JOINT OSCE/ODIHR-VENICE COMMISSION
GUIDELINES ON FUNDAMENTAL RIGHTS

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JOINT OSCE/ODIHR – VENICE COMMISSION
GUIDELINES ON FUNDAMENTAL RIGHTS

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OSCE/ODIHR – VENICE COMMISSION GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY

(2nd EDITION)

Prepared by the OSCE/ODIHR Panel on Freedom of Assembly
and by the Venice Commission
Adopted by the Venice Commission
at its 83rd Plenary Session
(Venice, 4 June 2010)

Introduction

These *Guidelines on Freedom of Peaceful Assembly* together with the *Explanatory Notes* were prepared by the Panel of Experts on Freedom of Assembly of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) in consultation with the European Commission for Democracy though Law (the Venice Commission) of the Council of Europe.[1]

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1. See also CDL-AD(2005)040 *Opinion on the OSCE/ODIHR Guidelines for Drafting Laws Pertaining to Freedom of Assembly* (adopted by the Venice Commission at its 64th Plenary Session, Venice, 21-22 October 2005). A member of the Venice Commission (Peter Paczolay of Hungary) participated at the roundtable in Warsaw, one of the four roundtables where the Guidelines were discussed.

The *Explanatory Notes* (Section B) constitute an integral and non-alienable part of the *Guidelines* (Section A), and should be read in concert with them.

Both the *Guidelines* and *Explanatory Notes*, first drafted by the ODIHR, were informed by four consultative roundtable events held in 2006 in Tbilisi, Belgrade, Almaty and Warsaw. In total, these roundtable sessions were attended by as many as 150 participants from 29 different OSCE participating States. Participants represented many diverse interests including law enforcement personnel and non-governmental human rights advocacy groups, government ministers and organisers of assemblies, academic commentators and practicing lawyers. The Document benefitted significantly from this wealth of hands-on experience in widely differing contexts. The first edition of the Guidelines has since informed a number of Legal Opinions and Legislative Guidelines prepared jointly by the OSCE-ODIHR Expert Panel on Freedom of Peaceful Assembly and the Venice Commission.[2] Reference to the Guidelines has also been made in the case law of the European Court of Human Rights,[3] and by organs of the UN.[4] This second edition of the Guidelines updates the 2007 document in light of new case law. It also expands upon the first edition drawing upon comments and feedback received by the Expert Panel.

The *Guidelines* (Section A) and *Explanatory Notes* (Section B) are based on international and regional treaties and other documents relating to the protection of human rights,[5] evolving State practice (as reflected, *inter alia*, in judgments of domestic courts),[6] and the general principles of law recognized by the community of nations. They demarcate a clear minimum baseline in relation to these standards, thereby establishing a threshold that must be met by national authorities in their regulation of freedom of peaceful assembly. The document, though, differs from other texts that merely attempt to codify these standards or summarize the relevant case-law. Instead, it seeks to promote excellence, and is therefore illustrated by examples of good practice (measures that have proven successful across a number of jurisdictions or which have demonstrably helped ensure that the freedom to assemble is accorded adequate protection).

The legal regulation of freedom of assembly is a complex matter. A wide range of issues (both procedural and substantive) must be considered so as to best facilitate

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2. These Opinions can be found at: http://www.legislationline.org and http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E
3. See, for example, *Oya Ataman v. Turkey* (2006) at para.16 (referring to the Venice Commission's Opinion on the then draft Guidelines); *Gillan and Quinton v. UK* (2010) citing para.86 of the report of the UK Parliamentary Joint Committee on Human Rights, 'Demonstrating respect for rights? A human rights approach to policing protest' (March 2009).
4. See, for example, *Note by the Secretary-General on Human rights defenders*: *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms* (A/62/225 Sixty-second session) at para.91-92 regarding the monitoring role performed by the Office of the High Commissioner for Human Rights (OHCHR) during the April 2006 protests in Nepal. See also, UN Doc. A/HRC/7/28/Add.3, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Mission to Serbia, including Kosovo* (4 March 2008) at para.111.
5. Principally, the relevant standards contained in the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and the jurisprudence of the United Nations Human Rights Committee and the European Court of Human Rights respectively.
6. Including the Constitutional Courts of both OSCE participating and non-participating States.

its enjoyment. Moreover, the approach to regulation varies greatly across the OSCE space – from the adoption of a single consolidated law, to the incorporation of provisions concerning peaceful assemblies in an array of different laws (including laws governing the powers of law enforcement agencies, criminal and administrative codes, anti-terror legislation, and election laws). Recognizing these differences, and also the great diversity of country contexts (particularly in relation to democratic traditions, the rule of law, and the independence of the judiciary), the Document does not attempt to provide ready-made solutions. It is neither possible nor desirable to draft a single transferable 'model law' that could be adopted by all OSCE participating States. Rather, the *Guidelines* and the *Explanatory Notes* seek to clarify key issues and discuss possible ways to address them.

In regulating freedom of assembly, well-drafted legislation is vital in framing the discretion afforded to the authorities.[7] This demands that governments, and those involved in the drafting of legislation, consult with the individuals and groups affected by it (including local human rights organisations) as an integral part of the drafting process. Often, however, it is not the text of the law which is at issue, but its implementation. Therefore, while these *Guidelines* and *Explanatory Notes* will inform those involved in the drafting of legislation pertaining to freedom of assembly, they are also aimed at those responsible for implementing that legislation (the relevant administrative and law enforcement authorities) and those affected by its implementation. The *Guidelines* and *Explanatory Notes* are therefore primarily addressed to practitioners – legislative draftspersons, politicians, legal professionals, police officers and other law enforcement personnel, local officials, trade unionists, assembly organisers and participants, Non-Governmental Organisations (NGOs), Civil Society Organisations (CSOs), and those involved in monitoring both freedom of assembly and policing practice.

While Section A contains the *Guidelines*, Section B is not only essential to a proper understanding of these Guidelines, but provides examples of 'good practice', which is what makes this document special. Part I of Section B (chapters 1-5) emphasizes the importance of freedom of assembly and sketches its parameters. It outlines the importance of freedom of assembly (chapter 1), identifies core issues in the regulation of freedom of assembly (chapter 2), sets out a number of guiding principles which should govern its regulation (chapter 3), examines the legitimate grounds for, and types of, restriction (chapter 4), and examines relevant procedural issues (chapter 5). Part II (chapters 6-8) is more practically focused, and examines the implementation of freedom of assembly legislation. It covers the policing of public assemblies (chapter 6), the responsibilities of assembly organisers (chapter 7) and the role of the media and independent monitors (chapter 8).

The Guidelines along with the Explanatory Notes are available for download from the ODIHR and Venice Commission websites as well as the ODIHR Legislative Database

7. As the UK Joint Committee on Human Rights has recently stated, it is better 'to draft legislation itself in sufficiently precise terms so as to constrain and guide police discretion, rather than to rely on decision-makers to exercise a broad discretion compatibly with human rights.' See Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1)* (London: HMSO, HL Paper 47-I; HC 320-I, 23 March 2009) at pp.21-22, para.76 (and repeated in Recommendation 4).

(www.legislationline.org), where national legislation on public assemblies and other related legal materials can also be found.

This second edition of the Guidelines and the Explanatory Notes remains a living document. The ODIHR and Venice Commission thus continue to welcome comments and suggestions, which should be emailed to assembly@odihr.pl.

Section A – guidelines on freedom of peaceful assembly

1. Freedom of Peaceful Assembly

Freedom of peaceful assembly

Freedom of peaceful assembly is a fundamental human right which can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. Assemblies may serve many purposes, including the expression of diverse, unpopular or minority opinions. It can be an important strand in the maintenance and development of culture, and in the preservation of minority identities. The protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralist society in which groups with different beliefs, practices, or policies can exist peacefully together.

Definition of assembly

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

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

Only peaceful assemblies are protected

An assembly should be deemed peaceful if its organisers have professed peaceful intentions and the conduct of the assembly is non-violent. The term 'peaceful' should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.

2. Guiding Principles

Presumption in favour of holding assemblies

As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden in law should be presumed to be permissible and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of the freedom should be clearly and explicitly established in law.

2.2 The State's positive obligation to facilitate and protect peaceful assembly

It is the primary responsibility of the State to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the State should always seek to facilitate and protect public assemblies at the organiser's preferred location, and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.

2.3 Legality

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

2.4 Proportionality

Any restrictions imposed on freedom of assembly must be proportional. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. The principle of proportionality requires that authorities do not routinely impose restrictions which would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city. A blanket application of legal restrictions tends to be over-inclusive and will thus fail the proportionality test because no consideration has been given to the specific circumstances of the case.

2.5 Non-discrimination

Freedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly, the relevant authorities must not discriminate against any individual or group on any ground.

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

2.6 Good administration

The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this must be clearly stated in law. The regulatory authority should itself ensure that the general public has adequate access to reliable information about its procedures and operation. Organisers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should have an opportunity to make oral and written representations directly to the regulatory authority. The regulatory process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the notified date of the assembly.

2.7 Liability of the regulatory authority

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

3. Restrictions on Freedom of Assembly

Legitimate grounds for restriction

The legitimate grounds for restriction are prescribed in international and regional human rights instruments. These should not be supplemented by additional grounds in domestic legislation.

3.2 Public space

Assemblies are as much a legitimate use of public space as commercial activity and the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions.

3.3 Content-based restrictions

Assemblies are held for a common expressive purpose and thus aim to convey a message. Restrictions on the visual or audible content of any message should face a high threshold and should only be imposed if there is an imminent threat of violence.

3.4 Time, Place and Manner' restrictions

A wide spectrum of possible restrictions, which do not interfere with the message communicated, is available to the regulatory authority. Reasonable alternatives should be offered if any restrictions are imposed on the time, place or manner of an assembly.

3.5 'Sight and Sound'

Public assemblies are held to convey a message to a particular target person, group or organisation. Therefore, as a general rule, assemblies should be facilitated within 'sight and sound' of their target audience.

4. Procedural Issues

4.1 Notification

It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation. Prior notification should only therefore be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require an assembly organiser to submit a notice of intent rather than a request for permission.

The notification process should not be onerous or bureaucratic. The period of notice should not be unnecessarily lengthy, but should still allow adequate time prior to the notified date of the assembly for the relevant State authorities to plan and prepare for the event in satisfaction of their positive obligations, and for the completion of an expeditious appeal to (and ruling by) a court should any restrictions be challenged.

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

4.2 Spontaneous assemblies

Where legislation requires advance notification, the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable. Such an exception would only apply in circumstances where the legally established deadline cannot be met. The authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.

4.3 Simultaneous assemblies

Where two or more unrelated assemblies are notified for the same place and time, each should be facilitated as best as possible. Prohibition of public assemblies solely

on the basis that they are due to take place at the same time and location of another public assembly will likely be a disproportionate response where both can be reasonably accommodated. The principle of non-discrimination further requires that assemblies in comparable circumstances do not face differential levels of restriction.

4.4 Counter-demonstrations

Counter-demonstrations are a particular form of simultaneous assembly in which the participants wish to express their disagreement with the views expressed at another assembly. The right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate. Indeed demonstrators should respect the right of others to demonstrate as well. Emphasis should be placed on the State's duty to protect and facilitate each event where counter-demonstrations are organised or occur, and the State should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within 'sight and sound' of one another.

4.5 Decision-making

The regulatory authorities should ensure that the decision-making process is accessible and clearly explained. The process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the notified date of the assembly.

4.6 Review and Appeal

The right to an effective remedy entails a right to appeal the substance of any restrictions or prohibitions on an assembly. An initial option of administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be an appeal mechanism to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. A final ruling, or at least relief through an injunction, should therefore be given prior to the notified date of the assembly.

5. Implementing Freedom of Peaceful Assembly Legislation

5.1 Pre-event planning with law enforcement officials

Wherever possible, and especially in the case of large assemblies or assemblies on controversial issues, it is recommended that the organiser discuss with the law enforcement officials the security and public safety measures that are put in place

prior to the event. Such discussions might, for example, cover the deployment of law enforcement personnel, stewarding arrangements, and particular concerns relating to the policing operation.

5.2 Costs

The costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities. The State must not levy any additional monetary charge for providing adequate policing. Organisers of non-commercial public assemblies should not be required to obtain public liability insurance for their event.

5.3 A human rights approach to policing assemblies

The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. In particular, the State has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law enforcement officials must also protect participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit it in any way.

5.4 The use of negotiation and/or mediation to de-escalate conflict

If a standoff or other dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. Such dialogue – whilst not always successful – can serve as a preventive tool helping to avoid the escalation of conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force.

5.5 The use of force

The use of force must be regulated by domestic law, which should set out the circumstances that justify the use of force (including the need to provide adequate prior warnings) and the level of force acceptable to deal with various threats. Governments should develop a range of responses which enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations where other more peaceful interventions have failed.

5.6 Liability and accountability of law enforcement personnel

If the force used is not authorized by law, or more force was used than necessary in the circumstances, law enforcement personnel should face civil and/or criminal liability as well as disciplinary action. Law enforcement personnel should also be held

liable for failing to intervene where such intervention may have prevented other officers from using excessive force. Where it is alleged that a person is physically injured by law enforcement personnel or is deprived of his or her life, an effective, independent and prompt investigation must be conducted.

5.7 Liability of organisers

Organisers of assemblies should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organisers should not be liable for the actions of individual participants nor for the actions of non-participants or *agents provocateurs*. Instead, individual liability should arise for any individual if he or she personally commits an offence or fails to carry out the lawful directions of law enforcement officials.

5.8 Stewarding assemblies

It is recommended that organisers of assemblies be encouraged to deploy clearly identifiable stewards to help facilitate the event and ensure compliance with any lawfully imposed restrictions. Stewards do not have the powers of law enforcement officials and should not use force, but should aim to obtain cooperation of assembly participants by means of persuasion.

5.9 Monitors

The independent monitoring of public assemblies provides a vital source of information on the conduct of assembly participants and law enforcement officials. This information may be used to inform public debate and can usefully also serve as the basis for dialogue between government, local authorities, law enforcement officials and civil society. Non-governmental and civil society organizations play a crucial watchdog role in any democracy and must therefore be permitted to freely observe public assemblies.

5.10 Media access

The role of the media as a 'public watchdog' is to impart information and ideas on matters of public interest – information which the public also has a right to receive. Media reports can thus provide an otherwise absent element of public accountability for both assembly organisers and law enforcement officials. Media professionals should therefore be guaranteed as much access as is possible to an assembly and to any related policing operation.

Section B – Explanatory Notes

Part I

1. The importance of freedom of assembly

1. Throughout the Guidelines, the term 'right to *freedom of* peaceful assembly' is used in preference to that of 'the *right* to peaceful assembly'. This emphasizes that any 'right to assemble' is underpinned by a more fundamental freedom, the essence of which is that it should be enjoyed without interference.[8] Participation in public assemblies should be entirely voluntary and uncoerced.[9]

2. Freedom of peaceful assembly is a fundamental human right which can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. It has been recognised 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 which they hold in common with others. As such, freedom of peaceful assembly facilitates dialogue within civil society, and between civil society, political leaders and government.

8. See, for example, *Bączkowski and Others v. Poland* (2006) at p.5: 'The Constitution clearly guaranteed the freedom of assembly, not a right. It was not for the State to create a right to assembly; its obligation was limited to securing that assemblies be held peacefully.'
9. Tajik law, for example, defines 'participant' in terms of their support for the aims of the event.

3. Freedom of peaceful assembly can serve many purposes including (but not limited to) the expression of views and the defence of common interests, celebration, commemoration, picketing and protest. The exercise of the freedom can have both symbolic and instrumental significance, and can be an important strand in the maintenance and development of culture, and in the preservation of minority identities. It is complemented by other rights and freedoms such as freedom of association,[10] the right to establish and maintain contacts within the territory of a State,[11] freedom of movement,[12] the right to cross international borders,[13] freedom of expression,[14] and freedom of thought, conscience and religion.[15] As such, freedom of assembly is of fundamental importance for the personal development, dignity, and fulfilment of every individual and the progress and welfare of society.[16]

4. The protection of the right to freedom of assembly also underpins the realization of both social and economic rights (including employment and labour interests) and so-called 'third generation' rights (such as the right to a healthy environment). Article 12 of the EU Charter, for example, emphasizes the particular importance of the right to freedom of peaceful assembly and association in relation to political, trade union and civic matters.[17] Furthermore, those who seek to defend and advance socio-economic and developmental interests (properly regarded as indivisible from civil and political rights) can also rely upon the 'right to organise' as recognised in both Article 5 of the *European Social Charter*[18] and the ILO *Convention (87) concerning Freedom of Association*

10. Article 22, ICCPR, and Article 11, ECHR. See further indirect restrictions on freedom of assembly below at para.107.
11. Article 17, *Council of Europe Framework Convention on National Minorities*, which draws upon paragraphs 32.4 and 32.6 of the Copenhagen Document of the CSCE.
12. Article 12, ICCPR, and Article 2 of Protocol 4, ECHR.
13. For example, *Djavit An v. Turkey* (2003); *Foka v. Turkey* (2008). See also *Indirect Restrictions on Freedom of Assembly* at para.107 below.
14. Article 19(2) and (3), ICCPR and Article 10, ECHR. Freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The European Court of Human Rights has often recognised that freedom of assembly and freedom of expression are often, in practice, closely associated. See, for example, *Ezelin v. France* (1991), paras. 37, 51; *Djavit An v. Turkey* (2003), para. 39; *Christian Democratic People's Party v. Moldova* (2006), para. 62; *Öllinger v. Austria* (2006), para. 38.
15. Article 18, ICCPR and Article 9, ECHR.
16. See, *Joint Statement on Racism and the Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression*. See also Fenwick, Helen 'The Right to Protest, the Human Rights Act and the Margin of Appreciation' (1999) 62 *Modern Law Review* 491 at 492-3.
17. See for example, *Enerji Yapi-Yol Sen v. Turkey* (2009, in French only) in which the Grand Chamber of the European Court of Human Rights acknowledged that in participating in a national one-day strike action, trade union members had been exercising their right to freedom of peaceful assembly. Moreover, while the right to strike is not absolute, a ban prohibiting all public servants or employees from taking such action was disproportionate and did not meet a pressing social need.
18. As revised (STE No.163) 3 May 1996.

and Protection of the Right to Organise.[19] National labour laws should be interpreted consistently with these standards.

5. With appropriate media coverage, public assemblies communicate with local and national audiences and with the world at large. In countries where the media is limited or restricted, freedom of assembly is vital for those who wish to draw attention to local issues. This communicative potential underlines the importance of freedom of assembly in effecting change.

6. Public assemblies often have increased prominence and significance in the context of elections when political parties, candidates and other groups and organisations seek to publicise their views and mobilize support (see further paragraph 107 below).[20] Legal measures that are potentially more restrictive than the normal regulatory framework governing freedom of assembly should not be necessary to regulate assemblies during or immediately after an election period, even if there is heightened tension. On the contrary, the general law on assemblies should be sufficient to cover assemblies associated with election campaigns, an integral part of which is the organisation of public events.[21] Open and free political expression is particularly valued in the human rights canon.

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19. The International Labour Conference has pointed out in a resolution adopted at its 54th Session in 1970 that the right of assembly (amongst others) is 'essential for the normal exercise of trade union rights'. See, 'Freedom of association and collective bargaining: Resolution of 1970 concerning trade union rights and their relation to civil liberties'(Document No. (ilolex): 251994G16). For a concrete example, see Committee of Experts on the Application of [ILO] Conventions and Recommendations (CEACR), *Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Malawi* (ratification: 1999; Document No. (ilolex): 062006MWI087, published 2006): 'The Committee notes the … violent police repression of a protest march by tea workers in September 2004 as well as issues previously raised by the Committee on the right to strike. … [F]reedom of assembly and demonstration constitutes a fundamental aspect of trade union rights and … the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order…'

20. A number of cases have arisen, for example, in relation to the regulation of the election-related protests in Moldova in 2009. See, for example, Application no. 29837/09 by Radu Popa against Moldova, lodged on 8 June 2009; Application no. 24163/09 by Sergiu Mocanu against Moldova, lodged on 11 May 2009; Application no.19828/09 by Stati and Marinescu against Moldova, lodged on 16 April 2009. See also, Applications nos. 43546/05 and 844/06 by Boris Hmelevschi and Vladimir Moscalev against Moldova lodged on 1 and 8 December 2005 (which also raises the issue of unregistered insignia).

21. See, for example, *Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations*, Opinion-Nr/: FOA – KYR/111/2008 27 June 2008, available at: http://www.legislationline.org/download/action/download/id/824/file/test.pdf ; See also OSCE Election Observation Mission, Kyrgyz Republic, *Presidential Election, 23 July 2009: Statement of Preliminary Findings and Conclusions*, at p.3; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Republic of Moldova* CCPR/C/MDA/CO/2, 4 November 2009 at para.8(d) noting that against the backdrop of violence at post-election demonstrations in April 2009, '[t]he State party should: …(d) Ensure respect for the right to freedom of assembly in accordance with article 21 of the Covenant, including through the enforcement of the 2008 Law on Assemblies and put in place safeguards, such as appropriate training, to ensure that such violation of human rights by its law enforcement officers do not occur again.'; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Azerbaijan* CCPR/C/AZE/CO/3, 13 August 2009 at paras.16-17.

7. In addition to serving the interests of democracy, the ability to freely assemble is also crucial to creating a pluralist and tolerant society in which groups with different, and possibly conflicting, backgrounds, beliefs, practices, or policies can exist peacefully together. In circumstances where the right to freedom of thought, conscience and religion is also engaged, the role of the authorities 'is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.'[22] Furthermore, the European Court of Human Rights has held that in creating a pluralist, broadminded and tolerant society, 'although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.'[23]

2. The Regulation of Freedom of Peaceful Assembly

The legal framework

International and regional standards

8. The sources of law identified in this section are among the most important treaties to which ODIHR refers when conducting reviews of legislation. The international and regional standards concerning freedom of assembly mainly derive from two legal instruments: the *International Covenant on Civil and Political Rights* (ICCPR)[24] and the *European Convention for the Protection of Human Rights*

22. *Barankevich v. Russia* (2007) at para.30. In such circumstances, Article 11 should be interpreted in light of Article 9 (see *Barankevich*, paras. 20 and 44). The Court further stated at para.31: 'It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority.'
23. See, *inter alia*, *Bączkowski and Others v. Poland* (2007) at para.63; *Hyde Park and others v. Moldova (No.1)* (2009) at para.28; *Hyde Park and others v. Moldova (No.2)* (2009) at para.24; *Hyde Park and others v. Moldova (No.3)* (2009) at para.24; *Chassagnou and Others v. France* [GC] (1999) at para.112; *Christian Democratic People's Party v. Moldova* (Application no. 28793/02, judgment of 14 February 2006) at para.64; *Young, James and Webster v. the United Kingdom* (1981) at para.63.
24. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is a declaration rather than a binding treaty. The International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, were adopted in 1966 to give effect to the principles enunciated in the Declaration. The three documents together constitute the International Bill of Human Rights. The ICCPR sets out universally accepted minimum standards in the area of civil and political rights. The obligations undertaken by States ratifying or acceding to the Covenant are meant to be discharged as soon as a State becomes party to the ICCPR. The implementation of the ICCPR by its State parties is monitored by a body of independent experts – the UN Human Rights Committee. All State parties are obliged to submit regular reports to the Committee on how the rights are being implemented. In addition to the reporting procedure, Article 41 of the Covenant provides for the Committee to consider interstate complaints. Furthermore, the First Optional Protocol to the ICCPR gives the Committee competence to examine individual complaints with regard to alleged violations of the Covenant by States party to the Protocol. See further Annex A.

and Fundamental Freedoms (ECHR) and their optional protocols.[25] The *American Convention on Human Rights* is also of particular relevance to member countries of the Organization of American States.[26] Other relevant treaties include the UN *Convention on the Rights of the Child*, the *Charter of Fundamental Rights of the European Union* and the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (the CIS Convention).[27] The key provisions in relation to the right to freedom of peaceful assembly are reproduced below.

Article 20(1), Universal Declaration of Human Rights

Everyone has the right to freedom of peaceful assembly and association.[28]

Article 21, International Covenant on Civil and Political Rights

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

Article 15, Convention on the Rights of the Child

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

25. The ECHR is the most comprehensive and authoritative human rights treaty for the European region. The treaty has been open for signature since 1950. All member States of the Council of Europe are required to ratify the Convention within one year since the State's accession to the Statute of the Council of Europe. The ECHR sets forth a number of fundamental rights and freedoms, and parties to it undertake to secure these rights and freedoms to everyone within their jurisdiction. Individual and interstate petitions are dealt with by the European Court of Human Rights in Strasbourg. At the request of the Committee of Ministers of the Council of Europe, the Court may also give advisory opinions concerning the interpretation of the ECHR and the protocols thereto. See further Annex A.
26. As provided by Article 44 of the American Convention, '[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member States of the Organization [of American States], may lodge petitions with the [Inter-American] Commission [on Human Rights] containing denunciations or complaints of violation of this Convention by a State Party.' See further Annex A.
27. The CIS Convention was opened for signature on 26 May 1995 and came into force on 11 August 1998. It has been signed by seven of the twelve CIS member States (Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan) and ratified by Belarus, the Kyrgyz Republic, the Russian Federation and Tajikistan. See further, for example, Decision on the Competence of the [European] Court [of Human Rights] to Give and Advisory Opinion concerning 'the coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights' (2 June 2004).
28. See Article 29, UDHR for the general limitations clause.

Article 11, European Convention on Human Rights

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 15, American Convention on Human Rights

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

Article 12, Charter of Fundamental Rights of the European Union

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

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

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

1. Everyone shall have the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, public health or morals or for the protection of the rights and freedoms of others. This Article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or by members of the law-enforcement or administrative organs of the State.

OSCE Copenhagen Document 1990

[The participating States reaffirm that]:

9.2 [E]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.

9. The significance of these treaties and documents derives, in part, from the jurisprudence developed by their respective monitoring bodies – the UN Human Rights Committee,[29] the European Court of Human Rights, and the Inter-American Commission on Human Rights.[30] This body of case-law is integral to the interpretation of these standards, and should be fully understood by those charged with implementing domestic laws on freedom of assembly. It is recommended, therefore, that governments ensure that accurate translations of key cases are made widely available.[31]

Regulating freedom of assembly in domestic law

10. Freedom of peaceful assembly should be accorded constitutional protection which ought, at a minimum, to contain a positive statement of both the right and the obligation to safeguard it. There should also be a constitutional provision which guarantees fair procedures in the determination of the rights contained therein. Constitutional provisions, though, cannot provide for specific details or procedures. Moreover, where a Constitution does not expressly articulate the principles of legality and proportionality, constitutional provisions relating to freedom of assembly that are of a general nature can, without further clarification, afford excessively wide discretion to the authorities and increase the possibility of abuse.

