decided to cancel their event. ODIHR was informed by The Hague authorities that out of the 22 planned demonstrations 10 were eventually held.<sup>189</sup> There was a very little turnout of assembly participants in the Malieveld as observed by the ODIHR monitors on the second day of the NSS and virtually no audience. The turnout was significantly smaller than expected by the state authorities.<sup>190</sup>

130. A civil society group called Noelhuis planned to hold a march from the Central Station to the World Forum, where the NSS was held in The Hague, to present a letter to the world leaders assembled there. The city authorities were notified of the assembly and its purpose, as well as the route of the march. At a meeting with the police a week before the planned assembly, the organizers were informed that they would not be allowed to march through the city to the World Forum and that they were instead asked to accept the Malieveld as an alternative venue and hold a static event. The organizers eventually declined. In response the mayor issued a written decision with the above-mentioned restrictions.<sup>191</sup>
131. Organizers interviewed by ODIHR noted that the fact that they had not received a prompt response from the municipality of Paris regarding the installation of equipment needed for the assembly made them change the venue to a site which did not belong to the authority of the municipality and which then required decision only by the police prefecture.<sup>192</sup>
132. In Podgorica, the police imposed certain changes that could constitute restrictions on the Pride parade. The route provided in the notification was changed by the police based on the argument that it would have been very difficult to cordon off given existing police resources.

### *Conclusions and recommendations on restrictions imposed before assemblies*

133. The avoidance of the disruption of traffic is not listed among the legitimate aims under OSCE commitments and international human rights standards in the interest of which the freedom of peaceful assembly can be restricted. Even if such grounds are reportedly rarely used to restrict assemblies in practice, such as in the Netherlands and Bulgaria, such provisions are not in line with the relevant OSCE commitments and international human rights standards.
134. Portugal's Decree Law 406/74, which prohibits assemblies that offend the honour and consideration due to sovereign bodies and the Armed Forces,<sup>193</sup> provides the authorities with broad discretion to restrict assemblies based on the content of the assembly's message. Such content based restrictions, if imposed, would not be in line with international human rights standards. Moreover, the provision is not sufficiently precise to enable an individual to assess whether or not his or her conduct would constitute an offence and therefore breach the law.

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<sup>188</sup> Decision on the restriction of the "March to the World Forum" assembly by the mayor of The Hague, 19 March 2014.

<sup>189</sup> Interview with representatives of the The Hague municipality and the police, 15 April 2014.

<sup>190</sup> *Ibid.*

<sup>191</sup> Decision of the mayor of The Hague, 18 March 2014. A copy of the decision has been provided to ODIHR by the state authorities.

<sup>192</sup> Interview with representatives of the CFDT Trade Union, 30 April 2014.

<sup>193</sup> Article 1(2), Decree Law 406/74 of Portugal.

The lack of foreseeability of a breach of law and the likely consequences of that breach is against the international standards.<sup>194</sup>

135. The language of the Public Assemblies Act in the Netherlands requiring assemblies near the International Court of Justice or a diplomatic or consular mission to refrain from conduct that may affect how the organization functions<sup>195</sup> is unnecessarily broad and would likely give the Dutch authorities wide discretion in determining what type of conduct could affect the organization's daily activities. Since diplomatic and consular missions often attract assemblies for various causes, this broad provision is disproportionate.
  136. Prohibiting assemblies at certain public locations – such as in Bulgaria, the Czech Republic, Greece, Montenegro or Portugal – or at certain times of the day – such as in Bulgaria, France, Greece, the Netherlands and Portugal – constitute blanket prohibitions.<sup>196</sup> Since blanket bans on assemblies are likely to be disproportionate in that they fail to take into account the individual circumstances of the assemblies involved, they should be avoided, and other, less intrusive restrictions should be used. Furthermore, according to the UN Special Rapporteur, restriction of access to a public place by not allowing assemblies to be held in the close vicinity of iconic buildings, such as presidential palaces, parliaments or memorials, should also meet the strict test of necessity and proportionality.<sup>197</sup>
  137. In addition, the prohibition of assemblies planned for the so-called quiet hours in Greece is too vague and can result in an overly restrictive and arbitrary application of the law. In Portugal, limiting processions and parades to Sundays and holidays, on Saturdays after noon and on other days after 19:30 is overly restrictive.
  138. The grounds for banning the counterdemonstration by the Albanian Muslim Forum in response to the Tirana Pride events and the counterdemonstration by a political group in response to the Podgorica Pride march do not seem to satisfy the strict scrutiny based on international human rights standards and OSCE commitments as the restrictions did not seem to demonstrate to meet the standards of necessity and proportionality.
  139. Regarding the NSS-related protests in The Hague, although there can be legitimate security considerations that have to be taken into account when regulating and facilitating assemblies during summits, these should not be used to justify disproportionate interference with the freedom of peaceful assembly and, specifically, the ability of assembly participants to convey a message to their intended target audience. The blanket ban that was introduced on mobile assemblies and the limitation of the location of assemblies to Malieveld failed to take into account the individual circumstances of each assembly, and therefore give rise to concerns about the proportionality of restrictions imposed. The location selected by the authorities was not within sight and sound of the intended audience and therefore ill-suited for the purpose of the assemblies.
140. Recommendations for participating States:
- to ensure that restrictions on assemblies are only imposed on grounds that are expressly identified as legitimate under OSCE commitments and international human rights law

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<sup>194</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 35.

<sup>195</sup> Article 9(1), the Public Assemblies Act of the Netherlands.

<sup>196</sup> “Draft Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria”, Venice Commission, 5 June 2009, paras. 23 and 42, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)087-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)087-e)>.

<sup>197</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 66.

(necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others);

- to ensure that any restrictions on assemblies have a basis in primary law and strictly adhere to the principle of proportionality, ensuring in particular that restrictions are narrowly tailored to meet the specific and legitimate aims pursued by the authorities and are necessary in a democratic society;
- to refrain from imposing blanket restrictions on assemblies, which are likely to be disproportionate, and ensure that each assembly is assessed individually; to this end, to remove provisions from the law that can operate as blanket legislative provisions that ban assemblies at specific times or in specific public places;
- to remove or amend restrictions in the law that are too vague and can therefore result in an overly restrictive and/or arbitrary application of the law;
- to generally refrain from imposing content-based restrictions on assemblies unless these can be compellingly justified by intentional incitement to violence resulting in an imminent threat of violence or by a message constituting advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence;
- to ensure that security or other considerations do not disproportionately limit the ability of assembly participants to convey their message within sight and sound of their intended audience;
- to ensure that, where security or other considerations may result in time, place and manner restrictions on assemblies, these are, whenever possible, previously discussed with the organizers of assemblies and that suitable alternatives consistent with the sight-and-sound principle are proposed.

## FACILITATING SIMULTANEOUS ASSEMBLIES, INCLUDING COUNTER-DEMONSTRATIONS

### *Facilitating simultaneous assemblies: international standards and good practice*

141. Where notification or an authorization request is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as best as possible.<sup>198</sup> A prohibition against conducting public events in the same place and at the same time as another public event where they can both be reasonably accommodated is likely to be a disproportionate response.<sup>199</sup>
142. In the case of counterdemonstrations, emphasis should be placed on the state's duty to protect and facilitate each event where counterdemonstrations are organized or occur and on the state's duty to provide adequate policing resources to accommodate and facilitate such related simultaneous assemblies, to the extent possible, within sight and sound of one another.<sup>200</sup> Importantly, the right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate.<sup>201</sup> When the intention of the organizers of a counterdemonstration is specifically to prevent another assembly from taking place or to interfere with it, Article 5 of

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<sup>198</sup> *The Guidelines, op. cit.*, note 3, para. 4.3.

<sup>199</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 122.

<sup>200</sup> *Ibid.*, para. 4.4.

<sup>201</sup> *Ibid.*

the ICCPR or Article 17 of the ECHR may be engaged, and the counter-demonstration will not enjoy protection normally afforded by the right to freedom of peaceful assembly.<sup>202</sup>

143. In the case of simultaneous assemblies at the same place and time, the UN Special Rapporteur: “considers it good practice to allow, protect and facilitate all events, whenever possible. In the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial.”<sup>203</sup>
144. If the events cannot be accommodated simultaneously (due, for example, to a 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 fair method of allocating the events to particular locations, so long as this does not discriminate between different groups. This may be done, for example, on a first-come-first-served basis, although abuse of such a rule (where notification for an assembly is deliberately submitted early to block access to other events) should not be allowed. Where, for some reason, this approach leads to an unfair result, the authorities may even draw a name from a hat or flip a coin to determine which assembly should be facilitated in the location indicated in the notification.<sup>204</sup>

*Facilitating simultaneous assemblies: procedural issues in selected participating States*

145. Albanian law does not explicitly address simultaneous assemblies or counterdemonstrations, thus leaving the handling of such demonstrations to police discretion. Other participating States generally apply a first-come-first-served principle in dealing with notifications of simultaneous assemblies.
146. In the Czech Republic, for instance, Article 10 of Act on the Right of Assembly requires that authorities ban an assembly when it is “planned for the same place and time as another assembly”.<sup>205</sup> If the organizers cannot agree on adjusting the times for their assemblies, the first-come-first-served rule applies. If the authorities do not know which party submitted their notification first, they cast a ballot to determine who may hold their assembly.<sup>206</sup>
147. In some of the participating States where ODIHR monitored assemblies, counterdemonstrations were banned by the regulatory authority or the police. As described earlier, the planned counterdemonstration of the Albanian Muslim Forum in response to the Tirana Pride events was banned by the police with the reasoning that it was announced to take place at the same time and place as the Gay Pride bike ride and Gay Pride march, for which notification had been submitted previously.
148. A planned counterdemonstration, for which an official notification had been submitted, by the youth wing of Srpska Lista, a nationalist political group, in response to the Podgorica Pride march was banned by the authorities based on the failure to comply with the notification

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<sup>202</sup> *Ibid.*, para. 124.

<sup>203</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 30.

<sup>204</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 122.

<sup>205</sup> Article 10(2)(b), Act on the Right of Assembly of the Czech Republic.

<sup>206</sup> *Ibid.*

deadline.<sup>207</sup> ODIHR was informed, that the police asked the organizers to withhold the date of the Pride march until the last moment for security considerations.

149. Some assembly organizers in Athens noted instances when notification submitted for simultaneous assemblies at the same place and time resulted in the city authorities' suggestion of an alternative location although the place could accommodate them.<sup>208</sup> Interviews with various interlocutors in the Netherlands suggested that demonstrations and counterdemonstrations are often allowed only outside of sight and sound of one another.<sup>209</sup>

*Conclusions and recommendations on procedural and related issues and the facilitation of simultaneous assemblies*

150. In light of OSCE commitments and international human rights standards, it is generally good practice to facilitate, as much as possible, the holding of simultaneous assemblies. This should be reflected in procedures followed during the pre-assembly notification phase. Where laws or regulations deal explicitly with the issue of simultaneous assemblies, they should not include an automatic prohibition on holding events at the same place and time. As discussed above, in the Czech Republic, an assembly can be banned if it is simultaneous with another previously notified assembly.<sup>210</sup>
151. Although the relevant provision in Czech law facilitates dialogue for the organizers to agree on adjusting their assembly times and, if no agreement is reached, employs a first-come-first-served rule, it does not appear to allow for simultaneous assemblies under any circumstances. Instead, if the organizers fail to agree on a new time and place, the authorities will ban the assembly that did not submit its notification first. This provision is inconsistent with the requirement that authorities should implement measures that make it possible for two assemblies to be held at the same time and place when the assemblies do not interfere with each other and can be accommodated. In accommodating simultaneous assemblies, emphasis should be placed on practical solutions that can be found through dialogue and negotiation.
152. In other contexts, and in situations where simultaneous assemblies are not specifically regulated, the police and other local authorities can play an important role in facilitating or regulating simultaneous assemblies. Specifically in relation to LGBTI Pride marches and similar events, counter-demonstrations may give rise to public safety and security considerations. However, the authorities should generally seek to facilitate the holding of a peaceful assembly and related, peaceful counterdemonstrations within sight and sound of one another. In this regard, banning the counterdemonstration of the Albanian Muslim Forum in response to the Tirana Pride may have been disproportionate. The aim of protecting the right of assembly of one group could not on its own be sufficient to justify a ban on a counterdemonstration.<sup>211</sup> People have a right to assemble as counterdemonstrators to express their disagreement with the views expressed at another public assembly.<sup>212</sup> On such occasions, the coincidence in time and venue of the two assemblies is essential for the message to be conveyed by the second assembly.<sup>213</sup>

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<sup>207</sup> Interview with representatives of the Ministry of Human Rights and Minority Issues, Podgorica, 18 October 2013.

<sup>208</sup> Interview with the organizer of the ADEDY/GSEE/EKA assembly, 30 April 2013.

<sup>209</sup> Interview with state interlocutors from The Hague and Amsterdam, 21 March 2014. Interview with the organizer and legal representative of the Stop the NSS march, 21 March 2014.

<sup>210</sup> Article 10, Act on the Right of Assembly of the Czech Republic.

<sup>211</sup> *Ollinger v. Austria* (2008), para. 45.

<sup>212</sup> *The Guidelines*, *op. cit.*, note 3, Explanatory Notes, para. 123.

<sup>213</sup> *Ibid.*

153. The fact that, in Podgorica, police instructed the organizers to withhold the date of the Pride march until the last moment for security considerations might have limited the right of people to counter-demonstrate. This cautious approach of the Montenegrin authorities may have been justified in light of the serious security risks and recent incidents which had taken place during a Pride event in Budva earlier in the year. However, the ultimate goal for similar events in the future should be to accommodate peaceful assemblies and counter-demonstrations within sight and sound of each other in those cases where the latter are not intended to prevent the other assembly from taking place.

154. Recommendations for participating States:

- to ensure that provisions regulating assemblies and other public events taking place simultaneously and in the same or adjacent locations are based on the presumption that, whenever possible, all assemblies should be accommodated; in particular, to ensure that there are no provisions prohibiting public events from taking place at the same time and at the same place when they can be reasonably accommodated;
- in relation to assemblies and corresponding counterdemonstrations, to ensure that no automatic restrictions are in place preventing them from taking place within sight and sound of each other; any restrictions imposed on assemblies should be narrowly tailored and should only be based on legitimate grounds based on objective evidence under international human rights law;
- to ensure that, when two public events cannot be accommodated in the same location, the organizers are encouraged to engage in a dialogue with each other to find a mutually satisfactory solution;
- to ensure that, in the pre-assembly phase, organizers of assemblies are not compelled, coerced, or otherwise subjected to pressure 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.

## DECISION-MAKING AND REMEDIES

### *Decision-making and review: international standards and good practice*

155. The public should be informed about which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in the law.<sup>214</sup> A clear procedure for interaction between event organizers and the regulatory authorities is also necessary. Such a procedure should set out appropriate time limits by working backwards from the date of the proposed event, and it should allocate sufficient time for each stage in the regulatory process.<sup>215</sup>

156. In addition, the regulatory process should establish an opportunity to appeal or otherwise challenge the decision of the regulatory authority in an independent court. Appeals and other challenges ought to be decided in a prompt and timely manner so that any revisions to the

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<sup>214</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 61.

<sup>215</sup> *Ibid.*, para. 65.

authorities' decision can be implemented without further detriment to the applicant's rights.<sup>216</sup> In this context, the ECtHR determined that the absence of an effective appeals procedure against a decision to forbid an assembly prior to the proposed date of said assembly is a violation of the ECHR.<sup>217</sup>

157. To address situations where authorities fail to respond promptly to a notification, the law should stipulate that organizers of a public assembly may proceed with their planned activities according to the terms specified in their notification without restriction.<sup>218</sup>
158. 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.<sup>219</sup>

### *Decision-making and review in selected participating States*

159. Decision-making power with respect to assemblies is either allocated to the police or to a member of the local government, usually the mayor. The mayor of a municipality decides on issues related to assemblies in Bulgaria, France and the Netherlands.<sup>220</sup> The authority responsible for administrative powers in the relevant area, which may be the local authority, the municipal authority, the regional authority or the Ministry of the Interior, decides issues related to assemblies in the Czech Republic.<sup>221</sup> The regulatory authority also decides on assembly related issues in Portugal and Spain.<sup>222</sup> In Albania, Greece and Montenegro, the police determine matters related to assemblies.<sup>223</sup>
160. In some participating States, there is a requirement that the responsible authority notify the organizers about a ban or other restrictions promptly after they submit their notification. The Act on the Right of Assembly of the Czech Republic requires the responsible Czech authority to issue a ban “without any undue delay” and no later than three days after receiving the notification.<sup>224</sup> The law in the Netherlands requires that the authorities inform the organizers “as quickly as possible”.<sup>225</sup> In Bulgaria, a ban on an assembly has to be imposed within 24 hours following submission of the notification.<sup>226</sup> Changes and restrictions have to be substantiated and communicated to the organizer with 72 hours of receipt of the notification in Spain.<sup>227</sup>
161. In Albania, Article 6 of the Law on Demonstrations requires the Chief of the Commissariat of the Police to determine which regulations will be imposed on a demonstration within 24 hours after receiving an initial notice and eight hours after receiving a corrected notice. The Chief of the Commissariat shall then promptly notify the organizer and appropriate government officials about these regulations.

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<sup>216</sup> *Ibid.*, para. 66.

<sup>217</sup> *Bączkowski and Others v. Poland* (2007).

<sup>218</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 120.

<sup>219</sup> *Ibid.*, para. 67.

<sup>220</sup> Article 12, Law on Gatherings, Meetings and Manifestations of Bulgaria; Article 211-4, Internal Security Code of France; Article 5, Public Assemblies Act of the Netherlands.

<sup>221</sup> Articles 2a, 10, Act on the Right of Assembly of the Czech Republic.

<sup>222</sup> Article 3(2), Decree 46/74 of Portugal; Article 10, Organic Law 9/1983 of Spain.

<sup>223</sup> Article 8, Law on Demonstrations of Albania; Article 11, Public Assemblies Act of Montenegro; Article 3, Act 794/1971 of Greece.

<sup>224</sup> Article 11(1), Act on the Right of Assembly of the Czech Republic.

<sup>225</sup> Article 5, Public Assemblies Act of the Netherlands.

<sup>226</sup> Article 12, Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>227</sup> Article 10, Organic Law 9/1983 of Spain.

162. Other participating States maintain legislation that only requires states to inform organizers of a ban before a planned assembly. Authorities must notify the organizers 48 hours before the start of a planned assembly in Montenegro and eight hours before an assembly in Greece.<sup>228</sup>
163. As previously discussed, mayors in the Netherlands may, in response to a notification, impose conditions or restrictions or even prohibit a demonstration. Any conditions, restrictions or prohibitions that a mayor imposes on a planned assembly must be provided in writing as a response to the notification. When specific agreements with the organizer have been made, these are also sent to him/her. The Public Assemblies Act in the Netherlands however does not contain an exact time frame within which the relevant mayor has to issue a decision following the notification.
164. According to Article 25 of the Law on Demonstrations of Albania, any administrative decisions by the police imposing prior restrictions or prohibiting an assembly, or operational decisions by the police during an assembly “may be appealed according to the legal provisions in force”. The Law does not specify the form of such an appeal and does not indicate which body will be responsible to receive and decide on such an appeal. Finally, the Law also does not explicitly state whether such an appeal may be heard prior to the desired date or time of the assembly (e.g., by way of urgent or interim proceedings).<sup>229</sup>
165. Legislation provides for prompt review of a ban before an independent court in some of the participating States where ODIHR monitored assemblies. In the Czech Republic, an organizer may appeal a decision by the regulatory authority to a court within 15 days of the decision being issued. The court must make a decision within three days,<sup>230</sup> but an appeal does not suspend the execution of the decision.<sup>231</sup> Under Bulgarian law, a ban may be appealed by an organization to a competent court within three days of receiving the decision on the ban.<sup>232</sup> The court must decide on the legitimacy of the ban within 24 hours, and the court’s decision is final. An appeal does not postpone the execution of the ban, however.<sup>233</sup>
166. Montenegro’s legislation provides for the possibility of submitting a complaint against a ban to the “state authority in charge of internal affairs”, which must make a decision within 24 hours.<sup>234</sup> A complaint does not delay the execution of the decision. The same applies to the lack of a decision by the responsible ministry within the prescribed period.
167. In France, administrative orders can be challenged before administrative tribunals. Appeals are made before the administrative courts of appeal, and the Council of State, as the highest administrative body, is the final judge on acts taken by local authorities. If a demonstration is prohibited, the administrative judge has to make sure that there is a risk of disturbance to public order, and that no other measure to maintain order is sufficient or adapted to guarantee the security of people and property.<sup>235</sup>
168. In Portugal, the organizers of an assembly may request a judicial review against alleged illegal interference by the public administration in the exercise of freedom of peaceful

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<sup>228</sup> Article 11, Public Assembly Act of Montenegro; Article 6(5), Act 794/1971 of Greece.

<sup>229</sup> See “Note on the Law on Demonstrations of the Republic of Albania”, OSCE/ODIHR, 29 March 2011, p. 10. Unpublished document on file with ODIHR.

<sup>230</sup> Article 11(3), Act on the Right of Assembly of the Czech Republic.

<sup>231</sup> However, should a positive verdict be rendered after the planned assembly date, the organizer can hold the assembly as originally planned within 30 days of the judgment. In this case the notification period gets shortened to one day prior to the assembly. Article 11 (3), Act on the Right of Assembly of the Czech Republic.

<sup>232</sup> Article 12(4), Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>233</sup> *Ibid.*

<sup>234</sup> Article 12, Public Assembly Act of Montenegro.

<sup>235</sup> Peters and Ley, *op. cit.*, note 26, p. 31.

assembly. The appeal has to be filed within 15 days of the decision that is alleged to constitute the interference.<sup>236</sup>

169. The Public Assemblies Act in the Netherlands does not regulate how a ban, condition, restriction or instruction imposed on an assembly by a mayor could be challenged. Some of the assembly organizers ODIHR met with in The Hague reported that conditions or restrictions had been conveyed to them only orally and that there had been delays in the receipt of the mayor's written decision following submission of their notification, a practice that often results in a lack of opportunity for a judicial review before the date of the planned assembly.<sup>237</sup> A late decision also affects the capability of the organizer to advertise the event owing to the fact that the decision can impact the time, venue and route of the assembly.<sup>238</sup> Another alleged practice criticised by the organizers was the reliance of the regulatory and judicial authorities on the guidelines for demonstrations issued by the Mayor of The Hague, which - being a policy document- cannot be challenged before courts.<sup>239</sup>
170. Following the submission of a notification, Bulgarian legislation allows the relevant mayor to change the time and place of a planned gathering or meeting or the route of a demonstration if they threaten public order or traffic safety.<sup>240</sup> The route of the Sofia Pride march was changed under this provision following the first notification.<sup>241</sup> In the co-ordination letter issued at the end of the consultation process between the organizer and the municipality, the municipality imposed a list of requirements, such as making the organizer personally responsible for any damages to municipal property or to the property of third parties.<sup>242</sup> The organizer challenged these conditions in the Sofia Administrative Court, which refused to rule on the case, arguing that only a prohibition of an assembly could be subject to its review.<sup>243</sup>

#### *Conclusions and recommendations on decision-making and review*

171. The requirement that the responsible authority notify the organizers about a ban shortly after they submit their notification, such as the one in place in the Czech Republic or Bulgaria, is a positive practice. By informing the organizers about bans shortly after notification is received, organizers are more likely to be able to seek remedies for undue bans or make alternative plans for their assemblies, thereby facilitating the realization of the right to freedom of peaceful assembly. By informing organizers of a ban only shortly before the start of an assembly, as is the case in Greece, organizers might be deprived of an opportunity to challenge any undue restrictions on assemblies in the form of bans.
172. Providing for a prompt independent judicial review in the legislation, such as in the Czech Republic and Bulgaria, is a positive practice; however, the lack of an appeal's suspensive effect on the relevant decision when time permits might render this ineffective as a remedy.

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<sup>236</sup> Article 14, Decree Law 406/74 of Portugal.

<sup>237</sup> Interview with the organizer and legal representative of the Stop the NSS march, 21 March 2014.

<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid.*

<sup>240</sup> Article 12(1), Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>241</sup> The seventh Sofia Pride march was initially planned to be on 21 June 2014, but the organizers eventually decided to postpone it until 5 July 2014.

<sup>242</sup> Municipality of Sofia, SO-4900-256/2/12, June 2014: "All damages to municipal property and to the property of third parties shall be at the organizer's expense." A copy of the co-ordination letter was provided to ODIHR by the Sofia Municipality.

<sup>243</sup> Sofia Administrative Court, Court Ruling No. 3149. 27.06.2014. A copy of the ruling was provided to ODIHR by the organizer.

173. Montenegro's legislation provides for an appeal to the state authority in charge of internal affairs.<sup>244</sup> Since decisions on assemblies are made by the authorized body in charge of police affairs, this procedure seems to consist of an appeal to a higher level in the same ministry. Hence, the appeals process in Montenegro, while timely, is not a fully independent review. The initial option of an administrative review may reduce the burden on the courts, but an opportunity for an appeal to an independent court should be available to an organizer. The lack of such an appeal's suspensive effect on the enforcement of the appealed decision and the fact that the lack of a decision by the responsible ministry within the prescribed period results in the upholding of the ban can make this remedy ineffective.
174. Expressly providing for an avenue to challenge not only bans but also prior restrictions or conditions imposed on an assembly, such as in Albania, is a positive practice. The requirement of a prompt response by the chief of the commissariat to the notice of a planned demonstration is a good practice, as it guarantees that the organizers of an assembly face no undue delays in learning about restrictions applicable to their activities.<sup>245</sup> However, it is problematic that the same law does not specify a procedure for lodging an appeal against decisions made by the chief of the commissariat of the police. It also does not specify when an appeal will be heard or when a decision on the appeal will be made. Thus, it is unclear whether an appeal will be heard and a decision made before the date of the proposed assembly. This does not appear to be in compliance with the principles of legality and foreseeability of legislation, which are important requirements for the fair and effective implementation of laws.<sup>246</sup>
175. The lack of legal avenues to challenge prior restrictions or conditions imposed on assemblies in some participating states, such as in Bulgaria, is not in line with international human rights standards. The organizer of an assembly should not be compelled or coerced to accept restrictions, and he/she should have an opportunity to challenge them.
176. The organizers' access to an effective remedy should also not be hampered by delayed decision-making or communication of such decisions by the responsible authorities, as was reportedly the case for one assembly observed by ODIHR in The Hague, as described above.
177. Recommendations for participating States:
- to ensure that the regulation of assemblies is conducted in a transparent manner, giving the organizers timely notice of prompt regulatory decisions with justified reasons and recourse to a prompt and effective remedy through administrative and/or judicial review;
  - to ensure that any administrative review procedure is sufficiently prompt to enable judicial review by an independent and impartial court to take place once administrative remedies have been exhausted, prior to the date of the assembly indicated in the notification;
  - to ensure that any restriction placed on an assembly is communicated in a timely manner in writing to the organizers of the assembly, including a detailed explanation of the reasons behind each restriction;

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<sup>244</sup> Article 12, Public Assemblies Act of Montenegro.

<sup>245</sup> See "Note on the Law on Demonstrations of the Republic of Albania", OSCE/ODIHR, 29 March 2011. Unpublished document on file with ODIHR.

<sup>246</sup> *Ibid.*

- to ensure that assembly organizers are not compelled to accept, and are able to challenge in court, the substance of any restriction before the date of the assembly, irrespective of the legal form of the incorporating document.

## DUTIES AND RESPONSIBILITIES OF THE ORGANIZERS

### *Duties and responsibilities of the organizers: international standards and good practice*

178. At the stage of pre-event planning, especially in the case of large assemblies or assemblies related to controversial issues, it is a good practice for organizers to discuss with law-enforcement officials the security and public-safety measures that are to be put in place prior to an event. Such discussions can cover, *inter alia*, the deployment of law-enforcement personnel, stewarding arrangements and particular concerns relating to the policing operation<sup>247</sup> (see Section III for assembly policing). Other agencies, such as fire and ambulance services, could also contribute to a discussion of the possible risks presented by an assembly and the planned measures to be put in place should they materialize. The imposition by law on organizers to carry out 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 exercising their freedom of peaceful assembly.<sup>248</sup> Any such engagement should be entirely voluntary and should never be used as a way to compel the organizer to agree to restrictive conditions.<sup>249</sup>
179. The notification procedure should at all times be free of charge so as not to financially deter organizers from exercising their right to freedom of peaceful assembly.<sup>250</sup> The costs of providing additional services to facilitate and protect assemblies should be covered by the state. In particular, the costs of providing adequate security and safety (including traffic control, crowd management and medical services) should be fully covered by the public authorities, and no additional charge should be levied for providing adequate policing.<sup>251</sup> Similarly, the responsibility for routine clean-up after a public assembly should lie with the municipal authorities.<sup>252</sup>
180. Organizers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event,<sup>253</sup> as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom of assembly.<sup>254</sup> Under some circumstances, it may be legitimate to impose on organizers of assemblies the condition that they arrange a certain level of stewarding for their gathering.<sup>255</sup> However, such a condition

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<sup>247</sup> *The Guidelines, op. cit.*, note 3, para. 5.1.

<sup>248</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 189.

<sup>249</sup> *Ibid.* para.103.

<sup>250</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 57.

<sup>251</sup> *The Guidelines, op. cit.*, note 3, para. 5.2. Also see “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 57.

<sup>252</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 32. Also see “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para.57.

<sup>253</sup> *The Guidelines, op. cit.*, note 3, para. 5.2.

<sup>254</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 198.

<sup>255</sup> *Ibid.*, para. 195. Stewards or marshals are individuals who assist the organizers of an assembly in managing the event. They should be clearly identifiable and properly trained.

should only be imposed as a result of a specific assessment of the assembly in question, and never by default, and should in no way detract from the positive obligation of the state to provide adequately resourced policing arrangements and the overall responsibility of the law-enforcement agencies for maintaining public order.<sup>256</sup>

181. 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 do not personally violate existing laws governing all participants in an assembly.<sup>257</sup> This principle also applies in those cases when an assembly degenerates into serious public disorder. In such circumstances, it is the responsibility of the state to limit the damage caused and under no circumstances should the organizers of a lawful and peaceful assembly be held liable for disruption caused by others where the organizers did not cause and did not specifically intend the damage or disruption.<sup>258</sup>
182. Assembly organizers should not be made responsible for the maintenance of public order, as also stressed by the UN Special Rapporteur,<sup>259</sup> and in any case they should not be accountable for the unlawful acts of participants or third parties. The principle of individual liability of participants should be upheld, notably due to the presumption of peacefulness of the assembly. Holding the organizers of an event liable for the conduct of others 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*), which could not have been reasonably foreseen.<sup>260</sup> Besides, individual participants who have not personally committed any unlawful act during an assembly should not be held liable even if others become violent.<sup>261</sup>
183. Any liability arising after an assembly, such as for deliberately not respecting legitimate restrictions, and any sanctions imposed on the organizers should be in line with the principle of proportionality.<sup>262</sup> Disproportionate sanctions and penalties imposed on organizers and participants after a demonstration, namely in the form of fines or imprisonment, may breach freedom of assembly and ultimately deter individuals and organizations from exercising this freedom in the future.<sup>263</sup> Moreover, anyone charged with an offence related to an assembly must enjoy fair-trial rights<sup>264</sup> irrespective of the liability (administrative or criminal) at issue.

#### *Duties and responsibilities of the organizers in selected participating States*

184. In the majority of the participating States where ODIHR monitored assemblies, specific legal provisions exist describing the duties and responsibilities of organizers in relation to the holding of an assembly and ensuring public order.

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<sup>256</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 195.

<sup>257</sup> Organizers should not be liable for the actions of individual participants or stewards; instead, individual liability should arise for participants or stewards if they commit an offence or if they fail to carry out the lawful directions of law-enforcement officials. See the *Guidelines, op. cit.*, note 3, Explanatory Notes, paras. 112 and 197.

<sup>258</sup> *Ibid.*, para. 198.

<sup>259</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 31.

<sup>260</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 112.

<sup>261</sup> ECtHR, *Ezelin v. France* (1991), para. 53; *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 111.

<sup>262</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 109. Also see ECtHR, *Ezelin v. France* (1991).

<sup>263</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 77.

<sup>264</sup> *The Guidelines, op. cit.*, note 3, Explanatory Note, para. 110.

185. In Portugal, for example, organizers are required to check assembly participants for weapons, and if weapons are discovered, to hand the participants over to the relevant state authorities.<sup>265</sup>
186. Organizers in Montenegro are faced with a large number of responsibilities when holding an assembly. The organizer is, in general, required to ensure peace and order at the assembly, which he or she carries out by using a sufficient number of stewards provided at the organizer's own expense.<sup>266</sup> Alternatively, the organizer may allocate these monitoring duties to a relevant legal or physical entity.<sup>267</sup> Organizers are required to take "all necessary measures to ensure" that assembly participants are not armed and do not cause damage, and the stewards are required to immediately detain and hand over to the police any participant carrying arms or objects that can be used to cause injury.<sup>268</sup> The stewards must search any person entering the assembly area, confiscate dangerous objects, prevent individuals from entering if they seem to be intoxicated, direct the movement of the participants, remove anyone disrupting peace and order, and detain individuals who commit serious violations of peace and order and turn them over to the police.<sup>269</sup> The organizer must also designate a manager to supervise the assembly and direct the work of the stewards. The manager is responsible for measures pertaining to public order, for calling an end to the assembly when participants' safety or property is threatened and for informing participants when an assembly is completed or banned and asking them to disperse peacefully.<sup>270</sup> In addition to ensuring public order, organizers in Montenegro must enable undisturbed passage for emergency vehicles and provide for medical and fire protection.<sup>271</sup>
187. In the Czech Republic, the convener of an assembly has the duty to co-operate and to coordinate with the authorities to facilitate a peaceful assembly, to manage the assembly so as to prevent it from substantially deviating from its purpose, to ensure the necessary number of stewards, to give orders to the stewards, to ensure that the assembly is peaceful and prevent disturbances and to end the assembly.<sup>272</sup> The convener must ask the police for assistance without any undue delay in the case of a disturbance that they are unable to control.<sup>273</sup> The convener of an assembly is obliged to attend the assembly in person. He or she may fulfil that obligation through a designated organizer or representative. If no such person is present at the assembly, the convener will be in violation of the law.
188. In France, a committee of at least three organizers should be established to manage an assembly, maintain order, prevent breaches against the law, prohibit "speech against public order and good character" or prevent any act deemed to be a crime or other offence.<sup>274</sup>
189. Albanian law states that the organizer of a demonstration is responsible for the organization and proper conduct of the demonstration.<sup>275</sup> He or she has the duty to support the police in maintaining order and can give instructions to the participants in this respect. If such orders are not obeyed and the lawful conduct of the assembly is endangered, the organizer has to end the demonstration.
190. In Bulgaria, the organizer and the mayor share the responsibility to adopt all measures required for maintaining public order in the course of an assembly and for ensuring traffic

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<sup>265</sup> Article 8(2), Decree Law 406/74 of Portugal.

<sup>266</sup> Article 13, Public Assembly Act of Montenegro.

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*, Articles 15, 17.

<sup>269</sup> *Ibid.*, Article 17.

<sup>270</sup> *Ibid.*, Articles 19, 21.

<sup>271</sup> *Ibid.*, Articles 13, 15.

<sup>272</sup> Article 6, Act on the Right of Assembly of the Czech Republic.

<sup>273</sup> *Ibid.*, Article 6(6).

<sup>274</sup> Article 8, France's Act of 30 June 1881 on Freedom of Assembly.