11. While there is no requirement that participating States enact a specific law on freedom of assembly, such legislation can greatly assist in protecting against arbitrary interferences with the right to freedom of peaceful assembly.[32] Any such domestic legislation should confer *broadly* framed *protection* on freedom of assembly, and *narrowly* define those types of assembly for which some degree of *regulation* may be justified. It cannot be overemphasized that in an open society many types of assembly do not warrant any form of official regulation. The provisions of a specific law can also serve as a guide for sound decision making by regulatory authorities. Consequently, many States or

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29. See further, Nowak, M. *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed.; Kehl: N.P. Engel: 2005) at 481-494; Joseph, S., Schultz, J., and Castan, M. *The International Covenant on Civil and Political Rights* (2nd ed.; New York: OUP: 2004) at 568-575.
30. See, for example, Organisation of American States, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression* (2005), Chapter 5, 'Public Demonstrations as an exercise of freedom of expression and freedom of assembly'. Available online at: http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&lID=1 ; U.N. Doc. A/62/225 Human Rights Defenders: Note by the Secretary-General, 13 August 2007, Section D at pp.8-14: 'Monitoring the right to protest at the regional level: jurisprudence and positions of regional mechanisms.' Available online at: http://www.unhcr.org/refworld/pdfid/4732dbaf2.pdf
31. For example, following the judgment of the European Court of Human Rights in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), the Bulgarian Ministry of Justice sent the judgment of the European Court of Human Rights, translated into Bulgarian, and accompanied by a circular letter, to the mayors of the cities concerned. In order to inform the courts and the public of the new binding interpretation of the law, the court also posted the Bulgarian translation of the judgment on its internet site http://www.mjeli.government.bg/. See *Human Rights Information Bulletin*, No.64, 1 December 2004 – 28 February 2005 at 49-50. (ISSN 1608-9618 H/Inf (2005) 3), available at http://www.coe.int/T/E/Human_Rights/hrib64e.pdf.
32. See, for example, *Mkrtchyan v. Armenia* (2007) at para.39 in relation to the requisite quality of any such law if it is to meet the requirement of foreseeability.

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

12. Domestic laws regulating freedom of assembly must be consistent with the international instruments ratified by that State. Domestic laws should also be drafted, interpreted and implemented in conformity with relevant international and regional jurisprudence and good practice. The enforcement of such laws will depend significantly upon the existence of an impartial and adequately trained police service and an independent judiciary.

13. Furthermore, the rule of law demands legal stability and predictability. Amendments introduced as a response to particular events, for example, often result in partial and piecemeal reforms which are harmful to the protection of rights and to the overall coherence of the legislative framework. Those involved in the drafting of legislation should always consult with those most closely involved in its implementation and with other interested individuals and groups (including local human rights organizations). Such consultation should be considered as an integral part of the drafting process. To this end, it may be helpful to place a statutory duty upon the relevant regulatory authority to keep the law under review in light of practice, and to make considered recommendations for reform if necessary.

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33. Ukraine, for example, has drafted a law governing demonstrations for the first time. The need for clear legislation governing public assemblies has also been in recognized in Kosovo: UN Doc. A/HRC/7/28/Add.3, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Mission to Serbia, including Kosovo*, 4 March 2008 at para.111: 'At the time of the visit, the Kosovo Assembly had recently adopted a law on public assembly, which was in the legal office of UNMIK for examination. The Special Representative was later informed that the law could not be promulgated because legislation in this area is not within the competency of the Kosovo Assembly. The legislation in force on freedom of assembly is therefore a law adopted in 1981 under the former Socialist Federal Republic of Yugoslavia. … [T]he Special Representative urges the authorities to adopt adequate legislation on freedom of peaceful assembly. Adequate legislation and its scrupulous implementation are fundamental to preventing the reoccurrence of the tragic incidents that happened on 10 February 2007. The Special Representative suggests using the *Guidelines on Freedom of Peaceful Assembly* published by the Office for Democratic Institutions and Human Rights (ODHIR) of OSCE to draft and implement legislation in this area. She further refers to the recommendations of her reports to the General Assembly of 2006 and 2007, which focus on freedom of peaceful assembly and the right to protest in the context of freedom of assembly.'

34. CDL-AD(2005)040, Point 12.

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

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

15. The imperative of adopting a holistic approach to freedom of assembly is underscored by the 'destruction of rights' provisions contained in Article 30 UDHR, Article 5 ICCPR and Article 17 ECHR.[37] As detailed further at paragraph 96 below, for example, participants in public assemblies whose advocacy of national, racial or religious hostility constitutes incitement to discrimination, hatred or violence will forfeit the protection of their expressive rights under the ECHR and ICCPR.

Article 30, Universal Declaration of Human Rights

Article 30, Universal Declaration of Human Rights

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

Article 5, International Covenant on Civil and Political Rights

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

35. See, for example, *Ezelin v. France* (1991) at para.35. Thus, if the right to freedom of peaceful assembly is considered to be the *lex specialis* in a given case, it would not be plausible for a Court to find a violation of the right to freedom of expression if it had already established, on the same facts, that there had been no violation of the right to freedom of peaceful assembly. This question was touched upon by Mr. Kurt Herndl in his dissenting opinion in the case of *Kivenmaa v. Finland* (1994) CCPR/C/50/D/412/1990, at para. 3.5.
36. *Otto-Preminger-Institut v. Austria* (1994), para. 47.
37. See, for example, *Vajnai v. Hungary* (2008) paras.20-26 (discussing the Article 17 jurisprudence, and finding that the application in this case did not constitute an abuse of the right of petition for the purposes of Article 17). Similarly, Article 17 was not engaged in the cases of *Soulas v. France* (2008, in French only), or *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia* (1999) at para.77. These cases can be contrasted with *Glimmerveen and Hagenbeek v. the Netherlands* (1979); *Garaudy v. France* (2003); and *Lehideux and Isorni v. France* (1998).

Article 17, European Convention on Human Rights

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

Principal definitions and categories of Assembly

For the purposes of the Guidelines, an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.[38]

16. An assembly, by definition, requires the presence of at least two persons. Nonetheless, an individual protester exercising his or her right to freedom of expression, where their physical presence is an integral part of that expression, should also be afforded the same protections as those who gather together as part of an assembly.

17. A range of different activities are protected by the right to freedom of peaceful assembly – static assemblies (such as public meetings, mass actions, 'flash mobs',[39] demonstrations, sit-ins, and pickets),[40] and moving assemblies (such as parades, processions, funerals, pilgrimages, and convoys).[41] These examples are

38. See also Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed.; Kehl: N.P. Engel: 2005) at p.373: 'The term "assembly" is not defined but rather presumed in the Covenant. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional right. It is beyond doubt that not every assembly of individuals requires special protection. Rather, only *intentional*, temporary gatherings of several persons for a specific purpose are afforded the protection of freedom of assembly.' In *Kivenmaa v. Finland* Communication No. 412/1990 at para.7.6, the Human Rights Committee stated that 'public assembly is understood to be the coming together of more than one person for a lawful purpose in a public place that others than those invited also have access to.'

39. 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 organised, they do not involve any formal organisation or group. They may be planned using new technologies (including text messaging and Twitter). Their *raison d'être* demands an element of surprise which would be defeated by prior notification.

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

41. In *Christians Against Racism and Fascism (CARAF)* (1980), the European Commission accepted 'that the freedom of peaceful assembly covers not only static meetings, but also public processions' (at p.148, para. 4). This understanding has been relied upon in a number of subsequent cases including *Plattform 'Ärzte für das Leben' v. Austria* (1988) and *Ezelin v. France* (1991). In the latter case, it was stated that the right to freedom of assembly 'is exercised in particular by persons taking part in public processions.' (Commission, para. 32). See also David Mead, 'The Right to Peaceful Process under the European Convention on Human Rights – A Content Study of Strasbourg Case Law' 4 *EHRLR* (2007) 345-384.

not exhaustive, and domestic legislation should frame the types of assembly to be protected as broadly as possible (as demonstrated by the extracts from the laws in Kazakhstan and Finland below). Recent case law evidences the variety of new forms of protest to which the right to freedom of assembly has been held to extend. These include mass cycle rides,[42] drive-slow protests,[43] and confirmation that the right to freedom of expression includes the choice of the form in which ideas are conveyed, without unreasonable interference by the authorities, particularly in the case of symbolic protest activities.[44]

18. The question of at what point an assembly can no longer be regarded as a *temporary* presence (thus exceeding the degree of tolerance presumptively to be afforded by the authorities towards all peaceful assemblies) must be assessed in the individual circumstances of each case.[45] Nonetheless, the touchstone

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42. In Poznan, Poland, for example, authorities refused to recognise Critical Mass 'Great Bike Ride' as a public assembly within the meaning of Article 7(2)(3) of the Polish Assemblies Act and Article 57 of the Constitution. It thus treated the ride as an 'other event' under Article 65 of the Road Traffic Act (requiring the organiser to obtain an administrative decision granting consent). See Adam Bodnar and Artur Pietryka, *Freedom of Assembly from the Cyclist's Perspective* (Helsinki Foundation for Human Rights, 18 September 2009), referring to the Polish Constitutional Tribunal, judgment of 18 January 2006 (K21/05) relating to the Equality parade in Warsaw, where the Tribunal distinguished between assemblies (organised to express a point of view) and competitions or races (recreational events with no political or communicative importance). See also *Kay v. Metropolitan Police Commissioner* [2008] UKHL 69, holding that a critical mass cycle ride with no pre-determined route could be construed as a procession 'customarily held' (and thus within the exemption from prior notification under the UK *Public Order* Act 1986). Lord Phillips (at para.25) identified three possible alternative constructions of the notification requirement in the *Public Order* Act 1986: '(i) The notification obligation does not apply to a procession that has no predetermined route; (ii) There is no obligation to give notice of a procession that has no predetermined route because it is not reasonably practicable to comply with section 11(1); or (iii) The notification obligation is satisfied if a notice is given that states that the route will be chosen spontaneously.'
43. *Barraco v. France* (2009, in French only).
44. *Women and Waves v. Portugal* (2009). It is worth noting, however, that the European Commission of Human Rights previously held in *Anderson v. UK* (Application No. 33689/96, decision of 27 October 1997, admissibility) that 'there is … no indication ... that freedom of assembly is intended to guarantee a right to pass and re-pass in public places, or to assemble for purely social purposes anywhere one wishes.'
45. See, for example, *Çiloğlu and Others v. Turkey* (2007, in French only) in which the European Court of Human Rights noted that unlawful weekly sit-ins (every Saturday morning for over three years) of around 60 people in front of a High School in Istanbul, to protest against plans to build an F-type prison, had become an almost permanent event which disrupted traffic and clearly caused a breach of the peace: 'In view of the length and number of previous demonstrations, the Court considered that the authorities had reacted within the margin of appreciation afforded to States in such matters. It therefore held, by five votes to two, that [dispersal resulted in] no violation of Article 11.' See also, *Cisse v. France* (2002), in which the evacuation of a church in Paris which a group of 200 illegal immigrants had occupied for approximately two months was held to constitute an interference (albeit justified on public health grounds, para.52) with the applicant's right to freedom of peaceful assembly (paras.39-40). In the case of *Friedl v. Austria* (1992) the European Commission – in finding the applicant's Article 11 complaint to be inadmissible – did not rule on whether a camp of (on average) 50 homeless persons with tables and photo stands which lasted for approximately one week 'day and night' before being dispersed fell within the definition of 'peaceful assembly' under Article 11(1) ECHR. The Commission noted that it had previously held that a demonstration by means of repeated sit-ins blocking a public road *did* fall within the ambit of Article 11(1), though ultimately the demonstration was legitimately restricted on public order grounds (*G v. the Federal Republic of Germany*, 1989, admissibility). In 2008, the Hungarian Constitutional Court rejected a petition which sought a finding of 'unconstitutional

established by the European Court of Human Rights is that demonstrators ought to be given sufficient opportunity to manifest their views.[46] Where an assembly causes little or no inconvenience to others then the authorities should adopt a commensurately less stringent test of temporariness (see further paragraphs 39-45 below in relation to 'proportionality'). The extracts below also serve to highlight that the term 'temporary' should not preclude the erection of protest camps or other non-permanent constructions.

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

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

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

In a public meeting, banners, insignia, loudspeakers and other regular meeting equipment may be used and temporary constructions erected. In this event, the arranger shall see to it that no danger or unreasonable inconvenience or damage is thereby caused to the participants, bystanders or the environment.

19. These Guidelines apply to assemblies held in public places that everyone has an equal right to use (including, but not limited to, public parks, squares, streets,

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

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

roads, avenues, sidewalks, pavements and footpaths).[47] In particular, the State should always seek to facilitate public assemblies at the organiser's preferred location where this is a public place that is ordinarily accessible to the public (see further paragraphs 39-45 below in relation to 'proportionality').

20. Participants in public assemblies have as much a claim to use such sites for a reasonable period as everyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used (such as commercial activity or pedestrian and vehicular traffic).[48] This principle has been clearly stated by both the European Court of Human Rights and the Inter-American Commission on Human Rights' Special Rapporteur for Freedom of Expression:

> ***Balcik v. Turkey* (2007) at paragraph 52, and *Ashughyan v. Armenia* (2008) at paragraph 90:**
>
> *'Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic, and where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 ECHR is not to be deprived of all substance.'*
>
> **Inter-American Commission on Human Rights: *Report of the Office of the Special Rapporteur for Freedom of Expression* (2008), at paragraph70:**
>
> *'Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Office of the Special Rapporteur is therefore concerned about the existence of criminal provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and of any kind) or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected interests such as the life or liberty of individuals.'*

21. Other facilities ordinarily accessible to the public that are buildings and structures – such as publicly owned auditoriums, stadiums or buildings – should

47. This draws on the United States doctrine of the 'public forum'. See, for example, *Hague v. Committee for Industrial Organisation*, 307 US 496 (1939).

48. In *Patyi and Others v. Hungary* (2008) at paras.42-43, for example, the European Court of Human Rights rejected the Hungarian government's arguments relating to potential disruption to traffic and public transport (*cf. Éva Molnár v. Hungary*, 2008). For further argument against the prioritization of vehicular traffic over freedom of assembly, see Nicholas Blomley, 'Civil Rights Meets Civil engineering: Urban Public Space and Traffic Logic' 22(2) Can. J. L. & Soci. 55 (2007).

also be regarded as legitimate sites for public assemblies, and will similarly be protected by the rights to freedom of assembly and expression.[49]

22. The right to freedom of peaceful assembly has also been held to cover assemblies on private property.[50] However, the use of private property for assemblies raises issues that are different from the use of public property. For example, prior notification (other than booking the venue, or seeking the permission of the owner of the premises) is not required for meetings on private property.[51]

23. In general, property owners may legitimately restrict access to their property to whomsoever they choose.[52] Nonetheless, there has been a discernable trend towards the privatization of public spaces in a number of jurisdictions, and this has potentially serious implications for assembly, expression and dissent.[53] The State may on occasion have a positive obligation to ensure access to privately owned places for the purposes of assembly or expression. In the case of *Appleby and Others v. the United Kingdom* (2003), a case concerning freedom of expression in a privately owned shopping centre, the European Court of Human Rights stated that the effective exercise of freedom of expression 'may require positive measures of protection, even in the sphere of relations between individuals.'[54] Freedom of assembly in privately owned spaces may be deserving of protection *where the essence of the right has been destroyed*.

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49. See, for example, *Acik v. Turkey* (2009) (detention of student for protest during speech of University Chancellor; violation of Articles 3 and 10 ECHR); *Cisse v. France* (2002); *Barankevich v. Russia* (2007) at para.*25*: 'The right to freedom of assembly covers both private meetings and meetings in public thoroughfares …' The use of such buildings may be subject to health and safety regulations, and to anti-discrimination laws. See also the discussion of 'quasi-public space' in Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1)* (London: HMSO, HL Paper 47-I; HC 320-I, 23 March 2009) at pp.16-17 'Public and Private Space'.
50. See, for example, *Djavit An v. Turkey* (2003), para.56; *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979) at p.119.
51. Public order and criminal laws also apply to assemblies on private property, enabling appropriate action to be taken if assemblies on private property harm other members of the public.
52. See further paragraphs 46-60 below. The owner of private property has much greater discretion to choose whether to permit a speaker to use his property than the government has in relation to publicly owned property. Compelling the owner to make his or her property available for an assembly may, for example, breach their rights to private and family life (Article 8 ECHR), or to peaceful enjoyment of their possessions (Article 1 of Protocol 1, ECHR).
53. See, for example, Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York: The Guilford Press, 2003); Margaret Kohn, *Brave New Neighbourhoods: The Privatization of Public Space* (New York: Routledge, 2004); Kevin Gray, and Susan Gray, *Civil Rights, Civil Wrongs and Quasi-Public Space* EHRLR 46 [1999]; *Fitzpatrick and Taylor, Trespassers Might be Prosecuted: The European Convention and Restrictions on the Right to Assemble* EHRLR 292 [1998]; Jacob Rowbottom, *Property and Participation: A Right of Access for Expressive Activities* 2 EHRLR 186-202 [2005].
54. *Appleby v. United Kingdom* (2003) at para.39 citing *Özgür Gündem v. Turkey* (2000) paras.42-46, and *Fuentes Bobo v. Spain* (2000) para.38. It is noteworthy that the applicants in *Appleby* cited relevant case law of Canada (para.31) and the United States (paras. 25-30, and 46). The Court considered (a) the diversity of situations obtaining in contracting States; (b) the choices which must be made in terms of priorities and resources (noting that the positive obligations "should not impose an impossible or disproportionate burden on the authorities"); and (c) the rights of the owner of the shopping centre under Article 1 of Protocol 1. In *Cisse v. France* (2002), cited above at note xlv, the applicable domestic laws stated that 'Assemblies for the purposes of worship in premises belonging to or placed at the disposal of a religious association shall be open to the public. They shall be exempted from [certain requirements], but shall remain under the supervision of the authorities in the interests of public order.'

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

Where … the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights. The corporate town, where the entire municipality was controlled by a private body, might be an example.

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

'Peaceful' and 'non-peaceful' assemblies

25. **'***Peaceful' assemblies:* Only 'peaceful' assembly is protected by the right to freedom of assembly. The European Court of Human Rights stated that '[i]n practice, the only type of events that did not qualify as 'peaceful assemblies' were those in which the organisers and participants *intended* to use violence.'[56] Participants must also refrain from using violence (though the use of violence by a small number of participants should not automatically lead to the categorization as non-peaceful of an otherwise peaceful assembly – see paragraph 164 below). An assembly should therefore be deemed peaceful if its organizers have professed peaceful intentions, and this should be presumed unless there is compelling

55. See, for example, Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Places* (Cambridge University Press, 2009) at 130-132: 'In recent years, local and national officials have altered the architectures and landscapes of public places in whys that may limit spatial contestation.' Zick also discusses architectural designs that limit the scope for communicative interaction with those inside the buildings concerned (for example, by incorporating few or no windows on lower flowers).

56. In *Cisse v. France* (2002) at para.37 [emphasis added]. See also *G v. The Federal Republic of Germany* (1989), in which the European Commission stated that 'peaceful assembly' does not cover a demonstration where the organisers and participants have violent *intentions* which result in public disorder.

and demonstrable evidence that those organising or participating in that particular event themselves intend to use, advocate or incite imminent violence.[57]

26. The term 'peaceful' should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote,[58] and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.[59] Thus, by way of example, assemblies involving purely passive resistance should be characterized as 'peaceful'.[60] Furthermore, in the course of an assembly, 'an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.'[61]

27. The spectrum of conduct that constitutes 'violence' should be narrowly construed, but may exceptionally extend beyond purely physical violence to include inhuman or degrading treatment,[62] or the intentional intimidation or harassment, of a captive audience.[63] In such instances, the destruction of rights provisions may also be engaged (see paragraph 15 above).

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57. *Christian Democratic People's Party v. Moldova* (No.2) (2010) at para.23: 'The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities.'
58. *Plattform "Ärzte für das Leben" v. Austria* (1988), at para. 32 which concerned a procession and open-air service organised by anti-abortion protesters. Similarly, the European Court has often stated that, subject to Article 10(2), freedom of expression "…is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society' *Handyside v. The United Kingdom* (1976), para.49. Applied in *Incal v. Turkey* (1998), para.46; *Otto-Preminger-Institut v. Austria* (1994), para.49, and joint dissenting judgment, para.3; *Müller and Others v. Switzerland* (1988), para.33; *Observer and Guardian v. United Kingdom* (1991), para.59; *Chorherr v. Austria* (1993, Commission) para.39.
59. See BVerfGE 69,315(360) regarding roadblocks in front of military installations. See Fn.3: 'Their sit-down blockades do not fall outside the scope of this basic right just because they are accused of coercion using force.' See generally, Peter E.Quint, *Civil Disobedience and the German Courts: The Pershing Missile Protests in Comparative Perspective* (Routledge-Cavendish, 2008).
60. If a narrower definition of 'peaceful' than this were to be adopted, it would mean that the scope of the right would be so limited from the outset, that the 'limiting clauses' (such as those contained in Article 11(2) ECHR) would be virtually redundant.
61. *Ziliberberg v. Moldova* (2004, admissibility).
62. See, for example, the Northern Ireland case of *In re E (a child)* [2008] UKHL 66. There is a 'minimum level of severity' that must be met before behaviour can be deemed 'inhuman or degrading' for the purposes of Article 3 ECHR. This will depend on all circumstances of the case including duration of treatment, its physical and mental effects, and in some cases, the sex, age and state of health of the victim. See also Nowak, Manfred, *UN Covenant on Civil and Political Rights, ICCPR Commentary* (2nd ed.; Kehl: N.P. Engel: 2005), cited above at note xxix, at 486-487.
63. See, for example, recent funeral protest cases in the United States such as *Phelps-Roper v. Taft*, 2007 US Dist. LEXIS 20831 (ND Ohio, March 23, 2007). As Manfred Nowak states, 'In accordance with the customary meaning of this word, peaceful means the absence of violence in its various forms, in particular armed violence in the broadest sense. For example, an assembly loses its peaceful character when persons are physically attacked or threatened, displays smashed, furniture destroyed, cars set afire, rocks or Molotov cocktails thrown or other weapons used. … So-called "sit-ins" or blockades are peaceful assemblies, so long as their participants do not use force …' Nowak, M. supra note xxix, at 487. See also, David Kretzmer, 'Demonstrations and the Law', 19(1) *Israel Law Review* 47 at 141-3 (1984), proposing that the limits of 'pickets as harassment' be guided by the following principles: '(i) Pickets outside the office of a public figure cannot be

28. If this fundamental criterion of 'peacefulness' is met, it triggers the positive obligations entailed by the right to freedom of peaceful assembly on the part of the State authorities (see further at paragraphs 31-34,104 and 144-145 below). It should be noted that assemblies that survive this initial test (thus, *prima facie*, deserving protection) may still legitimately be restricted on public order or other legitimate grounds (see chapter 4).

3. Guiding Principles

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

Presumption in favour of holding assemblies

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

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regarded as harassment; (ii) Pickets outside the office or place of business of non-public figures may only be regarded as harassment if they exceed the bounds of reasonableness as regards duration and time; (iii) Pickets outside the residence of a public figure may not be regarded as "harassment" unless they exceed the boundaries … as to duration, occasion, time and alternative avenues.' See also the *Interim Report* of the Strategic Review of Parading in Northern Ireland (2008), at p.50. Available at: http://cain.ulst.ac.uk/issues/parade/srp/srp290408interim.pdf

64. *Rassemblement Jurassien & Unité Jurassien v. Switzerland* (1979) at pp. 93 and119; *Christians Against Racism and Facism v. UK* (*CARAF*) (1980) at p.148; *G v. The Federal Republic of Germany* (1989) at p.263; *Anderson et al v. UK (1997),* and *Rai Almond and 'Negotiate Now v. the United Kingdom,* (1995) at p.146.

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

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

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

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

State's duty to protect peaceful assembly

31. The State has a positive duty to actively protect peaceful assemblies (see further *Rights and Responsibilities of Law Enforcement Personnel below*),[65] and this should be expressly stated in any relevant domestic legislation pertaining to freedom of assembly and police and military powers. This positive obligation requires the State to protect the participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit them in any way.

32. The importance of freedom of assembly for democracy was emphasized in paragraph 2 above. In this light, the costs of providing adequate security and safety measures (including traffic and crowd management, and first-aid services)[66] should be fully covered by the public authorities.[67] The State must not levy any additional monetary charge for providing adequate and appropriate policing.[68] Furthermore, organisers of public assemblies should not

65. See, for example, *Plattform Ärzte für das Leben v. Austria* (1988).
66. See, for example, *Balçık and Others v. Turkey* (2007) at para.49 in which the European Court of Human Rights suggests that State provision of such preventive measures is one of the purposes of prior notification.
67. In *Gülec v. Turkey* (1998), the European Court of Human Rights emphasized the importance of law enforcement personnel being appropriately resourced: 'gendarmes used a very powerful weapon because they did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province …is in a region in which a state of emergency has been declared.' See further, 'Rights and Responsibilities of Law Enforcement Officials', paras.144-146.
68. In *Barankevich v. Russia* (2007) at para.33, for example, the European Court of Human Rights was critical of the fact that there was 'no indication that an evaluation of the resources necessary for neutralising the threat [posed by violent counter-demonstrators] was part of the domestic authorities' decision-making process.'

be required to obtain public liability insurance for their event. Similarly, the responsibility to clean up after a public assembly should lie with the municipal authorities.[69] To require assembly organisers to pay such costs would create a significant deterrent for those wishing to enjoy their right to freedom of assembly and might actually be prohibitive for many organisers. As such, imposing onerous financial requirements on assembly organisers is likely to constitute a disproportionate prior restraint.

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

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

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

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

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

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

33. The State's duty to protect peaceful assembly is of particular significance where the persons holding, or attempting to hold, the assembly are espousing a view which is unpopular, as this may increase the likelihood of hostile opposition. However, potential disorder arising from hostility directed against those participating in a peaceful assembly must not be used to justify the imposition of restrictions on the peaceful assembly. In addition, the State's positive duty to protect peaceful assemblies also extends to simultaneous opposition assemblies (often known as counter-demonstrations).[70] The State should therefore make available adequate policing resources to facilitate demonstrations and related simultaneous assemblies within 'sight and sound' of one another (see further paragraphs 122-124 below). The principle of non-discrimination further requires that assemblies in comparable circumstances do not face differential levels of restriction.

34. The duty to protect peaceful assembly also requires that law enforcement officials be appropriately trained to deal with public assemblies, and that the

69. See, for example, OSCE/ODIHR Panel on Freedom of Assembly and European Commission for Democracy through Law (Venice Commission) *Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely hold Rallies and Demonstrations* (Strasbourg/Warsaw, 27 June 2008, Opinion-Nr.: FOA – KYR/111/2008) at para.37.

70. See, for example, *Öllinger v. Austria* (2006).

culture and ethos of the agencies of law enforcement adequately prioritizes the protection of human rights (see paragraphs 147-148 and 178 below).[71] This not only means that they should be skilled in techniques of crowd management that minimize the risk of harm to all concerned, but also that they should be fully aware of, and understand, their responsibility to facilitate as far as possible the holding of peaceful assemblies.

Legality

35. Any restrictions imposed must have a formal basis in primary law, as must the mandate and powers of the restricting authority.[72] The law itself must be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also to foresee the likely consequences of any such breach.[73] The incorporation of clear definitions in domestic legislation is vital to ensuring that the law remains easy to understand and apply, and that regulation does not encroach upon activities that ought not to be regulated. Definitions, therefore, should neither be too elaborate nor too broad.

36. While this foreseeability requirement does not mean that a single consolidated law on freedom of assembly need be enacted, it does at least require consistency between the various laws that might be invoked to regulate freedom of

71. See, for example, Mary O'Rawe, 'Human Rights and Police Training in Transitional Societies: Exporting the Lessons of Northern Ireland.' 27(3) *Human Rights Quarterly* (August 2005), pp. 943-968; Mary O'Rawe, 'Transitional Policing Arrangements In Northern Ireland: The Can't And The Won't Of The Change Dialectic' 26(4) *Fordham International Law Journal* (April 2003), pp.1015 -1073.
72. See *Hyde Park v. Moldova* (No.2) (2009). In this case, it was emphasized that the reasons for restrictions must be provided only by the legally mandated authority. The European Court of Human Rights noted that the reasons cited by the Municipality for restrictions on a demonstration were not compatible with the relevant Assemblies Act, and it was not sufficient that compatible reasons were later given by the Court: the Courts were not the legally mandated authority to regulate public assemblies and could not legally exercise this duty either in their own name or on behalf of the local authorities.
73. See *Hashman and Harrup v. UK* (1999), where a condition was imposed on protesters not to behave *contra bonos mores* (*ie* in a way which is wrong rather than right in the judgment of the majority of fellow citizens). This was held to violate Article 10, ECHR because it was not sufficiently precise so as to be 'prescribed by law'. In *Gillan and Quinton v. the United Kingdom* (2010) the European Court of Human Rights reiterated (at para.77) that 'the law must indicate with sufficient clarity the scope of any … discretion conferred on the competent authorities and the manner of its exercise.' In this case, the Court found that since the police powers under the *Terrorism Act* 2000 to stop and search an individual for the purpose of looking for articles which could be used in connection with terrorism were 'neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse', they were not therefore 'in accordance with the law' (paras.76-87). See also *Steel and Others v. UK* (1998), and *Mkrtchyan v. Armenia* (2007) at paras.39-43 (relating to the foreseeability of the term 'prescribed rules' in Article 180.1 of the Code of Administrative Offences. In the latter case, the Armenian government unsuccessfully argued that these rules were prescribed by a Soviet Law which had approved, *inter alia*, the Decree on "Rules for Organising and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the USSR' of 28 July 1988. See also, for example, *Connolly v. General Construction Company*, 269 U.S. 385, 46 S.Ct. 126 (1926): 'A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue.'

assembly. Any law which regulates freedom of peaceful assembly should not duplicate provisions already contained in other legislation in order to help ensure the overall consistency and transparency of the legislative framework.

37. The more specific the legislation, the more precise the language used ought to be. Constitutional provisions, for example, because of their general nature, will be less precise than primary legislation.[74] In contrast, legislative provisions that confer discretionary powers on the regulatory authorities should be narrowly framed and should contain an exhaustive list of the grounds for restricting assemblies (see paragraph 69 below). Clear guidelines or criteria should also be established to govern the exercise of such powers and limit the potential for arbitrary interpretation.[75]

38. To aid certainty, any prior restrictions should be formalised in writing and communicated to the organiser of the event within a reasonable timeframe (see further paragraph 135 below). Furthermore, the relevant authorities must ensure that any restrictions imposed during an event are in full conformity with the law and consistent with established jurisprudence. Finally, the imposition, after an assembly, of sanctions and penalties which are not prescribed by law is not permitted.

Proportionality

39. Any restrictions imposed on freedom of assembly must pass the proportionality test.[76] 'The principle of proportionality is a vehicle for conducting a balancing exercise. It does not directly balance the right against the reason for interfering with it. Instead, it balances the nature and extent of the interference against the reason for interfering.'[77] The extent of the interference should cover only the purpose which justifies it.[78] Moreover, given that a wide range of interventions might be suitable, the least intrusive means of achieving the legitimate purpose should always be given preference).[79]

40. The regulatory authority must recognize that it has authority to impose a range of restrictions, rather than viewing the choice as simply between non-intervention or prohibition (see further *'Time, Place and Manner' Restrictions* at paragraphs 99-100 below). Any restrictions should closely relate to the particular concerns

74. See European Court of Human Rights, *Rekvényi v. Hungary* (1999), at para 34.
75. See, for example, *Gillan and Quinton v. the United Kingdom* (2010), discussed further at note 223.
76. See, for example, *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979).
77. Feldman, D. *Civil Liberties & Human Rights in England and Wales*, 2nd ed., (2002) p.57. (emphasis added).
78. Hoffman, D. and Rowe, J. *Human Rights in the UK: An Introduction to the Human Rights Act 1998* (2nd ed.) (Pearson Education Ltd. 2006) at p.106. Importantly, the only purposes or aims that may be legitimately pursued by the authorities in restricting freedom of assembly are provided for by Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11(2) of the ECHR. Thus, the only objectives that may justify the restriction of the right to peaceably assemble are the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.
79. As such, for example, the dispersal of assemblies must only be used a measure of last resort (see further paras.165-170).

raised, and should be narrowly tailored to meet the specific aim(s) pursued by the authorities. The State must show that any restrictions promote a substantial interest that would not be achieved less effectively absent the restriction. The principle of proportionality thus requires that authorities do not routinely impose restrictions which would fundamentally alter the character of an event (such as relocating assemblies to less central areas of a city).[80]

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

'Restriction of freedom of assembly must be proportionate to pursued goals. To reach the goal such a restriction must not exceed necessary and sufficient limits.' Moreover, 'measures taken for restriction of the freedom of assembly must be highly needed for reaching the goal which was the cause for making the restriction.'

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

42. The European Court of Human Rights has further held that the reasons adduced by national authorities to support any claim of proportionality must be 'relevant and sufficient',[82] 'convincing and compelling'[83] and based on 'an acceptable assessment of the relevant facts.'[84] Mere suspicion or presumptions cannot

80. See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at paras.29.1 and 32 (English translation): '(29.1)…The extensive prohibitions in the very centre of the city essentially restricts the right of the persons to hold meetings, processions and pickets … (32) … In the case law of Germany, it is recognized that the institutions of power shall put up with any disturbance of traffic which it is not possible to avoid when realizing freedom of assembly. *If protesting is envisaged to take place in the centre, then it is not possible to make the procession move through the outskirts so that it does not disrupt the movement of traffic…*'
81. See, for example, *Campbell v. MGN Ltd* [2004] at paras.16-20 per Lord Nicholls. For detailed discussion of parallel analysis (in relation to Articles 8 and 10 ECHR), see further, Helen Fenwick and Gavin Phillipson, *Media Freedom under the Human Rights Act* (OUP, 2006) at pp.700-706. See also the Hungarian Constitutional Court's approach when confronted with a conflict between two fundamental rights (at note 140 below).
82. See, for example, *Makhmudov v. Russia* (2007) at para.65.
83. *Id.*, at para.64.
84. *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), at para. 87. See also, *United Communist Party of Turkey and Others v. Turkey* (1998) at para. 47.

suffice.[85] This is particularly the case where the assembly concerns a matter of public interest, or where political speech is involved.[86]

43. Consequently, the blanket application of legal restrictions – for example, banning all demonstrations during certain times, or from particular locations or public places which are suitable for holding assemblies – tend to be over-inclusive and will thus fail the proportionality test because no consideration has been given to the specific circumstances of each case.[87] Legislative provisions which limit the holding of assemblies only to certain specified sites or routes (whether in central or remote locations) seriously undermine the communicative purpose of freedom of assembly, and should thus be regarded as a *prima facie* violation of the right. Similarly, the regulation of assemblies in residential areas, or of assemblies at night time, should be handled on a case-by-case basis rather than being specified as a prohibited category of assemblies.

44. The time, place, and manner of individual public assemblies can however, be regulated to prevent them from unreasonably interfering with the rights and freedoms of other people (see chapter 4 below). This reflects the need for a proper balance to be struck between the rights of persons to express their views by means of assembly, and the interest of not imposing unnecessary burdens on the rights of non-participants.

45. If, having regard to the relevant factors, the authorities have a proper basis for concluding that restrictions should be imposed on the time or place of an assembly (rather than merely the manner in which the event is conducted), a suitable alternative time or place should be made available.[88] Any alternative must be such that the message which the protest seeks to convey is still capable of being effectively communicated to those to whom it is directed – in other words, within 'sight and sound' of the target audience (see also paragraph 33 above, and 'Simultaneous Assemblies' at paragraphs 122-124 below).[89]

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85. See *Brokdorf* decision of Federal Constitutional Court of Germany, BVerfGE 69,315 (353, 354)
86. See, for example, *Christian Democratic Peoples' Party v. Moldova* (2006), at para.71. Similarly, *Rosca, Secareanu and Others v. Moldova* (2008) at para.40 (citing the *Christian Democratic Peoples' Party* case).
87. See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.29.3 (English translation): 'The state may not prohibit holding meetings, processions and pickets at foreign missions; only these activities shall not be too noisy and aggressive. However, even in these cases … this issue shall be solved on the level of *application* of legal norms' (emphasis added). While the Court noted (at para.28.1) that s.22(2) *Vienna Convention on International Diplomatic Relations* (1961) requires host states 'to undertake all the adequate measures to protect premises of the mission from any kind of breaking in or incurring losses and to avert any disturbance of peace of the mission or violation of its respect', it concluded (at para.28.3) that there 'is no norm which assigns the state with the duty of fully isolating foreign diplomatic and consular missions from potential processions, meetings or pickets.' See also, David Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Era* (Hart Publishing, 2010) at pp.101-2.
88. *Rai, Almond and "Negotiate Now" v. United Kingdom* (1995, admissibility).
89. See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.29.3 (English translation): 'The state has the duty not only to ensure that a meeting, picket or a procession takes place, but also to see to it that freedom of speech and assembly is effective, namely – that the organized activity shall reach the target audience.'

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

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

Any date proposed by the authorized body shall be within two days after the date proposed by the organizer.

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

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

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

Non-discrimination

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

47. Article 14 ECHR does not provide a freestanding right to non-discrimination but complements the other substantive provisions of the Convention and its Protocols. Thus, Article 14 is applicable only where the facts at issue (or arguably, the grounds of restriction) fall within the ambit of one or more of the

90. See further 'General Comment 18: Non-Discrimination', U.N. Human Rights Committee, U.N. Doc. CCPR General Comment 18, (1989).

other Convention rights.[91] OSCE participating States, and parties to the ECHR, are encouraged to ratify Protocol 12 (see below) which contains a general prohibition of discrimination.[92] Additionally, Article 5 of the Convention on the Elimination of all forms of Racial Discrimination requires States Parties to prohibit and eliminate racial discrimination.

Article 26 ICCPR

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

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

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

… (d) Other civil rights, in particular:

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

Article 14 ECHR

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

Protocol 12 ECHR, Article 1 – General prohibition of discrimination

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

91. See for example, *Haas v. Netherlands* (2004) at para.41. In light of judgement of the European Court of Human Rights in *Thlimmenos v. Greece* (2000), Robert Wintemute argues that the interpretation of Article 14 ECHR should be broadened to include 'two access routes' so that not only the opportunity denied, but also the ground for its denial, could be deemed to fall 'within the ambit' of another Convention right and so engage Article 14. See Wintemute, R. '"Within the Ambit": How big is the "gap" in Article 14 European Convention on Human Rights? Part 1' (2004) 4 *European Human Rights Law Review* 366-382.
92. See, for example, *Sejdić and Finci v. Bosnia and Herzegovina* (2009), the first case in which the European Court of Human Rights found a violation of Protocol 12, holding (at para.55) that '[n] otwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see the Explanatory Report to Protocol No. 12, para.18).'

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

Article 21 of the EU Charter of Fundamental Rights:

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

48. Any discrimination based on grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. Moreover, the failure of the State to prevent or take steps in response to acts of discrimination committed by private individuals may also constitute a breach of the right to freedom from discrimination.[93]

93. See *Opuz v. Turkey* (2009) at paras.184-191 (here, in relation to domestic violence). Many problems have arisen specifically in relation to assemblies organised by Lesbian, Gay, Bisexual and Transgender (LGBT) groups. See further *Bączkowski and Others v. Poland* (2007) where the Court found there to be a violation of Article 14 in conjunction with Article 11 ECHR. See also, Applications nos. 4916/07, 25924/08 and 14599/09 by *Nikolay Aleksandrovich Alekseyev against Russia* lodged on 29 January 2007, 14 February 2008 and 10 March 2009. At the time of writing, members of the organizational committee of the Belgrade Pride Parade (which was to have been held on 20 September 2009) have challenged, *inter alia*, the alleged failure of state organs in Serbia to take all reasonable measures to prevent private acts of discrimination against the applicants. See also, Council of Europe, Parliamentary Assembly, *Recommendation 211 (2007) on Freedom of Assembly and Expression for Lesbians, Gays, Bisexuals and Transgendered Persons*, 26 March 2007 (available https://wcd.coe.int/ViewDoc.jsp?id=1099699&Site=Congress&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679), and the related 'Explanatory Report: Freedom of Assembly and Expression for Lesbian, Gay, Bisexual and Transgendered Persons', Congress of Local and Regional Authorities, Council of Europe, 26-28 March 2007. Available online at: https://wcd.coe.int/ViewDoc.jsp?Ref=CPL(13)9PART2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679. Furthermore, see U.N. General Assembly, *Human rights defenders: Note by the Secretary-General* (report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, in accordance with General Assembly resolution 60/161), U.N. Doc. A/61/312, 5 September 2006, at para.71; Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani*, U.N. Doc. A/HRC/4/37, 24 January 2007, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/104/17/PDF/G0710417.pdf?OpenElement at para.96; Human Rights Council, *Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, at para.454. Also, ILGA, *LGBT Rights - Freedom of Assembly: diary of events by country (August 2008)*. Available at: http://www.ilga-europe.org/media_library/lgbt_rights_freedom_of_assembly_diary_of_events_by_country_august_2008

49. Importantly, Article 26 ICCPR has been interpreted to include 'sexual orientation' in the reference to non-discrimination on grounds of 'sex.'[94] Article 13 of the Amsterdam Treaty also provides for the European Union to 'undertake necessary actions to fight discrimination based on … sexual orientation', and Article 21(2) of the EU Charter of Fundamental Rights prohibits 'any discrimination on any ground" including on the basis of sexual orientation.[95] Both Principle 20 of the *Yogyakarta Principles*,[96] and the *Committee of Ministers Recommendation on measures to combat discrimination on grounds of sexual orientation*[97] are also directly relevant in this regard.

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94. See *Nicholas Toonen v. Australia*, U.N. Human Rights Committee, No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (04/04/94) at para.8.7.
95. Article 21 of the *Charter of Fundamental Rights of the European Union* provides that 'Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.' [2000] C364/01, available at http://www.europarl.eu.int/charter/pdf/text_en.pdf.
96. Principle 20, *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* (http://www.yogyakartaprinciples.org/) provides that: 'Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities. States shall: Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity; Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities; Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights; Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection.' See also the accompanying *Jurisprudential annotations*, available at: http://www.yogyakartaprinciples.org/yogyakarta-principles-jurisprudential-annotations.pdf
97. *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity* (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies) provides that: 'III. Freedom of expression and peaceful assembly… 14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity; 15. Member states should ensure that law-enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly; 16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order; 17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

50. The regulatory authority must not impose more onerous pre-conditions on some persons wishing to assemble than on others whose case is similar.[98] The regulatory authority may, however, treat differently persons whose situations are significantly different.[99] Article 26 of the ICCPR guarantees all persons equality before the law and equal protection of the law. This implies that decisions by the authorities concerning freedom of assembly must not have a discriminatory impact, and so both direct and indirect discrimination are prohibited.[100] Furthermore, the law enforcement authorities have an obligation to investigate whether discrimination was a contributory factor to any criminal conduct that occurs during an assembly (such as participants being physically attacked).[101]

51. Attempts to prohibit and permanently exclude assemblies organised by members of one ethnic, national, or religious group from areas predominantly occupied by members of another racial group may be deemed to promote segregation, and would thus be contrary to the *UN Convention on the Elimination of All Forms of Racial Discrimination*, Article 3 of which affirms that "[p]arties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."

52. This following section highlights some of the key human rights provisions which protect the freedom of peaceful assembly by particular sections of society whose freedoms are sometimes not adequately protected.

Groups, Unregistered Associations, and Legal Entities

53. Freedom of peaceful assembly can be exercised by both individuals and corporate bodies (as, for example, provided in the extract from the Bulgarian Law on Gatherings, Meetings and Manifestations below).[102] In order to ensure that freedom of peaceful assembly is protected in practice, States should remove the requirement of mandatory registration of any public organisation and guarantee the right of citizens to set up formal and informal associations. (See further 'Freedom of association and freedom of assembly', at paragraphs 105-106 below).

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98. In part, this was the argument raised by the applicants in *Baczkowski and Others v. Poland* (2007) and (2006, admissibility). The applicants stated that they were treated in a discriminatory manner firstly because organisers of other public events in Warsaw in 2005 had not been required to submit a 'traffic organisation plan', and also because they had been refused permission to organise the March for Equality and related assemblies because of the homosexual orientation of the organisers.
99. *Thlimmenos v. Greece* (2000) at para.44.
100. Indirect discrimination occurs when an ostensibly non-discriminatory provision in law affects certain groups disproportionately.
101. *Nachova and Others v. Bulgaria* [GC] (2005), at para.161.
102. See *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979) at p. 119, and *Christians against Racism and Fascism v. the United Kingdom* (1980) at p. 148. Similarly, the right to freedom of thought, conscience and religion can be exercised by a church body, or an association with religious and philosophical objects, *ARM Chappell v. UK* (1987) at p.246.

Article 2, Law on Gatherings, Meetings and Manifestations, Bulgaria (1990)

Gatherings, meetings and manifestations can be organized and held by [individuals], associations, political and other social organizations.

Minorities

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

'Non-Nationals'

55. **(stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists):** International human rights law requires that non-nationals 'receive the benefit of the right of peaceful assembly.'[106] It is therefore important that the law does not extend freedom of peaceful assembly only to citizens, but that it also includes stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists. Note, however, that Article 16, ECHR provides that '[n]othing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.' The application of Article 16 should be confined to speech activities by non-nationals which directly burden national security. There is no reason to stop non-nationals from participating in an assembly that, for example,

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

104. Adopted by GA Res 47/135,18 December 1992.

105. See *Hyde Park v. Moldova No.1* (2009) para.28 citing *Young, James and Webster v. the United Kingdom*, 13 August 1981, para.63, Series A no. 44, and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, para.112, ECHR 1999-III). Similarly, *Hyde Park v. Moldova No.2* (2009) para.24; *Hyde Park v. Moldova No.3* (2009) at para.24.

106. U.N. Human Rights Committee, General Comment 15, The position of aliens under the Covenant.

challenges domestic immigration laws or policies. The increase in transnational protest movements also underscores the importance of facilitating freedom of assembly for non-nationals.[107]

Women

56. Under Article 3 of the *UN Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW), State parties are obliged to take all appropriate measures to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.[108]

Children

57. Like adults, children also have legitimate claims and interests. Freedom of peaceful assembly provides them with a means of expressing their views and contributing to society. Article 15 of the *UN Convention on the Rights of the Child* requires State parties to recognize the right of children to organise and participate in peaceful assemblies.[109]

Article 15, UN Convention on the Rights of the Child

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

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

107. See further Donatella della Porta, Abby Peterson, Herbert Reiter, *The Policing of Transnational Protest* (Ashgate, 2006).

108. Article 7(c), CEDAW also safeguards the right of women to participate in non-governmental organizations and associations concerned with the public and political life of the country. See also *Opuz v. Turkey* (2009), cited above at 93.

109. Article 15, Convention on the Rights of the Child.

***Finland Assembly Act* (1999)**

Section 5, Right to arrange public meetings …

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

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

Article 6, Organisers of assemblies …

(2) Minors of age 14, persons declared with limited legal capacity can organise public assemblies together with the persons with the full legal capacity.

Article 7, Participants in assemblies

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

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

Persons with a disability

59. The *UN Convention on the Rights of Persons with Disabilities* similarly emphasizes the need to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities...'[110] The international standards provide that '[e]very person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in … the International Covenant on Civil and Political Rights, and in other relevant instruments.'[111] All individuals should thus be facilitated in the enjoyment of their freedom to peacefully assemble, irrespective of their legal capacity.

Law enforcement personnel and State officials

60. The ECHR permits 'lawful restrictions on the exercise of these rights by members of the armed forces, of the police, or of the administration of the State.'[112]

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110. Article 1, UN Convention on the Rights of Persons with Disabilities.

111. Principle 1 (5), United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, United Nations General Assembly resolution 46/119.

112. Article 11(2), European Convention for the Protection of Human Rights and Fundamental Freedoms. See, for example, *Demir and Baykara v. Turkey* (2008) at para.109: 'The Convention makes no distinction between the functions of a Contracting State as holder of public power and its responsibilities as employer. Article 11 is no exception to that rule. On the contrary, paragraph 2 *in fine* of this provision clearly indicates that the State is bound to respect freedom of assembly and association, subject to the possible imposition of "lawful restrictions" in the case of members of its armed forces, police or administration (see *Tüm Haber Sen and Çınar*…). Article 11 is accordingly binding upon the "State as employer", whether the latter's relations with its employees are governed by public or private law ...' See also *Enerji Yapi-Yol Sen v. Turkey* (2009, in French only) cited at note 17 above.

Any such restrictions must be designed to ensure that the responsibilities of those in the services concerned are properly discharged and that any need for the public to have confidence in their neutrality is maintained.[113] The definition of neutrality is central. Neutrality should not be interpreted so as to unnecessarily restrict the freedom to hold and express opinion. Legislation should not therefore restrict the freedom of assembly of law enforcement personnel (including the police and military) or State officials unless the reasons for restriction are directly connected with their service duties, and then only to the extent absolutely necessary in light of considerations of professional duty.

Good administration and transparent decision-making

61. The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in law.[114] It is important to have a properly mandated decision-making authority, as those officials who have to bear the risk of taking controversial decisions about assemblies often come under intense public pressure (potentially leading to decisions which do not adhere to or reflect the human rights principles set out in these Guidelines). In some jurisdictions, it may be appropriate for decisions about regulating assemblies to be taken by a different body from the authority tasked with enforcing the law. This separation of powers can assist those enforcing the law by rendering them less amenable to pressure to change an unfavourable decision. In jurisdictions where there are diverse ethnic and cultural populations and traditions, it may be helpful if the regulatory authority is broadly representative of those different backgrounds.[115]

62. The officials responsible for taking decisions concerning the regulation of the right to freedom of assembly should be fully aware of, and understand their responsibilities in relation to, the human rights issues bearing upon their decisions. To this end, such officials should receive periodic training in relation to the implications of existing and emerging human rights case law. The regulatory authority must also be adequately staffed and resourced so as to enable it to effectively fulfil its obligations in a way that enhances co-operation between the organiser and authorities.

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113. See *Ahmed and Others v. United Kingdom* (1998); *Rekvényi v. Hungary* (1999).
114. See *Hyde Park v. Moldova No.1* (2009) at para.31. See xxiii above. 'It is true that new reasons for rejecting Hyde Park's application to hold an assembly were given by the courts during the subsequent judicial proceedings. However, sections 11 and 12 of the Assemblies Act give exclusive authority to the local authorities to authorise or not assemblies.' Similarly, *Hyde Park v. Moldova No.2* (2009) at para.27; *Hyde Park v. Moldova No.3* (2009) at para.27.
115. See, for example, the Parades Commission in Northern Ireland, whose members are appointed in accordance with Schedule 1 of the *Public Processions (NI)* Act 1998, and which, as a body, must be as representative as is possible of the community as a whole (para.2(3) of Schedule 1).

63. The regulatory authority should ensure that the general public has adequate access to reliable information relating to public assemblies,[116] and also about its procedures and operation. Many countries already have legislation specifically relating to access to information, open decision-making, and good administration, and these laws should be applicable to the regulation of freedom of assembly.

64. Procedural transparency should ensure that freedom of peaceful assembly is not restricted on the basis of imagined risks, or even real risks which, if opportunities were given, could be adequately addressed prior to the assembly. In this regard, the authorities should ensure that its decisions are as well-informed as is possible. Domestic legislation could, for example, require that a representative of the decision-making authority attend any public assembly in relation to which substantive human rights concerns have been raised (irrespective of whether or not any restrictions were actually imposed). Organisers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should also have an opportunity to make oral and written representations directly to the regulatory authority (see further, 'Decision-making and Review Process' at paragraphs 132-140 below). It is of note that Article 41 of the Charter of Fundamental Rights of the European Union provides that everyone has the right to good administration.

> **Article 41 of Charter of Fundamental Rights of the European Union** *(1) Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.*
>
> *(2) This right includes:*
>
> *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
>
> *the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
>
> *the obligation of the administration to give reasons for its decisions.*

65. Laws relating to freedom of assembly should outline a clear procedure for interaction between event organisers and the regulatory authorities. This should set out appropriate time limits working backwards from the date of the proposed event, and should allow adequate time for each stage in the regulatory process

116. See, for example, 'Joint Statement on Racism and the Media by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression'. One example of good practice is provided by the Northern Ireland Parades Commission which publishes details of all notified parades and related protests in Northern Ireland categorized according to the town in which they are due to take place. See further http://www.paradescommission.org. See also, for example, the records maintained by Strathclyde Police in Scotland relating to the policing of public processions. Available at http://strathclydepoliceauthority.gov.uk/images/stories/CommitteePapers/FullAuthority2009/FA1October2009/item%206%20-%20review%20of%20police%20resources%20deployed%20at%20marches%20and%20parades.pdf

Review and appeal

66. An initial option of administrative review (see further paragraph 137) can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be an opportunity to appeal the decision of the regulatory authority to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. A final ruling should therefore be given prior to the notified date of the assembly. In the absence of the possibility of a final ruling, the law should provide for the possibility of interim relief by injunction. This requirement is examined further below, in Chapter 5 'Procedural Issues' (*Decision-making and review process*, paragraphs 132-140) and in Annex A, 'Enforcement of International Human Rights Standards.'

Liability of the regulatory authority

67. The regulatory authorities must comply with their legal obligations, and should be accountable for any failure – procedural or substantive – to do so whether before, during or after an assembly. Liability should be gauged according to the relevant principles of administrative or criminal law, or of judicial review concerning the misuse of public power.

Article 183, Penal Code of the Republic of Moldova (2002)

Violation of the right to freedom of assembly

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

Article 67, Contraventions Code of the Republic of Moldova (2008)

Violation of the right to freedom of assembly

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

4. Restrictions on Freedom of Assembly

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

Legitimate grounds for restriction

69. The legitimate grounds for restriction are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation,[117] nor loosely interpreted by the authorities.[118]

70. The regulatory authorities must not raise obstacles to freedom of assembly unless there are compelling arguments to do so. Applying the guidance below should help the regulatory authorities test the validity of such arguments. The legitimate aims discussed in this section (as provided in the limiting clauses in Article 21, ICCPR and Article 11, ECHR) are not a licence to impose restrictions, and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.

Public Order

71. The inherent imprecision of this term[119] must not be exploited to justify the prohibition or dispersal of peaceful assemblies. Neither a hypothetical risk of public disorder, nor the presence of a hostile audience are legitimate grounds for prohibiting a peaceful assembly.[120] 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.[121] The European Court of Human Rights has noted that 'an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.'[122]

72. An assembly which the organisers intend to be peaceful may still legitimately be restricted on public order grounds in certain circumstances. Such restrictions should only be imposed when there is evidence that participants will themselves use or incite imminent, lawless and disorderly action and such action is likely to occur. This approach is designed to extend protection to controversial speech

117. That the authorities should not supplement the legitimate aims, particularly with arguments based on their own view of the merits of a particular protest, see *Hyde Park v. Moldova No.3* (2009) at para.26. See further note 23.

118. This point has recently been emphasized by the Council of Europe's Committee of Ministers. See recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies, at para.16 (see note.97 above).

119. In the *Brokdorf* decision of the German Federal Constitutional Court (1985) (1 BvR 233, 341/81), for example, 'public order' was understood as including the totality of unwritten rules, obedience to which is regarded, as an indispensable prerequisite for an orderly communal human existence within a defined area according to social and ethical opinions prevailing at the time.

120. For example, *Makhmudov v. Russia* (2007).

121. *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001) at para.94.