<sup>275</sup> Article 11, Law on Demonstration of Albania.

safety.<sup>276</sup> In Greece, the organizer (“chairman”) and his/her nominees (“steering committee”) are obliged to ensure the normal conduct of the assembly, for which purpose they should take “all the appropriate measures” including invoking the intervention of the police.<sup>277</sup>

191. In Spain, assembly organizers are responsible for ensuring that an assembly is peaceful and law-abiding.<sup>278</sup> Pursuant to Article 4.3 of the Assembly Law of Spain, natural or legal persons organizing or promoting assemblies or demonstrations are subsidiarily liable for damages caused by assembly participants to third parties, unless they had taken all reasonable means at their disposal to prevent them. In the case of unnotified demonstrations, the Law on the Protection of Public Safety establishes that those who can reasonably be identified as leading the assembly or demonstration, or as the inspiration behind the demonstration, shall also be considered as organisers.<sup>279</sup>
192. A failure to comply with relevant legal requirements on providing notification for an assembly, and for the conduct thereof, may result in civil, administrative, or criminal liability for the organizers, depending on the jurisdiction.
193. Both Albania and Bulgaria’s laws impose criminal sanctions on organizers for conducting assemblies where the assembly does not follow the procedures established in the law. Article 262 of Albania’s Criminal Code specifies that the organizers of assemblies “without prior permission” or when organizers “breach the conditions provided in the request for permission” are criminally liable and may be fined or even imprisoned for up to one year.<sup>280</sup> Bulgaria’s Criminal Code makes the organizer of a previously banned gathering or of a gathering that was ordered to be dispersed criminally liable and punishable with up to one year in prison.<sup>281</sup>
194. In France, an individual may be imprisoned for six months and fined 7,500 Euros for failing to file notification when required, for holding a prohibited demonstration on public roads or by creating an inaccurate or incomplete notice in order to mislead authorities about the objective or conditions of a proposed assembly.<sup>282</sup> Similarly, organizers in Greece may face three months’ imprisonment and a fine if proper notification for an assembly is not provided, if the nature of the assembly is materially different from what was in the notification, if the assembly is banned or if the assembly continues after a police order to disperse it.<sup>283</sup> Finally, Spanish organizers may face imprisonment and fines for calling, holding or attempting to hold a previously banned assembly or if they intended to subvert the constitutional order or seriously alter public peace.<sup>284</sup> Organizers who lead an unlawful assembly aimed at committing an offence or who do not attempt to prevent others bearing weapons or other dangerous items at the assembly by all means available to them may be imprisoned for three years.<sup>285</sup> Organizers that fail to take measures to maintain the order, refuse to break up the demonstration or overlook the requirement of prior notice, may incur administrative liability.<sup>286</sup> These behaviours are categorized as “serious offences” and the law provides for a fine ranging from 300.52 Euros to 30,050.61 Euros.<sup>287</sup> NGOs have reported instances where

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<sup>276</sup> Article 11(2), Law on Gatherings, Meetings and Manifestations of Bulgaria.

<sup>277</sup> Article 4(5), Act 794/1971 of Greece.

<sup>278</sup> Article 4(2), Organic Law 9/1983 of Spain.

<sup>279</sup> Article 23 (c), Public Safety Law of Spain.

<sup>280</sup> Article 262, Criminal Code of Albania.

<sup>281</sup> Article 174a(2), Criminal Code of Bulgaria.

<sup>282</sup> Article 431-9, Penal Code of France. Based on information received by ODIHR from the French Ministry of Interior, the maximum sanctions allowed by law are rarely applied in practice.

<sup>283</sup> Article 9, Act 794/1971 of Greece.

<sup>284</sup> Article 514, Criminal Code of Spain.

<sup>285</sup> *Ibid.*

<sup>286</sup> Article 23 (c) and (d), Organic Law 1/1992 on the Protection of Public Safety of Spain.

<sup>287</sup> Article 28.1.(a), Organic Law 1/1992 on the Protection of Public Safety of Spain.

proceedings were initiated against individuals who have participated in unannounced assemblies on the ground of “disobedience to the authorities”, regulated as a minor offence in the Law on the Protection of Public Safety.<sup>288</sup> Following his visit to Spain in June 2013, the Commissioner for Human Rights of the Council of Europe has shown concern about the increasing use of administrative sanctions against participants in unannounced demonstrations.<sup>289</sup>

195. Some participating States only issue fines to organizers who do not fully comply with their assigned responsibilities. In the Czech Republic, organizers may be fined up to CZK 5,000 (180 Euros) for failing to comply with the notification requirements, for violating a ban or for violating assigned duties.<sup>290</sup> Organizers in Montenegro may be fined 100 to 300 times the amount of the average monthly salary for holding an assembly without filing a prior mandatory notification, for holding it in a location where assemblies are not allowed based on Article 10 of the Public Assembly Act, for holding a banned assembly, for failing to inform the public about a ban, for failing to provide sufficient monitors, for failing to take all necessary measures to ensure that the participants are not armed and for failing to ensure an undisturbed passage for police and other emergency vehicles.<sup>291</sup>
196. ODIHR monitors identified assembly stewards at some of the observed assemblies, such as the Podgorica Pride, Sofia Pride, the anti-austerity protest in Madrid, the march of the Workers’ Social Justice Party (DSSS) in Usti nad Labem, the demonstration of the trade unions in Paris on the occasion of Labour Day or the march organized by the National Front in Paris.
197. The role of stewards in assemblies differed considerably among observed assemblies. In Madrid assembly stewards were walking alongside the protesters but no particular action was observed by the monitors. At the Sofia Pride, stewards were responsible, among others, to screen and let the assembly participants and the media representatives into the gathering area. Assembly stewards at the National Front march in Paris played a crucial role in controlling the traffic at the assembly route.

### *Conclusions and recommendations on the duties and responsibilities of the organizers*

198. As discussed before, it is particularly worrisome that in many of the participating States where ODIHR monitored assemblies organizers of unannounced assemblies can be subjected to particularly harsh sanctions regardless of the peacefulness of the assembly or the lack of disturbance of public order. This practice does not take into account the individual circumstances of each assembly and the presumption in favour of holding assemblies and can be used to unduly limit the exercise of the right to freedom of peaceful assembly. In this context the broad grounds on which people can be identified as assembly organisers in Spain is especially problematic. As confirmed by the UN Special Rapporteur, organizers should not face fines or imprisonment for failing to notify authorities.<sup>292</sup> The ECtHR has also stated that

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<sup>288</sup> Article 26, Organic Law 1/1992 on the Protection of Public Safety. See Amnesty International, Spain: The Right to Protest under Threat, April 2014.

<sup>289</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013 (CommDH(2013)18) available at:

<https://wcd.coe.int/ViewDoc.jsp?id=2106465&Site=COE&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>

<sup>290</sup> Article 14(1), Act on the Right of Assembly of the Czech Republic.

<sup>291</sup> Article 31, Public Assemblies Act of Montenegro.

<sup>292</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 51.

“freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction even at the lower end of the scale of disciplinary penalties for participation in a demonstration which has not been prohibited, as long as this person does not himself commit any reprehensible act on such an occasion”.<sup>293</sup> Subjecting the organizers and participants to sanctions may have a considerable dissuasive effect on individuals who would like to exercise their fundamental freedoms.

199. As highlighted by the UN Special Rapporteur, assembly organizers cannot be held responsible for ensuring the maintenance of public order and providing adequate safety and security. These issues must be primarily the responsibility of public authorities. The duty of the state to protect the safety and security of all groups and individuals in their exercise of freedom of peaceful assembly should be clearly defined in law and reinforced by the explicit commitment of the relevant institutions and authorities to fulfil this duty. Therefore, legislation placing the duty on the organizer to ensure peace and order at an assembly, such as in Albania, Bulgaria, Greece, Montenegro or Spain, creates an undue burden on organizers and may have unintended legal consequences by placing the responsibility for the wrongdoing of participants on organizers even if the latter have no control over such actions.<sup>294</sup> Moreover, several of the states where assemblies were observed have legal provisions that directly establish administrative or criminal liability for the organizer for the conduct of others, in contravention of international standards. These include, for example, Bulgaria’s Criminal Code, which makes the organizer of a gathering that was ordered to be dispersed criminally liable and punishable with imprisonment of up to one year if the assembly does not disperse. The requirement imposed by the Sofia municipality following the notification of the Pride making the organizer personally responsible for any damages to municipal property or to the property of third parties – as described before – also belongs to this category.
200. Similarly, organizers in Greece may face three months’ imprisonment and a fine if an assembly continues after a police order for dispersal or if the nature of the assembly is materially different from what was in the notification. The subsidiary liability of the organizer for damages caused by assembly participants to third parties in Spain is also similarly problematic.
201. Especially for large or controversial assemblies, it is a good practice to ensure adequate stewarding of public events and good communication between organizers, stewards, law-enforcement officials, and other relevant state bodies. Assembly stewards can indeed play an important role in facilitating an assembly and ensuring compliance with any lawfully imposed restrictions<sup>295</sup> and by ensuring adequate stewarding, an assembly organizer could counter any claims that public safety might be compromised by his or her event.<sup>296</sup> However, neither organizers nor stewards are law-enforcement officials and should not be treated as such by laws applicable to public assemblies. Therefore, duties and powers such as checking participants for weapons (such as in Portugal and Montenegro) or detaining and handing over to the police participants carrying arms or objects that can be used to cause injury (such as Montenegro) are not in line with the human rights standards.
202. Organizers of certain assemblies may be required to ensure adequate stewarding of their event based on a specific assessment of that particular assembly.<sup>297</sup> Nevertheless, when this requirement is imposed on organizers of all assemblies, with no distinction made, it violates the proportionality principle. It is also important to highlight that any requirement to provide

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<sup>293</sup> *Galstyan v. Armenia* (2007), para. 115.

<sup>294</sup> See “Note on the Law on Demonstrations of the Republic of Albania”, OSCE/ODIHR, 29 March 2011, para. 43. *Unpublished document on file with ODIHR.*

<sup>295</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 195.

<sup>296</sup> *Ibid.*, para. 75.

<sup>297</sup> *Ibid.*, para. 195.

stewarding during assemblies in no way detracts from the positive obligation of the state to protect the safety and security of assembly participants and other individuals present.<sup>298</sup> Moreover, there should be no obligation placed upon organizers to pay for stewarding arrangements (for example, by employing professional stewards or private security firms).<sup>299</sup> The law in Montenegro that stipulates that failing to provide a sufficient number of stewards (monitors) at an assembly may result in a large fine for the organizer is not in line with the human rights standards.

203. Organizers of assemblies may be held liable for their failure to act within the law. However, any sanctions or fines imposed after an assembly should strictly adhere to the principle of proportionality. The risk of a heavy and disproportionate fine or other penalty may, in itself, inhibit the enjoyment of freedom of peaceful assembly. For example, the possible fines imposed in Montenegro or Spain on organizers who fail to comply with their assigned duties appear to be excessive and can have a chilling effect on organizers. In the absence of genuine criminal activity punishable by other laws, a violation of the notification requirement should be addressed by fines proportional to the offence committed.<sup>300</sup> Importantly, the amount of fines imposed on organizers of assemblies should also be in line with the proportionality principle. Possible punishment that includes imprisonment and a fine for organizers failing to provide sufficient notification for an assembly in Albania, France and Greece fall short of these standards.

204. Recommendations for participating States:

- to ensure that the official duty to maintain public order during assemblies, including by protecting participants, is clearly defined in the law and is understood by law-enforcement officers and policymakers at all levels, as a central responsibility of the state;
- to ensure that assembly organizers are not held responsible for the maintenance of public order - which would essentially ask them to replace law-enforcement bodies - and assembly organizers and participants are not held liable for the unlawful conduct of other people;
- to ensure that the role of assembly stewards, in law and in practice, is clearly defined as the role of facilitators assisting organizers in managing events and to ensure that a requirement to have stewards present during an assembly is only imposed on a case-by-case basis when justified by the size or nature of the assembly. Assembly stewards should not be tasked with government functions that directly pertain to the maintenance of public order during assemblies;
- to ensure that the duties of the organizers of assemblies are limited to making reasonable efforts to meet legal requirements for assemblies which include making reasonable efforts so that their assemblies are peaceful and that lawful instructions by law-enforcement officials are obeyed;
- to ensure that insurance requirements, fees to cover the costs of clean-up after assemblies or costs of other additional public services (such as policing and medical services) are not imposed on the organizers of assemblies;

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<sup>298</sup> *Ibid.*

<sup>299</sup> *Ibid.*, para. 196.

<sup>300</sup> “Joint Opinion on the Public Assembly Act of the Republic of Serbia”, OSCE/ODIHR and Venice Commission, 18 October 2010, para. 42.

- to ensure that any sanctions applied against organizers who fail to comply with legal requirements for assemblies are proportionate. Where there is no genuine criminal activity punishable by other laws, a violation of these requirements should be addressed by fines of a proportionate amount, allowing for the imposition of minor sanctions where the offence is of a minor nature;
- to ensure that laws do not contain vague and broadly defined offences that confer excessive discretion upon law-enforcement officials or that enable the imposition of excessive and disproportionate sanctions on protesters.

### SECTION III: POLICING ASSEMBLIES

#### ENGAGEMENT AND COMMUNICATION BY THE POLICE WITH ASSEMBLY ORGANIZERS AND PARTICIPANTS

*Engagement and communication by the police with assembly organizers and participants: international standards and good practice*

205. Engagement and communication by the police with assembly organizers and participants can help facilitate the enjoyment of the freedom of peaceful assembly and the work of the police, as well as reduce the risk of violence during assemblies. Proactive engagement by the police with assembly organizers with a view to sending a clear message informing crowd expectations and reducing the potential for conflict escalation is preferable.<sup>301</sup> Well-informed organizers can play an important role in relaying information to participants about potential risks, security measures, and planned or ongoing police action. In a similar vein, good practice in policing assemblies involves the adoption of a policy of “no surprises”, whereby law-enforcement officers 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>302</sup>
206. Prior warnings are necessary before the use of force, but the “no surprises” approach may extend beyond that and, broadly intended, can involve communication between police and organizers at the operational planning stage. Informing assembly organizers of planned police action and, to the extent possible, co-ordinating preparations with them during the pre-assembly phase can help in ensuring the effective policing of public assemblies. Assembly participants who are aware of expected police action may adapt and respond to it, avoiding confrontation or potential risks. To promote good communication, there should be a point of contact within the law-enforcement agency with whom protesters can communicate before or during an assembly.<sup>303</sup> It is also a good practice to have a similar point of contact among the organizers, especially during the assembly. Where possible, the same persons should be serving in the contact roles so as to establish sound working relationships.
207. Direct contacts and dialogue should be the preferred way to address differences in views or disputes both before and during an assembly. Where direct dialogue is not working in the pre-assembly phase, the facilitation of negotiations or mediated dialogue can be facilitated 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 an assembly and law-enforcement authorities.<sup>304</sup> Such dialogue might help to avoid the escalation of a conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force.<sup>305</sup> Similarly, 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. Such interventions can significantly help avert the occurrence of violence.<sup>306</sup>

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<sup>301</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 149.

<sup>302</sup> *Ibid.*, para. 150.

<sup>303</sup> *Ibid.*, para. 149.

<sup>304</sup> *Ibid.*, para. 134.

<sup>305</sup> *The Guidelines, op. cit.*, note 3, para. 5.4

<sup>306</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 157.

208. The UN Special Rapporteur also considers pre-event planning, including risk assessment, by law-enforcement officials, together with organizers of peaceful assemblies and, if possible, local authorities, as a good practice that may contribute to the success of an assembly. However, the participation of organizers in such planning should never be made compulsory.<sup>307</sup> Fundamentally, law-enforcement authorities should always be forthcoming and should genuinely co-operate with organizers, bearing in mind their duty to facilitate and protect peaceful assemblies.<sup>308</sup>
209. Post-event debriefing of law enforcement officials (particularly after non-routine events) should become standard practice. Such debriefing might usefully address a number of specific issues, including human rights issues, health and safety considerations, media safety, community impact considerations, operational planning and risk assessment, communications, command issues and decision-making, tactics, resources and equipment and future training needs.<sup>309</sup> Event organizers should be invited to participate in these debriefing sessions held by law enforcement officials after the assembly.

*Engagement and communication by the police with assembly organizers and participants in selected participating States*

*i. Pre-event communication*

210. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with organizers of assemblies prior to the events. The LGBTI assemblies in Podgorica and Sofia were considered to pose a higher risk of violence by counter-protesters. In both cases, prior discussions between organizers and law-enforcement and other local authorities took place, with a particular focus on security aspects.<sup>310</sup>
211. Pre-event communication between the organizers of the Gay Pride march and Gay Pride ride and police in Tirana entailed the police informing the organizers of possible threats and risks, of the planned policing measures, and of the respective duties and responsibilities of the police and the organizers regarding the assembly. In case of the Gay Pride events, the communication led to a slight change in the time of the assembly upon the request of the police to prevent a time overlap between the two assemblies in order to better manage the police resources.<sup>311</sup>
212. Konexe, the organizer of the Roma march in Usti nad Labem, was invited to the police operational meeting in preparation for the assemblies held in the town on 1 May 2014. The meeting involved the head of police units in charge of the facilitation of the assemblies and the head of the anti-conflict team and provided information on the policing plans.<sup>312</sup>
213. The organizer of the Stop the NSS march in The Hague informed ODIHR that he did not receive advance information on the security measures instituted by the police. ODIHR also

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<sup>307</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 68.

<sup>308</sup> *Ibid.*, para. 71.

<sup>309</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 170.

<sup>310</sup> Interviews with representatives of the Sofia municipality and organizers of the Sofia Pride, 20 June 2014 and with representatives of the Podgorica Pride and of the Police Directorate of Podgorica, 18 October 2013.

<sup>311</sup> Interviews with the organizers of the Gay Pride march and representatives of the police, 16 May 2014.

<sup>312</sup> Interview with a representative of Konexe, 30 April 2014.

received information that, following notification of the assembly, police paid visits to some of the organizers, interviewed the neighbours of the organizers, paid visits to the organizers' parents, and looked through the windows of the organizers' home with flash lights in an attempt to learn more about the organizers. In this case, however, they had already been informed of the organizers' identity and had set up a meeting.<sup>313</sup> Another civil society representative told ODIHR that visits by the police to the homes of activists before major assemblies frequently happen.<sup>314</sup> A representative of the Amsterdam police informed ODIHR that since last December the police had been looking into identifying who might demonstrate in the context of the NIS and visited the potential organizers with the view of explain the applicable rules and conditions of holding assemblies during the Summits.<sup>315</sup>

*ii. Interactions during an assembly*

214. During assemblies, communication between participants and police authorities could be observed in a number of locations. ODIHR monitors observed law-enforcement agents engaging directly with organizers during assemblies in order to facilitate events or accommodate a march. At the unannounced Bike around the Bomb protest in The Hague, police officers communicated with those who appeared to be the organizers of the assembly to determine the route of the assembly and redirect traffic accordingly.
215. The police and organizers appear to have communicated throughout the LGBTI Pride march in Podgorica. The communication between the organizers and the police during the evacuation that took place at the end of the march was also observed as very smooth. The police asked the Pride participants to wait for the evacuation to take place, and Pride members followed the indications given and thanked the police for their co-operation and protection during the event.
216. In Athens, a senior police officer was assigned to each assembly held on 1<sup>st</sup> May 2013 to co-operate with the organizers on the spot and to provide real-time information on the assembly to the operations centre.<sup>316</sup> In Madrid, there was an intensive communication between the organisers and the police to facilitate the protest against austerity measures, as evidenced by various interlocutors. At the Stop the NSS march in The Hague, there were two contact points each assigned from the organizers and the police for the duration of the assembly. As observed by ODIHR monitors, the organizers have maintained communication with the participants and the police throughout the event.
217. In some of the participating States where ODIHR observed assemblies, specialized police units exist to facilitate communication between the organizers, assembly participants and the police. In Amsterdam, a so-called peace unit is deployed at high-risk demonstrations, which is responsible for the timely and continuous communication with the organizers and protesters.<sup>317</sup>

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<sup>313</sup> Interviews with representatives of the organizer of the Stop the NSS march and Amnesty International, 21 March 2014.

<sup>314</sup> Interview with a representative of Amnesty International, 14 April 2014.

<sup>315</sup> Interview with state interlocutors from The Hague and Amsterdam, 21 March 2014.

<sup>316</sup> Interview with representatives the Attica General Police Directorate, 30 April 2013.

<sup>317</sup> The main task of the unit is conflict prevention and networking. During an assembly, the unit members examine the behaviour of the participants. The currently 88 member unit is trained in the relevant legal framework guaranteeing the freedom of peaceful assembly and in making contact in a non-aggressive way. Interview with a representative of the Peace Unit, 14 April 2014.

218. Anti-conflict teams work throughout the Czech Republic. They are not regular police officers but a specialized division. Anti-conflict team members talk to the participants of an assembly and they mediate in conflict situations. They pay attention to the mood of the people and potential dangers and supply relevant information to the head of the team, who works closely with the commander of the entire police operation. Members of the anti-conflict team are recognizable, as they wear luminous vests with “anti-conflict team” written on them.<sup>318</sup> In Bulgaria, anti-conflict teams started to operate about a year ago, with the special task of ensuring smooth communication and dialogue with assembly participants.<sup>319</sup>
219. ODIHR observed communication between assembly participants and organizers with members of the anti-conflict team in Usti nad Labem. They followed the DSSS march and alerted the participants whenever they were moving too wide into the street endangering themselves because of the cars passing by. They intervened by slightly withdrawing and politely talking to a person who got into a verbal fight with some of the participants of the DSSS assembly at the gathering point. They were more concentrated in potential “conflict areas”. For example when the DSSS march stopped in the vicinity of the counterdemonstrators and there was a risk of violence, they urged the participants to move along. However, no interaction was observed in between the anti-conflict team members and the assembly participants in Sofia. The ODIHR monitors were subsequently informed by the police and a representative of the municipality that there was no reason for them to intervene.<sup>320</sup> There was also difference in their appearance. Members of the anti-conflict team facilitating the assemblies in Usti nad Labem did not wear police uniform and police gear. The anti-conflict team in Sofia had police uniform on and the policemen carried batons. ODIHR was subsequently informed that since the anti-conflict team members were part of the police cordon their appearance and gear were similar to the rest of the policemen in the cordon.<sup>321</sup>
220. ODIHR was informed about that the state authorities and the police issued reports and/or held debriefings following the assembly in some of the participating States where monitoring took place, such as Czech Republic, Montenegro and the Netherlands.

*Conclusions and recommendations on engagement and communication by the police with assembly organizers and participants*

221. For most assemblies observed by ODIHR, communication between participants and organizers and police took place both before and during the assembly. It is positive that, in many cases, communication was considered to be adequate by both police and assembly organizers. Both the organizers and the police authorities described their co-operation and communication as very effective in Podgorica, Sofia and Tirana.
222. Good communication facilitated the work of the police and the enjoyment of the freedom of peaceful assembly by participants in public events. The good communication between the organizers and the police during the evacuation in Podgorica contributed to the overall success of the evacuation operation.
223. In The Hague, communication during a bike procession allowed the police to facilitate an unannounced assembly. The anti-conflict teams employed by the police in Usti nad Labem

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<sup>318</sup> Interview with police representatives, 5 June 2014.

<sup>319</sup> Interview with a representative of the Sofia Metropolitan Police, 7 July 2014.

<sup>320</sup> Interviews with representatives of the Sofia Municipality, and the Sofia Metropolitan Police, 7 July 2014.

<sup>321</sup> Interview with a representative of the Sofia, Municipality, 7 July 2014.

played a positive role in facilitating the exchange of information between police, assembly organizers, and assembly participants.

224. Communication before and during assemblies can be particularly significant where the assembly involves specific risks for the participants or, more generally, for public order. It is worth noting that, in the context of some of the higher-risk events monitored by ODIHR, such as in Podgorica or Usti nad Labem, only limited information was shared between organizers and police forces on security preparations.
225. It is important to acknowledge that real security risks are involved in the policing of some assemblies and that there may be a need to retain a certain degree of confidentiality in relation to planned police tactics. Nevertheless, in some circumstances, openness and communication between the police and the protesters, including communication at the planning stage, could reduce the risk of incidents and could facilitate the work of the police.
226. It also has to be acknowledged that, whereas liaison, co-ordination or negotiation between assembly organizers and the relevant authorities may facilitate a proportionate response by the state in ways that best accommodate competing interests, the potential for compulsory or intimidating prior negotiation processes to exert a significant chilling effect on the enjoyment of freedom of assembly also needs to be noted.
227. Reaching out to potential assembly organizers with the aim of providing information on the conditions of organizing an assembly and the applicable restrictions can facilitate the exercise of this freedom, however anticipatory visits by police to the homes of potential assembly organizers and participants before the NSS in the Netherlands have reportedly had an intimidating effect on some assembly organizers and participants.<sup>322</sup> Moreover, such practices can lead to undue interference with the right to privacy.
228. Pre-event communication with the organizers should not be used as a pretext to exert pressure to accept limitations the organizers may disagree with.
229. Having post-event reporting and debriefings, such was the case in the Czech Republic and Montenegro, is a positive practice. ODIHR was informed about the positive effect of the inclusion of the organizer into such debriefings. The participation of the Czech NGO, Konexe in an evaluation meeting following a demonstration for example reportedly led to enhanced cooperation and information sharing between Konexe and the police.<sup>323</sup>
230. Recommendations for participating States:
- to ensure that effective communication is established between assembly organizers, participants and police forces before and during assemblies in order to create mutual understanding, avoid unnecessary confrontation, reduce tension, prevent violence or to stop any disruptive or unlawful incidents quickly should they break out;
  - to ensure that the police appoint easily accessible liaison officers, or other appropriate intermediaries, whom organizers can contact before or during an assembly;
  - to ensure that those exercising their right to assemble are not compelled to negotiate with the authorities, unless this is necessary and proportionate, and that generally their participation in any such process is entirely optional and voluntary;

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<sup>322</sup> Interview with representatives of the organizer of the Stop the NSS march, 21 March 2014.

<sup>323</sup> Interview with a representative of Konexe, 30 April 2014.

- to adopt a “no surprises” approach in policing assemblies by disclosing as much planning as possible to the organizers; whenever possible, this approach may also extend to dialogue and communication with all involved groups, including potentially violent groups at the pre-assembly stage;
- to hold post-event debriefing of law enforcement officials (particularly after non-routine events) with the involvement of willing assembly organizers as a standard practice.

## CO-OPERATION AND CO-ORDINATION BETWEEN THE POLICE AND OTHER AUTHORITIES

### *Co-operation and co-ordination between the police and other authorities: international standards and good practice*

231. There are several authorities and agencies involved in facilitating the exercise of the right to freedom of peaceful assembly besides law-enforcement officials, such as regulatory authorities (e.g., municipalities), authorities in charge of national security and counter-terrorism, fire and ambulance services, transport authorities etc., and it is important that effective communication be ensured among them before and during assemblies.<sup>324</sup> It is also vital that assembly organizers do everything within their power to assist these agencies in responding to emergencies or criminal conduct.<sup>325</sup>
232. In cases where different law-enforcement structures are responsible for the facilitation of an assembly (such as national and municipal police), or different police units (such as criminal police, riot police, traffic police, anti-conflict teams), clearly identifiable command structures and well-defined operational responsibilities enable proper co-ordination between law-enforcement personnel, between law-enforcement agencies and assembly organizers, and help ensure accountability for operational decisions.<sup>326</sup>

### *Co-operation and co-ordination between the police and other authorities in selected participating States*

233. In several participating States where ODIHR monitored assemblies, such as Bulgaria, the Czech Republic and the Netherlands, the municipality (or the mayor) is responsible for receiving assembly notifications and is authorized to ban an assembly or impose prior restrictions, as well as to disperse an assembly. The police, however, are responsible for enforcing any restrictions imposed by the regulatory authority. In the Czech Republic, for example, any intervention aimed at dispersing an assembly is performed by a police unit on the basis of a decision to disperse made by a representative of the local authority, who is present at the assembly. A member of the Czech police is only able to intervene to disperse an assembly without such a decision if no representative of the local authority is present. If an intervention aimed at dispersing an assembly is performed without a representative of the

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<sup>324</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 152.

<sup>325</sup> *Ibid.*

<sup>326</sup> *Ibid.*, para. 151.

local authority having decided to do so, the police must subsequently inform the local authority of the intervention undertaken.

234. In the Czech Republic, the Ministry of Interior has issued a “Manual for Municipalities on the Law on the Right to Assembly”<sup>327</sup> in order to address numerous requests from local authorities for guidance on the many issues related to assembly. First issued in 2009, the manual provides basic orientation on the legislation regulating the right to assembly in the Czech Republic and the maintenance of public order in the context of assemblies. The manual rather exhaustively describes the many dilemmas and scenarios faced by local authorities in their handling of assemblies.
235. The police are responsible for the overall facilitation of assemblies. In Albania, Bulgaria, the Czech Republic, Greece, Montenegro and Portugal, the municipal police and the national police co-operate and share responsibilities in this regard. In Greece, for example, public order is the responsibility of the national police force, including the security police. However, the municipal police are in charge of guarding certain places, in collaboration with the national police.<sup>328</sup> In Montenegro, the municipal police are responsible for the prevention of damage to municipal property.<sup>329</sup> In Portugal, when a demonstration takes place, the public security police (PSP) take the lead in ensuring the maintenance of public peace and order but can request the intervention of the municipal police. In that case, generally, the latter does not go to the front line but rather stays behind, helping with the logistics (e.g., providing food to the police officers, taking cars out of the way, etc.).<sup>330</sup>
236. In Sofia (Bulgaria) the mayor is responsible for ensuring security and public order in the city. A directorate within the municipal government is responsible for the facilitation of mass events and to foster co-operation with the metropolitan police in this respect. The municipal police belong to the department of the public order and security police of the Sofia metropolitan police, but follow the orders of the mayor, and the Sofia metropolitan police supervise the work of the municipal police in terms of exercising laws and regulations.<sup>331</sup> The municipal police in Bulgaria patrol the streets, guard municipal events and sporting events, and, as an exception, can be used during demonstrations to maintain public order and security. The head of the Public Order and Security Directorate of the Sofia Municipality was present during the whole duration of the Sofia Pride and was observed by ODIHR talking to the assembly organizers or members of the traffic police. He walked in front of the truck that lead the march and gave instructions on the speed. At one point where the street became very narrow and the top of the truck reached a building he asked the driver to slow down, to turn off the music and the people dancing on the truck to get off.
237. In the Netherlands, in the context of the Nuclear Summit in 2014, the structures on security and counter-terrorism within the Ministry of Security and Justice were involved in accessing and monitoring the safety and security risks regarding the assemblies but were not directly involved in their facilitation.<sup>332</sup> Policing is guided by what is called the local “triangle”.<sup>333</sup> This consultative body is made up of the relevant mayor, the public prosecutor and the local chief of police. This body allows for an integrated approach to security problems, which covers both maintaining public order and conducting a criminal investigation. The main bodies for the development of the security policy at the local level at the NSS were the local

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<sup>327</sup> “Manuál pro obce k zákonu o právu shromažďovacímu”, Interior Ministry of the Czech Republic, 2009, <<http://www.mvcr.cz/clanek/extremismus-manual-pro-obce-k-zakonu-o-pravu-shromazdovacim.aspx>>

<sup>328</sup> Interview with representatives of the municipal police, 13 June 2013.

<sup>329</sup> Interview with representatives of the Podgorica City Hall, 18 October 2013.

<sup>330</sup> Interview with representatives the Lisbon municipal police, 30 May 2013.

<sup>331</sup> Interviews with a representative of the Sofia municipality, 20 June and 7 July 2014.

<sup>332</sup> Interviews with state interlocutors in The Hague, 21 March and 15 April 2014.

<sup>333</sup> Article 13, Police Law of the Netherlands.

triangles of The Hague and Amsterdam. The triangles also took strategic decisions regarding police interventions during the NSS. During the NSS, three police command and staffing centres were installed in the field: one for the police operations in The Hague, one for Amsterdam and a third at the national level. The staff at the national level was responsible for co-ordinating supplies for personnel and resources for the operations in the various places to be policed. A second task was to direct and command operations at the national level.

*Conclusions and recommendations on the co-operation and co-ordination between the police and other authorities*

238. Effective communication and co-operation between the authorities and agencies involved in the facilitation of the enjoyment of freedom of peaceful assembly is paramount. Their roles and responsibilities, as well as operational methods and supervisory structures, should be clear and transparent. This facilitates the work of the organizers and enhances accountability and access to review procedures.
239. Some interlocutors acknowledged the good co-operation between the municipality and the police regarding the facilitation of the assemblies observed by ODIHR. These include, for example, the municipality and police in Usti nad Labem (Czech Republic) and in Amsterdam (Netherlands).
240. ODIHR monitors observed effective communication and cooperation between the police forces and head of the Public Order and Security Directorate of the Sofia municipality during the Sofia Pride.
241. Some municipalities and local police structures have more experience in facilitating assemblies than others owing to their different levels of exposure. It is advisable that experiences across the country are shared between the more and less experienced municipalities and police units and that a depository of such practices be created at the national level to provide guidance. The annually revised “Manual for Municipalities on the Law on the Right to Assembly” issued by the Ministry of Interior of the Czech Republic is a commendable effort in this regard.
242. Recommendations for participating States:
- to ensure effective co-ordination and co-operation between the various authorities and agencies involved in the facilitation of the exercise of freedom of peaceful assembly;
  - to ensure effective co-ordination among the various law-enforcement units and uniform application of the relevant codes governing police behaviour in the context of facilitating assemblies;
  - to explore ways to share experiences and good practices among the various agencies and authorities regarding facilitating peaceful assemblies, both nationally and internationally.

**POLICING ASSEMBLIES THAT DO NOT COMPLY WITH LEGAL REQUIREMENTS**

*Policing assemblies that do not comply with legal requirements: international standards and good practice*

243. Where an assembly occurs in violation of applicable laws but is otherwise peaceful, non-intervention or active facilitation by the police is generally the best way to ensure a peaceful outcome.<sup>334</sup> In general, as long as assemblies remain peaceful, they should not be dispersed by law-enforcement officials.<sup>335</sup> This should apply also to assemblies that have been banned. Facilitating such assemblies does not insulate participants from sanctions for violating applicable laws after such an assembly has dispersed. The lack of compliance with legal requirements may give rise to liability for organizers and the imposition of sanctions after an assembly. Any sanctions imposed must have a legal basis and should be proportionate.
244. The UN Special Rapporteur reiterates that “should the organizers fail to notify the authorities, the assembly should not be dissolved automatically”.<sup>336</sup> This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer.<sup>337</sup> In this regard, the ECtHR has emphasized that “in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without an illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.<sup>338</sup>

*Policing assemblies that do not comply with legal requirements in selected participating States*

245. In some of the participating States where ODIHR monitored assemblies, legislation specifically authorizes the dispersal of assemblies for which no notification was submitted or banned assemblies.<sup>339</sup> In Portugal, Montenegro and the Netherlands, authorities can disperse unannounced assemblies.<sup>340</sup> In Greece, the Netherlands and Montenegro, legislation allows for the dispersal of prohibited assemblies.<sup>341</sup> Bulgaria’s assembly law requires the mayor to dissolve an assembly when it is not organized or held in accordance with the terms and procedures set by the assembly law in general, but it is silent on the specific grounds of dispersal.<sup>342</sup>
246. ODIHR monitored assemblies or parts of assemblies that did not comply with legal requirements on notification in Bulgaria (Sofia), in the Czech Republic (Usti nad Labem),

<sup>334</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 155.

<sup>335</sup> *Ibid.*, para. 165. See the UN’s Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. According to Principle 13: “In the dispersal of assemblies that are unlawful but nonviolent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.” Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, August to 7 September 1990, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>>

<sup>336</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 29. The Special Rapporteur is also of the opinion that the organizers of such assemblies should not be subject to criminal sanctions or administrative sanctions resulting in fines or imprisonment. See “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para 51.

<sup>337</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 29.

<sup>338</sup> *Bukta and Others v. Hungary* (2007), para. 36.

<sup>339</sup> Article 7(1)(b), Act 794/1971 of Greece; Article 20(1), Public Assembly Act of Montenegro.

<sup>340</sup> Article 5(1), Decree Law 406/74 of Portugal; Article 20(1), Public Assembly Act of Montenegro; Article 7(a), Law on Public Demonstrations of the Netherlands.

<sup>341</sup> Article 7(1)(c), Act 794/1971 of Greece; Article 20(1), Public Assemblies Act of Montenegro; Article 7(a), Public Assemblies Act of the Netherlands.

<sup>342</sup> Article 13(1), Law on Gatherings, Meetings and Manifestations of Bulgaria.

Greece (Athens) and in the Netherlands (The Hague). Most of such assemblies monitored by ODIHR were accommodated and facilitated by law-enforcement authorities.