122. See further *Ezelin v. France* (1991) and *Ziliberberg v. Moldova* (2004).

and political criticism, even where this might engender a hostile reaction from others (see further content-based restrictions at paragraphs 94-98 below).[123]

73. Compelling and demonstrable evidence is required that those organising or participating in the particular event will themselves use violence. In the event that there is evidence of potential violence, the organizer must be given a full and fair opportunity to rebut it by submitting evidence that the assembly will be peaceful.

Public Safety

74. There is a significant overlap between public safety considerations and those concerning the maintenance of public order. Particular public safety concerns might arise, for example, when assemblies are held outside daylight hours, or when moving vehicular floats form part of an assembly. In such instances, extra precautionary measures should generally be preferred over restriction.

75. The State has a duty to protect public safety, and under no circumstances should this duty be assigned or delegated to the organiser of an assembly. However, the organiser and stewards may assist in ensuring the safety of members of the public. An assembly organiser could counter any claims that public safety might be compromised by his or her event by, for example, ensuring adequate stewarding (see further paragraphs 191-196 below).

The Protection of Health

76. In the rare instances in which health might be an appropriate basis for restricting of one or more public assemblies, those restrictions should not be imposed unless other similar concentrations of individuals are also restricted. Thus, before a restriction may be justified based on the need to protect public health, similar restrictions should also have been applied to attendance at school, concerts, sports events, and other such activities where people ordinarily gather.

77. Restrictions might also be justified on occasion where the health of participants in an assembly becomes seriously compromised. In the case of *Cisse v. France* (2002), for example, the intervention of the authorities was justified on health grounds given that the protesters had reached a critical stage during a hungerstrike, and were confined in unsanitary conditions. Again, though, such reasoning should not be relied upon by the authorities to pre-emptively break-up peaceful assemblies, even where a hungerstrike forms part of the protest strategy.

The Protection of Morals

78. The main human rights treaties which protect freedom of assembly (the ICCPR and ECHR) are 'living instruments' and thus attuned to diverse and changing moral values. Measures purporting to safeguard public morals must therefore

123. See, for example, *Christian Democratic People's Party v. Moldova (No. 2)* (2010) at para.27. Finding a violation of Article 11 ECHR, the European Court of Human Rights stated that 'the applicant party's slogans, even if accompanied by the burning of flags and pictures, was a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova.'

be tested against an objective standard of whether they meet a pressing social need and comply with the principle of proportionality.[124] Indeed, it is not sufficient for the behaviour in question merely to offend morality – it must be behaviour which is deemed criminal and has been defined in law as such (see paragraph 35 above).[125]

79. Moreover, the protection of morals should not ordinarily be regarded as an appropriate basis for imposing restrictions on freedom of assembly.[126] Reliance on such a category can too easily lead to content regulation and discriminatory treatment. Restrictions will violate the right to freedom of peaceful assembly unless they are permissible under the standards governing content regulation (see paragraphs 94-98 below) and non-discrimination (at paragraphs 46-60 above).[127]

The Protection of the Rights and Freedoms of Others

80. The regulatory authority has a duty to strike a proper balance between the important freedom to peacefully assemble and the competing rights of those who live, work, shop, trade and carry on business in the locality affected by an assembly. That balance should ensure that other activities taking place in the same space may also proceed if they themselves do not impose unreasonable burdens.[128] Temporary disruption of vehicular or pedestrian traffic is not, of

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124. *Norris v. Ireland* (1988) at paras.44-46. It is noteworthy that 'public morals' as a legitimate ground for limiting freedom of assembly is not synonymous with the moral views of the holders of political power. See Judgment of the Polish Constitutional Tribunal, 18th January 2006, K 21/05, *Requirement to Obtain Permission for an Assembly on a Public Road* (English translation), available at http://www.trybunal.gov.pl/eng/summaries/documents/K_21_05_GB.pdf

125. See, for example, *Hashman and Harrup v. UK* (1999) regarding the common law of offence of behaviour deemed to be 'contra bones mores'.

126. For criticism of a legislative provision relating to morality, see, *http://www.bahrainrights.org/node/208; http://hrw.org/english/docs/2006/06/08/bahrai13529.htm*. Manfred Nowak's commentary on the ICCPR cites assemblies near or passing 'holy locations or cemeteries' (in relation to morality) or 'natural-protection or water-conservation grounds' (in relation to public health) as examples of particular. See Nowak, *supra* note 29 above at 493.

127. See, for example, Tania Groppi (Siena University) *Freedom of thought and expression, General Report*, *Political Structure and Human Rights*, citing the Constitutional Court of Hungary (European Union Meeting, Union of Turkish Bar, Ankara 16-18 April 2003) at p.6. Available at http://www.unisi.it/ricerca/dip/dir_eco/COMPARATO/groppi4.doc . See, for example, Hungarian Constitutional Court, Decision no. 21/1996 (V.17.) [ABH 1997] 74 at 84.

128. In the American case of *Schneider v. State*, 308 U.S. 147 (1939), it was held that there was a right to leaflet even though the leafleting caused litter. In *Collin v. Chicago Park District*, 460 F.2d 746 (7th Cir. 1972) it was held that there was a right to assemble in open areas that the park officials had designated as picnic areas. In *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Osterreich* (2003), the European Court of Justice held that allowing a demonstration which blocked the Brenner Motorway between Germany and Italy for almost 30 hours was not a disproportionate restriction on the free movement of goods under Article 28 EC Treaty). This was for three reasons: (1) the disruption was a relatively short duration and on an isolated occasion; (2) measures were taken to limit the disruption caused; (3) excessive restrictions on the demonstration could have deprived the demonstrators of their rights to expression and assembly, and indeed possibly caused greater disruption. The Austrian authorities considered that they had to allow the demonstration to go ahead because the demonstrators were exercising their fundamental rights of freedom of expression and freedom of assembly under the Austrian constitution. See also *Commission v. France* (1997). This case concerned protests by French farmers directed against agricultural products from other Member States. The Court held that by failing to adopt

itself, a reason to impose restrictions on an assembly.[129] Nor is *opposition* to an assembly of itself sufficient to justify prior limitations. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe upon the rights and freedoms of others.[130] This is particularly so given that freedom of assembly, by definition, constitutes only a temporary interference with these other rights.

81. While business owners and local residents do not normally have a right to be consulted in relation to the exercise of fundamental rights,[131] where their rights are engaged, it is good practice for the organiser and law enforcement agencies to discuss with the affected parties how the various competing rights claims might best be protected to the mutual satisfaction of all concerned (see further paragraph 134 below in relation to negotiation and mediated dialogue).

82. Where the regulatory authority restricts an assembly for the purpose of protecting the competing rights and freedoms of others, the body should state:
   - the nature of any valid rights claims made;
   - how, in the particular context, these rights might be infringed (outlining the specific factors considered); and
   - how, precisely, the authority's decision mitigates against any such infringement (the necessity of the restrictions); and
   - why less intrusive measures could not be used.

83. Rights that might be claimed by non-participants affected by an assembly (although these need not be rights enumerated in the ICCPR or ECHR)[132] potentially include: the right to privacy (protected by Article 17, ICCPR and Article

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all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French government had failed to fulfil its obligations under Article 30 EC Treaty, in conjunction with Article 5, of the Treaty.

129. *Éva Molnár v. Hungary (*2008) at para.34: 'The Court notes that restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others with a view to preventing disorder and maintaining the orderly circulation of traffic.' As Nicholas Blomley argues, 'traffic logic serves to reconstitute public space … Public space is not a site for citizenship, but a mere 'transport corridor'. See Nicholas Blomley, 'Civil Rights Meet Civil Engineering: Urban Public Space and Traffic Logic.' 22 *Can. J.L.& Soc.* 55 at 64 (2007). See also Timothy Zick, *Speech Out of Doors: Preserving First Amendment Liberties in Public Places* (Cambridge University Press, 2008).

130. See, for example, *Ashughyan v. Armenia* (2008) at para.90, cited above at para.20. Similarly, *Balçık and Others v. Turkey* (2007) at para.49; *Oya Ataman v. Turkey* (2006) at para.38; *Nurettin Aldemir and others v. Turkey* (2007) at para.43.

131. The UN *Declaration on the Rights of Indigenous Peoples* includes a right to be consulted on decisions and actions that have an impact on indigenous peoples' rights and freedoms.

132. In so far as other non-Convention rights are concerned, only 'indisputable imperatives' can justify the imposition of restrictions on public assemblies. See, for example, *Chassagnou v. France* (1999) at para.113: 'It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect 'rights and freedoms' not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right.' This clearly sets a high threshold: there must be a verifiable impact ('indisputable') on the lives of others requiring that objectively necessary ('imperative') steps be taken. It is not enough that restrictions are merely expedient, convenient or desirable.

8, ECHR)[133] the right to peaceful enjoyment of one's possessions (protected by Article 1 of Protocol 1, ECHR),[134] the right to liberty and security of person (Article 9, ICCPR and Article 5 ECHR),[135] and the right to freedom of movement (Article 12, ICCPR and Article 2 of Protocol 4 ECHR).[136] It may also be that restrictions on freedom of assembly could be justified to protect the right of others to freedom of expression and to receive information (Article 19, ICCPR and Article 10 ECHR),[137] or to manifest their religion or belief (Article 18, ICCPR and Article 9, ECHR).[138] Nonetheless, no restrictions should be imposed on freedom of assembly on grounds of protecting the rights of others unless the requisite threshold has been satisfied in relation to these other rights. Indeed, anyone seeking to exercise the right to freedom of assembly in a way that would destroy the rights of others already forfeits their right to assemble by virtue of the destruction of rights clause in Article 5 ICCPR and Article 17 ECHR (see paragraph 15 above).

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133. The right to 'private life' covers the physical and moral integrity of the person (*X and Y v. The Netherlands*, 1985), and the State must not merely abstain from arbitrary interference with the individual, but also positively ensure *effective* respect for private life. This can extend even in the sphere of relations between individuals. Where it is claimed that a right to privacy is affected by freedom of assembly, the authority should seek to determine the validity of that claim, and the degree to which it should tolerate a temporary burden. The case of *Moreno Gómez v. Spain* (2004) might give some indication of the high threshold that must first be overcome before a violation of Article 8 can be established.

134. See, for example, *Chassagnou and Others v. France* (1999). Also *Gustafsson v. Sweden* (1996). The right to peacefully enjoy one's possessions has been strictly construed by the European Court of Human Rights so as to offer protection only to proprietary interests. Moreover, for a public assembly to impact on the enjoyment of ones' possessions to an extent that would justify the placing of restrictions on it, a particularly high threshold must first be met. Businesses, for example, benefit from being in public spaces and, as such, should be expected to tolerate alternative uses of that space. As previously emphasized, freedom of assembly should be considered a normal and expectable aspect of public life.

135. Note, however, that Article 5 ECHR is concerned with total deprivation of liberty, not mere restrictions upon movement (which might be covered by Article 2 of Protocol 4). This distinction between deprivation of, and mere restriction upon, liberty has been held to be 'one of degree or intensity, and not one of nature or substance.' See *Guzzardi v. Italy* (1980) at para.92; and *Ashingdane v. the United Kingdom* (1985) at para.41. See also *R (on the application of Laporte) v. Chief Constable of Gloucester Constabulary* [2006] UKHL 55; and *Austin and Saxby v. Commissioner of Police of the Metropolis* [2009] UKHL 5. For critique of the latter judgment, see David Mead, 'Of Kettles, Cordons and Crowd Control: Austin v. Commissioner of Police for the Metropolis and the Meaning of 'Deprivation of Liberty' 3 *EHRLR* 376-394 (2009); Helen Fenwick, 'Marginalising human rights: breach of the peace, "kettling", the Human Rights Act and public protest' *Public Law* (2009) 737-765.

136. Significantly, however, the right to free movement does not generally refer to the use of public roads but rather to the possibility of changing one's place of residence. See, for example, the judgement of the Polish Constitutional Tribunal, *Case 21/05*, 18 January 2006 (also cited in the decision of the Hungarian Constitutional Court, *Decision 75/2008, (V.29.) AB*, at para.2.3). See also note 14 above.

137. *Acik v. Turkey* (2009) at para.45: 'In the instant case, the Court notes that the applicants' protests took the form of shouting slogans and raising banners, thereby impeding the proper course of the opening ceremony and, particularly, the speech of the Chancellor of Istanbul University. As such, their actions no doubt amounted to an interference with the Chancellor's freedom of expression and caused disturbance and exasperation among some of the audience, who had the right to receive the information being conveyed to them.'

138. *Öllinger v. Austria* (2006), at para. 46. For such a claim to be upheld would require that the assembly impose a direct and immediate burden on the expressive rights or the exercise of the religious beliefs of others.

84. Assessing the impact of public events on the rights of others must take due consideration of the frequency of similar assemblies before the same audience. While a high threshold must again be met, the cumulative impact on a captive audience of numerous assemblies (for example, in a purely residential location) *may* constitute a form of harassment that could legitimately be restricted to protect the rights of others. Repeated, albeit peaceful, demonstrations by particular groups might also in certain circumstances be viewed as an abuse of a dominant position (see above, paragraphs 7 and 54), again legitimately restricted to protect the rights and freedoms of others.[139] The principle of proportionality requires that in achieving this aim, the least onerous restrictions possible should be used (see paragraphs 39-45 above).[140]

National Security

85. The issue of national security is often given too wide an interpretation in relation to freedom of assembly. The *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights* limit reliance on national security grounds to justify restrictions of freedom of expression and assembly.

Part vi, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights

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

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

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

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

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139. See *Hyde Park v. Moldova No.1* (2009) at para.28 citing *Young, James and Webster v. the United Kingdom* (1981) at para.63, and *Chassagnou and Others v. France* [GC] (1999). Similarly, *Hyde Park v. Moldova No.2* (2009) para.24, and *Hyde Park v. Moldova No.3* (2009) at para.24.

140. See the discussion of 'parallel scrutiny' at note lxxxi above (and accompanying text). See also, for example, the decision of the Hungarian Constitutional Court, *Decision 75/2008, (V.29.) AB*, at para.2.2 (referring to a previous decision of the Court, ABH 2001, 458-459): 'with respect to the prevention of a potential conflict between two fundamental rights: … the authority should be statutorily empowered to ensure the enforcement of both fundamental rights or, if this is impossible, to ensure that any priority enjoyed by one of the rights to the detriment of the other shall only be of a temporary character and to the extent absolutely necessary.'

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

Principle 6, Johannesburg Principles on National Security, Freedom of Expression and Access to Information

Expression That May Threaten National Security

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

(a) the expression is intended to incite imminent violence;

(b) it is likely to incite such violence; and

(c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Legislation intended to counter 'terrorism' and 'extremism'

87. Efforts to tackle terrorism or 'extremism', and to enhance security must never be invoked to justify arbitrary action which curtails the enjoyment of fundamental human rights and freedoms. The 2004 *Berlin Declaration of the International Commission of Jurists on 'Upholding Human Rights and the Rule of Law in Combating Terrorism'* [142] emphasized that 'the odious nature of terrorist acts cannot serve as a basis or pretext for States to disregard their international obligations, in particular in the protection of fundamental human rights.' Similarly, both the *Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis* (2007)[143] and the *OSCE Manual on Countering Terrorism, Protecting Human Rights* (2007)[144] caution against the imposition of undue restrictions on the exercise of freedom of expression and assembly during crisis situations.

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

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

In the implementation of counter-terrorism measures, States must respect and safeguard fundamental rights and freedoms, including freedom of expression,

141. *The Johannesburg Principles*, ARTICLE 19, November 1996 (ISBN 1 870798 48 1).

142. Available from http://www.icj.org. Similarly, the United Nations 'Global Counter-Terrorism Strategy' adopted by member States on 8 September 2006, emphasized in part IV 'that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing', and that 'States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law...'

143. Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies. Available online at: https://wcd.coe.int/ViewDoc.jsp?id=1188493

144. Particularly, Chapter 16 'Freedom of Association and the Right to Peaceful Assembly' at pp.240-150. Available online at: http://www.osce.org/publications/odihr/2007/11/28294_980_en.pdf

religion, conscience or belief, association, and assembly, and the peaceful pursuit of the right to self-determination, as well as the right to privacy, which is of particular concern in the sphere of intelligence gathering and dissemination. All restrictions on fundamental rights must be necessary and proportionate.

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

90. Any such extraordinary pre-emptive measures should be transparent and based on corroborated evidence,[147] time-limited and subject to independent or judicial review. Specifically, the unilateral suspension of the *Schengen Agreement* to enable the re-imposition of border controls in anticipation of large-scale assemblies should not permit disproportionate or blanket restrictions on the freedom of movement of those travelling to participate in or observe an assembly.[148]

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145. The EU Council Framework Decision on combating terrorism (2008/919/JHA of 28 November 2008 amending Framework Decision 2002/474/JHA) requires that member States criminalize 'public provocation to commit a terrorist offence' (including 'such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed').

146. The *Ten Basic Human Rights Standards for Law Enforcement Officials* adopted by Amnesty International also provide that exceptional circumstances such as a state of emergency or any other public emergency cannot justify any departure from these standards. AI Index: POL 30/04/98.

147. *Makhmudov v. Russia* (2007) at para.68.

148. See Donatella della Porta, Massimiliano Andretta, Lorenzo Mosca, and Herbert Reiter, *Globalization from Below: Transnational Activists and Protest Networks* (University of Minnesota Press, 2006) at 157-8 citing 'Italian Parliamentary Investigative Commission (IPIC) 'Minutes of the Hearing. August 28, 2001 at http://www.camera.it. The suspension of the Schengen Agreement on free movement (11-21 July 2001) permitted border checks on people in advance of the G8 Summit in Genoa. 140,000 people were checked, and 2,093 rejected. See also Lluis Maria de Puig (Rapporteur) *Democratic Oversight of the Security Sector in Member States*, Report for the Political Affairs Committee, Parliamentary Assembly of the Council of Europe (2 June 2005, Doc. 10567), at para.97: 'Oversight, accountability and transparency concerns also arise with regard to State claims of exception to the Schengen regime.… The Schengen Convention (Article 2.2) establishes that internal borders may be crossed without checks on persons being carried out. However, it also recognises that where public policy or national security so requires, a member State may decide unilaterally to carry out national border checks appropriate to the situation for a limited period. Even though this was meant to apply exceptionally to emergencies and limited in time,

91. Domestic legislation designed to counter terrorism or 'extremism' should narrowly define the terms 'terrorism' and 'extremism' so as not to include forms of civil disobedience and protest, the pursuit of certain political, religious or ideological ends, or attempts to exert influence on other sections of society, the government, or international opinion. Furthermore, any discretionary powers afforded to law enforcement officials should be narrowly framed and include adequate safeguards to reduce the potential for arbitrariness.[149]

Derogations in times of war or other public emergency

92. Under Article 4 ICCPR and Article 15 ECHR, in times of war or public emergency threatening the life of the nation, States may take measures derogating from their obligation to guarantee freedom of assembly. They may do so only to the extent strictly required by the exigencies of the situation, and provided that such measures are not inconsistent with their other obligations under international law.[150] The crisis or emergency must be one 'which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed.'[151] The *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights* further state that neither '[i]nternal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation' nor '[e]conomic difficulties' can justify derogations under Article 4.[152]

EU member States have used this provision on a regular basis to re-establish border controls. This often occurs when there are high-level international political summits or meetings taking place which are expected to draw demonstrators and protestors. Protestors have been blocked entry into EU member States on the basis of membership in a group, rather than on an individual case-by-case basis. Because this provision remains at the intergovernmental level (ie. State authorities unilaterally take the decision to reimpose border controls), there is complete lack of judicial and parliamentary accountability for the implementation of this paragraph … The law enforcement authorities at the national level have wide discretion to determine the existence of a threat to public policy and national security, and the security standards to follow in the particular event.' Through the over-use of supposed emergency clauses to reimpose border controls and to prevent entry to those deemed likely to demonstrate and cause disturbances to public order, States impinge on basic human rights such as the freedom of expression and freedom of assembly. There is a lack of democratic accountability, in particular of the failure to respect the principles of proportionality, transparency and human rights.'

149. See, for example, *Gillan and Quinton v. the United Kingdom* (2010) in which police stop and search powers under section 44 of the United Kingdom's *Terrorism Act* 2000 were held not to be 'in accordance with the law' for the purposes of Article 8 ECHR (the right to private and family life). This was in part due to the breadth of the powers (the exercise of which did not require reasonable suspicion on the part of the police officer) and also the lack of adequate safeguards against arbitrariness: 'such a widely framed power could be misused against demonstrators and protestors.' (see para.76-87). See also paragraph 35-38 above ('Legality') and paragraphs 89, 154 and 161 above regarding police stop and search powers.

150. See also paragraph 25 of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

151. See *Lawless v. Ireland* (1961) at para.28. See also the *Questiaux Principles*: Nicole Questiaux, 'Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency', UN doc. E/CN.4/Sub.2/1982/15, 27 July 1982. In addition, General Comment No.29 of UN Human Rights Committee (August 2001) provides examples rights that cannot be derogated from.

152. Siracusa Principles, paragraphs 40-41. Annex, UN Doc E/CN.4/1984/4 (1984) http://www1.umn.edu/humanrts/instree/siracusaprinciples.html.

93. A public emergency must be both proclaimed to the citizens in the State concerned[153] and notified to other State parties to the ICCPR through the intermediary of the UN Secretary General (Article 4(3) ICCPR), the Secretary General of the Council of Europe (Article 15(3) ECHR) and the OSCE (Paragraph 28.10, Moscow Meeting of the Conference on the Human Dimension, 1991). Derogations should also be time-limited.

Types of restriction

Content-based restrictions

94. Speech and other forms of expression will normally enjoy protection under Article 19 ICCPR and Article 10 ECHR. In general, therefore, the regulation of public assemblies should not be based upon the content of the message they seek to communicate. As the European Court of Human Rights has recently stated, it is 'unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest.'[154] This principle is explicitly reflected in the extract from the Netherlands *Public Assemblies Act* cited below. Any restrictions on the visual or audible content of any message displayed or voiced should therefore face heightened (sometimes referred to as 'strict' or 'anxious') scrutiny, and only be imposed if there is an imminent threat of violence. Moreover, criticism of government or State officials should never, of itself, constitute a sufficient ground for imposing restrictions on freedom of assembly – the European Court has often emphasized that the 'limits of permissible criticism are wider with regard to the government than in relation to a private citizen.'[155]

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

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

153. See Article 4(1) ICCPR, and the *Cyprus* case, (1958-59) Yearbook ECHR 174.

154. *Hyde Park and Others v. Moldova No.1* (2009) at para.26. Here, an event to protest against Moldova's electronic voting in the Eurovision Song Contest was prohibited on the basis that "the Parliament was not responsible for organising the Eurovision song contest, which took place in Ukraine and the protest was groundless because it concerned past events". In finding a violation of Article 11 ECHR, the European Court held that '[s]uch reasons cannot be considered compatible with the requirements of Article 11 of the Convention …'

155. For example, *Incal v. Turkey* (1998) at para.54. See also the Human Rights Committee's Concluding Comments on Belarus [1997] UN doc. CCPR/C/79/Add. 86, at para.18, available at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.86.En?Opendocument: "Decree No. 5 of 5 March 1997 imposes strict limits on the organization and preparation of demonstrations, lays down rules to be observed by demonstrators, and bans the use of posters, banners or flags that 'insult the honour and dignity of officials of State organs' or which 'are aimed at damaging the State and public order and the rights and legal interests of citizens.' These restrictions cannot be regarded as necessary in a democratic society to protect the values mentioned in article 21 of the Covenant."

95. Whether behaviour constitutes the intentional incitement of violence is inevitably a question which must be assessed on the particular circumstances.[156] Some difficulty arises where the message concerns unlawful activity, or where it could be construed as inciting others to commit non-violent but unlawful action. Expressing support for unlawful activity can, in many cases, be distinguished from disorderly conduct, and should not therefore face restriction on public order grounds. The touchstone must again be the existence of an imminent threat of violence.[157]

96. While expression should normally still be protected even if it is hostile or insulting to other individuals, groups or particular sections of society, advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law.[158] Specific instances of hate speech 'may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.'[159] Even then, resort to

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156. In *Christian Democratic People's Party v. Moldova* (2006) for example, the European Court of Human Rights was '…not persuaded that the singing of a fairly mild student song could reasonably be interpreted as a call to public violence.'

157. In the case of *Cisse v. France* (2002), the European Court of Human Rights stated (at para.50) that '[t]he Court does not share the Government's view that the fact that the applicant was an illegal immigrant sufficed to justify a breach of her right to freedom of assembly, as ... [*inter alia*] ... peaceful protest against legislation which has been contravened does not constitute a legitimate aim for a restriction on liberty within the meaning of Article 11(2).' In *Tsonev v. Bulgaria* (2006), the European Court of Human Rights found that there was no evidence that merely by using the word 'revolutionary' (the Bulgarian Revolutionary Youth Party) represented a threat to Bulgarian society or to the Bulgarian State. Nor was there anything in the party's constitution which suggested that it intended to use violence in pursuit of its goals. In the case of *Incal v. Turkey* (1998), the applicant's conviction for helping to prepare a political leaflet which urged the population of Kurdish origins to band together and 'set up Neighbourhood Committees based on the people's own strength' was held by the European Court to have violated the applicant's freedom of expression under Article 10. Read in context, the leaflet could not be taken as incitement to the use of violence, hostility or hatred between citizens. See also *Stankov and the United Macedonian Organization* (2001) at paras.102-3, and *United Macedonian Organisation Ilinden and Others v. Bulgaria* (2006) at para.76. In *Christian Democratic People's Party v. Moldova* (No.2) (2010) at para.27, the Court rejected the Moldovan government's assertion that that the slogans ('Down with Voronin's totalitarian regime', 'Down with Putin's occupation regime') even when accompanied by the burning of a picture of the President of the Russian Federation and a Russian flag, amounted to calls to violently overthrow the constitutional regime, to hatred towards the Russian people, and to an instigation to a war of aggression against Russia. The Court held that these slogans could not reasonably be considered to be a call for violence, but rather 'should be understood as an expression of dissatisfaction and protest' – 'a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova.'

158. Article 20(2) ICCPR.

159. Principle 4 of the Council of Europe Committee of Ministers Recommendation No. R(97)20. The Appendix to *Recommendation No. R(97) 20* defines 'hate speech' as 'covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.' See further, the *UN Convention on the Elimination of All Forms of Racial Discrimination*, and *Resolution (68) 30 of the Committee of Ministers on Measures to be taken against incitement to racial, national and religious hatred*. See, for example, the Austrian Constitutional Court judgment of March 16 2007 (B 1954/06) upholding a prohibition on an assembly because (in part) national-socialist slogans had been used at a previous assembly (in 2006) with the same organiser.

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).

97. Where the insignia, uniforms, emblems, music, flags, signs or banners to be played or displayed during an assembly conjure memories of a painful historical past, that should not of itself be reason to interfere with the right to freedom of peaceful assembly to protect the rights of others.[160] On the other hand, where such symbols are intrinsically and exclusively associated with acts of physical violence, the assembly might legitimately be restricted to prevent the reoccurrence of such violence or to protect the rights of others.

98. The wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited so long as the mask or costume is not worn for the purpose of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct.[161]

'Time, Place and Manner' restrictions

99. The types of restriction that might be imposed on an assembly relate to its 'time, place, and manner'. This phrase originates from American jurisprudence, and captures the sense that a wide spectrum of possible restrictions, which do not interfere with the message communicated, is available to the regulatory authority (see further 'Proportionality' above at paragraphs 39-45). In other words,

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The Austrian *National-Socialist Prohibition Act* 1947 prohibited all national-socialist activities. See also the Holocaust denial cases of *Ernst Zündel v. Canada*, Communication No.953/2000, UN Doc. CCPR/C/78/D/953/2000 (2003) at para.5.5 - 'The restriction ... served the purpose of protecting the Jewish communities' right to religious freedom, freedom of expression, and their right to live in a society free of discrimination, and also found support in article 20, paragraph 2, of the Covenant'; and *Robert Faurisson v. France*, Communication No.550/1993, UN Doc. CCPR/C/58/D/550/1993 (1996) at para.9.6 – 'Since the statements ... read in their full context, were of a nature as to raise or strengthen anti-semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-semitism.'