247. On 1 May 2013 in Athens, ODIHR monitored three separate assemblies organized by trade unions and left-wing political groups (such as the “Front of the anti-capitalist, revolutionary, communist left and radical ecology” ANTARSYA, the General Confederation of All Workers (GSEE) and the All-Workers Militant Front (PAME)). No official notification had been provided to police authorities about these events. Nevertheless, the police facilitated the assemblies, including by maintaining communication with the protesting groups throughout the events. The assemblies were peaceful and no incidents of detention or use of force were observed. The police informed ODIHR that the absence of an official notification of the three assemblies did not constitute a problem, as the relevant information had been posted on the Internet by the organizers.<sup>343</sup>
248. On 1 May 2014 in Usti nad Labem, several parallel assemblies took place, one of which was entirely unannounced and another altered its itinerary. About 100 people assembled in the Pedicle quarter, an area with a higher concentration of Roma population, in Usti nad Labem at a rally organized by a Roma rights NGO called Konexe. This static rally was followed by a march, for which notification had not been provided, in support of the Roma community and against an assembly organized by the right-wing Workers' Social Justice Party (DSSS) in the town. The participants in the Konexe assembly marched to a park, approximately 200 metres away from the route of the DSSS march, where they were eventually stopped by the police. At the same place, about 70 other opponents of the DSSS march, mainly people belonging to anti-fascist and anarchist groups, who were holding a gathering, for which no notification had been provided, against the DSSS march and right-wing extremism, joined them. The counterdemonstrations against the DSSS march were not allowed to approach within sight and sound of the DSSS march, and the groups were separated by police cordons and police dogs, in addition to the physical distance which served as a buffer zone. The unannounced assemblies were facilitated by the police, including members of the anti-conflict team, until they dispersed voluntarily.
249. In response to the seventh Sofia Pride march on 5 July 2014, a counterdemonstration for which no notification had been provided was held involving an MP from the Ataka Party approximately 60 Ataka Party sympathizers and football fans. They gathered about 500 metres from the route of the Pride march.<sup>344</sup> ODIHR monitors observed a handful of police officers at the gathering point of the assembly and several officers on the road connecting the monument with the park where the Pride participants gathered and where they were supposed to return following the march. Shortly before the end of the Pride march, the participants of the counterdemonstration moved towards the park where the Pride participants gathered following the march, but were stopped by a police cordon and not let into the park. They dispersed voluntarily and the Pride march concluded without incidents.
250. In The Hague, ODIHR observed three assemblies that did not fully meet relevant notification requirements or previously imposed restrictions. On 23 March 2014, a bike procession with around 50 participants, for which no notification had been provided, took place. Although the

<sup>343</sup> Interview with representatives of the Attica General Police Directorate, 30 April 2013.

<sup>344</sup> According to media information the Ataka supporters gathered at this location to prevent the Pride participants leave flowers at the monument as they had information that this has been planned by the organizers of the Pride. <http://btvnews.bg/gallery/bulgaria/regionalni-novini/sofiya-praid-mina-spokoino-prez-stolitsata-snimki.html> The Party's newspaper published report on the event as part of the Party's efforts to resist “the homosexual aggression”. <http://www.vestnikataka.bg/2014/07/%D1%81%D0%B8%D0%BC%D0%BF%D0%B0%D1%82%D0%B8%D0%B7%D0%B0%D0%BD%D1%82%D0%B8-%D0%B8-%D1%87%D0%BB%D0%B5%D0%BD%D0%BE%D0%B2%D0%B5-%D0%BD%D0%B0-%D0%BF%D0%BF-%D0%B0%D1%82%D0%B0%D0%BA%D0%B0-%D1%81%D0%B0-%D0%B1/>

organizer was under the impression that they had fulfilled the relevant notification requirements when they submitted a notification via e-mail to the NSS security authorities, the representatives of the police and the municipality informed ODIHR that they had gained knowledge about the assembly only through their own research on social media. The police officers made contact immediately with the people gathering at the assembly meeting point. The commander asked the participants about their intended route. After phoning the police command center, the police commander informed the organizers that it would not be possible for the assembly to move down the requested route as the mayor had not given approval for the cyclists to travel east through the Malieveld. The commander confirmed that participants would have to limit themselves to cycling to the Peace Palace, where they could make a short stop, and back. The organizer accepted this change without challenging it at the spot. The event concluded without incidents.

251. As described earlier, a civil society group called Noelhuis was banned from holding a march from the Central Station to the World Forum on 24 March 2014, where the NSS was held in The Hague. The organizer was instructed to hold a static assembly instead at the Malieveld. Nevertheless, on the day of the assembly 50-70 participants gathered and began to march peacefully in line with the initially announced plan of the organizers. After walking approximately 130 metres for about five minutes, the demonstration approached a line of police officers with bikes creating a blockade. The participants did not attempt to pass through but stopped peacefully without any resistance. The police kettled all assembly participants, journalists and onlookers, including two members of the ODIHR team.<sup>345</sup> Those kettled, with the exception of media representatives, were arrested and escorted to a nearby police bus.
252. ODIHR observed a small assembly on 24 March 2014 in The Hague comprising four participants: three women and a man. The assembly was held in a pond in the city centre, in front of the parliament, without prior notification having been given to the authorities. The participants protested peacefully against nuclear power and weapons in connection with the ongoing NSS by standing in the pond holding up banners and handing out flyers. The police engaged in negotiations with the assembly participants. The organizer later informed ODIHR that they were offered to go to the Malieveld on the spot, which they refused with the reasoning that no one would have seen them there.<sup>346</sup> Since the negotiations between the police and the participants did not result in a mutual agreement, the police dispersed the assembly participants from the pond after about an hour. Each person got arrested and received an administrative fine of 150 Euros for not obeying the orders of the police.<sup>347</sup> The police presence during the event was significant compared to the small size of the assembly. The organizer of the assembly informed ODIHR that the pond was selected for the location of the assembly to allow sufficient time to convey their message before the police could arrest them.<sup>348</sup>

*Conclusions and recommendations on the policing of assemblies that do not comply with legal requirements in selected participating States*

253. The fact that the lack of compliance with formal legal requirements can constitute, as such, sufficient grounds for the dispersal of an assembly in many of the participating States where

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<sup>345</sup> ODIHR monitors were subsequently allowed to leave upon presentation of their identification documents.

<sup>346</sup> E-mail communication with the assembly organizer, 28 March 2014, on file with ODIHR.

<sup>347</sup> *Ibid.*

<sup>348</sup> *Ibid.*

ODIHR monitored assemblies, such as in Bulgaria, Greece, Montenegro, the Netherlands, and Portugal is not in line with international standards.

254. However, the majority of the assemblies observed by ODIHR that did not comply fully with relevant legal requirements were facilitated by the police, which is in line with international standards and good practices. This approach, which does not exclude the imposition of sanctions after an event, enables the enjoyment of freedom of peaceful assembly even when the formal and legal requirements for assemblies are not met. It is in line with the principle that any intervention by the state in restricting freedom of assembly should be limited to the minimum extent necessary on grounds that are legitimate under OSCE commitments and international human rights law.
255. In The Hague, the ODIHR monitoring team witnessed different approaches to the peaceful assemblies that did not meet formal legal requirements. Whereas the Bike around the Bomb assembly the day before the NSS was actively facilitated by the police, both the unannounced assembly at the parliament and the march to the World Forum on the first day of the NSS led to the group arrest of all assembly participants. In the first case, the arrest followed only one warning, and sufficient time to disperse voluntarily was not granted. A group arrest in such case may fail to meet the proportionality test.

256. Recommendations for participating States:

- to ensure that peaceful assemblies are not dispersed merely because they do not comply with formal legal requirements for assemblies; such assemblies should be facilitated by police and other competent authorities;
- to ensure that police restrictions on such peaceful assemblies are only imposed on grounds that are legitimate and necessary under OSCE commitments and international human rights law, to protect national security or public safety, public order, public health or morals (when behaviour is deemed criminal and has been defined in law as such) or the rights and freedoms of others.

## POLICING DEMONSTRATIONS AND COUNTERDEMONSTRATIONS

*The policing of demonstrations and counterdemonstrations: international standards and good practice*

257. Freedom of peaceful assembly includes the right to protection against violent counter-demonstrators. Law-enforcement officials must protect participants of a peaceful assembly from any person or group, including counter-demonstrators, that attempts to disrupt or inhibit the assembly in any way.<sup>349</sup> The ECtHR has stated that:
258. [A] demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly

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<sup>349</sup> *The Guidelines, op. cit.*, note 3, para. 5.3.

expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the state not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. Like Article 8, Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.<sup>350</sup>

259. However, the obligation to protect a demonstration from violent counter-demonstrators is about the measures to be taken and not the results to be achieved. States therefore have a duty to take “reasonable and appropriate” measures to enable demonstrations to proceed peacefully, but they cannot guarantee this absolutely.<sup>351</sup>
260. The positive duty to protect peaceful assemblies also applies to counter-protests, and police forces should act in a way that ensures respect for both demonstrators’ and counter-demonstrators’ right to assemble. In particular, 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.<sup>352</sup> Moreover, the principle of non-discrimination further requires that assemblies under comparable circumstances not face differential levels of restriction.<sup>353</sup>
261. However, the right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate.<sup>354</sup> When a counterdemonstration is organized specifically to prevent another assembly from taking place, it will not enjoy the protection afforded according to the right to freedom of peaceful assembly.<sup>355</sup>
262. Law-enforcement officials should be appropriately trained to fully understand their responsibility to facilitate as far as possible the holding of peaceful assemblies.<sup>356</sup> They should be prepared and properly trained to handle the presence of *agents provocateurs* and counter-demonstrators aiming to disrupt or disperse an assembly, and to remove them from the assembly or contain them effectively. The authorities should also be prepared to handle simultaneous demonstrations, which should be facilitated and protected when possible.<sup>357</sup>

*The policing of demonstrations and counterdemonstrations in selected participating States*

263. ODIHR monitored assemblies and related counter-demonstrations in Albania (Tirana), Bulgaria (Sofia), Czech Republic (Usti nad Labem) and in Montenegro (Podgorica).
264. As described earlier, in Usti nad Labem, several parallel assemblies took place, two of which were counterdemonstrations. DSSS held a march that was billed as a protest against the adoption of the euro. At the same time, parallel assemblies and counterdemonstrations by left-wing and civil society groups took place. Although the convener of the DSSS march announced that the demonstration was to be against the Euro, anti-Roma, anti-immigrant and

<sup>350</sup> *Plattform “Ärzte für das Leben” v. Austria* (1988) 13 E.H.R.R. 204, para. 32.

<sup>351</sup> *Ibid.*, para. 34.

<sup>352</sup> *The Guidelines, op. cit.*, note 3, para. 4.4.

<sup>353</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 33.

<sup>354</sup> *Ibid.*, para. 124.

<sup>355</sup> *Ibid.*

<sup>356</sup> *Ibid.*, para. 34.

<sup>357</sup> "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para 70.

racist slogans and banners dominated the march. Several members of the assembly wore insignia referring to the National Socialist era in Germany. There were approximately 250 participants of the DSSS assembly.

265. About 100 people assembled at a rally organized by a Roma rights NGO called Konexe. This static rally was followed by a march, in support of the Roma community and against the DSSS assembly. The participants in the Konexe assembly marched to a park, approximately 200 metres away from the route of the DSSS march, where they were eventually stopped by the police. At the same place, about 70 other opponents of the DSSS march, mainly people belonging to anti-fascist and anarchist groups joined them. At the park, the Green Party was holding a parallel event with concerts and a picnic to express solidarity with the Roma and disagreement with Nazism. The counterdemonstrations against the DSSS march were not allowed to be within sight and sound of that march owing to security considerations. Besides the physical distance, the groups were separated using police cordons and vehicles. When the participants in the DSSS march reached the point on the route closest to the counter-demonstrators towards the Roma settlement, they stopped. The police reacted by deploying dogs and horses. In addition, the road was blocked by two rows of policemen and police vans with riot police inside. After a couple of minutes, the march moved along.
266. The Podgorica Pride march was the second Pride event held in Montenegro. The first Pride march took place in Budva three months before, with approximately 100 participants, and was met with a hostile audience of approximately 1,000 people.<sup>358</sup> The announcement of the 20 October 2013 Pride march in Podgorica drew strong opposition and attracted hate speech on social networks.<sup>359</sup> The announced counterdemonstration of the youth wing of the political group Srpska Lista was banned by the police. The Pride was assessed by the police to be an extremely high-risk event because of the threat of violence by counter-demonstrators. The main risk was assessed to be some loose groupings of nationalists and soccer fans from Montenegro, Serbia and Croatia and sufficiently high to preclude protesters from assembling within sight and sound of the Pride parade. In advance of the Pride event, the police, in cooperation with the Pride organizers, devised a security plan. According to the plan, prospective participants needed to sign up first with the organizers, who would subsequently (one day prior to the event) inform them of the “checkpoint” location where they would have to be at an exact time to be granted access. The media would be allowed if cleared by the organizers. The organizers would provide stewards. An evacuation plan was also devised, but it was kept confidential until after the assembly.
267. The route of the Podgorica Pride was secured by three cordons of police. The officers were in full riot gear on the external perimeter and in lighter gear on the internal perimeters. Two lines of police officers (approximately 25 officers on each side) accompanied the participants when the march started. The Pride event attracted about 100 counter-protesters. They gathered along the assembly route at least at three locations. The protesters seemingly involved individuals and groups acting on their own and not in an entirely organized fashion. They surrounded the police cordons. The participants chanted hateful slogans and threw stones, canisters and other objects towards Pride participants and also used pyrotechnic devices. They were not within sight and sound of the Pride participants and the thrown objects were able to reach only the police standing near the cordons. The police dispersed the violent crowd using force,

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<sup>358</sup> Based on media reports, 200 protesters hurled stones, bottles and flares at police officers as they attempted to keep them separated from the Pride participants. Protesters chanted “Kill the gays!” and carried banners saying “Only a healthy Montenegro”. According to social media information, 22 people were detained. “Violence mars first gay parade in Montenegro”, Reuters, 24 July 2013, <<http://www.reuters.com/article/2013/07/24/us-montenegro-gay-idUSBRE96N0HX20130724>>.

<sup>359</sup> Milena Milosevic, “Montenegro's First Gay Pride March Attacked”, Balkan Insight, 24 July 2013, <<http://www.balkaninsight.com/en/article/incidents-mark-montenegro-s-first-gay-parade>>.

including tear gas, against some of the counter-protesters and detained some of them. The Pride participants were able to march through the centre of the city without interference. Following the parade, the police evacuated the participants and brought them to a police station, where they were advised to wait until the city centre was secured.<sup>360</sup>

268. In Tirana, ODIHR monitors observed two assemblies, an LGBTI bike ride with about 40 participants and the LGBTI Pride march with approximately 60 participants. The Albanian Muslim Forum submitted notification for a counter-demonstration to take place at the Youth Park, which was banned by the police in advance of the Pride events owing to security considerations, i.e. the ability of the Tirana police forces to properly ensure the security and safety of the demonstration owing to the other two previously notified LGBTI events taking place at the same place and time. Another counter-demonstration by the Red and Black Alliance was announced only on social media sites without official notification to the police. The police facilitated both Pride events by being present at the gathering points and along the assembly routes. There was also a police presence at the Youth Park, where the Albanian Muslim Forum announced its assembly. Only a handful of people – ODIHR monitors could not determine whether they were associated with the announced counter-demonstration of the Albanian Muslim Forum – showed up at the Youth Park. Both the march and the bike ride proceeded peacefully and undisturbed.
269. About 600 people celebrated the seventh Sofia Pride march on 5 July 2014. The participants of an unnotified counterdemonstration with approximately 60 participants gathered about 500 metres from the route of the Pride parade. Right before the start of the Pride the police informed the organizers about the counterdemonstration and assured them that they will protect the Pride participants. ODIHR monitors observed police officers at the gathering point of the Pride participants and every 5 metres along the route of the march. Similarly, there were police officers on the street between the two assemblies. Shortly before the end of the Pride march, the participants of the counterdemonstration moved towards the park where the Pride participants gathered following the march, but were stopped by a police cordon at the crossroads before reaching the park. The Pride concluded without incidents. The two events were facilitated and policed by approximately 600 police officers, including anti-conflict teams, riot police, and plain-clothes police officers.

### *Conclusions and recommendations on policing of demonstrations and counterdemonstrations*

270. The policing of assemblies and related counterdemonstrations may pose specific risks of confrontation between opposing groups. This is underscored by the need to ensure that assemblies are consistently policed in line with principles providing that an assembly should be allowed to take place within sight and sound of its intended audience.
271. In policing demonstrations and counterdemonstrations, the police must ensure that assembly participants are able to convey their message to their audience, while ensuring the safety and security of all individuals present.
272. Police authorities should be encouraged to find ways to allow demonstrations and counterdemonstrations near one another (unless counterdemonstrations are directly threatening the rights of others), avoiding the creation of unnecessarily large buffer zones. Whenever possible, they should limit their interventions to keeping opposing groups close to each other, albeit physically separate.

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<sup>360</sup> Interview with representatives of the Podgorica Police Directorate, 21 October 2014.

273. The police in Podgorica successfully protected the participants of the Pride parade from violent counter-demonstrators and secured their physical safety following the end of the assembly. The counter-protesters were also able to express their opinion as long as they remained peaceful, and the reaction of the police appeared to be proportionate, targeting the people engaged in violence. The counter-protesters were not within sight and sound of the parade; however, based on the very high risk of confrontation and the violent behaviour of the counter-protesters, this was an appropriate measure.
274. The fact that the authorities both in Sofia and in Usti nad Labem facilitated unannounced counterdemonstrations and devoted adequate policing resources to be able to facilitate simultaneous assemblies and protect the physical safety and security of the demonstrators in both locations shows a positive practice.
275. The announced counter-demonstration of the Albanian Muslim Forum was banned on the grounds of lack of police resources to facilitate the assembly parallel to the previously notified Pride events. According to ODIHR's assessment, the announced location of the counter-demonstration would have been within "sight and sound" of the two LGBTI events. As discussed, the positive duty to protect peaceful assemblies also applies to counter-protests. The state has to ensure adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within sight and sound of one another.<sup>361</sup>

276. Recommendations for participating States:

- to ensure that police authorities facilitate assemblies and counterdemonstrations within sight and sound of each other to the extent possible and adequate policing resources are made available to that effect;
- to facilitate all simultaneous assemblies (including peaceful counter-demonstrations) to the extent possible, while protecting the right to assemble and the security of all peaceful protesters by deploying an adequate number of properly trained law enforcement personnel to this end;
- to ensure that potential disorder arising from hostility directed against those participating in a peaceful assembly is not used to justify the imposition of restrictions on the peaceful assembly;
- in particular, whenever possible, to ensure that any measures taken to physically separate demonstrators and counter-protesters or onlookers, including by creating buffer zones, interfere as little as possible with the ability of assembly participants to be within sight and sound of one another or their intended audience;
- to take adequate measures to protect the safety and security of all assembly participants, demonstrators and counter-demonstrators alike, as well as of onlookers; such measures should place emphasis on allowing opposing groups to demonstrate close to each other, albeit separated physically.