160. See, for example, the 'Red Star' case of *Vajnai v. Hungary* (2008) at para.49: 'no real and present danger of any political movement or party restoring the Communist dictatorship.' Cf. *Lehideux and Isorni v. France* (1998); In *Stankov and the United Macedonian Organisation* (ILINDEN) (2001), the Court rejected the Bulgarian government's assertion that 'the context of the difficult transition from totalitarian regimes to democracy, and due to the attendant economic and political crisis, tensions between cohabiting communities, where they existed in the region, were particularly explosive. The events in former Yugoslavia were an example. The propaganda of separatism in such conditions had rightly been seen by the authorities as a threat to national security and peace in the region. See also *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia* (2009). See also *Soulas v. France* (2008, in French only). Finding no violation of Article 10, the Court's press release emphasizes that 'when convicting the applicants, the domestic courts had underlined that the terms used in the book were intended to give rise in readers to a feeling of rejection and antagonism, exacerbated by the use of military language, with regard to the communities in question, which were designated as the main enemy, and to lead the book's readers to share the solution recommended by the author, namely a war of ethnic re-conquest.'

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

rather than the choice for the authorities being one between non-intervention and prohibition, there are many 'mid-range' limitations that might adequately serve the purpose(s) which they seek to achieve (including the prevention of activity that causes damage to property or harm to persons). These can be in relation to changes to the time or place of an event, or the manner in which the event is conducted. An example of 'manner' restrictions might relate to the use of sound amplification equipment, or lighting and visual effects. In this case, regulation may be appropriate because of the location or time of day for which the assembly is proposed.

100. The regulatory authority must not impose restrictions simply to pre-empt possible disorder or interferences with the rights of others. The fact that restrictions can be imposed during an event (and not only before it takes place) enables the authorities to avoid imposing onerous prior restrictions and to ensure that restrictions correspond with and reflect the situation as it develops. This, however, in no way implies that the authorities can evade their obligations in relation to good administration (see paragraphs 61-67 above) by simply regulating freedom of assembly by administrative fiat. Furthermore, (as discussed at paragraphs 134 and 157 below) the use of negotiation and/or mediation can help resolve disputes around assemblies by enabling law enforcement authorities and the event organiser to reach agreement about any necessary limitations.

'Sight and Sound'

101. Given that there are often a limited number of ways to effectively communicate a particular message, the scope of any restrictions must be precisely defined. In situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should always aim to facilitate the assembly within 'sight and sound' of its object or target audience (see above at paragraphs 33 and 45, and paragraph 123 below).

Restrictions imposed prior to an assembly ('prior restraints')

102. These are restrictions on freedom of assembly either enshrined in legislation or imposed by the regulatory authority prior to the notified date of the event. Such restrictions should be concisely drafted so as to provide clarity for both those who have to follow them (assembly organisers and participants), and those tasked with enforcing them (the police or other law enforcement personnel). They can take the form of 'time, place and manner' restrictions or outright prohibitions. However, blanket legislative provisions, which ban assemblies at specific times or in particular locations, require much greater justification than restrictions on individual assemblies.[162] Given the impossibility of having regard to the specific circumstance of each particular case, the incorporation of such

162. See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.29.1 (English translation): 'Inelastic restrictions, which are determined in legal norms as absolute prohibitions, are very rarely regarded as the most considerate measures.'

blanket provisions in legislation (and their application) may be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated, '[s]weeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.'[163]

103. An assembly organiser should not be compelled or coerced either to accept whatever alternative(s) the authorities propose, or to negotiate with the authorities about key aspects (particularly the time or place) of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.

104. Prohibition of an assembly is a measure of last resort, only to be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant interests. Given the State's positive duty to provide adequate resources to protect peaceful assembly, prohibition may actually represent a failure of the State to meet its positive obligations. Where a State body has prohibited an action unlawfully, legal responsibility of the State will ensue.

Freedom of association and freedom of assembly

105. Since the right to assemble presumes the active presence of others for its realisation, restrictions upon freedom of association (Article 22 ICCPR and Article 11 ECHR) will often undermine the right to assemble. Freedom of association encompasses the ability of groups of individuals to organise collectively and to mobilise in protest against the State and/or other interests. Restrictions on the right to freedom of association that might undermine freedom of assembly include requiring formal registration before an association can lawfully assemble, prohibiting the activities of unregistered groups, prescribing the scope of an association's mandate,[164] rejecting registration applications, disbanding or prohibiting an association, or imposing onerous financial pre-conditions.

106. Like freedom of peaceful assembly, the right to associate is essential to the effective functioning of democracy and an independent civil society, and such restrictions can therefore rarely be justified. Furthermore, while the right to associate – in a political party, a trade union or other civic body – may logically precede the organisation of public assemblies (see also paragraph 53 above), the right to freedom of peaceful assembly should

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

164. For example, *Zvozskov v. Belarus* (1039/2001) UN Human Rights Committee, 10 November 2006. 22 B.H.R.C. 114.

never be made contingent upon registration as an association.[165] As the European Court of Human Rights itself stated in *Stankov and the United Macedonian Organisation ILINDEN v. Bulgaria* (2001), 'while past findings of national courts which have screened an association are undoubtedly relevant in the consideration of the dangers that its gatherings may pose, an automatic reliance on the very fact that an organization has been considered anti-constitutional – and refused registration – cannot suffice to justify under Article 11(2) of the Convention a practice of systematic bans on the holding of peaceful assemblies.'[166]

Indirect restrictions on freedom of assembly

107. *Restrictions should not be imposed on* other rights which have the effect of burdening freedom of assembly unless there is a compelling justification for doing so. It is noteworthy that restrictions imposed on *other* rights often indirectly impact upon the enjoyment of the right to freedom of peaceful assembly, and should therefore be taken into consideration when assessing the extent to which a State has met its positive obligations to protect freedom of assembly.[167] For example, restrictions on liberty and freedom of movement within the territory of a State (Article 12 ICCPR, Article 5 ECHR and Article 2 of Protocol 4, ECHR), and across international borders can prevent or seriously delay participation in an assembly.[168] Similarly, restrictions that impact upon

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

166. *Stankov and the United Macedonian Organisation ILINDEN v. Bulgaria* (2001) at para.92.

167. For example, in *Balcik and Others v. Turkey* (2007), at para.44: the European Court of Human Rights noted that States must 'refrain from applying unreasonable indirect restrictions upon [the right to assemble peacefully].'

168. It is worth noting that in the English case of *R (on the application by Laporte) (FC) v. Chief Constable of Gloucestershire* [2006] HL 55; 2 AC 105, the House of Lords held that the use of police common law powers to prevent an *anticipated* breach of the peace (by stopping and searching a bus carrying demonstrators to a protest at an air-base, and escorting the bus back to its point of departure, thereby also detaining those on the bus for several hours) was a disproportionate interference with the applicant's rights to freedom of assembly and expression (since it was both premature and indiscriminate). Furthermore, the police reliance on their common law powers to return the bus to London was not prescribed by law: '[I]t is not enough to justify action that a breach of the peace is anticipated to be a real possibility' (at para.47). In addition, the U.N. Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, has observed that human rights defenders 'have been prevented from leaving the country by

a State's obligation to hold free elections (under Article 25 ICCPR[169] and Article 3, Protocol 1) such as the detention of political activists, or the exclusion of particular individuals from electoral lists,[170] can also indirectly curtail the right to freedom of assembly.

Restrictions imposed during an assembly

108. The role of the police or other law enforcement personnel during an assembly will often be to enforce any prior restrictions imposed in writing by the regulatory body. No additional restrictions should be imposed by law enforcement personnel unless absolutely necessary in light of demonstrably changed circumstances. On occasion, however, the situation on the ground may deteriorate (participants, for example, might begin using or inciting imminent violence), and the authorities may have to impose further measures to ensure that other relevant interests are adequately safeguarded. In the same way that reasons must be adduced to demonstrate the need for prior restrictions, any restrictions imposed in the course of an assembly must be equally rigorously justified. Mere suspicions will not suffice, and the reasons must be both relevant and sufficient. In such circumstances, it will be appropriate for other civil authorities (such as an Ombudsman's office) to have an oversight role in relation to the policing operation, and law enforcement personnel should be accountable to an independent body. Furthermore, as noted above at paragraphs 37 and 91, unduly broad discretionary powers afforded to law enforcement officials may breach the principle of legality given the potential for arbitrariness. The detention of participants during an assembly (on grounds of their committing administrative, criminal or other offences) should meet a high threshold given the right to liberty and security of person and the fact that interferences with freedom of assembly are inevitably time sensitive. Detention should be used only in the most pressing situations when failure to detain would result in the commission of serious criminal offences.

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representatives of the authorities at airports or border-crossings. In some of the cases, defenders have not been issued with the documents needed in order to travel. … A large number of communications on this question have … been sent to Eastern European and Central Asian States. … [T]ravel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the *Declaration [on Human Rights Defenders]* and the recognition in its preamble that individuals, groups and associations have the right to "promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels'". *Human Rights Defenders: Note by the Secretary-General* U.N. Doc. A/61/312, 5 September 2006, at paras.57-60. See also note cxlviii below relating to the suspension of the Schengen Agreement.

169. See also the Human Rights Committee's General Comment No.25 (1996) on article 25 (Participation in public affairs and the right to vote).

170. See, for example, Application no. 21672/05 by Vidadi Sultanov against Azerbaijan, lodged on 2 June 2005; Application no. 15405/04 by Juma Mosque Congregation and Others against Azerbaijan, lodged on 28 April 2004; Reply from the Committee of Minsters to Written Question no.565, 'The situation for a political prisoner in Azerbaijan' 17 July 2009. Available at: http://assembly.coe.int/Documents/WorkingDocs/Doc09/EDOC11995.pdf *Kuolelis, Bartosevicius and Burokevicius v. Lithuania* (2008); *Zdanoka v. Latvia* (2006); *Tsonev Anguelov v. Bulgaria* (2006).

Sanctions and penalties imposed after an assembly

109. The imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to, or during, an assembly. For example, the European Court of Human Rights has held that prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate. Any isolated outbreak of violence should be dealt with by way of subsequent prosecution or other disciplinary action rather than prior restraint.[171] It is noteworthy, however, that on several occasions, the Human Rights Committee and the European Court of Human Rights have found subsequent sanctions to constitute a disproportionate interference with the right to freedom of assembly or expression.[172] As with prior restraints, the principle of proportionality also applies to liability arising after the event. Any penalties specified in the law should therefore allow for the imposition of minor sanctions where the offence concerned is of a minor nature.

Defences

110. *Anyone charged with an offence relating to an assembly must enjoy fair trial* rights. All provisions that create criminal or administrative liability must comply with the principle of legality (see above at paragraphs 35-38). Furthermore, organisers and participants should benefit from a 'reasonable excuse' defence. For example, an assembly organiser should not face prosecution for either under- or over- estimating the number of expected participants in an assembly, if this estimation was made in good faith. Similarly, a participant should not be held liable for anything done under the direction of a law enforcement official,[173] or for taking part in an unlawful assembly if they were not aware of the unlawful nature of the event. Furthermore, if there are reasonable grounds for non-compliance with the notification requirement, then no liability or sanctions should adhere.

111. Individual participants in any assembly who themselves do not commit any violent act should not be prosecuted even if others in the assembly become violent or disorderly. As stated in the case of *Ezelin v. France* (1991),'[i]t is not 'necessary' in a democratic society to restrict those freedoms in any

171. *Stankov* (2001) at para.94 (cited above at note 121).

172. For example, *Patrick Coleman v. Australia* (2006) *CCPR/C/87/D/1157/2003* at para.7.3 (the Human Rights Committee considered a fine and five day custodial sentence to be a disproportionate penalty for making a speech without a permit). See also *Ezelin v. France* (1991) (assembly), and *Incal v. Turkey* (1998) (expression). See also, David Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Era* (Hart Publishing, 2010) at pp.104-105.

173. An example of such a defence is contained in Sections 6(7) and 6(8), *Public Processions (Northern Ireland) Act* 1998. There may be a number of ways to provide for the 'reasonable excuse' defence in the law, but good practice suggests that words such as 'without reasonable excuse' should be clearly identified *as a defence* to the offence where it applies, and not merely as an element of the offence which would have to be proved or disproved by the prosecution. See 'Preliminary Comments on the Draft Law "On Amendments to Some Legislative Acts of the Republic of Kazakhstan on National Security Issues"', OSCE-ODIHR Opinion-Nr. GEN-KAZ/002/2005, 18 April 2005.

way unless *the person in question* has committed a reprehensible act when exercising his rights.'[174]

112. Assembly organisers should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. Furthermore, organisers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organiser did not intend or directly participate in. Holding organisers of the event liable would be a manifestly disproportionate response since this would imply that organisers are imputed to have responsibility for acts by other individuals (including possible agents provocateur) which could not have been reasonably foreseen.

5. Procedural Issues

Advance notification

113. It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation.[175] Prior notification should only therefore be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.

114. The UN Human Rights Committee has held that a requirement to give notice, while a *de facto* restriction on freedom of assembly, is compatible with the permitted limitations laid down in Article 21, ICCPR.[176] Similarly, the European Commission on Human Rights in *Rassemblement Jurassien* (1979) stated that: '…Such a procedure is in keeping with the requirements of Article 11(1), if only

174. At para.52. In *Ziliberberg v. Moldova* (2004) (admissibility, at p.10) it was stated that 'an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.' See also *Gasparyan v. Armenia* (2009) at para.43; *Galstyan v. Armenia* (2008) at para.115; *Ashughyan v. Armenia* (2008) at para.90. In *Cetinkaya v. Turkey* (Application 75569/01, judgment of 27 June 2006, in French only), the European Court of Human Rights found that the applicant's conviction and fine for mere participation in what the authorities later decided was an 'illegal assembly' (in this case, a press conference at which a statement critical of the authorities had been read out) constituted a violation of Article 11.

175. Ireland is one example where there is no requirement at all for prior notification of static public assemblies (although organisers will generally notify the appropriate local police station). Similarly, the *Public Order Act* 1986 in England and Wales does not require prior notification for open-air public meetings. See also Nathan W. Kellum, 'Permit Schemes: Under Current Jurisprudence, what Permits are Permitted?' 56 *Drake L. Rev*. 381 (2007-08).

176. See U.N. Human Rights Committee, *Kivenmaa v. Finland* (1994). See also the Human Rights Committee's Concluding Comments on Morocco [1999] UN doc. CCPR/79/Add. 113, at para.24: The Committee is concerned at the breadth of the requirement of notification for assemblies and that the requirement of a receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in article 21 of the Covenant. The requirement of notification should be restricted to outdoor assemblies and procedures adopted to ensure the issue of a receipt in all cases. Available at: http://www.unhcr.org/refworld/country,,HRC,,MAR,456d621e2,3ae6b01218,0.html

in order that the authorities may be in a position to ensure the peaceful nature of the meeting, and accordingly does not as such constitute interference with the exercise of the right.' [177]

115. It is good practice to require notification only when a substantial number of participants are expected, or not to require prior notification at all for certain types of assembly. Some jurisdictions do not impose a notice requirement for small assemblies (see the extracts from the laws in Moldova and Poland below), or where no significant disruption of others is reasonably anticipated by the organiser (such as might require the redirection of traffic).[178] Furthermore, individual demonstrators should not be required to provide advance notification to the authorities of their intention to demonstrate.[179] Where a lone demonstrator is joined by another or others, then the event should be treated as a spontaneous assembly (see paragraphs 126-131 below).

Article 3, Law on Public Assemblies, Republic of Moldova (2008): Definitions

'Assemblies with a small number of participants' – public assemblies that gather less than 50 persons.

Article 12(5), Law on Public Assemblies, Republic of Moldova (2008): Exceptions from notification

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

Article 6, Law on Assemblies, Poland (1990)

1. Assemblies organised in the open in areas accessible to unspecified individuals, hereinafter referred to as "public assemblies", must be reported in advance to the commune authority with competence ratione loci for the site of the assembly.

2. If the assembly is to be held in the neighbourhood of a diplomatic representation/ mission, consular offices, special missions, or international organisations, which are covered by diplomatic immunities and privileges, the commune authority is obliged to notify the responsible Police commander and Ministry of Foreign Affairs.

3. The commune council may specify areas where organisation of an assembly does not require notification.

116. Any notification process should not be onerous or bureaucratic, as this would undermine the freedom by discouraging those who might wish to hold an assembly. Furthermore, the period of notice should not be unnecessarily lengthy (normally no more than a few days), but should still allow adequate time prior to the notified

177. *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979) at p.119.

178. See, further, Neil Jarman and Michael Hamilton, 'Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly', 1(2) *Journal of Human Rights Practice* 208-235 (2009) at 218.

179. See, for example, Kellum at note clxxv above, concluding (at 425) that 'authoritative precedent supports the view that permit schemes should be limited in scope' and '[i]ndividuals and small group gatherings should never be subjected to such tedious requirements.'

date of the assembly for the relevant State authorities to plan and prepare for the event (for example, by deploying police officers, equipment etc),[180] for the regulatory body to give a (prompt) official response to the initial notification, and for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged. While laws may legitimately specify a minimum period of advance notification prior to an assembly, any outer time limit should not preclude the advance planning of large scale assemblies. When a certain time limit is set forth by the law, it should be only indicative.

117. The official receiving the notice should issue a receipt explicitly confirming that the organisers of the assembly are in compliance with applicable notice requirements (see the example from Moldova below). The notice should also be communicated immediately to all State organs involved in the regulatory process, including the relevant law enforcement agencies.

Article 10(3), Law on Public Assemblies, Republic of Moldova (2008)

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

Notification, not Authorization

118. Any legal provisions concerning advance notification should require an assembly organiser to submit a notice of intent to hold an assembly, not a request for permission.[181] A permit requirement is more prone to abuse than notification, and may accord insufficient value to the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful. It is significant that in a number of jurisdictions, permit procedures have been declared unconstitutional.[182]

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180. In *Kuznetsov v. Russia* (2008), the European Court of Human Rights held (at para.43), that 'merely formal breaches of the notification time-limit [were] neither relevant nor a sufficient reason for imposing administrative liability'. In this case, late notification did not prevent the authorities from adequately preparing for the assembly.

181. See also note 66 above citing *Balçık and Others v. Turkey* (2007) at para.49 in which the European Court of Human Rights suggests that State provision of such preventive measures is one of the purposes of prior notification.

182. The Constitutional Court of Georgia has annulled part of the law (Article 8 para 5) which allowed a body of local government to *reject* a notification (thus effectively creating a system of prior license rather than prior notification), *Georgian Young Lawyers' Association Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia* (5 November 2002) N2/2/180-183. See also *Mulundika and others v. The People*, Supreme Court, Zambia, 1 *BHRC* 199 (10 January 1996); *All Nigeria Peoples Party v. Inspector General of Police* (Unreported, June 24, 2005) (Fed HC (Nig)); *Rev. Christopher Mtikila v. Attorney-General,* High Court of Tanzania at Dodoma, Civil Case No. 5 of 1993. Vol.1 *Commonwealth Human Rights Law Digest*, 1996, p.11. In the latter case, the Court held that 'the requirement of a permit in order to organise a public meeting is unconstitutional for it infringes the right to freedom of peaceful assembly as guaranteed in the Constitution.' Furthermore, 'in the Tanzanian context this freedom is rendered the more illusory by the stark truth that the power to grant permits is vested in cadres of the ruling party.'

119. Nonetheless, a permit requirement based on a legal presumption that a permit for use of a public place *will* be issued (unless the regulatory authorities can provide evidence to justify a denial) can serve the same purpose as advance notification.[183] Those countries in which a permit is required are encouraged to amend domestic legislation so as to require only notification.[184] Any permit system must clearly prescribe in law the criteria for issuance of a permit. In addition, the criteria should be confined to considerations of time, place, and manner, and should not provide a basis for content-based regulation. As emphasized at paragraphs 94-98 above, the authorities must not deny the right to assemble peacefully simply because they disagree with the merits of holding an event for the organiser's stated purpose.[185]

120. There should be provision in law that in the event of a failure on the part of the authorities to respond promptly to a notification, the organisers of a public assembly may proceed with the activities according to the terms notified without restriction (see the example from the Armenian law below). Even in countries where authorization rather than notification is still required, authorization should be presumed granted if a prompt response is not given.

Article 12, Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, Republic of Armenia (2008)

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

…

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

121. If more people than anticipated by the organiser gather at a notified assembly, the relevant law enforcement agencies should facilitate the assembly so long as the participants remain peaceful (see also 'defences' at paragraphs 110-112 above).

183. See generally *Forsyth County, Georgia v. The Nationalist Movement* 505 U.S. 123 (1992). Such a system derives from the US jurisprudence, and approximates a notification system because there is a legal presumption against denial of a permit absent a sufficient showing by the government. See also Kellum, note clxxv above.

184. Such reforms have been welcomed by the European Court of Human Rights. See, for example, *Barankevich v. Russia* (2007) at para.28: 'The Court welcomes the amendment in 2004 of the law on public assemblies, to which the Government referred, whereby the requirement of prior authorisation was replaced by simple notification of the intended assembly.'

185. *Hyde Park v. Moldova (No.3)* (2009) at para.26.

Simultaneous assemblies

122. All persons and groups have an equal right to be present in public places to express their views. Where two or more assemblies are notified for the same place and time, the events should be facilitated together if they can be accommodated.[186] If this is not possible (due, for example, to lack of space) the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities may seek to resolve the issue by adopting a random method of allocating the events to particular locations, so long as this does not discriminate between different groups. This may, for example, be a 'first come, first served' rule, although abuse of such a rule (where an assembly is deliberately notified early to block access to other events) should not be allowed. The authorities may even hold a ballot to determine which assembly should be facilitated in the notified location (see the example from the law in Malta below). A prohibition on conducting public events in the same place and at the same time of another public event where they can both be reasonably accommodated is likely to be a disproportionate response.

Article 5(3), Malta Public Meetings Ordinance (1931)

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

Counter-demonstrations

123. Persons have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at another public assembly.[187] On such occasions, the coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly. Such related simultaneous assemblies should be facilitated so that they occur

186. See, for example, *Hyde Park v. Moldova No.2* (2009) at para.26: 'There was no suggestion that the park in which the assembly was to take place was too small to accommodate all the various events planned there. Moreover, there was never any suggestion that the organisers intended to disrupt public order or to seek a confrontation with the authorities or other groups meeting in the park on the day in question. Rather their intention was to hold a peaceful rally in support of freedom of speech. Therefore, the Court can only conclude that the Municipality's refusal to authorise the demonstration did not respond to a pressing social need.'

187. See *Öllinger v. Austria* (2006), at paras.43-51, which provides guidance as to the factors potentially relevant to assessing the proportionality of any restrictions on counter-demonstrations. These include whether the coincidence of time and venue is an essential part of the message of the counter-demonstration, whether the counter-protest concerned the expression of opinion on an issue of public interest, the size of the counter-demonstration, whether the counter-demonstrators have peaceful intentions, and the proposed manner of the protest (use of banners, chanting etc).

within 'sight and sound' of their target in so as far as this does not physically interfere with the other assembly (see also paragraphs 33, 45 and 101 above).

124. Nonetheless, as clearly stated in the ECHR case of *Plattform 'Ärzte für das Leben' v. Austria* (1988), 'the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.'[188] Thus, because each person or group has a right to express their views undisrupted by others, counter-demonstrators may not disrupt the activities of those who do not share their views. Emphasis should be placed on the State's duty to prevent disruption of the main event where counter demonstrations are organised.[189] Furthermore, an evidential question is raised where the intention of the organiser of a counter-demonstration is specifically to prevent the other assembly from taking place – effectively, to destroy the rights of others. In such cases, Article 5 ICCPR and Article 17 ECHR may be engaged, and the counter-demonstration will not enjoy the protection afforded to the right to freedom of peaceful assembly (see paragraph 15 above).

Exceptions from the notification process

125. It will be for the legislature in each jurisdiction to determine whether there should be any specific exceptions from the notification process. Exceptions must not be discriminatory in effect and should be targeted towards a class of assembly rather than a class of organiser.

Spontaneous assemblies

126. A spontaneous assembly is generally regarded as one organised in response to some occurrence, incident, other assembly, or speech, where the organiser (if there is one) is *unable* to meet the legal deadline for prior notification, or where there is no organiser at all. Such assemblies often occur around the time of the triggering event, and the ability to hold them is important because delay would weaken the message to be expressed.[190]

127. While the term 'spontaneous' does not preclude the existence of an organiser, spontaneous assemblies may also include gatherings with no identifiable organiser. Such assemblies are coincidental, and occur for instance, when a crowd gathers at a particular location with no prior advertising or invitation.

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188. See European Court of Human Rights, *Plattform "Ärzte für das Leben" v. Austria* (1988) at para 32.

189. See *Christian Democratic People's Party v. Moldova (no. 2)* (2010) at para.28. Here the Court held that it 'was the task of the police to stand between the two groups and to ensure public order … Therefore, this reason for refusing authorisation could not be considered relevant and sufficient within the meaning of Article 11 of the Convention.'

190. See the judgment of the Hungarian Constitutional Court, *Decision 75/2008, (V.29) AB*, which established that the right of assembly recognized in Article 62 para. (1) of the Hungarian Constitution covers both the holding of peaceful spontaneous events (where the assembly can only be held shortly after the causing event) and assemblies held without prior organisation. The Court stated that 'it is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event.' See also the *Brokdorf* decision of Federal Constitutional Court of Germany, BVerfGE 69,315 (350).

They often result because of commonly held knowledge, or knowledge disseminated via the internet, about a particular event.[191] Numbers may be swelled by passers-by who choose to join the assembly, although it is also possible that once a crowd begins to gather, mobilization can be achieved by various forms of instantaneous communication (phone, text message, word of mouth, internet etc). Such communication should not, of itself, be interpreted as evidence of prior organization. Where a lone demonstrator is joined by another or others, the gathering should be treated similarly to a spontaneous assembly.

Law on Public Assemblies, Republic of Moldova (2008)

Article 3, Main definitions

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

Article 12, Exceptions from notification

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

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

Article 10(1), Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, Republic of Armenia (2008)

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

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

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

128. Spontaneous assemblies should be lawful, and are to be regarded as an expectable (rather than exceptional) feature of a healthy democracy. Of course, the organiser's ability to meet a deadline for prior notification will depend on the length of the required notification period itself (and these requirements

191. See, for example, *Kivenmaa v. Finland*, Communication No. 412/1990, U.N. Doc. CCPR/C/50/D/412/1990 (1994) where the Human Rights Committee held that 'the gathering of several individuals at the site of the welcoming ceremonies for a foreign head of State on an official visit, publicly announced in advance by the State party authorities, cannot be regarded as a demonstration.' As has been noted elsewhere (see Nowak for example, note xxix above), the dissenting opinion is much more persuasive.

vary significantly between participating States). Laws regulating freedom of assembly should explicitly provide either for exemption from prior notification requirements for spontaneous assemblies (where giving advance notice is impracticable), or for a shortened notification period (whereby the organiser must notify the authorities as soon as is practicable). Such an exception would only apply in circumstances where an organiser is *unable* to meet the legally established deadline.[192] It is appropriate that organisers should inform the authorities of their intention to hold an assembly as soon as is possible. Only in this way can the authorities reasonably be expected to fulfil their positive obligations to protect the assembly, and to maintain public order and uphold the rights and freedoms of others.

129. The European Court of Human Rights has clarified what it considers will constitute such 'special circumstances' (*i.e.* when the right to hold spontaneous events may override the obligation to give prior notification). These circumstances arise 'if an immediate response to a current event is warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete.'[193]

130. Whether or not a specific organiser was unable to meet the deadline for prior notification, or whether a delay in holding the assembly would have rendered its message obsolete, are questions of fact and must be decided on the particular circumstances of each case. For example, even within a sustained long-running protest campaign (which might ordinarily suggest that timely notification would be possible), there may be events of urgent or special significance to which an immediate response by way of a spontaneous assembly would be entirely justified.

131. Even where no such exemption for spontaneous assemblies exists in the law, the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature. The European Court of Human Rights has stated that 'a decision to disband such assemblies 'solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.'[194]

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192. See further, for example, *Rai and Evans v. United Kingdom* (2009): 'The present applicants do not suggest they had insufficient time to apply for the authorisation and, given the subject matter of their demonstration (the ongoing British involvement in Iraq) and the evidence of their prior knowledge and planning, the time-limits set down in the 2005 Act did not constitute an obstacle to their freedom of assembly.' See also, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.30.2 (English translation).

193. See *Bukta and Others v. Hungary* (2007) at para.32; *Éva Molnár v. Hungary* (2008) at para.38.

194. *Bukta v. Hungary* (2007) at para.36. See also the subsequent decision of the Hungarian Constitutional Court, *Decision 75/2008, (V.29.) AB*, finding that: '...[I]t is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event.' See also *Oya Ataman v. Turkey* (2006) at paras.41 and 43. It is noteworthy that in the case of *Aldemir and Others v. Turkey* (2007), the dissenting opinion of Judges Türmen and Mularoni stated that 'the majority fail … to provide any guidelines as to the circumstances under which non-compliance with the regulations may justify intervention by the security forces.' See also *Kuznetsov v. Russia* (2008), at note 180 above.

Decision-making and review process

132. The regulatory authority should make publicly available a clear explanation of the decision-making procedures. It should fairly and objectively assess all available information to determine whether the organisers and participants of a notified assembly are likely to conduct the event in a peaceful manner, and to ascertain the probable impact of the event on the rights and freedoms of other non-participant stakeholders. In doing so, it may be necessary to facilitate meetings with the event organiser and other interested parties.

133. The regulatory authority should also ensure that any relevant concerns raised are communicated to the event organiser, and the organiser should be offered an opportunity to respond to any concerns raised. This is especially important if these concerns might later be cited as the basis for imposing restrictions on the event. Providing the organiser with such information allows them the opportunity to address the concerns, thus diminishing the potential for disorder and helping foster a cooperative, rather than confrontational, relationship between the organisers and the authorities.

134. Assembly organisers, the designated regulatory authorities, law enforcement officials, and other parties whose rights might be affected by an assembly, should make every effort to reach mutual agreement on the time, place and manner of an assembly. If, however, agreement is not possible and no obvious resolution emerges, negotiation or mediated dialogue may help reach a mutually agreeable accommodation in advance of the notified date of the assembly. Genuine dialogue between relevant parties can often yield a more satisfactory outcome for everyone involved than formal recourse to the law. The facilitation of negotiations or mediated dialogue can usually best be performed by individuals or organisations not affiliated with either the State or the organiser. The presence of parties' legal representatives may also assist in facilitating discussions between the assembly organiser and law enforcement authorities. Such dialogue is usually most successful in establishing trust between parties if it is begun at the earliest possible opportunity. Whilst not always successful, it serves as a preventive tool helping to avoid the escalation of conflict or the imposition of arbitrary or unnecessary restrictions.

135. Any restrictions placed on an assembly should be communicated in writing to the event organiser with a brief explanation of the reason for each restriction (noting that such explanation must correspond with the permissible grounds enshrined in human rights law and as interpreted by the relevant courts). The burden of proof should be on the regulatory authority to show that the restrictions imposed are reasonable in the circumstances.[195] Such decisions should also be communicated to the organiser within a reasonable timeframe – *i.e.* sufficiently far in advance of the date of a proposed event to allow the decision to be judicially appealed to an independent tribunal or court before the notified date of the event.

195. See, for example, *Makhmudov v. Russia* (2007) at para.68.

136. The regulatory authority should publish its decisions so that the public has access to reliable information about events taking place in the public domain. This might be done, for example, by posting decisions on a dedicated web-site.[196]

137. The organiser of an assembly should have recourse to an effective remedy through a combination of administrative and judicial review. The availability of effective administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. Any administrative review procedures must themselves be sufficiently prompt to enable judicial review to take place once administrative remedies have been exhausted, prior to the notified date of the assembly.

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

Article 14(2) Law on Assemblage and Manifestations, Republic of Georgia (1997, as amended 2009)

A decision of a local governance body on forbidding holding an assemblage or manifestation may be appealed against in a court. The court shall pass a final decision within two working days.

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

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

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

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

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

140. It is good practice for the regulatory authority to have a legal obligation to keep the regulatory framework under review and to make recommendations for its improvement. It is also considered good practice for the regulatory authority to submit an annual report on the activity of the regulatory authority (including relevant statistics on, for example, the number of assemblies notified and the number restricted) to an appropriate supervisory body, such as a national human rights institution, ombudsman, or Parliament.[199] At the very least, the regulatory authority should publish annual statistics and make these accessible to the public.[200]

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

199. Article 14(3) *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* provides that: '[t]he State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.'

200. It is noteworthy that the European Court of Human Rights has articulated a broader interpretation of the 'freedom to receive information', thereby recognizing a right of access to information. See *Sdružení Jihočeské Matky c. la République tchèque* (2006, judgment in French only).

Part II - Implementing Freedom of Peaceful Assembly Legislation

Introduction

141. Part I of these Guidelines focused on the parameters of freedom of assembly and the drafting of legislation which is consistent with international human rights standards. These earlier sections addressed the substantive grounds for restriction and the procedures which accord priority to the freedom to assemble. The implementation of freedom of assembly legislation, however, brings with it different challenges. If laws are to provide more than mere paper guarantees, and if rights are to be practical and effective rather than theoretical or illusory, the implementation of laws relating to freedom of assembly by domestic law enforcement agencies must also meet exacting standards. These standards are the subject of this second section.

142. The socio-economic, political and institutional context in which assemblies take place often impacts upon the success of steps taken to implement the law. It is vital to note, however, that the presence of certain socio-economic or political factors does not of itself make violence at public assemblies inevitable. Indeed, violence can often be averted by the skilful intervention of law enforcement officials, municipal authorities and other stakeholders such as monitors and stewards. Measures taken to implement freedom of assembly legislation should therefore neither unduly impinge on the rights and freedoms of participants or other third parties, nor further aggravate already tense situations by being unnecessarily confrontational. Such interventions must instead aim to minimize potential harm. The Guiding Principles outlined in chapter 3 above (including non-discrimination and good administration) are of particular relevance at the implementation stage.

143. Furthermore, the law enforcement agencies and judicial system in participating States play a crucial role in the prevention of violence and the apprehension and prosecution of offenders. It was often emphasized during the roundtable sessions which were part of the drafting of the first edition of these Guidelines, that the independence of both law enforcement personnel and judiciary from partisan influence or, in the case of the judiciary, from executive branch interference must be assured. Law enforcement personnel in some jurisdictions have, in the past, failed to intervene to protect peaceful assemblies. States are urged to implement measures (including policy development and targeted recruitment initiatives) to increase trust and confidence in the law enforcement and justice system.[201]

6. Policing Public Assemblies

144. Diversifying protest tactics and new modes of communication undoubtedly present challenges for the policing of public assemblies. Nonetheless, the role of law enforcement officials goes beyond recognizing the existence of fundamental rights and includes positively safeguarding those rights (see paragraphs 31-34, and 104 above).[202] This obligation derives from the State's general duty to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.[203]

A human rights approach to Policing

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

146. **The rights of law enforcement personnel should be recognised:** In the fulfillment of their obligation to protect human rights, regard should also

201. See also, for example, the *Resolution on the Increase in Racist and Homophobic Violence in Europe*, passed by the European Parliament on 15 June 2006, at para.L, which urges member States to consider whether their institutions of law enforcement are compromised by 'institutional racism'.
202. See, for example, the Council of Europe's *European Code of Police Ethics* (2001) and related commentary which sets out good practice principles for member State governments in preparing their internal legislation and policing codes of conduct.
203. See generally, *OSCE Human Dimension Commitments* , Volume 1 (Thematic Compilation) (2nd ed. 2005) at pp.7-8.
204. *Plattform 'Ärzte für das leben' v. Austria* (1988) at para.32.
205. See, for example, *Giuliani and Gaggio v. Italy* (2009, referred to the Grand Chamber on 1 March 2010) at para.204.

plainly be had to the rights, health and safety of police officers and other law enforcement personnel. The nature of their job may place them in difficult and dangerous situations, in which they have to make split-second judgments based upon uncertain and rapidly evolving facts. On occasion, law enforcement officers may suffer the emotional, physical, and behavioural consequences of critical incident or post-traumatic stress. In such cases, law enforcement agencies should have recourse to skilled mental health professionals to facilitate confidential individual debriefings.[206]

Training

147. Governments must ensure that law enforcement officials receive adequate training in the policing of public assemblies. Training should equip law enforcement agencies to act in a manner that avoids escalation of violence and minimises conflict, and should include 'soft skills' such as negotiation and mediation. Training should also include relevant human rights issues,[207] and should cover the control and planning of policing operations, emphasizing the imperative of minimizing recourse to force to the greatest extent possible.[208] In this way, training can help ensure that the culture and ethos of law enforcement agencies adequately prioritizes a human rights centered approach to policing.

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

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206. Della Porta and Reiter, for example, note that Post-Genoa, a one month course was held by sociologists and psychologists for police deployed in Florence. Donatella della Porta and Herbert Reiter, 'the policing of global protest: the g8 at Genoa and its aftermath', chapter 2 in Donatella della Porta, Abby Peterson, and Herbert Reiter, *the policing of transnational protest* (Ashgate, 2006) at p.38.

207. See, for example, Article 15, *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* which provides that '[t]he State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.'

208. Issues around police training may be relevant in assessing whether a State has fulfilled its positive obligations under Article 2 ECHR – see, for example, *McCann v. UK* (1995) at para.151.

209. For example, the OSCE *Guidebook on Democratic Policing* (2008); the UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*; the Council of Europe, *European Code of Police Ethics* (2001); Amnesty International, *Ten Basic Human Rights Standards for Law Enforcement Officials* (AI Index: POL 30/04/98). The full text of the latter principles (available online at: http://web.amnesty.org/library/index/engpol300041998) contains further useful explanatory guidance relating to their implementation.

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

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

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

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

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

Policing assemblies – general principles of good practice

149. **Law enforcement agencies should be proactive in engaging with assembly organizers:** Officers should seek to send clear messages that inform crowd expectations and reduce the potential for conflict escalation.[211] Furthermore,

210. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): The CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2009, at p.83. Available at: http://www.cpt.coe.int/en/documents/eng-standards.pdf

211. Her Majesty's Chief Inspector of the Constabulary (HMIC), *Adapting to Protest: Nurturing the British Model of Policing* (November 2009) at p.54. In one UK example, the Metropolitan Police Service used Bluetooth messaging as a means to communicate with protesters during the Tamil protests in 2009, 'explaining the policing approach and stating their intention not to disperse protesters and to allow the protest to continue.' See Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest? Follow-up*: Government's Response to the Committee's Twenty-Second Report of Session 2008-09 (London: HMSO, HL Paper 45; HC 328, 3 February 2010) at p.7.

there should be a nominated point of contact within the law enforcement agency whom protesters can contact before or during an assembly. These contact details should be widely advertised.[212]

150. **The policing operation should be characterized by a policy of 'no surprises':** Law enforcement officers should allow time for people in a crowd to respond as individuals to the situation they face, including any warnings or directions given to them.[213]

151. **Law enforcement command structures should be clearly established:** Clearly identifiable command structures and well defined operational responsibilities enable proper coordination between law enforcement personnel, between law enforcement agencies and the assembly organiser, and help ensure accountability for operational decisions.

152. **Inter-agency communication should be ensured:** It is imperative that law enforcement officials, representatives of regulatory authorities, and other public safety agencies (fire and ambulance services, for example) are able to communicate with one another and exchange data during public assemblies. As chapter 7 (below) emphasizes, it is also vital that the assembly organisers do everything within their power to assist these agencies in responding to emergencies or criminal conduct. Thorough inter-agency contingency planning can help ensure that lines of communication are maintained.[214]

153. **Law enforcement personnel should be clearly and individually identifiable:** Law enforcement personnel while in uniform must wear or display some form of identification (such as a nameplate or number) on their uniform and/or headgear and not remove or cover this identifying information or prevent persons from reading it during an assembly.

154. **Intrusive anticipatory measures should not be used:** Unless a clear and present danger of imminent violence actually exists, law enforcement officials should not intervene to stop, search and/or detain protesters *en route* to an assembly.[215]

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212. Joint Committee on Human Rights, *Demonstrating Respect for Rights? Follow-up* (London: HMSO, HL Paper 141/ HC 522, 14 July 2009), at para.14.

213. Ralph Crawshaw, *Police and Human Rights: A Manual for Teachers, Resource Persons and Participants in Human Rights Programmes* (2nd Edition) (Martinus Nijhoff Publishers: Leiden and Boston, 2009) at p.237.

214. For example, in *Giuliani and Gaggio v. Italy* (2009) at para.12 it was accepted by the parties that the *Carabinieri* and police officers could not communicate directly amongst themselves by radio but could only contact the control room.

215. A violation of Article 11 ECHR was found in the case of *Nisbet Özdemir v. Turkey* (no. 23143/04, judgment of 19 January 2010), where the applicant was arrested while on her way to an unauthorised demonstration at Kadıköy landing stage in Istanbul in February 2003 to protest against the possible intervention of US forces in Iraq. The Court also found a violation of the investigative obligation under Article 3. See also note cxxxv above, referring to *R (on the application by Laporte) (FC) v. Chief Constable of Gloucestershire* [2006] HL 55; 2 AC 105, and the report by the U.N. Special Representative of the Secretary-General on the Situation of Human Rights Defenders, *Human Rights Defenders: Note by the Secretary-General* U.N. Doc. A/61/312, 5 September 2006, at paras.57-60

155. **Powers to intervene should not always be used:** The existence of police (or other law enforcement) powers to intervene, disperse an assembly, or use force does not mean that such powers should always be exercised. Where an assembly occurs in violation of applicable laws, but is otherwise peaceful, non-intervention or active facilitation may sometimes be the best way to ensure a peaceful outcome. In many cases, dispersal of an event may create more law enforcement problems than its accommodation and facilitation, and over-zealous or heavy-handed policing is likely to significantly undermine police-community relationships. Furthermore, the policing costs of protecting freedom of assembly and other fundamental rights are likely to be significantly less than the costs of policing disorder borne of repression. Post-event prosecution for violation of the law remains an option.

156. **The response of law enforcement agencies must be proportionate:** A wide range of options are available to the relevant authorities, and their choice is not simply one between non-intervention or the enforcement of the prior restrictions, and termination or dispersal.

157. **Using mediation or negotiation to de-escalate tensions during an assembly:** If a standoff or dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. As noted at paragraph 142 above, such interventions can significantly help avert the occurrence of violence. The Municipality of Warsaw, for example, deploys specialised civil servants who may be present at an assembly, and who can facilitate communication between the organisers and law enforcement officials.[216] (See also paragraph 134 above regarding the use of negotiation and/or mediation to help resolve disputes in advance of assemblies).

158. **Law enforcement officials should differentiate between participants and non-participants:** The policing of public assemblies should be sensitive to the possibility of 'non-participants' (such as accidental bystanders or observers) being present in the vicinity of an assembly.[217] See further the discussion of 'kettling'[218] at paragraph 160 below.

159. **Law enforcement officials should differentiate between peaceful and non-peaceful participants:** Neither isolated incidents of sporadic violence, nor the violent acts of some participants in the course of a demonstration, are themselves sufficient grounds to impose sweeping restrictions on peaceful

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216. See Article 11, Law on Assemblies, Poland (1990): (1) The communal authority may delegate its representatives to an assembly; (2) When so requested by the organiser, the communal authority shall, to the extent required and possible, secure police protection under provisions of the Act of 6 April 1990 on the Police (JoL No. 30, item 179) to see to a proper progress of the assembly, and may delegate its representative to attend the assembly; (3) Upon arriving at the site of the assembly, the delegated representatives of the communal authority shall be obliged to produce their authorisation to the leader of the assembly.

217. Some Codes of Administrative Offences refer explicitly to 'active participation'. See also *Ziliberberg v. Moldova* (2004) (2004, admissibility, at p.11).

218. 'Kettling' is the term used in the UK to describe a strategy of crowd management that relies on containment.

participants in an assembly.[219] Law enforcement officials should not therefore treat a crowd as homogenous if detaining participants or (as a last resort) forcefully dispersing an assembly.[220] See further the discussion of 'kettling' at paragraph 160 below.

160. **Strategies of crowd control that rely on containment (a tactic known in the UK as 'kettling') must only be used exceptionally:** Such strategies tend to be indiscriminate in that they do not distinguish between participants and non-participants, or between peaceful and non-peaceful participants. While it is undoubtedly the case that allowing some individuals to cross a police line whilst at the same time preventing others from doing so can exacerbate tensions, an absolute cordon permitting no egress from a particular area potentially violates individual rights to liberty and freedom of movement.[221] As noted by the UK's Joint Committee on Human Rights, 'it would be a disproportionate and unlawful response to cordon a group of people and operate a blanket ban on individuals leaving the contained area, as this fails to consider whether individual circumstances require a different response.'[222]

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

Use of police lines

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

161. **Protocols for the stop and search, detention, or arrest of participants should be established:** It is of paramount importance that States establish clear and prospective protocols for the lawful stop and search or arrest of participants in assemblies. Such protocols should provide guidance as to when such measures are appropriate and when they are not, how they should be conducted, and

219. *Ziliberberg v. Moldova* (2004, admissibility) at p.10 citing *Ezelin v. France* (1989) at para. 34.
220. See *Solomou and Others v. Turkey* (2008): violation of Article 2 in relation to whether the shooting of a demonstrator could be justified by the aim of quelling a 'riot or insurrection' under Article 2(2)(c) ECHR. Here, the Court regarded it of critical importance that despite demonstrators being armed with iron bars, Mr. Solomou was himself not armed and was peaceful.
221. See further note 135 above.
222. Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest? Follow-up* (London: HMSO, HL Paper 141/ HC 522, 14 July 2009) at paras.28-29.

how individuals are to be dealt with following arrest. In drafting these protocols, regard should be had to international jurisprudence concerning the right to private and family life, the right to liberty, and the right to freedom of movement. While mass arrests are to be avoided, there may be occasions involving public assemblies when numerous arrests are deemed necessary. However, large numbers of participants should not be deprived of their liberty simply because the law enforcement agencies do not have sufficient resources to effect individual arrests – adequate resourcing forms part of the positive obligation of participating States to protect the right to assemble (see paragraphs 31-34 and 104 above).[223] The retention of fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences must be strictly limited by law.[224]

162. **Detention conditions must meet minimum standards:** Where individuals are detained, the authorities must ensure adequate provision for first aid, basic necessities (water and food), opportunity to consult with lawyers, and the separation of minor from adult, and male from female detainees. Detainees must not be ill-treated whilst being held in custody.[225] Where detention facilities are inadequate to deal with the number of individuals, arrested individuals must be freed unless doing so would pose a threat to public safety. Procedures must be established to limit the duration of detention to a strict minimum.

163. **Facilitating peaceful assemblies which do not comply with the requisite preconditions or which substantially deviate from the terms of notification:** If the organiser fails or refuses to comply with any requisite preconditions for the holding of an assembly (including valid notice requirements, and necessary and proportionate restrictions based on legally prescribed grounds), they might face prosecution. The European Court of Human Rights has stated that 'a decision to disband such assemblies 'solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate

223. Article 9 ICCPR and 5 ECHR protect the right to liberty and security of person. For example, in *Gillan and Quinton v. the United Kingdom* (2010), at para.61 (citing *Foka v. Turkey*, 2008, in which the applicant was subjected to a forced search of her bag by border guards) the Court noted that 'any search effected by the authorities on a person interferes with his or her private life.' In *Gillan and Quinton*, the Court did not finally determine the issue of whether Article 5 was engaged by the use of police stop and search powers under s.44 Terrorism Act 2000. *Guenat v. Switzerland* (1995) was a case involving detention for the purpose of making enquiries (thus falling short of arrest). The police actions were found not to have violated Article 5 ECHR. While not every restriction imposed on a person's liberty will necessarily amount to a *deprivation* of liberty as stipulated in article 5 ECHR, any restrictions must be deemed strictly necessary and be proportionate to the aim being pursued. See, for example, *Guzzardi v. Italy* (1980) at paras. 92-93: 'The difference between deprivation of and restriction upon liberty is … merely one of degree or intensity, and not one of nature or substance.' Moreover, *restrictions* on liberty may still constitute a violation of as protected by Article 12 ICCPR, and Article 2 of the Fourth Protocol, ECHR.

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

225. *Mammadov (Jalaloglu) v. Azerbaijan* (2007).

restriction on freedom of peaceful assembly.'[226] Such events may include 'flash mobs' (defined in note 39) the *raison d'être* of which demands an element of surprise that would be defeated by prior notification. Such assemblies should still be accommodated by law enforcement authorities as far as is possible. If a small assembly is scheduled to take place and, on the day of the event, it turns into a significantly larger assembly because of an unexpectedly high turnout, the assembly should be accommodated by law enforcement authorities and should be treated as being lawful so long as it remains peaceful. As stated in Basic Standard 4 of Amnesty International's *Ten Basic Human Rights Standards for Law Enforcement Officials*,[227] law enforcement personnel should '[a]void using force when policing unlawful but non-violent assemblies.'

164. **Policing peaceful assemblies that turn into non-peaceful assemblies:** Assemblies can change from being peaceful to non-peaceful and thus forfeit the protection afforded under human rights law (see paragraphs 25-28 above). Such an assembly may thus be terminated in a proportionate manner. However, the use of violence by a small number of participants in an assembly (including the use of inciting language) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly, and any intervention should aim to deal with the particular individuals involved rather than dispersing the entire event.

165. **Dispersal of assemblies:** So long as assemblies remain peaceful, they should not be dispersed by law enforcement officials. Indeed, dispersal of assemblies should be a measure of last resort and should be governed by prospective rules informed by international standards. These rules need not be elaborated in legislation, but should be expressed in domestic law enforcement guidelines, and legislation should require that such guidelines be developed. Guidelines should specify the circumstances that warrant dispersal, and who is entitled to make dispersal orders (for example, only police officers of a specified rank and above).

166. Dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm (including, for example, quieting hostile onlookers who threaten violence), and unless there is an imminent threat of violence.[228]

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226. *Bukta and Others v. Hungary*, (2007) at para.36; *Éva Molnár v. Hungary* (2008) at para.36. See also the judgment of the Hungarian Constitutional Court, *Decision 75/2008, (V.29) AB* at notes cxc and cxciv above.

227. AI Index: POL 30/04/98. The full text of these principles (available online at: http://web.amnesty.org/library/index/engpol300041998) contains further useful explanatory guidance relating to their implementation.

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

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

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

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

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

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

(e)(1) If and when the [police] determines that a[n] ... assembly, or part

thereof, should be dispersed, the [police] shall issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.

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

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

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

168. If dispersal is deemed necessary, the assembly organiser 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 (see further chapter 8 below, 'Monitoring Freedom of Peaceful Assembly'). See further 'Use of force' at paragraphs 171-178 below.

169. **Photography and video recording (by both law enforcement personnel and participants) should not be restricted, but data retention may breach the right to private life:** During public assemblies the photographing or video recording of participants by the law enforcement personnel is permissible. However, while monitoring individuals in a public place for identification purposes does not necessarily give rise to an interference with their right to private life,[229] the recording of such data and the systematic processing or permanent nature of the record kept may give rise to violations of privacy.[230] Moreover, photographing or videoing assemblies for the purpose of gathering intelligence can discourage individuals from enjoying the freedom, and should therefore not be done routinely. Photographing or video recording the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law enforcement agencies should be subject to prior judicial scrutiny.[231] Law enforcement agencies should develop and publish a policy relating to their use of overt filming/photography at public assemblies.[232]

170. **Post-event debriefing of law enforcement officials (particularly after non-routine events) should become standard practice:** Debriefing might usefully address a number of specific issues including human rights 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. Event organisers should be invited to participate in debriefing sessions held by law enforcement officials after the assembly.

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

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

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

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

Use of Force

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

172. Governments should develop a range of means of response, which enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations. Moreover, law enforcement officials ought to be provided with self-defence equipment such as shields, helmets, fire-retardant clothing, bullet-proof vests and bullet-proof transport in order to decrease the need to use weapons of any kind.[234] This again emphasizes the requirement that the State adequately resource its law enforcement agencies in satisfaction of its positive duty to protect freedom of peaceful assembly.

173. International standards give detailed guidance regarding the use of force in the context of dispersal of both unlawful non-violent and unlawful violent assemblies. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that '[i]n the dispersal of assemblies that are unlawful but *non-violent*, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.'[235] The UN Basic Principles also stipulate that '[i]n the dispersal of *violent* assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary …'[236]

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233. Paragraph 13 of Resolution 690 on the *Declaration on the Police* adopted by the Parliamentary Assembly of the Council of Europe in 1979 states that 'police officers shall receive clear and precise instructions as to the manner and circumstances in which they may make use of arms.' Similarly, paragraph 1 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. The European Court of Human Rights has noted that '…[a]s the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force.' See *Giuliani and Gaggio v. Italy* (2009) at paras.204-5.

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

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

236. *Id.,* Principle 14.

174. The right to life (Article 6 ICCPR, Article 2 ECHR) covers not only intentional killing, but also where the use of force results in the deprivation of life. Its protection entails 'a stricter and more compelling test of necessity' – 'the force used must be strictly proportionate to the achievement of the permitted aims.'[237] When assessing the use of force by law enforcement officials, the European Court of Human Rights has applied the evidential standard, 'beyond reasonable doubt'.[238] The burden or proof 'rests on the Government to demonstrate with convincing arguments that the use of force was not excessive'[239] and 'proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact…'[240] What will be judged to be a reasonable action or reaction requires an objective and real-time evaluation of the totality of circumstances.[241]

175. The OSCE *Guidebook on Democratic Policing* (2nd ed., 2008) was published as a reference source for good policing practice and internationally adopted standards. The following extract from the Guidebook reproduces those principles most closely related to the use of force in the context of freedom of peaceful assembly.

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

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

…

237. See, for example, *Giuliani and Gaggio v. Italy* (2009) at paras.204-5 citing *McCann and Others v. UK* at paras.148-149.

238. See *Ireland v. the United Kingdom* (1978) at para.161.

239. See *Balçık and Others v. Turkey* (2007) at para.28. In this case, the Court found a violation of Article 3 in relation to two applicants; and a Violation of Article 11. The Court held that the Government 'failed to furnish convincing or credible arguments which would provide a basis to explain or to justify the degree of force used' (concerning an unnotified demonstration of 46 people who refused to obey a police request to disperse, whereupon, after approximately half an hour, the police dispersed demonstration using truncheons and tear gas).