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<sup>361</sup> *The Guidelines, op. cit.*, note 3, para 4.4.

## USE OF FORCE, DETENTION AND CONTAINMENT, DISPERSALS

*The use of force, detention and containment, as well as dispersals: international standards and good practice*

277. In fulfilling their duties, police officers may only use force in line with the principles of necessity and proportionality.<sup>362</sup> Moreover, OSCE commitments reinforce the fundamental right to life (Helsinki 2008) and require participating States to prohibit torture and other cruel, inhuman or degrading treatment or punishment and to take effective legislative, administrative, judicial and other measures to prevent and punish such practices (Vienna 1989, Copenhagen 1990). The prohibition of torture and other forms of ill-treatment is also enshrined in a number of international human rights treaties, including the ICCPR (Article 7), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 2 and 16)<sup>363</sup> and the ECHR (Article 3). They should, as far as possible, apply non-violent means before resorting to the use of force and firearms,<sup>364</sup> which may be employed only if other means remain ineffective or without any promise of achieving the intended result.<sup>365</sup>
278. Human rights principles on the prohibition of torture and other ill-treatment and on the use of force by law-enforcement officers have specific implications with respect to the policing of assemblies. It is worth noting that, in addition to being in violation of human rights obligations, the inappropriate, excessive or unlawful use of force by law-enforcement authorities can be counter-productive, notably in undermining police-community relationships and causing widespread tension and unrest.<sup>366</sup> Police should resort to the use of force only in line with the principles of exceptionality, proportionality and necessity.<sup>367</sup>
279. In the context of assemblies, the use of force should be preceded by adequate prior warnings that permit individual participants to leave peacefully.<sup>368</sup> A variety of responses should enable a differentiated and proportional use of force<sup>369</sup> that is adequate to the threat, and, under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene.<sup>370</sup> The ECtHR has stressed that Article 3 of the Convention does not allow for a balancing exercise to be performed between the physical integrity of an individual and the aim of maintaining public order.<sup>371</sup>

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<sup>362</sup> See, for example, Article 3 of the UN Code of Conduct for Law Enforcement Officials. Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169, 17 December 1979, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>>.

Also, *Ivan Vasilev v. Bulgaria* (2007).

<sup>363</sup> All participating States covered in this report are parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>364</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4.

<sup>365</sup> *Ibid.* On the use of force by the police, also see OSCE, *Guidebook on Democratic Policing* (Vienna: OSCE, 2008), paras. 54 and ff. According to ECtHR, a recourse to physical force which has not been made strictly necessary by a person's own conduct is in principle an infringement of the right set forth in Article 3 of the Convention. *Izci v. Turkey* (2013), para. 55.

<sup>366</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 171.

<sup>367</sup> See UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>368</sup> *The Guidelines, op. cit.*, note 3, para. 5.5.

<sup>369</sup> *Ibid.*

<sup>370</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 176.

<sup>371</sup> *Izci v. Turkey* (2013), para. 56.

280. These principles apply as well to so-called less-than-lethal weapons, including plastic and rubber bullets, attenuated energy projectiles, water cannons and other forceful methods of crowd control, which must be strictly regulated,<sup>372</sup> ensuring that they are used only when necessary by police officers who are trained in their use. More generally, such types of equipment should be seen as being close to the far end of a continuum, which begins with equipment designed to minimize the need for the use of force (e.g., protective gear, shields, helmets, etc.) and which moves to different types of weapons, disabling chemicals, etc., depending on the threat faced by police officers or others.
281. With regard to the use of tear gas, The ECtHR Court has also ruled that its unwarranted use by law enforcement officers is not compatible with the prohibition of ill-treatment within the meaning of Article 3 of the Convention.<sup>373</sup> The UN Special Rapporteur recalled that gas does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions. He also warned against any modification of the chemical composition of the gas for the sole purpose of inflicting severe pain on protesters and, indirectly, bystanders.<sup>374</sup>
282. Strategies of crowd control that rely on containment (kettling or corralling) 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.<sup>375</sup> The kettling of protesters may also result in a violation of their rights to liberty and freedom of movement.<sup>376</sup> The UN Special Rapporteur has also noted that kettling is “inherently detrimental to the exercise of the right to freedom of peaceful assembly, due to its indiscriminate and disproportionate nature”<sup>377</sup> and has opposed this practice.<sup>378</sup>
283. OSCE commitments provide that no one will be deprived of his or her liberty except on such grounds and in accordance with procedures that are established by law (Moscow 1991).<sup>379</sup> In the context of assemblies, it is important to establish clear protocols for the lawful arrest of participants in assemblies, providing guidance as to when detention is justified.<sup>380</sup> While mass arrests are to be avoided, there may be occasions involving public assemblies when numerous arrests based on unlawful conduct of arrestees are deemed necessary. However, large numbers of participants should not be deprived of their liberty simply because the law-enforcement

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<sup>372</sup> *Ibid.*

<sup>373</sup> *Ali Günes v. Turkey* (2012), para. 168.

<sup>374</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 35. On the use of tear gas, see also *Izci v. Turkey* (2013); *Abdullah Yasa v. Turkey* (2013) and *Ataykaya v. Turkey* (2014).

<sup>375</sup> *The Guidelines, op. cit.*, note 3, para. 160.

<sup>376</sup> In *Austin and Others v. The United Kingdom* (2012), the ECtHR held that police kettling of a crowd (and a number of bystanders) did not constitute a deprivation of liberty under Article 5 of the ECHR. Nonetheless, it noted that kettling could only be permissible where violence is taking place or is reasonably thought to be imminent, and where other less intrusive means had been reasonably assessed as being ineffective. In a subsequent UK case, *Mengesha v. Commissioner of the Police of the Metropolis* (2013), the UK High Court held that kettling is not permitted as a means of obtaining the identification of those contained. Similar practices have also been reported in France, for example. *Austin and Others v. The United Kingdom* (App. Nos. 39692/09, 40713/09 and 41008/09, judgment of 15 March 2012), EWHC 1695 (Admin) at para.12.; “Does France respects the right of freedom of peaceful assembly for all citizens in Paris in 2011”, ECtHR News, 6 October 2001, <<https://echrnews.wordpress.com/tag/discrimination/>>.

<sup>377</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39/Add.1, 17 June 2013, para. 37.

<sup>378</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, 21 May 2012, para 37.

<sup>379</sup> A similar principle is enshrined in Article 9 of the ICCPR.

<sup>380</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 161.

agencies do not have sufficient resources to individualize arrest decisions based on particularized facts.<sup>381</sup>

284. Stemming from the presumption in favour of holding assemblies, non-violent unlawful assemblies should not be immediately terminated. Rather, the principle of proportionality requires that the enforced dispersal of unlawful assemblies – so long as they remain peaceful – should only occur once the demonstrators have been given a reasonable time to convey their message and disperse voluntarily. Even then, the authorities should follow a graduated response and should seek to exhaust non-forceful means of intervention, before adopting more forceful methods.
285. As noted above, the enforced dispersal of assemblies should be a measure of last resort when law-enforcement officials have taken all reasonable measures to facilitate and protect an assembly from harm and unless there is an imminent threat of violence.<sup>382</sup> The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that in the dispersal of assemblies that are unlawful but non-violent, law-enforcement officials should avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.<sup>383</sup>
286. If dispersal is deemed necessary, the assembly organizer and participants should be clearly and audibly informed prior to any intervention by law-enforcement personnel. 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.<sup>384</sup>

*Use of force, detention and containment, as well as dispersals in selected participating States*

287. According to Albania's Police Act, officers may use force "to achieve a legal purpose only when it is necessary, (...) only after other measures have been unsuccessful" and only the "minimal amount of force necessary".<sup>385</sup> Bulgaria's Ministry of Interior Act authorizes the use of force "only when this is absolutely necessary",<sup>386</sup> "only the absolutely necessary force",<sup>387</sup> and adds that the use of force "shall stop immediately after its lawful purpose has been achieved".<sup>388</sup> Both Albanian and Bulgarian laws also require warnings to be issued prior to any use of force.<sup>389</sup> In the Netherlands force can be used by the police in the course of their "lawful execution of duties" and "if the intended objective cannot be reached in other ways".<sup>390</sup>
288. Greece's Police Code of Conduct similarly allows force "only when absolutely necessary and to the extent envisaged and required for law enforcement".<sup>391</sup> In Portugal, the Police Code of Ethics authorizes law enforcement to only resort to the use of force when "it is deemed

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<sup>381</sup> *Ibid.*

<sup>382</sup> *Ibid.*, para. 165.

<sup>383</sup> Principle 13, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>384</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 168.

<sup>385</sup> Article 118, Police Act of Albania.

<sup>386</sup> Article 72(1), Ministry of Interior Act of Bulgaria.

<sup>387</sup> *Ibid.*, Article 73(3).

<sup>388</sup> *Ibid.*, Article 73(5).

<sup>389</sup> *Ibid.*, Article 73(1).

<sup>390</sup> Article 7 of the Police Act of the Netherlands.

<sup>391</sup> Article 2, Police Code of Conduct of Greece.

legitimate, strictly necessary, appropriate and proportionate to the objectives pursued”.<sup>392</sup> Although Spanish law refers to necessity and proportionality, the use of force in Spain is not specifically regulated.<sup>393</sup> In France, the use of force is appropriate only if absolutely necessary for the maintenance of public order. The deployed force must be proportionate to the disturbance.<sup>394</sup> In Montenegro, the Police Act says that “police powers must be proportionate to the need”.<sup>395</sup>

289. Most states regulate the grounds for dispersal in their legislation on assemblies. As discussed above, a prior ban or lack of notification may constitute a ground for a dispersal, but there are a number of other conditions, which could lead to this end. In Spain, authorities may disperse assemblies when disturbances to public order endangering people and property occur, when an assembly is deemed illegal by the penal laws or when the participants are wearing paramilitary uniforms.<sup>396</sup> The Penal Code defines an assembly as illegal when it is held in order to commit an offence or attended by people bearing weapons, explosive devices and other blunt or dangerous items.<sup>397</sup>
290. Portuguese authorities are limited to dispersing assemblies when an assembly does not fulfil its purpose as a result of acts contrary to the law or morals or acts that “seriously and effectively disrupt public order and tranquillity, the free exercise of individual rights”. Moreover, unannounced assemblies can also be dispersed.<sup>398</sup>
291. In the Netherlands, mayors can order dispersal if a condition, restriction or instruction has been infringed.<sup>399</sup> Moreover, similar to the reasons for a ban, the “interest of traffic” can be grounds for ordering the dispersal.
292. Article 9 of Albania’s Law on Demonstrations allows dispersal when the assembly “may damage public order and the security of persons in a concrete manner” or when “crimes are committed during the assembly” or “there is an emergency situation connected to public security and the place occupied by the assembly is needed for the emergency services”. Paragraph 2 allows the police officer in charge of assisting and observing the demonstration to remove participants who he/she thinks are posing a risk to the normal conduct of the demonstration.
293. Assemblies may be dispersed in Montenegro when they are unnotified or banned, take place outside the location stated in the notification, when participants are incited to violence or national, racial, religious and other types of hatred or intolerance, the stewards are unable to maintain peace and order or there is an actual or direct danger of violence or other types of major violation of public order and peace.<sup>400</sup>
294. Greek authorities may disperse an assembly when it becomes violent or there is an “imminent” risk to life or the participants’ physical integrity or if participants commit criminal offences.<sup>401</sup> Bulgaria’s law requires the relevant mayor to dissolve the assembly. Otherwise, the law is silent on the reasons and methods for dispersal.

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<sup>392</sup> Article 8(2), Police Code of Ethics of Portugal.

<sup>393</sup> Amnesty International, *Spain: The Right to Protest under Threat* (London: Amnesty International, 2014), <[https://www.amnesty.org.uk/sites/default/files/spain\\_-the\\_right\\_to\\_protest\\_under\\_threat\\_0.pdf](https://www.amnesty.org.uk/sites/default/files/spain_-the_right_to_protest_under_threat_0.pdf)>.

<sup>394</sup> Article R.431-3, Penal Code of France.

<sup>395</sup> Article 15, Police Act of Montenegro.

<sup>396</sup> Article 6, Organic Law 9/1983 of Spain.

<sup>397</sup> Article 513, Penal Code of Spain.

<sup>398</sup> Article 5(1), Decree Law 406/74 of Portugal.

<sup>399</sup> Article 7, Public Assemblies Act of the Netherlands.

<sup>400</sup> Article 20(3), Public Assembly Act of Montenegro.

<sup>401</sup> Article 7(1)(e) Act 794/1971 of Greece; Article 132, Act 141/1991 of Greece.

295. Similarly, legislation in several states also defines the methods of dispersal. Article 23 of the Albanian Law on Demonstrations specifies that if the police decide to disperse an assembly, they should order the organizers, stewards and participants to interrupt the assembly and leave the place where it is being held immediately. In case the participants do not leave the scene after three “clear calls” (Article 23, para. 2), the police may use force to disperse the assembly.
296. According to Act 794/1971 of Greece, “the police headquarters can decide the means in which an assembly can be dissolved, without consequences”.<sup>402</sup> Royal Decree 269/1972 describes the dispersal procedure in Greece. The police should notify the president of the assembly, the committee or the speaker. This should be done three times and communicated to the assembly participants through a megaphone. If the assembly is not brought to a stop, the police can use force. If the means are unsuccessful, and violence and unrest are imminent, “following an opinion provided by the administrative or judicial authority, the police can revert to the use of arms”.<sup>403</sup>
297. In France, the police may disperse unlawful assemblies after issuing two orders without success.<sup>404</sup> Portugal’s assembly law also requires the relevant authorities to submit a report stating the grounds for dispersal and to provide a copy of the report to organizers.<sup>405</sup>
298. Use of force, detentions, and kettling by law-enforcement officials were observed by ODIHR monitors in France (Paris), Montenegro (Podgorica), the Netherlands (The Hague), and in Spain (Madrid).
299. In Podgorica the police used force, including tear gas, against some of the counter-protesters against the Pride march and detained some of them in response to violent acts including the throwing of stones, pyrotechnic devices and other objects, as well as damage to property.
300. On 22 March 2014 in Madrid, a huge social protest took place against austerity measures and high unemployment involving approximately 50,000 participants. The police facilitated various groups coming to Madrid and later to the venue of the march from different cities and regions of Spain. The participants planned to march through the Madrid city center. During the first part of the march, evidence from the organizers and the police indicated that there had been intensive communication to facilitate the march. The police was present at higher numbers at certain areas of the assembly route such as the Bank of Spain, the Parliament or the headquarters of the People’s Party, the governing party of Spain. The roads to these buildings were blocked by double fence aided by police minivans. The assembly was mainly facilitated by regular police with riot police at the above-mentioned buildings. At around 8:30 p.m., several dozen aggressive hooded individuals (50 people according to the assembly organizers) approached the police fence installed at the street that leads to the headquarters of the People’s Party, and started to attack by throwing stones and other objects at the police fences. Approximately 250 policemen in riot gear started to push the crowd, which also affected several hundred peaceful demonstrators. The peaceful demonstrators gradually turned in resisting the push of the police. A number of them threw stones and used other means to resist the police intervention. The ODIHR monitors did not witness the outbreak of the violence but observed the results of the confrontation by the destroyed trash bins and hundreds of stones left in the area. Moreover, the incident was video recorded by a number of assembly participants and onlookers.<sup>406</sup> According to information received from the police,

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<sup>402</sup> Article 8, Act 794/1971 of Greece.

<sup>403</sup> Article 1, Royal Decree 279/1972 of Greece.

<sup>404</sup> Article 431-9, Penal Code of France.

<sup>405</sup> Article 5(2), Decree law 406/74 of Portugal.

<sup>406</sup> <https://www.youtube.com/watch?v=LWTnN0EEUhl;>  
<https://www.youtube.com/watch?v=8zrxflQ3Jqo&feature=youtu.be;>

approximately 30 individuals were detained (including three minors, according to the organizers) for committing acts of violence (use of force against the police, participation in a riot, damaging public property). Around 67 police officers were wounded. The police deployed rubber bullets and smoke grenades during the operation.

301. As described earlier, in The Hague, in the context of assemblies that did not fully meet relevant notification requirements and/or previously imposed restrictions, ODIHR observed the group arrests of all the peaceful protesters at two assemblies. At one of the observed assemblies, all the assembly participants were briefly kettled before arrest.
302. On 1 May 2014, a protest was held in Paris against right-wing violence. The assembly was organized by various groups, including the Movement against Racism and for Friendship among People and other associations in support of migrant rights. Police officers in regular uniforms and full riot gear were present at the gathering point of the assembly. Approximately 100 participants gathered to take part in the march, mostly young men. Some of them (about 40-50 persons) wore black clothes and covered their faces with masks and some had wooden sticks. When the march started the participants were escorted by the policemen walking in the front, back and on both sides. At the front and back there were about 15 officers each. A group of participants with masks and sticks walked in the front rows of the assembly, and was confrontational with police, e.g. throwing a flare in the direction of the police or shouting at police officers and using firecrackers throughout the march. At one point a scuffle between some of the participants and the police broke out. It was a brief instance which lasted for about 30 seconds during which time the police encircled the protesters. Violence was avoided. Following the confrontation the police cordon moved away and kept a larger distance of about 20-30 meters. When the march reached the Pont du Carrousel the participants stopped facing the Louvre. There was a row of riot police blocking the entrance of the Louvre and additional police units were deployed immediately after the march stopped significantly outnumbering the protesters. The police informed ODIHR later that the reinforcement was necessitated by the relatively close proximity of the parallel assembly organized by the Front National.<sup>407</sup> The march proceeded without incidents. There was no communication observed by ODIHR between the police and the organizers throughout the assembly.
303. ODIHR also observed a street march organized by groups of anarchists, anti-fascists, anti-capitalists, and anti-sexists on 1 May 2014 in Paris. There were about 500 participants. At the beginning of the demonstration only around 10-15 police officers in civilian clothes were observed. After the march started they were following the demonstration at the front and at the back. At one point about 15-20 people from the demonstrators started to act violently breaking the vitrines of a supermarket with sticks. A larger number of police officers in anti-riot gear were deployed to protect the supermarkets and bank offices on the assembly route. They also surrounded the protesters and moved along with them in two lines. The violent group threw glass bottles and once a chair at the police. The police did not react to the violence directed at them but used their shields to protect themselves. The violent group was seemingly not supported by the organizers and the rest of the participants.<sup>408</sup> Short-term restriction to move was imposed by police on the rue de Chemin Vert. At that point the police split the marching group in two creating a cordon between them. One group was effectively briefly “kettled”. This led to a short confrontation with a group of protesters who attempted to push through the police cordon. Following this incident, which lasted a few minutes, the two groups were allowed to join and to move forward. The ODIHR monitors did not observe the

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[http://www.youtube.com/watch?feature=player\\_embedded&v=s66Mbfv8ZxY](http://www.youtube.com/watch?feature=player_embedded&v=s66Mbfv8ZxY).