240. See *Saya and Others v. Turkey* (2008) in which the Court found a violation of Article 3 ECHR (both substantively and procedurally, but only in relation to some of the applicants). In this case, the Government 'failed to furnish convincing or credible arguments which could provide a basis to explain or to justify the degree of force used against the applicants, whose injuries are corroborated by medical reports.' See also *Ekşi and Ocak v. Turkey* (2010). In this case, the applicants and approximately fifty others took part in a commemoration ceremony marking the events of "Bloody May Day" (1 May 1977), when thirty-four people died on Taksim Square in Istanbul. The Court found a violation of Article 3 (regarding their treatment and the ensuing police investigation) and Article 11 on the basis that they were ill-treated by police officers during the forced dispersal of their demonstration.

241. In this regard, the European Court of Human Rights has held that 'the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified … where it is *based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken*. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.' See, for example, *Giuliani and Gaggio v. Italy* (2009) at paras.204-5 citing *McCann and Others* v. *UK* at paras.148-149.

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

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

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

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

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

70. If forced to use firearms, "law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident."

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

…

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

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

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

- where pepper spray or other irritant chemical may be used, decontamination procedures must be set out;[242]
- the use of attenuated energy projectiles (AEPs), baton rounds or plastic/rubber bullets, water cannon and other forceful methods of crowd control must be strictly regulated;[243]
- under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene; and
- the use of force should trigger an automatic and prompt review process after the event. It is good practice for law enforcement officials to maintain a written and detailed record of force used (including weapons deployed).[244] Moreover, where injuries or deaths result from the use of force by law enforcement personnel, an independent, open, prompt and effective investigation must be established (see further, *Liability and Accountability* at paragraphs 179-184 below).

177. It is vital that governments and law enforcement agencies keep the ethical issues associated with the use of force, firearms, and emerging technologies constantly under review.[245] Standards concerning the use of firearms are equally applicable to the use of other potentially harmful techniques of crowd management such as batons, horses, tear gas or other chemical agents, and water cannon.

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

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

242. In *Oya Ataman v. Turkey* (2006), the European Court of Human Rights held there to have been no violation of Article 3, but found that there was a violation of Article 11. The case concerned an unnotified assembly (c.40-50 participants) to protest against plans for 'F-type' prisons, The group refused to disperse following a police request, and the police used pepper spray. The Court noted that neither Tear Gas nor Pepper Spray were considered chemical weapons under the CWC [Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction' (1993)]. It further noted that Pepper Spray, '…used in some Council of Europe member States to keep demonstrations under control or to disperse them in case they get out of hand … may produce side-effects such as respiratory problems, nausea, vomiting, irritation etc etc.'

243. One example of such guidance is that issued by the Police Service of Northern Ireland, *Service Guidance in relation to the Issue, Deployment and Use of Attenuating Energy Projectiles (Impact Rounds) in Situations of Serious Public Disorder*, available online at: http://www.serve.com/pfc/policing/plastic/aep06.pdf. These state that '[t]he AEP has not been designed for use as a crowd control technology but has been designed for use as a less lethal option in situations where officers are faced with individual aggressors whether such aggressors are acting on their own or as part of a group' (at para.2(4)(a)). See also, Association of Chief Police Officers (ACPO) Attenuating Energy Projectile (AEP) Guidance (Amended 16th May 2005), available online at: http://www.serve.com/pfc/policing/plastic/aep.pdf

244. To ensure comprehensive reporting of uses of non-deadly force, agencies should define 'force' broadly. See further, for example, *Principles for Promoting Police Integrity,* United States Department of Justice (2001). Available at http://www.ncjrs.gov/pdffiles1/ojp/186189.pdf at pp.5-6, para.7, 'Use of Force Reporting.'

245. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para.1; See also, for example, *Simsek and Others v. Turkey* (2005) at para.91.

Extract from: Principles for Promoting Police Integrity (United States Department of Justice)[246]

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

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

Liability and Accountability

179. Law enforcement officials should be liable for any failure to fulfil their positive obligations to protect and facilitate the right to freedom of peaceful assembly. Moreover, liability should also extend to private agencies or individuals acting on behalf of the State: the European Court of Human Rights has stated that 'the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention.'[247]

180. The compliance of law enforcement officials with international human rights standards should be closely monitored.[248] It is good practice for an independent

246. United States Department of Justice, *Principles for Promoting Police Integrity*, at paras.1 and 4.
247. *Solomou and Others v. Turkey* (2008) at para.46.
248. In a number of countries (including Hungary, Sweden, Moldova and the United Kingdom) high profile inquiries have been instigated in the aftermath of misuse of police powers during public demonstrations. Their recommendations have emphasized, amongst other things, the importance of narrowly framed powers and rigorous training of law enforcement personnel.. See, *Report of the Special Commission of Experts on the Demonstrations, Street Riots and Police Measures in September-October 2006: Summary of Conclusions and Recommendations* (Budapest: February 2007), available online at: http://www.gonczolbizottsag.gov.hu/jelentes/gonczolbizottsag_jelentes_eng.pdf; Joint Committee on Human Rights, *Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1)* (HL Paper 47-I; HC 320-I, 23 March 2009), and *Follow-up Report* (London: HMSO, HL Paper 141/ HC 522, 14 July 2009); Her Majesty's Chief Inspector of the Constabulary (HMIC), *Adapting to Protest: Nurturing the British Model of Policing* (November 2009). In Moldova, in the aftermath of violence occurring at the election related demonstrations on 6-7 April 2009, a parliamentary commission was established to investigate

oversight mechanism to review and report on any large scale or contentious policing operation relating to public assemblies. In Northern Ireland, for example, human rights experts from the police oversight body (the Policing Board) have routinely monitored all elements of police operations related to controversial assemblies.[249] A police complaints mechanism should be established where none exists, with a range of potential resolutions at its disposal. In certain cases, there may also be a monitoring role for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). [250]

181. Where a complaint is received regarding the conduct of law enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the actions of law enforcement officers, an 'effective official investigation' must be conducted.[251] The core purpose of any investigation should be to secure the effective implementation of domestic laws which protect the right to life and bodily integrity, and in those cases involving State agents or entities, to ensure their accountability for deaths or physical injuries occurring under their responsibility. The particular form of investigation required to achieve those purposes may vary according to the circumstances.[252]

182. If the force used is not authorized by law, or more force was used than necessary in the circumstances, law enforcement officers should face civil and/or criminal

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the causes and effects of the April events. The commission was composed of the deputies and civil society representatives. Its comprehensive report examined the police response during and after the demonstrations and made a number of recommendations aimed at improving policing practices in Moldova.

249. For further details, see http://www.nipolicingboard.org.uk/index/publications/human-rights-publications/content-previous_hr_publications.htm

250. See, for example, the CPT report on its visit to Italy in 2004, published on 17 April 2006 regarding the events that took place in Naples (on 17 March 2001) and in Genoa (from 20 to 22 July 2001) and actions taken in response to the allegations of ill-treatment made against the law-enforcement agencies. The CPT stated that it wished 'to receive detailed information on the measures taken by the Italian authorities to prevent the recurrence of similar episodes in the future (relating, for instance, to the management of large-scale public-order operations, training of supervisory and operational personnel and monitoring and inspection systems).'

251. See *McCann and others v. UK* (1995) at para.161; *Kaya v. Turkey* (1998) at para.105; *Kelly and others v. UK* (2001) at para.94, *Shanaghan v. UK* (2001) at para.88; *Jordan v. UK* (2001) at para.105; *McKerr v. UK* (2001) at para.111; *McShane v. UK* (2002) at para.94. See also *Güleç v. Turkey (*1998) where the applicant's son was killed by security forces who fired on unarmed demonstrators (during a spontaneous, unauthorised demonstration) to make them disperse. The European Court of Human Rights found a violation of Article 2 on two grounds: (a) the use of force was disproportionate and not 'absolutely necessary', and (b) there was no thorough investigation into the circumstances. The Court stated that 'neither the prevalence of violent armed clashes nor the high incidence of fatalities can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into deaths arising out of clashes involving the security forces, or, as in the present case, a demonstration, however illegal it may have been.' (para.81). In *Saya and Others v. Turkey* (2008), a Health Workers' Trade Union march (for which authorization had been obtained) was stopped by police on May Day and forcefully dispersed. The applicants were taken into custody and released the next day. The European Court of Human Rights found that there had been a failure to carry out an effective and independent investigation into the allegations of ill-treatment ('Administrative Councils' in this case were not independent since they were chaired by governors, and composed of local representatives of the executive and an executive officer linked to the very security forces under investigation).

252. *Kelly and others v. UK* (2001) at para.94; *Shanaghan v. UK* (2001) at para.88; *Jordan v. UK* (2001) at paras. 107, 115; *McShane v. UK* (2002) at para. 94.

liability as well as disciplinary action.[253] The relevant law enforcement personnel should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force.

183. An applicant complaining of a breach of the right to life need only show that the authorities did not do all that could reasonably be expected in the circumstances to avoid the risk.[254] Where allegations are made against law enforcement officials in relation to inhuman or degrading treatment or torture, the European Court of Human Rights will conduct 'a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place.'[255]

184. Specific definitions such as self-defence – subject to important qualifications (such as a reasonableness test, and requirements that an attack was actual or imminent and that there was no other less forceful response available) – should be contained in domestic criminal law.

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

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

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

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

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

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

253. It is noteworthy, for example, that nine years after the G8 meeting in Genoa, 2001, the Italian Court of Appeal found a number of high ranking police officers guilty of human rights violations against protesters.
254. *Osman v. UK* (1998) at para.116.
255. *Muradova v. Azerbaijan* (2009) at para.99.
256. See also *Simsek and Others v. Turkey* (2005) at para.91.

7. Responsibilities of the Organiser

The organiser

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

> **Article 5, Montenegro Public Assembly Act (2005)**
>
> *The organiser of a peaceful assembly is any legal or physical entity (henceforth referred to as: the organiser) which, in line with this Act, organizes, holds and supervises the peaceful assembly. Peaceful assembly under paragraph 1 of this article can also be organized by a group of citizens, or more than one legal entity.*

186. Organisers of assemblies should cooperate with law enforcement agencies to ensure that participants in their assemblies comply with the law and the terms of any submitted notification. There should be clarity as to who precisely is involved in the organisation of any assembly, and it can be assumed that the official organiser is the person or persons in whose name prior notification is submitted. This need not be a legal entity, and could, for example, be a committee of individuals or informal organisation (see also paragraphs 53 and 105-106 above).[257]

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

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

257. For example, *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (2005).

Article 30, Act on Public Assembly (2004), Slovenia

Police assistance

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

In the instances specified in the previous paragraph, the organiser of the gathering or event is obliged to cooperate with the police also regarding the planning of measures for the maintenance of order at the gathering or event.

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

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

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

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

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

258. This legislation draws upon recommendations contained in the Report of the Goldstone Commission, *Towards Peaceful Protest in South Africa* (Heymann 1992).

Stewarding assemblies

191. 'Stewards' and 'marshals' (the terms are often used interchangeably) are individuals who assist an assembly organiser in managing the event.[259] Laws governing freedom of assembly may provide for the possibility of organisers being assisted by volunteer stewards. For example, while the police may have overall responsibility for public order, organisers of assemblies are encouraged to deploy stewards during the course of a large or controversial assembly. Stewards are persons, working in cooperation with the assembly organiser(s), with a responsibility to facilitate the event and help ensure compliance with any lawfully imposed restrictions.

192. Stewards do not have the powers of law enforcement officials and cannot use force, but should rather aim to obtain the cooperation of assembly participants by means of persuasion. Their presence can provide reassurance to the public, and help set the mood of an event. The primary role of stewards is to orient, explain, and give information to the public and to identify potential risks and hazards before and during an assembly. In cases of public disorder, the stewards (and organiser) should have a responsibility to promptly inform the relevant law enforcement officials. Law enforcement agencies should work in partnership with event stewards, and each must have a clear understanding of their respective roles.

193. **Training, briefing and debriefing:** Stewards should receive an appropriate level of training and a thorough briefing before the assembly takes place (in particular stewards should be familiar with the geography of the area in which the assembly is being held), and it is the responsibility of the organiser to coordinate the stewarding operation. For larger events, a clear hierarchy of decision-making should be established and stewards must at all times during an assembly be able to communicate with one another and with the organiser. As with law enforcement officials (see paragraph 170 above), it is important that stewards – together with the event organiser – hold a thorough post-event debriefing and evaluation after any non-routine assembly.

194. **Identification:** It is desirable that stewards be clearly identifiable (e.g. through wearing a bib, jacket, badge or armband).

195. **Requirement to steward certain assemblies:** Under some circumstances, it may be legitimate to impose on organisers a condition that they arrange a certain level of stewarding for their gathering. However, such a condition should only be imposed as the result of a specific assessment and never by default. Otherwise, it would likely violate the proportionality principle.[260] Any requirement to provide stewarding in no way detracts from the positive obligation of the State to provide adequately resourced policing arrangements. Stewards

259. For example, Article 3, Law on Assemblage and Manifestations in the Republic of Georgia (1997, as amended 2009) defines separate roles for 'Principal', 'Trustee', 'Organiser', and 'Responsible Persons'.

260. See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): '… The requirement to appoint extra keepers of public order in all the cases, when peaceful process of the activity is endangered, exceeds the extent of the collaboration duty of a person.'

are not a substitute for an adequate presence of law enforcement personnel and law enforcement agencies must still bear overall responsibility for public order. Nonetheless, efficient stewarding can help reduce the need for a heavy police or military presence at public assemblies.

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

Liability

197. Organisers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful, but they should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organiser should not be liable for the actions of individual participants, or stewards not acting in accordance with the terms of their briefing.[261] Instead, individual liability will arise for any steward or participant if they commit an offence or fail to carry out the lawful directions of law enforcement officials.

198. The organiser may wish to take out public liability insurance for their event. Insurance, however, should not be made a condition of freedom of assembly as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom. Moreover, if an assembly degenerates into serious public disorder it is the responsibility of the State – not the organiser or event stewards – to limit the damage caused. In no circumstances should the organiser of a lawful and peaceful assembly be held liable for disruption caused to others.

8. Monitoring Freedom of Peaceful Assembly

199. The right to observe public assemblies is part of the more general right to receive information (a corollary of the right to freedom of expression).[262] In this regard, the safeguards guaranteed to the media are particularly important.[263] However, freedom to monitor public assemblies should not only be guaranteed to all

261. See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): 'If too great a responsibility before the activity, during it or even after the activity is laid on the organizer of the activity … then at other time these persons will abstain from using their rights, fearing the potential punishment and additional responsibilities.'

262. See, *inter alia*, *Castells v. Spain* (1992) at para.43; *Thorgeir Thorgeirson v. Iceland* (1992) at para.63.

263. See, for example, *Observer and Guardian v. UK* (1991) at para.59(b); *Thorgeir Thorgeirson v. Iceland* (1992) at para.63.

media professionals[264] but also to others in civil society, such as human rights activists, who might be regarded as performing the role of 'social watchdogs' and whose aim is to contribute to informed public debate.[265]

200. The monitoring of public assemblies provides a vital source of independent information on the activities of both participants and law enforcement officials that may be used to inform public debate and serve as the basis for dialogue between government, local authorities, law enforcement officials and civil society.

Independent monitors

201. For the purposes of these Guidelines, monitors are defined as non-participant third party individuals or groups whose primary aim is to observe and record the actions and activities taking place at public assemblies. Independent monitoring may be carried out by local NGOs, human rights defenders,[266] domestic ombudsman offices or national human rights institutions, or by international human rights organizations (such as Human Rights Watch or Amnesty International) or intergovernmental networks (such as the Council of Europe, the OSCE or

264. The *Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis* (Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies) define 'media professionals' (at para.1) as 'all those engaged in the collection, processing and dissemination of information intended for the media. The term includes also cameramen and photographers, as well as support staff such as drivers and interpreters.'

265. The European Court of Human Rights has repeatedly recognized civil society's important contribution to the discussion of public affairs. See, for example, *Steel and Morris v. United Kingdom* (2005) at para.89: '…in a democratic society even small and informal campaign groups, such as London Greenpeace, must be able to carry on their activities effectively and … there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest…' See also *Társaság a Szabadságjogokért v. Hungary* (2009) at para.36, in which the Hungarian Civil Liberties Union was regarded as performing the role of a 'social watchdog'.

266. See paragraph 3 of *Ensuring Protection – European Union Guidelines on Human Rights Defenders*: 'Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.' Available at: http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf Furthermore, Article 5 of the UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* provides that: 'For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully.' See also Articles 6 and 8(2). As the UN Special Rapporteur on the situation of Human Rights Defenders has remarked: 'Social action for the realization of rights is increasingly manifested through collective and public action … [T]his form of protest or resistance to violations has become most vulnerable to obstruction and repression. Collective action is protected by article 12 of the *Declaration on Human Rights Defenders*, which recognizes the right to participate, individually or in association with others, in "peaceful activities against

the UN Office of the High Commissioner for Human Rights).[267] Such individuals and groups should therefore be permitted to operate freely in the context of monitoring freedom of assembly.

202. Monitoring public assemblies can be a difficult task, and the precise role of monitors will depend on why, and by whom, they have been deployed.[268] Monitors may, for example, be tasked with focusing on particular aspects of an assembly such as:
   - The policing of an assembly (to consider whether the State is fulfilling its positive obligations under human rights law);
   - Whether parties adhere to a prior agreement about how an assembly is to be conducted;
   - Whether any additional restrictions are imposed on an assembly during the course of the event;
   - Any instances of violence or use of force, both by participants or by law enforcement personnel;
   - The interaction between participants in an assembly and an opposing assembly; and/or
   - The conduct of participants in a moving assembly that passes a sensitive location.

203. Monitors will usually write up the findings from their observations into a report, and this may be used to highlight issues of concern to the State authorities. The report can thus serve as the basis for dialogue and engagement on such matters as the effectiveness of the current law and the extent to which the State is respecting its positive obligations to protect freedom of peaceful assembly. Monitoring reports may also be used to engage with the relevant law

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violations of human rights and fundamental freedoms" and entitles those "reacting against or opposing" actions that affect the enjoyment of human rights to effective protection under national law. Read together with article 5, recalling the right to freedom of assembly, and article 6 providing for freedom of information and its dissemination, peaceful collective action is a legitimate means of drawing public attention to matters concerning human rights.' See U.N. Doc. A/HRC/4/37, *Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani*, 24 January 2007 at para.29. Available at: http://www.wunrn.com/news/2007/06_07/06_25_07/070107_special.doc. See also *OSCE: Human Rights Defenders in the OSCE Region: Challenges and Good Practices* (2008), available at: http://www.osce.org/publications/odihr/2008/12/35711_1217_en.pdf.

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

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

enforcement agencies or with the municipal authorities and might highlight areas where further training, resources or equipment may be needed.

204. Independent monitoring reports may also be a useful resource for informing international bodies, such as the Council of Europe, the OSCE / ODIHR and the United Nations, of the level of respect and protection for human rights in a particular country (see further Appendix A, *Enforcement of international human rights standards*).

205. The ODIHR has developed a training programme for monitoring freedom of assembly, which has been used to support the work of human rights defenders in a number of countries in Europe and Central Asia. The ODIHR has also developed a handbook for monitoring freedom of assembly which further elaborates on the theory and practice of independent monitoring.[269] The following section, which is drawn from the training pack, highlights some of the ethical issues for monitors.

Ethical issues for monitors

Monitoring is an ethically based activity that aims to increase respect for human rights. Monitors have to work to high standards to ensure that their observations and reports are respected and can stand scrutiny. The following ethical issues have been drawn from a diverse range of working documents that have been produced for and by monitoring teams in a range of settings.

1. *Monitors should respect the human rights of all parties.*

2. *Monitors must show respect for the law. They should obey the law at all times and should co-operate with the police and emergency services. Monitors should also bear in mind that the witnessing of illegal activities (by the police, demonstrators, or others) might require them to give evidence at a later date.*

3. *Monitors should remain neutral. They should not advise parties on the ground or voice opinions about the actions of any party.*

4. *Monitors must maintain their independence throughout the process. Monitors should ensure their neutrality and independence are not compromised by their location, dress or demeanour. They should not join the body of a demonstration / picket / protest. Monitors may introduce themselves to participants but should not voice opinions on events and activities.*

5. *The work of monitors should be visible. They should have a form of identification available at all times. Monitoring is a transparent and open practice and it is hoped that the visible presence of monitors will have a positive impact on respect for human rights and deter acts of aggression and violence.*

6. *Monitors should always work as part of a team. They should have an agreed plan of action, a chain of command, and an agreed means of communication with other*

269. See further, OSCE-ODIHR Handbook on Monitoring Freedom of Peaceful Assembly.

team members. They should have an agreed public location (café, station, centre) for rendezvous after the event.

7. *Monitors should be mindful of their own safety. Monitors should work in pairs and at times it may be necessary for monitors to withdraw from a location or from public space if they have concerns for their personal safety.*

8. *Monitors must be aware of their responsibilities and the limits of their responsibilities. They are present to observe events and activities and should not intervene in situations or try to influence the activities of any party.*

9. *Despite the provisos specified above, monitors should also remember their social responsibilities as citizens and there may be times when an individual may consider it necessary to intervene in a particular situation. The monitoring team should discuss such eventualities as part of its general preparation.*

10. *Monitors should never act in away that will discredit the larger monitoring team. Monitors should never consume alcohol or other illegal drugs or substances before or during events.*

11. *Monitors should not make any formal comments to the press or other agencies about their work, other than to identify themselves as independent HR monitors.*

12. *The monitoring team should verbally debrief as soon as possible at the end of an event. Written reports should be prepared within twenty-four hours of the end of an event from notes made at the time.*

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

Media

206. The media performs a pre-eminent role in a State governed by the rule of law. The role of the media, as a 'public watchdog', is to impart information and ideas on matters of public interest – information which the public also has a right to receive. [270]

207. Media professionals therefore have an important role to play in providing independent coverage of public assemblies. The OSCE Representative on Freedom of the Media noted that 'uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech.'[271]

208. Furthermore, '[a]ssemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances

270. See, *inter alia*, *Castells v. Spain* (1992) at para.43; *Thorgeir Thorgeirson v. Iceland* (1992) at para.63.

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

to the attention of the public.'[272] Media reports and footage thus provide an important element of public accountability both for organisers of events and law enforcement officials. As such, the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.

Article 17, Law on Public Assemblies of the Republic of Moldova (2008): Observance of Assemblies

(1) Any person can make video or audio recording of the assembly.

(2) Access of the press is ensured by the organisers of the assembly and by the public authorities.

(3) Seizure of technical equipment, as well as of video and audio recordings of assemblies, is only possible in accordance with the law.

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

OSCE Special Report: Handling of the media during political demonstrations, Observations and Recommendations (June 2007)

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

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

272. Justice Berger, Justice of the Supreme Court of British Columbia (1980).

273. In the roundtable sessions held during the drafting of the first edition of these Guidelines, evidence was presented that in some jurisdictions law enforcement agencies had destroyed property belonging to media personnel. Such actions must not be permitted.

274. Miklos Haraszti (OSCE Representative on Freedom of the Media) *Special Report: Handling of the media during political demonstrations, Observations and Recommendations.* (OSCE, Vienna, June 2007). Available at http://www.osce.org/documents/rfm/2007/06/25176_en.pdf in English and at http://www.osce.org/documents/rfm/2007/06/25176_ru.pdf in Russian.

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

Recommendations

1. Law-enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations. Journalists have a right to expect fair and restrained treatment by the police.

2. Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behaviour vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an over-reaction is not repeated in the future and should send a strong signal that such behaviour will not be tolerated.

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

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

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

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

210. In addition, the *Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis* underline that not only is media coverage 'crucial in times of crisis by providing accurate, timely and comprehensive information', but 'media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society.' The following extracts are particularly relevant in relation to media coverage of freedom of peaceful assembly:

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

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

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

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

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

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

JOINT GUIDELINES ON THE LEGAL PERSONALITY OF RELIGIOUS OR BELIEF COMMUNITIES

Adopted by the Venice Commission
At its 99th Plenary Session
(Venice, 13-14 June 2014)

Introduction

OSCE participating States promised in paragraph 16.3 of the 1989 Vienna Document, to "grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries".

This commitment is a reality for many religious and belief communities in the OSCE region. There are, however, still challenges in its implementation in a number of OSCE participating States, both at the legislative and practical level. In particular, the use of mandatory registration systems, as well as significant practical and legal obstacles to acquiring legal personality continues to negatively affect the rights of a wide range of religious or belief communities.

In 2004, ODIHR and the Venice Commission sought to deal with these and a range of other topics related to these rights in the *Guidelines for Review of Legislation pertaining to Religion or Belief*.[1] Since then, other regional and universal international human rights bodies have provided a range of statements, opinions and judgments on this issue. It appeared logical, therefore, to update the guidance provided by ODIHR and the Venice Commission in this area. This decision was reinforced by the 2013 Kyiv Ministerial Council Decision on the freedom of thought, conscience, religion or belief, which called on OSCE participating States to "[r]efrain from imposing restrictions inconsistent with OSCE commitments and international obligations on the practice of religion or belief by individuals and religious communities."

The purpose of these Guidelines is to ensure that those involved in drafting and applying legislation in the area of the freedom of religion or belief, including civil society representatives, have at their disposal a benchmark document containing minimum international standards in the area of recognition of religious or belief communities. The document does not seek to challenge established agreements between states and religious or belief communities but, rather, to delineate the legal framework that would ensure that communities wishing to do so have a fair opportunity to be granted legal personality, and that the criteria established are applied in a non-discriminatory manner. This document elaborates on the issues of registration and recognition of religious and belief organizations, and supplements section II.F on "Laws governing registration of religious/belief organizations" of the 2004 Guidelines. The 2004 Guidelines do, however, remain valid in their entirety.

1. Available at <http://www.osce.org/odihr/13993>.

The current Guidelines are the product of extensive consultations with civil society and government officials. Four roundtable events were held to obtain feedback to draft versions of this document, including in Kyiv (3 September 2013), Warsaw (26 September 2013), Astana (10 October 2013) and Brussels (24 October 2013), bringing together over 90 participants from a wide range of different backgrounds. In addition, advice on the document was sought from ODIHR's Advisory Panel of Experts on Freedom of Religion or Belief, a 12-person body of independent experts from across the OSCE region appointed in February 2013. The Guidelines also rely on the important work done in this area by the UN Special Rapporteur on freedom of religion or belief, Professor Heiner Bielefeldt. We would like to thank all the civil society representatives, academics, government officials and others who have provided their expertise and commented on this document.

These Guidelines were published on the Venice Commission website on 16 June 2014.[2] While we have the privilege of presenting the edited version of this resource, gratitude is due to the former ODIHR Director, Ambassador Janez Lenarčič, for the guidance he provided in ensuring its publication.

It is our firm hope that this document will be used widely and will assist all religious and belief communities in obtaining the status that they seek, thereby ensuring that everyone can enjoy the freedom of religion or belief fully and with the dignity that they deserve.