<sup>407</sup> Interview with representatives of the police, 12 May 2014.

<sup>408</sup> For example, the group was approached by other participants, who asked them who they were and where they were from and the organizers at some point told them that in case there would be more violence they would have to stop the assembly.

use of force by the police or any arrests during the assembly. Following the demonstration the police informed ODIHR that seven people were taken to the police station after the assembly was over out of which five were released and two were detained for attacking a police officer.<sup>409</sup>

*Conclusions and recommendations on the use of force, detention, containment and dispersals*

304. In some participating States, assemblies may be dispersed in a broad range of situations, and these are not limited only to the most serious cases. In addition, the decision to disperse an assembly may be based more on the subjective considerations of the deciding authority rather than the objective facts of the situation.
305. Although Albania's Law on Demonstrations appears to be aimed at limiting dispersals to situations where assemblies are creating serious problems, the provisions are too broad or too vague and therefore could allow for an arbitrary application of the law. Moreover, the Law does not specify that only serious crimes attributable to the entire assembly should give rise to the need for dispersal. Paragraph 2 allows the police officer in charge of assisting and observing the demonstration. It is positive, however, that the Albanian Law explicitly notes that any use of force must be kept to a minimum.<sup>410</sup>
306. Greek authorities may disperse an assembly when it becomes violent or there is an "imminent" risk to life or the participants' physical integrity or if participants commit criminal offences.<sup>411</sup> Notably, Greek laws do not appear to allow for dispersal until violence actually happens or is imminent.
307. Assemblies may be dispersed by the police in Montenegro for a wide range of reasons, including when the "stewards are not able to maintain peace and order".<sup>412</sup> As discussed previously, the official duty to maintain public order during assemblies is the central responsibility of the state. Therefore, the dispersal of an assembly based on this provision would constitute disproportionate interference in the exercise of freedom of peaceful assembly. An assembly can be dispersed if "there is an actual or direct danger of violence or other types of major violation of public order and peace". The law, however, fails to specify what constitutes a "major violation of public order and peace".<sup>413</sup>
308. Bulgaria's law does not specify the reasons and methods for dispersal. The lack of legislation/guidance is likely to be problematic for police officers reacting to small- or large-scale disruptions/violence during assemblies.
309. As discussed earlier, some participating States authorize dispersal when the proper notification for an assembly has not been provided. Participating States should remember, that in line with internationally accepted good practice, unannounced assemblies should be allowed to continue without dispersal if these assemblies remain peaceful.
310. Ensuring that police practice in detaining and using force against participants or others present at assemblies meets human rights standards is of central importance. In this regard, it is positive that in most assemblies monitored by ODIHR, limited or no interventions were observed involving detentions or the use of force. This was generally the case also during assemblies that presented specific challenges in relation to the maintenance of public order

<sup>409</sup> Interview with representatives of the police, 12 May 2014.

<sup>410</sup> Article 23(3), Law on Demonstrations of Albania.

<sup>411</sup> Article 7(1)(e), Act 794/1971 of Greece; Article 132, Act 141/1991 of Greece.

<sup>412</sup> Article 20(3), Public Assembly Act of Montenegro.

<sup>413</sup> Article 20(3), Public Assembly Act of Montenegro.

and the protection of participants. In the cases where ODIHR observed the use of force by police, such as at the Podgorica Pride march, the use was judged to be necessary and proportionate.

311. The kettling of peaceful protesters at the March to the World Forum in The Hague preceding their arrest while announcing the dispersal only once and not allowing the participants sufficient time to disperse voluntarily raises concerns. As such, the employment of this containment tactic raises concerns about its compliance with the proportionality principle. For example, the ECtHR recently emphasized that measures of crowd control should not be used by national authorities directly or indirectly to stifle or discourage protest, given the fundamental importance of freedom of expression and assembly in all democratic societies. In relation to kettling, the Court underlined that, when not necessary to prevent serious injury or damage, alternative crowd-control measures should be used.<sup>414</sup>
312. All the above considerations are broadly related to the issue of over-policing of assemblies and the employment of police tactics that carry a risk of escalating, rather the de-escalating, tension. In a number of assemblies that remained peaceful, ODIHR observed the deployment of a very significant number of police officers in riot gear. This was particularly noticeable during assemblies surrounding the NSS in The Hague and the DSSS march in Usti nad Labem. The large numbers of police officers in The Hague, including police officers in riot gear (and the open display of handcuffs and batons), may have had an intimidating effect on peaceful protesters. For example the peaceful protest Stop the NSS in The Hague was facilitated by bike police, uniformed police with high visibility vests and riot police, with riot police dominating the scene on both flanks of the march. Although the assembly was peaceful and the march was not in the close vicinity of the NSS venue, the police officers moved with the assembly and positioned themselves very close to the participants. Moreover ten police vans escorted the march including a van with a video surveillance system and there were policemen taking pictures of and video recording the assembly participants.
313. In Usti nad Labem, the potential risk of violence and clashes between protesters and counter-demonstrators might have accounted for the presence of a large number of law-enforcement personnel, including regular and riot police, policemen with dogs and on horses.
314. In contrast, ODIHR monitors noticed only about a hundred police officers facilitating the protest against austerity measures combined with a protest against the European Commission, International Monetary Fund and the European Central Bank (“Troika”) on 1 June 2013 in Lisbon. The anti-Troika protest attracted about 2,500 participants, including also children, youth, pensioners and people living with disabilities. A police car and six vans were going ahead of the march by about 300 meters and the march itself was led by a car that belonged to the organizer and which therefore also regulated the speed of the marching participants. Three police vehicles and 12 police officers were observed at the back end of the demonstration. The policemen regulated the traffic and were mainly seen as observers of the event and did not interfere with the overall course of the assembly. For example, the police did not try to stop and identify the participants wearing masks.<sup>415</sup> The policemen did not display an opposition towards the assembly participants by physical appearance either as the police officers protecting the demonstration did not wear protective gear but only high-visibility vests or the regular police uniform.
315. Similarly, in Athens, the assembly organized on the occasion of the Labour Day by far-left groups on 1<sup>st</sup> May 2013 was facilitated with very low police visibility although the demonstration attracted about 2800 participants. No police officer was visible on the route of the march but observed by the ODIHR monitors on the parallel streets and side streets. The

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<sup>414</sup> *Austin and Others v. The United Kingdom* (2012).

<sup>415</sup> ODIHR monitors noticed nine participants wearing masks. The participants did not display any acts of violence.

police presence was also discrete at the parallel assembly organized by the General Confederation of All Workers. Riot police with special equipment were not immediately visible to demonstrators. Only two police officers equipped with shields and helmets were on the assembly route, near the Ministry of Interior.

316. ODIHR recognizes the importance of adequate police preparedness for dealing with potential unrest during assemblies. However, given the potential effect on public perceptions and community confidence, and as a way of de-escalating tension, a good practice in some situations may be to deploy police officers (in riot gear, if necessary) who are ready to intervene in locations that are very close to an assembly, but who are not immediately visible to assembly participants.

317. Recommendations for participating States:

- to ensure that the use of force by law-enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality and is consistent with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- ensure that rules on the use of force by law-enforcement officials policing assemblies are established, in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and made public;
- in particular, to ensure that less-than-lethal weapons, including chemical irritants and other chemical crowd control agents, are only used when necessary and proportionate to maintain public order or to achieve other legitimate aims; the use of such weapons should be strictly regulated and subjected to regular review;
- to ensure that officers equipped with less-than-lethal weapons are properly trained in their use; their training should incorporate international human rights principles on the use of force;
- to ensure that any decision to disperse an assembly is taken in line with the principles of necessity and proportionality; the order to disperse is clearly communicated (audible and clearly worded warnings) and explained so as to obtain, as far as possible, the understanding and compliance of the assembly participants and sufficient time is given for the participants to disperse safely and of their own accord;
- to ensure that individual participants in assemblies are only detained when there are reasonable grounds for the deprivation of liberty and without resorting to excessive use of force during arrests; mass arrests should be avoided;
- to ensure that crowd-control strategies relying on containment (kettling or corralling) are only employed when necessary to prevent serious damage or injury and when no alternative police tactics that would be less restrictive of the rights to liberty and the freedom of movement can be employed;
- to ensure that police tactics place emphasis on de-escalating tension and deploy large numbers of police officers in riot gear only when necessary on the basis of a specific risk assessment;
- to provide training to law-enforcement officials on the use of force and on facilitating assemblies with a strong emphasis on crowd management and crowd-control measures consistent with OSCE commitments and human rights standards;
- to ensure that law-enforcement agencies are adequately trained, resourced and equipped (including with non-lethal technologies) so as to best enable restrained and proportionate policing of people exercising their freedom of assembly.

## SECTION IV: MONITORING AND REPORTING ON FREEDOM OF PEACEFUL ASSEMBLY: ACCESS AND RESTRICTIONS

### *Media representatives and independent monitors: international standards and good practice*

318. OSCE participating States are committed to ensuring that everyone can enjoy the freedom of expression and to respecting the right of everyone, individually or in association with others, to freely seek, receive and impart views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information (Copenhagen 1990). The freedom of expression, including the right to information, is protected in numerous other international human rights instruments, such as the ICCPR (Article 19) and the ECHR (Article 10).
319. 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.<sup>416</sup> The right to monitor public assemblies is part of the more general right to receive information (a corollary to the right to freedom of expression). Freedom to monitor public assemblies should not only be guaranteed to all media representatives, including so-called citizen journalists,<sup>417</sup> but also to other members of civil society, such as human rights activists.<sup>418</sup>
320. Independent monitoring may also be carried out by intergovernmental organizations, national human rights institutions or NGOs. Such individuals and groups should, therefore, be permitted to operate freely in the context of monitoring freedom of assembly.<sup>419</sup>
321. As the UN Special Rapporteur emphasized, the right to peaceful assembly not only covers the right to hold or participate in an assembly, but also protects the rights of those monitoring peaceful assemblies.<sup>420</sup> He has, therefore, called on states to ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies.<sup>421</sup> The then Special Representative of the Secretary-General on the situation of human rights defenders called on states to allow human rights defenders to operate freely in the context of assemblies in order to enable them to perform their monitoring role.<sup>422</sup>
322. In addition, OSCE commitments require participating States to seek ways to further strengthen modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions; to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions; to welcome NGO activities, including, *inter alia*, observing compliance with commitments in the field of the human dimension and to allow NGOs, in view of their important function within the human dimension, to convey their views to their own

<sup>416</sup> *The Guidelines, op. cit.*, note 3, para. 5.9.

<sup>417</sup> Citizen journalism is intended here as the activity of citizens who do not work for the mainstream media but who collect, report, analyse, and disseminate news and information.

<sup>418</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 199.

<sup>419</sup> *Ibid.*, para. 201.

<sup>420</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, Summary.

<sup>421</sup> *Ibid.*, para. 94.

<sup>422</sup> “Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani”, United Nations General Assembly, A/62/225, 13 August 2007, paras. 91, 101(f)(i).

governments and the governments of all the other participating States during the future work of the OSCE on the human dimension (Moscow 1991).

323. The role of the media is to impart information and ideas on matters of public interest, information that the public also has a right to receive.<sup>423</sup> They also have a very important role to play in providing independent coverage of public assemblies.<sup>424</sup> Media reports and footage provide a key 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.<sup>425</sup> As the OSCE Representative on Freedom of the Media pointed out, “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>426</sup>

*Access and restrictions for media and independent monitors in selected participating States*

324. During their monitoring deployments, ODIHR observers generally did not experience restrictions on their ability to observe assemblies or gather information. An initial misunderstanding with the Spanish authorities<sup>427</sup> was subsequently clarified and ODIHR was able to observe assemblies in nine participating States in this monitoring cycle. ODIHR regrets that the Russian Federation was not ready to facilitate an ODIHR assembly monitoring mission.
325. In the vast majority of cases, before and after assemblies, ODIHR was able to secure the meetings it had requested with the local authorities of participating States where monitoring was conducted. Co-operation and the exchange of information were usually good or very good. An exceptionally high degree of openness and co-operation was noted in meetings with the authorities in Bulgaria, the Czech Republic and the Netherlands.
326. The Attica General Police Directorate in Athens (Greece) explained the details of police deployment in relation to each assembly ODIHR monitored. The Tirana State Police showed the ODIHR monitors the position of the police cordons in advance of the monitoring exercise.
327. In Usti nad Labem (Czech Republic), ODIHR monitors were granted access to cordoned-off areas or areas where other movement restrictions were in place. In The Hague, in the context of a group arrest, one ODIHR assembly monitor and the security expert for the monitoring exercise were temporarily detained but were allowed to leave once they showed their identification documents to the police. During the same policing measure, several media representatives were also temporarily detained.
328. ODIHR received information that the Tirana Pride march was also independently monitored by the OSCE Presence in Albania and the Office of the Albanian Ombudsman and their work was unhindered.
329. ODIHR did not observe any restrictions imposed by state agents on the professional activities of journalists during monitored assemblies. Most of the assemblies ODIHR observed, such as

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<sup>423</sup> *The Guidelines, op. cit.*, note 3, Explanatory Notes, para. 206.

<sup>424</sup> *Ibid.*, para. 207.

<sup>425</sup> *Ibid.*, para. 208.

<sup>426</sup> “Special Report: Handling of the media during political demonstrations – Observations and Recommendations”, OSCE Representative on the Freedom of the Media, 21 June 2007, <<http://www.osce.org/fom/25744>>.

<sup>427</sup> “OSCE/ODIHR Director disappointed by Spanish decision against monitoring of Madrid demonstration”, ODIHR Press Statement, 27 September 2013, <<http://www.osce.org/odihr/105973>>.

the anti-Troika march in Lisbon, the LGBTI Pride march in Podgorica, or the assembly in Almelo (The Netherlands), were extensively covered by the media.

330. The news server Romea.cz, which reports on news related to human rights and minority issues, especially those of concern to the Roma minority in the Czech Republic, provided online, real-time coverage of the assembly organized in the Roma community by Konexe in Usti nad Labem from inside the assembly.
331. However, despite the fact that organizers instructed their stewards that media could not be prevented from being present at Sofia Pride 2014, ODIHR monitors observed that some identifiable media representatives, such as from the Ataka TV Channel, were prevented from entering the gathering area of the assembly by the stewards at the entrance, and the police did not intervene. Also, according to the security plan for the Pride march in Montenegro, as provided by the police, media representatives were subject to clearance by the organizers.

*Conclusions and recommendations on access and restrictions for media and independent monitors*

332. In line with their OSCE commitments, Albania, Bulgaria, the Czech Republic, France, Greece, Montenegro, the Netherlands, Portugal and Spain facilitated ODIHR's assembly-monitoring missions by providing access to assembly locations and official interlocutors, as well as supplying additional information when requested.
333. In many of the participating States included in this monitoring exercise, there is no established practice by local civil society organizations to observe assemblies systematically. The monitoring of the LGBTI Pride and Ride in Tirana by the Office of the Ombudsman in Albania is positive. The promotion and facilitation of independent observation of assemblies by participating States is a good practice in line with OSCE commitments.
334. Allowing unhindered access to journalists and monitors during assemblies and enabling them to document and report on the interaction between assembly participants, police forces and others is an important corollary of OSCE commitments and other human rights standards on freedom of peaceful assembly, freedom of expression, and freedom of the media. It is positive that ODIHR, in the course of its monitoring, did not directly observe any significant impediments or obstacles to the work of journalists. However, the pre-screening of media representatives by the organizers gives rise to concern. Such practice can hinder the work of the media to impart information and ideas on matters of public interest, and could lead to content-based restrictions.
335. In addition, measures should be taken to ensure that, whenever kettling participants, law-enforcement officials refrain from detaining, even temporarily, other individuals, including assembly monitors and journalists, not engaging in unlawful conduct.

336. Recommendations for participating States:

- to allow and actively facilitate the independent monitoring of assemblies by international and local observers without imposing undue limitations on their activities;
- to expressly recognize and guarantee the right of civil society actors to monitor, record and report on the policing of assemblies;
- to ensure that both traditional and citizen journalists are able to provide coverage of public assemblies, including the actions of the police, without official hindrance, except under rare

circumstances where resources, such as time and space, are limited; in particular, to ensure that access is provided to the greatest extent possible to assembly monitors and journalists, to all locations where they may carry out their activities;

- to ensure that journalists and assembly monitors are not detained by the police a result of mass arrests or their lack of credentials; they should not be arrested as a result of their failure to leave an area once a dispersal order is given unless their presence would unduly interfere with police action.

## ANNEX 1: KEY OSCE COMMITMENTS RELEVANT TO ODIHR'S MONITORING MANDATE

### **Prague 1992 (Document on Further Development of CSCE Institutions and Structures: III. Human Dimension)**

[...] In order to extend practical co-operation among participating States in the human dimension, the Ministers decided to give additional functions to the Office for Free Elections which will henceforth be called the Office for Democratic Institutions and Human Rights.

10. Under the general guidance of the CSO, the Office should, *inter alia*:

[...]

- serve as an institutional framework for sharing and exchanging information on available technical assistance, expertise, and national and international programmes aimed at assisting the new democracies in their institution-building;
- facilitate contacts between those offering such resources and those wishing to make use of them;

[...]

- establish contacts with non-governmental organizations active in the field of democratic institution-building, with a view to enabling interested participating States to make use of their extensive resources and expertise;

### **Helsinki 1992**

[...] The participating States express their strong determination to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote the principles of democracy and, in this regard, to build, strengthen and protect democratic institutions, as well as to promote tolerance throughout society. To these ends, they will broaden the operational framework of the CSCE, including by further enhancing the ODIHR, so that information, ideas, and concerns can be exchanged in a more concrete and meaningful way, including as an early warning of tension and potential conflict. In doing so, they will focus their attention on topics in the Human Dimension of particular importance. They will therefore keep the strengthening of the Human Dimension under constant consideration, especially in a time of change.

[...]

[...] ODIHR will, as the main institution of the Human Dimension:

(5a) assist the monitoring of implementation of commitments in the Human Dimension

by:

- serving as a venue for bilateral meetings under paragraph 2 and as a channel for information under paragraph 3 of the Human Dimension Mechanism as set out in the Vienna Concluding Document;
- receiving any comments from States visited by CSCE missions of relevance to the Human Dimension other than those under the Human Dimension Mechanism; it will transmit the report of those missions as well as eventual comments to all participating States with a view to discussion at the next implementation meeting or review conference;
- participating in or undertaking missions when instructed by the Council or the CSO;

[...]

(5c) assist other activities in the field of the Human Dimension, including the building of democratic institutions by:

[...]

- communicating, as appropriate, with relevant international and non-governmental organizations;

### **Rome 1993**

[...] Inter alia, the ODIHR will enhance its activities under its mandate in the following areas:

[...]

- receiving information provided by NGOs having relevant experience in the human dimension field;
- serving as a point of contact for information provided by participating States in accordance with CSCE commitments;
- disseminating general information on the human dimension, and international humanitarian law.

### **Budapest 1994**

[...] [ODIHR] will provide supporting material for the annual review of implementation and, where necessary, clarify or supplement information received.

[...] The participating States recognize the need for enhanced co-operation through the ODIHR [...] for the exchange of information, including reports, and for further developing of future-oriented activities, such as outlined in the present document.

### **Oslo 1998**

[...] The OSCE and its institutions and instruments should further develop practical programs to foster democratic institutions, human rights and the rule of law in the OSCE area. The ability to react in a flexible and quick manner to emerging needs should be increased and the participating States should be encouraged to forward their requests for assistance to the relevant OSCE institutions and instruments. In particular the ODIHR should develop further its short-term advisory missions (“democratization teams”).

### **Istanbul 1999**

[...] We individually confirm our willingness to comply fully with our commitments. We also have a joint responsibility to uphold OSCE principles. We are therefore determined to co-operate within the OSCE and with its institutions and representatives [...]. We will co-operate in a spirit of solidarity and partnership in a continuing review of implementation.

### **Maastricht 2003**

[...] Full use will be made of ODIHR’s monitoring capacity, and operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis will

be promoted in order to have the fullest picture of developments. This will enable the OSCE to efficiently target work towards areas of highest priority.

### **Helsinki 2008**

[...] We recognize the valuable contribution of the OSCE in promoting and protecting the rights enshrined in the Universal Declaration. We recognize, in particular, the work of the Office for Democratic Institutions and Human Rights (ODIHR) in assisting the participating States, in accordance with its mandate, in implementing human dimension commitments.[...]

## **ANNEX 2: KEY OSCE COMMITMENTS ON FREEDOM OF PEACEFUL ASSEMBLY**

### **Vienna 1989 (Questions Relating to Security in Europe: Principles)**

[...] In order to ensure the freedom of the individual to profess and practice religion or belief, the participating States will, *inter alia*,

[...]

(16.4) - respect the right of these religious communities to

- establish and maintain freely accessible places of worship or assembly

[...]

### **Sofia 1989 (Preamble)**

The participating States reaffirm their respect for the right of individuals, groups and organizations concerned with environmental issues to express freely their views, to associate with others, to peacefully assemble, as well as to obtain, publish and distribute information on these issues, without legal and administrative impediments inconsistent with the CSCE provisions. [...]

### **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.

### **Paris 1990 (A New Era of Democracy, Peace and Unity)**

We affirm that, without discrimination, every individual has the right to [...] freedom of association and peaceful assembly [...]

### **Istanbul 1999 (Summit Declaration)**

26. [...] We pledge to ensure fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly.

### **Helsinki 2008**

[...] We reiterate that everyone has the right to freedom of thought, conscience, religion or belief; freedom of opinion and expression, freedom of peaceful assembly and association. The exercise of these rights may be subject to only such limitations as are provided by law and consistent with our obligations under international law and with our international commitments. [...]

### **ANNEX 3: KEY INTERNATIONAL AND REGIONAL STANDARDS ON FREEDOM OF PEACEFUL ASSEMBLY**

#### **MAIN INTERNATIONAL TREATIES AND DECLARATIONS:**

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

Everyone has the right to freedom of peaceful assembly and association.

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

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

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

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.

##### **International Convention on the Elimination of All Forms of Racial Discrimination, Article 5**

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: (...)

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

##### **Convention on the Elimination of All Forms of Discrimination against Women, Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country.

##### **Convention on the Rights of Persons with Disabilities, Article 29 - Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others

## **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 26**

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

## **United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 5**

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;

## **United Nations Code of Conduct for Law Enforcement Officials**

### **Article 2**

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

### **Article 3**

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

## **United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

### **Principle 4**

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

### **Principle 5**

Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

### **Principle 9**

Law enforcement officials shall not use firearms against persons except in self-defence or 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.

### **Principle 12**

As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

### **Principle 13**

In 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.

### **Principle 14**

In 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. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

## **MAIN REGIONAL TREATIES AND DECLARATIONS**

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

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

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

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels (...)

### **American Declaration of the Rights and Duties of Man, Article 21**

Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

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

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.

**ANNEX 4: ASSEMBLIES MONITORED BY ODIHR  
BETWEEN 1 MAY 2013 AND 5 JULY 2014**

#	Date	Participating State	City	Type of event	Short description
1	1/5/2013	Greece	Athens	Protest against austerity measures combined with a workers' strike	A rally and march with about 500 participants (notification had not been given)
2	1/5/2013	Greece	Athens	Protest against austerity measures and in support of workers' rights	A static assembly combined with a march gathering up to 2,000 participants (notification had not been given)
3	1/5/2013	Greece	Athens	Demonstration on the occasion of Labour Day	A march gathering about 2,800 participants (notification had not been given)
4	1/6/2013	Portugal	Lisbon	Protest against austerity measures combined with a protest against the European Commission, International Monetary Fund and the European Central Bank ("Troika")	A march with about 2,000-2,500 participants
5	1/6/2013	Portugal	Lisbon	Demonstration in support of animal rights	A silent sit-in protest followed by a march gathering up to 50 participants
6	20/10/2013	Montenegro	Podgorica	LGBTI Pride	A march of about 150 participants
7	20/10/2013	Montenegro	Podgorica	Counterdemonstration to LGBTI Pride	A banned counterdemonstration with about 100 participants
8	22/3/2014	Spain	Madrid	Protest against austerity measures, high unemployment combined with anti-government	A march that ended with a static rally with around 50,000 participants

#	Date	Participating State	City	Type of event	Short description
				protests	
9	23/3/2014	The Netherlands	The Hague	Nuclear Security Summit protest	Bike procession with around 50 participants (notification had not been given)
10	23/3/2014	The Netherlands	The Hague	Nuclear Security Summit protest	A march combined with a static rally with about 150 participants
11	23/3/2014	The Netherlands	Amsterdam	Nuclear Industry Summit protest	A picket line gathering about 50 participants
12	24/3/2014	The Netherlands	The Hague	Nuclear Security Summit protest	A static rally with a banned march with about 50-70 participants
13	25/3/2014	The Netherlands	Almelo	Nuclear Industry Summit protest	A static protest with up to 10 participants
14	24/3/2014	The Netherlands	The Hague	Nuclear Security Summit protest	An assembly in a pond with four participants (notification had not been given)
15	1/5/2014	France	Paris	Demonstration on the occasion of Labour Day	A static assembly with about 300 participants
16	1/5/2014	France	Paris	Demonstration against the EU	A march followed by a static rally with about 2,500 participants
17	1/5/2014	France	Paris	Protest against violence	A march with around 100 participants protesting against violence by the right-wing movement
18	1/5/2014	France	Paris	“Anti-establishment” demonstration	A street march organized by groups of anarchists, anti-fascists, anti-capitalists, and anti-sexists with about 500 participants
19	1/5/2014	Czech Republic	Usti nad Labem	Political party rally against the EU, immigration and Roma	A static rally and a march gathering up to 250/300 participants organized by the DSSS
20	1/5/2014	Czech Republic	Usti nad Labem	Counterdemonstration in support of the Roma	A static rally followed by a march with about 100 participants (notification had

#	Date	Participating State	City	Type of event	Short description
				community and against the DSSS march	been given for the static rally but not for the march)
21	1/5/2014	Czech Republic	Usti nad Labem	Political party rally on the occasion of Labour Day	A static rally with up to 100 participants
22	1/5/2014	Czech Republic	Usti nad Labem	Counterdemonstration against the DSSS march and right-wing extremism	A static rally followed by a march gathering up to 70 participants (notification had not been given)
23	17/5/2014	Albania	Tirana	LGBTI Ride	An LGBTI procession on bikes followed by a march on foot with around 40 participants
24	17/5/2014	Albania	Tirana	LGBTI Pride	An LGBTI static rally and march with around 50-60 participants
25	5/7/2014	Bulgaria	Sofia	LGBTI Pride	A static rally and march with around 600 participants
26	5/7/2014	Bulgaria	Sofia	Demonstration against LGBTI Pride	A static counterdemonstration of about 50 participants (notification had not been given)

**ANNEX 5: TABLE OF THE PARTICIPATING STATES WHERE ODIHR MONITORED ASSEMBLIES IN THE 2<sup>ND</sup> MONITORING CYCLE**

<b>State</b>	<b>Place(s)</b>	<b>Month and Year</b>	<b>Number of Monitored Assemblies</b>
Albania	Tirana	May 2014	2
Bulgaria	Sofia	July 2014	2
Czech Republic	Usti nad Labem	May 2014	4
France	Paris	May 2014	4
Greece	Athens	May 2013	3
Montenegro	Podgorica	October 2013	2
The Netherlands	Almelo, Amsterdam, The Hague	March 2014	6
Portugal	Lisbon	June 2013	2
Spain	Madrid	March 2014	1
<b>9</b>	<b>11</b>	<b>May 2013-July 2014</b>	<b>26</b>

## ANNEX 6: GLOSSARY OF KEY TERMS<sup>428</sup>

### **Assembly**

The intentional and temporary presence of a number of individuals in an open-air public place for a common expressive purpose.

### **Assembly monitor**

A non-participant third-party individual or member of a group whose primary aim is to observe and record the actions and activities taking place at public assemblies.

### **Authorization**

The act of authorizing; permission (expressly provided in writing). An authorization system presumes that the assembly cannot proceed unless express permission is obtained.<sup>429</sup>

### **Blanket ban/restriction**

Effective or applicable in all instances.

### **Citizen journalist**

Citizen journalism is an activity conducted by individuals who do not work for the mainstream media but who collect, report, analyse, and disseminate news and information.

### **Content-based restrictions**

A restriction that limits expression on the basis of the message it conveys.

### **Content-neutrality principle**

A principle that only allows the restriction of expression without regard to the content or communicative impact of the message conveyed.

### **Counterdemonstration**

An assembly that is convened to express disagreement with the views expressed at another public assembly, and that takes place at, or almost at, the same time and place as the one it disagrees with.

### **Demonstration**

An assembly or procession held to express the point of view of the participants.

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<sup>428</sup> All terms are from the OSCE/ODIHR and Venice Commission's *Guidelines on Freedom of Assembly* unless otherwise indicated. See *Guidelines on Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2nd ed., 2010), pp. 15, 35, 41, 58, 94, 116-121.

<sup>429</sup> *The Right to Freedom of Assembly in the Euro-Mediterranean Region, Part I. Legislation Review* (Copenhagen: Euro-Mediterranean Human Rights Network, 2013), p. 155.

**Dispersal**

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.

**Disruption**

An interruption of the normal course of action.

**Flash mob**

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. Their *raison d'être* demands an element of surprise that would be defeated by prior notification.

**Kettling or corralling**

A strategy of crowd control whereby police create cordons that contain a crowd in specific locations and do not allow it to move or disperse.

**Less-than-lethal weapon**

A weapon that is designed to incapacitate the target rather than kill or seriously injure.

**National security**

The quality or state of being capable of resisting hostile or destructive acts from inside or outside the state.

**Non-discrimination**

Freedom of peaceful assembly is to be enjoyed equally by all people. The principle that human rights shall be applied without discrimination.

**Notification**

A notice that provides information on an upcoming assembly and does not constitute a request for permission. A notification system presumes that the assembly can proceed unless the authorities impose restrictions on specified legitimate grounds.<sup>430</sup>

**Organizer**

The person or persons with primary responsibility for an assembly.

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<sup>430</sup> *Ibid.*

**Participant**

A person intentionally and voluntarily present at an assembly who supports the message of the assembly.

**Penalty**

A punishment established by law for a breach thereof.

**Permit**

The formal grant of permission by a regulatory authority to hold an assembly.

**Presumption in favour of holding assemblies**

The presumption that an assembly may proceed in the absence of well-founded justifications for the imposition of restrictions or for preventing an assembly from occurring. 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.

**Prior restraint**

Restrictions imposed in advance of an event.

**Proportionality (principle of)**

The principle requiring that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.

**Protection of rights and freedoms of others**

The prevention of major interference with the conflicting rights and freedoms of others.

**Public order**

Security in public places.

**Public safety**

A broad notion involving the protection of the population at large from various kinds of significant damage, harm, or danger, including emergencies.

**Public space**

A space where everyone is free to come and go without restriction (e.g., streets, sidewalks or parks).

**Rally**

A static demonstration.

**Regulatory authority**

The authority responsible for taking decisions about public assemblies.

**Risk assessment**

An assessment of possible risks or problems associated with an assembly and the development of a plan of action to counter such risks.

**Sanction**

A coercive measure intended to ensure compliance with the law.

**Simultaneous assemblies**

An assembly that takes place at the same time and place as another one but that has no relationship to the other event.

**Spontaneous assembly**

An assembly that takes place as an urgent response to an event or item of news.

**Steward**

A person, working in co-operation with the assembly organizer(s), with a responsibility to facilitate an event and help ensure compliance with any lawfully imposed restrictions.

**Time, place and manner restrictions**

The types of restrictions that might be imposed on an assembly relate to its time, place, and manner. A wide spectrum of possible restrictions that do not interfere with the message communicated are available. These limitations can relate to changes to the time or place of an event, or the manner in which the event is conducted.

**Unlawful assembly**

An assembly that proceeds in non-compliance with the law regulating assemblies.

## ANNEX 7: ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY

Besides providing a regular forum for the exchange of good practices regarding the regulation and facilitation of the enjoyment of the freedom to assemble peacefully at human dimension and other events, ODIHR has developed a range of tools and expert networks to support participating States in implementing their commitments related to the freedom of peaceful assembly. The following is an overview of the ODIHR toolbox to aid the work of governments and civil society in OSCE participating States.

<b>ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY</b>	
<b>TOOL</b>	<b>DESCRIPTION</b>
<b>Legislative review</b>	ODIHR provides legal reviews of respective draft and existing legislation of the OSCE participating States upon their request. The reviews are usually published in co-operation with the Council of Europe's Venice Commission, and supported with input from the ODIHR Panel of Experts on the Freedom of Peaceful Assembly, officially established in 2006. These legal reviews often entail follow-up discussions with relevant national stakeholders. All opinions are available at: <a href="http://www.legislationline.org/topics/topic/15">http://www.legislationline.org/topics/topic/15</a>
<b>Guidelines on the Freedom of Peaceful Assembly</b>	Some examples of good practices, particularly in terms of legislation, can be found in the Explanatory Notes of the OSCE/ODIHR-Venice Commission <i>Guidelines on Freedom of Peaceful Assembly</i> , 2 <sup>nd</sup> edition (2010), <a href="http://www.legislationline.org/">http://www.legislationline.org/</a> . <i>The Guidelines</i> are informed by the relevant jurisprudence, particularly from the European Court of Human Rights case law and national constitutional courts. <i>The Guidelines</i> also provide for examples of good practice where states have demonstrated viable solutions while regulating freedom-of-assembly issues: they are a useful tool, also for legislatures, in order to review existing or to draft new legislation pertaining to freedom of assembly; they provide tools for the national and local authorities, as well as the law-enforcement bodies, agencies that are tasked with regulating this freedom; they are referred to by the courts; used as an advocacy tool by non-governmental organizations and a resource tool for monitoring and training activities.
<b>Guidelines on the Protection of Human Rights Defenders</b>	These guidelines are based on OSCE commitments and universally recognized human rights standards that OSCE participating States have undertaken to adhere to. The

	<p>guidelines are informed by key international instruments relevant to the protection of human rights defenders. The guidelines do not set new standards or aim to create special rights for human rights defenders but concentrate on the protection of the human rights of those who are at risk as a result of their human rights work.  <a href="http://www.osce.org/odihr/119633">http://www.osce.org/odihr/119633</a></p>
<b>Assembly monitoring</b>	<p>In line with its mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been monitoring public assemblies across the OSCE space since 2011. The report of the first monitoring cycle was published in November 2012:  <a href="http://www.osce.org/odihr/97055">http://www.osce.org/odihr/97055</a></p>
<b>Capacity building for civil society actors in the area of assembly monitoring</b>	<p>Recognizing the need to build capacity with non-governmental organizations and human rights defenders to systematically monitor assemblies and their policing, to analyse the findings and report them in order to have another tool in co-operating with the authorities tasked with taking adequate measures while regulating this freedom, ODIHR published its <i>Handbook on Monitoring Freedom of Peaceful Assembly</i> in 2011,  <a href="http://www.osce.org/odihr/82979?download=true">http://www.osce.org/odihr/82979?download=true</a>.</p> <p>ODIHR has conducted several training course on the basis of this handbook.</p>
<b>Human Rights Training Guide to Policing Assemblies</b> (under development)	<p>ODIHR, in collaboration with the OSCE's Special Police Matters Unit, is developing a Human Rights Training Guide to Policing Assemblies. This tool will be used as a resource to deliver training courses for law-enforcement officials on how to facilitate assemblies in line with international human rights standards using best practices from various jurisdictions.</p>