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ODIHR Director

Dr. Gianni Buquicchio
President, Venice Commission

2. Edited by ODIHR following their adoption by the Venice Commission at its 99th Plenary Session on 13-14 June 2014.

Glossary of abbreviations

ACHR	American Convention on Human Rights
CCA	Churches and Congregations Act
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
OSCE	Organization for Security and Co-operation in Europe
ODIHR	OSCE Office for Democratic Institutions and Human Rights
UN	United Nations
UN-ECOSOC	United Nations Economic and Social Council
UN SR	United Nations Special Rapporteur on freedom of religion or belief

Part I.
The freedom of religion or belief and permissible restrictions in general

1. The freedom of religion or belief is a fundamental right, as recognized in international instruments[3] and OSCE commitments.[4] International standards specify that everyone has the right to freedom of thought, conscience and religion.[5] This right includes the freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance.[6]

3. The International Covenant on Civil and Political Rights (ICCPR), art. 18; the European Convention on Human Rights (ECHR), art. 9; the American Convention on Human Rights (ACHR), art. 12; and the EU Charter of Fundamental Rights, art. 10.
4. Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference), Vienna, (hereafter: Vienna 1989), para. 11, 16, 17 and 32; 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (hereafter: Copenhagen 1990), para. 9.4; CSCE Budapest Document 1994: Towards a Genuine Partnership in a New Era (hereafter: Budapest 1994), para. 27; Document of the Eleventh Meeting of the Ministerial Council, Maastricht, 2003 (hereafter: Maastricht 2003), para. 9.
5. ICCPR, art. 18 (1); ECHR, art. 9 (1); ACHR, art. 12 (1); Copenhagen 1990, para. 9.4; EU Charter of Fundamental Rights, art. 10.
6. ICCPR, art 18(1); ECHR, art. 9 (1); ACHR, art. 12 (1) ; Copenhagen 1990, para. 9.4.

2. The terms "religion" and "belief" are to be broadly construed.[7] A starting point for defining the application of freedom of religion or belief must be the self-definition of religion or belief, though of course the authorities have a certain competence to apply some objective, formal criteria to determine if indeed these terms are applicable to the specific case. There is a great diversity of religions and beliefs.[8] The freedom of religion or belief is therefore not limited in its application to traditional religions and beliefs or to religions and beliefs with institutional characteristics or practices analogous to those traditional views.[9] The freedom of religion or belief protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.[10]
3. The freedom of religion or belief is closely linked to other human rights and fundamental freedoms, such as, in particular, the freedom of expression,[11] the freedom of assembly and association[12] and the right to non-discrimination.[13]
4. The freedom to have or to adopt a religion or belief of one's choice, which includes the right to change one's religion or belief,[14] may not be subject to any limitations.[15]

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7. UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief* , 22 December 2011, A/HRC/19/60 (hereafter: UN SR Report on Recognition), para. 38; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), para. 34.
8. UN SR Report on Recognition, para. 31.
9. United Nations Human Rights Committee, General Comment 22 (UN Doc. HRI/GEN/1/Rev.1 at 35 (1994)), para. 2; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), paras. 22-24; *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, adopted by the Venice Commission at its 85th Plenary Session (Venice, 18-18 December 2012), para.43; ECtHR 15 June 2010, *Grzelak v. Poland*, Application no. 7710/02, para. 85; ECtHR 25 May 1993, *Kokkinakis v. Greece,* Application no. 14307/88, para. 31; and ECtHR 18 February 1999, *Buscarini and Others v. San Marino* Application no. 24645/94, para. 34.
10. United Nations Human Rights Committee, General Comment 22 (UN Doc. HRI/GEN/1/Rev.1 at 35 (1994)), para. 2; *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para.46-47.
11. See, for example, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance*, 20 September 2006, UN Doc. A/HRC/2/3, paras. 40-43.
12. ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, Application no. 30985/96, para. 62.
13. *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), para. 19.
14. ECHR, art. 9 (1); Copenhagen 1990, para. 9.4; United Nations Human Rights Committee, General Comment 22, para. 5; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), para. 31.
15. ICCPR, art. 18 (2); ACHR, art. 12 (2); UN Human Rights Committee, General Comment 22, para. 8; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012), paras. 28 and 30.

5. The freedom to manifest a religion or belief may only be limited if each of the following criteria is fulfilled:

A. The limitation is prescribed by law;[16]

B. The limitation has the purpose of protecting public safety, (public) order, health or morals,[17] or the fundamental rights and freedoms of others;[18]

C. The limitation is necessary for the achievement of one of these purposes and proportionate to the intended aim;[19] and

D. The limitation is not imposed for discriminatory purposes or applied in a discriminatory manner.[20]

6. Limitations must not be applied in a manner that would vitiate the freedom of religion or belief.[21] In interpreting the scope of permissible limitation clauses, states should proceed from the need to protect the rights guaranteed under international instruments.[22]

7. For a limitation to be "prescribed by law", the legal provision outlining the limitation should be both adequately accessible and foreseeable. This requires that it should be formulated with sufficient precision to enable individuals or communities– if need be with appropriate advice – to regulate their conduct. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interference by public authorities with human rights and fundamental freedoms. In matters affecting fundamental rights, it would be contrary to the rule of law for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise.[23] It also requires that limitations may not be retroactively or arbitrarily imposed on specific individuals or groups; neither may they be imposed by rules that purport to be laws, but

16. ICCPR, art. 18 (3); ECHR, art. 9 (2); ACHR, art. 12 (3); Copenhagen 1990, para. 9.4; ECtHR 30 June 2011, *Association les Temoins de Jehovah v. France*, Application No.8916/05, para. 66-72.
17. The United Nations Human Rights Committee has observed that "the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition" (UN Human Rights Committee, General Comment 22, para. 8).
18. ICCPR, art. 18 (3); cf. ECHR, art. 9, which limits the number of grounds for limitations to "the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others"; cf. ACHR, which limits the number of grounds for limitations to "public safety, order, health, or morals, or the rights or freedoms of others".
19. ICCPR, art. 18 (3); art. 12 ACHR; cf. ECHR, art. 9 (2) ("necessary in a democratic society in the interest of…").
20. United Nations Human Rights Committee, General Comment 22, para. 8.
21. Ibid.
22. Ibid.
23. ECtHR 26 October 2000, *Hasan & Chaush v. Bulgaria*, Application no. 30985/96, para. 84; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 35.

which are so vague that they do not give fair notice of what the law requires or which allow for arbitrary enforcement.[24]

8. Limitations may be applied only for those purposes for which they were prescribed in provisions with regard to the freedom of religion or belief, and are not allowed on grounds that are not specified in international instruments, even if these grounds would be allowed as restrictions to other human rights or fundamental freedoms.[25]

9. Limitations must be necessary in accordance with the grounds for restriction specified in provisions on freedom of religion or belief. For a limitation to be necessary, it must be directly related and proportionate to the specific need on which it is predicated,[26] while the interference must correspond to a pressing social need and be proportionate to the legitimate aim pursued.[27] The concept of a "pressing social need" is to be narrowly interpreted, which means that limitations should not just be useful or desirable, but must be necessary.[28] For an interference to be proportionate, there must be a rational connection between a public policy objective and the means employed to achieve it. In addition, there has to be a fair balance between the demands of the general interest and requirements to protect an individual's fundamental rights, the justification for the limitation must be relevant and sufficient and the least intrusive means available must be used.[29]

10. State permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and communities as rights holders and does not depend on official authorization.[30] This also means that, as will be outlined in more detail below, the legal prohibition and sanctioning of unregistered activities is incompatible with international standards.

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24. United Nations, Economic and Social Council (UN-ECOSOC), *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (UN_ECOSOC Siracusa Principles), UN Doc. E/CN.4/1985/4, Annex (1985) at paras. B(i) 15-18; *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008), para. 6.
25. United Nations Human Rights Committee, General Comment 22, para. 8.
26. Ibid.
27. ECtHR 25 November 1996, *Wingrove v. the United Kingdom*, Application no. 17419/90, para. 53.
28. ECtHR 14 June 2007, *Svyato-Mykhaylivska Parafiya v. Ukraine*, Application no. 77703/01, para. 116; ECtHR 17 February 2004, *Gorzelik and Others v. Poland,* Application no. 44158/98, paras. 94-95.
29. UN-ECOSOC *Siracusa Principles*, paras. A 10-14; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para.36. See also *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia* by the Venice Commission and OSCE/ODIHR, CDL-AD(2010)054, para. 35.
30. ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, 45701/99, para. 128-130; *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt*, UN Doc.A/HRC/19/60, paras. 25 and 41.

Part II.
The freedom to manifest religion or belief in community with others

11. As noted above, individuals enjoy the freedom of religion or belief either alone or acting in community with others. This document will refer to individuals acting in community with others to exercise their freedom of religion or belief as "religious or belief *communities*". It will refer to those religious or belief communities that are recognized as legal persons in their national legal order as 'religious or belief *organizations*".

12. International human rights law protects a wide variety of community manifestations of religions and beliefs. The freedom to manifest a religion or belief consists of the freedom of worship and the freedom to teach, practise and observe one's religion or belief. There may be considerable overlap between these types of manifestations.

13. The *freedom to worship* includes, but is not limited to, the freedom to assemble in connection with a religion or belief[31] and the freedom of communities to perform ritual and ceremonial acts giving direct expression to their religion or belief,[32] as well as various practices integral to these freedoms, including the building and maintenance of freely accessible places of worship,[33] the use of ritual formulae and objects and the display of symbols.[34]

31. UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55, para. 6 (a).
32. UN Human Rights Committee General Comment 22, para. 4.
33. Vienna 1989, para. 16.4; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (a).
34. UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (h).

14. The *freedom to observe and practise* includes, but is not limited to, ceremonial acts, but also such customs as the observance of dietary regulations,[35] the wearing of distinctive clothing or head coverings,[36] participation in rituals associated with certain stages of life[37] and the use of a particular language customarily spoken by a group in practising their religion,[38] as well as the freedom to establish and maintain appropriate charitable or humanitarian institutions and the observance of holidays and days of rest.[39]

15. The *freedom to practise and teach religion or belief* includes, but is not limited to, acts integral to the conduct by religious groups of their basic affairs, such as the right to organize themselves according to their own hierarchical and institutional structures[40] and the right to select, appoint and replace their personnel in accordance with their respective requirements and standards, as well as with any freely accepted arrangement between them and their state;[41] the freedom to establish seminaries or religious schools;[42] the freedom to train religious personnel in appropriate institutions;[43] the right to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;[44] the right of religious communities, institutions and organizations to produce, import and disseminate religious publications and materials;[45] the right of each individual to give and receive religious education in the language of their choice, whether individually or in association with others, in places suitable for these purposes,[46] including the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;[47] the right to solicit and receive voluntary financial and other contributions from individuals and institutions;[48] and the freedom to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international

35. UN Human Rights Committee General Comment 22, para. 4.
36. Ibid.
37. Ibid.
38. Ibid.
39. UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (b) and 6 (h).
40. Vienna 1989, para. 16.4.
41. Vienna 1989, para. 16.4; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (g); UN Human Rights Committee General Comment 22, para. 4.
42. UN Human Rights Committee General Comment 22, para. 4.
43. Vienna 1989, para. 16.8.
44. UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (d).
45. Vienna 1989, para. 16.10; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (c) and (d).
46. Vienna 1989, para. 16.6.
47. Vienna 1989, para. 16.7.
48. Vienna 1989, para. 16.4; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (f); *Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine,* CDL-AD(2006)030, adopted by the Venice Commission at its 68th Plenary Session (Venice, 13-14 October 2006), para. 34.

levels,[49] including through travel, pilgrimages and participation in assemblies and other religious events.[50]

16. As noted above, the freedom to manifest religion or belief in community with others is accorded to human beings as rights-holders, and cannot be made subject to any prior restraint through the use of mandatory registration procedures or similar procedures.[51] Any limitations to the various forms of manifestation of the freedom of religion or belief described herein must, therefore, meet the strict criteria set out in Part I.

49. UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, para. 6 (i).
50. Vienna 1989, para. 32.
51. ECtHR 12 May 2009, *Masaev v. Moldova*, Application no. 6303/05, para. 26; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 69; *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief,* CDL-AD(2008)032, para. 89.

Part III. Religious or belief organizations

17. As described in Part II, international human rights law accords protection to religious or belief communities, regardless of whether or not they enjoy legal personality. Religious or belief communities may choose, however, to set up religious organizations to ensure that they are able to act in the legal sphere. For the purposes of this document, "religious or belief organizations" are religious or belief communities that are recognized as independent legal persons in the national legal order. National law may refer to the recognition of legal personality under a number of different names, and may utilize a variety of legal techniques to ensure that religious or belief communities are able to operate as legal persons in the national legal order. Regardless of the method chosen to implement the obligation to ensure voluntary access to legal personality for religious or belief communities, states must ensure that the national legal framework in place for doing so complies with the international human rights instruments to which they are parties and with their other international commitments. States must also ensure that gaining access to legal personality should not be more difficult for religious or belief communities than it is for other types of groups or communities. This section will describe the international legal framework in greater detail, while also referring to good practice from individual states.

In the **United States**, an individual or "associations of individuals united for a special purpose, and permitted to do business under a particular name" may qualify as a "person" under the law (*Pembina Consol. Silver Mining & Milling Co. v. Com. Of Pennsylvania,* 125 U.S. 181, 189, 8 S. Ct. 737, 741, 31 L. Ed. 650 (1888)). As such, legal personality may attach to individuals, organizations or commercial entities. Thus, religious communities may establish commercial organizations (such as corporations, sole proprietorships, general partnerships, limited liability partnerships and limited liability companies) or non-profit organizations (typically organized as corporations) in order to obtain legal personality. Commercial entities and non-profit corporations are governed pursuant to the law of the state in which they are formed. The majority of faith groups in the United States are organized as non-profit corporations pursuant to the applicable state law and the federal Internal Revenue Code (for example, 26 U.S.C. § 501(c)) in order to secure favourable tax-exempt status and treatment.

In **Estonia**, at the sub-constitutional level, the legal personality of religious and belief communities is regulated by the Non-profit Organisations Act and Churches and Congregations Act (CCA). According to the CCA, a religious association is a legal person in civil law. It is a non-profit organization. The CCA contains five different types of religious organizations: (1) churches; (2) congregations; (3) associations of congregations; (4) monasteries; and (5) religious societies. A congregation (or association of congregations) can be an association of natural persons confessing the Christian faith or any other religion (or belief). The same applies to monasteries. There are no major restrictions on religious communities to choose a suitable legal form for their activity.

In **Spain**, there are three interrelated forms of legal personality that are open to religious communities:

a) "*Confesiones religiosas*", which is the basic form of legal personality for communities, churches and religious communities;

b) "*Entidades religiosas*", which grant legal personality to specific territorial, associational or structural compounds of recognized "*confesiones religiosas*". A "seminar", "diocese", "local community or church" or "territorial subdivision" of a "*confesión religiosa*" can be an "*entidad religiosa*" under Spanish law in order to simplify legal affairs; and

c) "*Federaciones religiosas*", which are federations comprising a group of "*confesiones religiosas*" that share some characteristics (such as dogma, historical origin, etc.). There are also "*Federaciones de entidades religiosas*".

In addition, any religious or belief group can register as an ordinary association in the state Registry of Associations.

18. It must be noted that the autonomous existence of religious or belief communities is indispensable for pluralism in a democratic society and is an issue that lies at the very heart of the protection that the freedom of religion or belief affords.[52] It directly concerns not only the organization of these communities as such, but also the effective enjoyment of the right to freedom of religion by all their active members. When the organizational life of the community is not protected by the freedom of religion or belief, all other aspects of the individual's freedom of religion become vulnerable.[53] The ability to establish a legal entity to act collectively in a field of mutual interest is one of the most important aspects of the freedom of association, without which that right would be deprived of any meaning. As regards the organization of a religious community, a refusal to recognize it as a legal entity has also been found to

52. ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, Application no. 30985/96, para. 62; ECtHR 9 July 2013, *Sindicatul Păstorul Cel Bun" v. Romania*, Application no. 2330/09, para. 136; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova,* Application no. 45701/99, para. 118, and ECtHR 22 January 2009*, Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria,* Application nos. 412/03 and 35677/04, para. 103.

53. ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria,* Application no. 30985/96, para. 62.

constitute an interference with the right to freedom of religion under Article 9 of the ECHR as exercised by both the community itself and its individual members.[54] OSCE participating States have therefore promised to "grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries".[55]

19. Under international human rights law, a refusal by the state to accord legal personality status to an association of individuals based on a religion or belief amounts to an interference with the exercise of the right to freedom of religion or belief, read in the light of the freedom of association.[56] The authorities' refusal to register a group, or to withdraw its legal personality, have been found to affect directly both the group itself and also its presidents, founders or individual members.[57] A refusal to recognize the legal personality status of religious or belief communities has, therefore, been found to constitute an interference with the right to freedom of religion or belief[58] as exercised by both the community itself as well as its individual members.[59]

20. The right to legal personality status is vital to the full realization of the right to freedom of religion or belief. A number of key aspects of organized community life in this area become impossible or extremely difficult without access to legal personality. These include having bank accounts and ensuring judicial

54. ECtHR 1 October 2009, *Kimlya and others v. Russia*, Application nos. 76836/01 and 32782/03, para. 84.
55. Vienna 1989, para. 16.3.
56. ECtHR 1 October 2009*, Kimlya and Others v. Russia,* Application nos. 76836/01 and 32782/03*,* para. 84; ECtHR 10 June 2010, *Jehova's Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 101; ECtHR 17 February 2004, *Gorzelik and Others v. Poland,* Application no. 44158/98, para. 52 and ECtHR 1 July 1998, *Sidiropoulos and Others v. Greece*, Application no. 26695/95, para. 31; *Opinion on Legal Status of Religious Communities in Turkey and the Right of the orthodox Patriarchate of Istanbul to use the adjective "Ecumenical"*, CDL-AD(2010)005, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), para. 6 & 9; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 64; OSCE/ODIHR and Venice Commission, *Guidelines for Review of Legislation Pertaining to Religion or Belief,* 2004 (hereafter: 2004 Guidelines), para. 8.
57. ECtHR 10 June 2010, *Case of Jehova's Witnesses of Moscow and others v. Russia,* Application no. 302/02, para. 101; ECtHR 15 January 2009, *Association of Citizens Radko and Paunkovski v. the former Yugoslav Republic of Macedonia*, Application no. 74651/01, para. 53; ECtHR 19 January 2006, *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, Application no. 59491/00, para. 53; ECtHR 3 February 2005, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, Application no. 46626/99, para.27 and ECtHR 31 August 1999, *APEH Üldözötteinek Szövetsége and Others v. Hungary* (Dec.), Application no. 32367/96.
58. UN Human Rights Committee 21 October 2005, *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v. Sri Lanka, communication* 1249/2004, para. 7.2.
59. ECtHR 10 June 2010, *Jehova's Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 101; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98 paras.79-80, and ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova,* Application no. 45701/99, para. 105.

protection of the community, its members and its assets;[60] maintaining the continuity of ownership of religious edifices; the construction of new religious edifices; establishing and operating schools and institutes of higher learning; facilitating larger-scale production of items used in religious customs and rites; the employment of staff; and the establishment and running of media operations.[61]

In the **Netherlands**, legal persons have the same rights and obligations under relevant parts of civil law (notably property law) as natural persons, according to Article 2:5 of the Civil Code (which provides that "as far as the law of property is concerned, a legal person is equal to a natural person, unless the contrary results from law"). Religious denominations, which can easily obtain legal personality – as an association, foundation or *sui generis* church organization – can thus engage in legal acts, such as filing law suits, entering into contracts and filing applications for land use permits, among others. There are no different categories of legal persons in this respect; accordingly, all religious denominations organized as one of these three types of legal persons can carry out such legal acts.

21. Any denial of legal personality to a religious or belief community would, therefore, need to be justified under strict conditions, as set out in Part I of the Guidelines. At the same time, under international human rights law, religious or belief communities should not be obliged to seek legal personality if they do not wish to do so.[62] The choice of whether or not to register with the state may itself be a religious one, and the enjoyment of the right to freedom of religion or belief must not depend on whether a group has sought and acquired legal personality status.[63] States have developed a number of practices involving, for example, police control, surveillance, restrictive measures including the closing of places

60. ECtHR 10 June 2010, *Jehova's Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 102; ECtHR, *Kimlya and others v. Russia*, Application nos. 76836/01 and 32782/03, para. 85; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98, para. 66; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova,* Application no. 45701/99, para. 118;; ECtHR 3 April 2008, *Koretskyy and Others v. Ukraine*, Application no. 40269/02, para. 40 and ECtHR 16 December 1997, *Canea Catholic Church v. Greece*, paras. 30 and 40-41; *Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania adopted by the Venice Commission at its 64th plenary session* (Venice, 21-22 October 2005), CDL-AD(2005)037-e, para. 23; *Opinion on the legal status of Religious Communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective "Ecumenical"*, CDL-AD(2010)005, para. 68.
61. UN SR Report on Recognition, para. 46.
62. UN SR Report on Recognition, para. 58: "[i]n keeping with the universalistic understanding of human rights, States must ensure that all individuals can enjoy their freedom of thought, conscience, religion or belief on the basis of respect for their self-understanding in this entire area. Respect for freedom of religion or belief as a human right does not depend on administrative registration procedures, as freedom of religion or belief has the status of a human right, prior to and independent from any acts of State approval."
63. *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, para. 26.

of worship, the confiscation of property, financial sanctions, imprisonment,[64] blocking access to chaplaincy services, restricting the dissemination or ownership of religious literature or restricting the freedom to convince others of one's religion or belief. Obviously, these and similar measures are not in line with international standards if they are imposed merely due to the failure of a religious or belief community to seek or obtain legal personality status.

In **Italy**, it is possible for religious communities to constitute themselves as non-recognized associations (*associazione non riconosciuta*) in accordance with Art. 36-38 of the Civil Code. This is the simplest model and is also applied by political parties and trade unions. Although a community does not gain legal personality in this manner, a religious community does attain legal capacity (including independence in property issues and the ability to receive donations and take legal action) in complete liberty, without their constitutive act or statute being submitted to any form of state control. Creating a non-recognized association is very simple: it requires a minimum of three members, a statute and a notary act.

In **Estonia**, the law does not prohibit the activities of religious associations which are not registered. Rather, the main disadvantage for unregistered entities is that they cannot present themselves as legal persons and, therefore, cannot exercise the rights and protections accorded to a religious legal entity. Nevertheless, they still enjoy their constitutionally-protected collective freedom of religion as a religious group. There is no restriction as such for a non-registered religious community to conduct religious meetings or ceremonies at somebody's home or rented premises. According to the law, collective freedom of religion or belief can only be restricted if it is detrimental to public order, health or morals, and if it violates the rights and freedoms of others.

In **Germany**, religious communities that are not registered as an association or as any other specific form of a legal entity have the status of non-registered associations (non-registered associations are regulated under Section 54 of the German Civil Code), as are other legal entities. This kind of association enjoys the same rights as a non-trading partnership (*Gesellschaft bürgerlichen Rechts*) and has partial legal capacity; in practice, the courts widely make use of analogies to the provisions for registered associations.

As a rule, religious or belief groups and communities present in **Ireland** take the form of voluntary unincorporated associations. An unincorporated association is a group of persons bound together by identifiable rules and having an identifiable membership. The rules determine how the association can be joined and left and who controls the association and its funds, and on what terms (see O'Keefe v. Cullen (1873) IR 7 CL 319 and The State (Colquhoun) v. D'Arcy and Others [1936] IR 641). In general, the association's property is jointly held by the members, rather than by the association itself. An unincorporated association cannot sue or be sued in its own name. There are no registration requirements for unincorporated associations.

64. UN SR Report on Recognition, para. 58.

22. There are a variety of ways of ensuring that religious or belief communities who wish to seek legal personality are able to do so. Some national legal systems do so through procedures involving the courts, others through an application procedure with a government agency. Depending on the individual state, a variety of different forms of legal personality may be available to religious or belief communities, such as trusts, corporations, associations and foundations, as well as various *sui generis* types of legal personality specific to religious or belief communities.

In the **United States**, in order to register as a non-profit corporation, religious associations must establish Articles of Incorporation and by-laws. Articles of Incorporation consist of structural information, including the organization's name, address, registering agent and non-profit and tax-exempt purpose. By-laws set forth the organization's rules and procedures, frequently detailing who may serve on the Board of Directors and the length of such service; when and how meetings occur; and the manner in which officers are appointed. In sum, they comprise the organization's operations. To become a non-profit corporation, religious and belief communities must apply for such recognition with the appropriate state agency. They must also file Form 1023 or 1024 with the federal Internal Revenue Service to obtain federal tax-exempt status. Under most circumstances, once federal tax-exempt status is granted, state and local tax-exempt status is automatic.

In **the former Yugoslav Republic of Macedonia**, the Primary Court Skopje II is competent to maintain the Unique Court Registry of churches, religious communities and religious groups. The data recorded in the competent registry is public. The Minister of Justice prescribes the form and the content of the application form of the competent registry and the way it is kept. The state authority competent for the relationships between the state and religious communities, the Commission for Relationships with Religious Communities and Religious Groups, keeps a file on registered churches, religious communities and religious groups, but has no competence in processing their registration.

23. Regardless of the system used to govern access to legal personality and the particular terms that may be used to describe the forms of legal personality open to religious or belief communities, national law in this area must comply with international human rights instruments and OSCE commitments.[65] This means, among others, that religious or belief organizations must be able to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities.[66]

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65. For a catalogue of laws governing registration of religious/belief organizations, see the 2004 Guidelines, section II.F (1).
66. ECtHR 14 June 2007, *Svyato-Mykhaylivska Parafiya v. Ukraine*, Application no. 77703/01, para. 123; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary,* CDL-AD(2012)004 para.30-35*; Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2009)036, adopted by the Venice Commission at its 79th Plenary Session (Venice, 12-13 June 2009), para. 39.

24. Considering that a wide variety of legal acts may be performed only by actors recognized as legal persons, access to legal personality for religious or belief communities should be quick, transparent, fair, inclusive and non-discriminatory.[67]

25. Any procedure that provides religious or belief communities with access to legal personality status should not set burdensome requirements.[68] Examples of burdensome requirements that are not justified under international law include, but are not limited to, the following: that the registration application be signed by all members of the religious organization and contain their full names, dates of birth and places of residence;[69] that excessively detailed information be provided in the statute of the religious organization;[70] that excessively high or unreasonable registration fees be paid; that the religious organization has an approved legal address;[71] or that a religious association can only operate at the address identified in its registration documents.[72] Such requirements would not appear to be necessary in a democratic society for the grounds enumerated in international human rights instruments. Also, religious or belief communities interested in obtaining legal personality status should not be confronted with unnecessary bureaucratic burdens or with lengthy or unpredictable waiting periods.[73] Should the legal system for the acquisition of legal personality require certain registration-related documents, these documents should be issued by the authorities.[74]

Apart from associations and foundations, which are open to all types of religious and belief communities, in **the Netherlands,** there is one specific type of legal personality open only to churches. Article 2:2(1) of the Civil Code provides legal personality to so-called "*Kerkgenootschappen*" (literally "church communities"). The Civil Code has not defined "*Kerkgenootschappen*": as such, definitions can only be found in case law and legal doctrine. The Court of Cassation has held that religious organizations – *ex lege,* without having to obtain state recognition – are church communities with legal personality if they meet the following

67. UN SR Report on Recognition, para. 54; *Opinion on the draft law Law on amendment and supplementation of Law no 02/L-31 on freedom of religion,* CDL-AD(2014)012, adopted by the Venice Commission at its 98th Plenary Session (Venice 21-22 March 2014), paras. 43ff.
68. *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para. 68; *Opinion on the draft law Law on amendment and supplementation of Law no 02/L-31 on freedom of religion*, CDL-AD(2014)012, paras. 67ff.
69. UN SR Report on Recognition, para. 44.
70. *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 66.
71. Human Rights Committee views of 26 July 2005, *Sergei Malakhovsky and Alexander Pikul v. Belarus*, Comm. no. 1207/2003, para. 7.6.
72. *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 80-82.
73. UN SR Report on Recognition, para. 55.
74. ECtHR 17 July 2012, *Fusu Arcadie and others v. Moldova,* Application no. 22218/06, para. 37-38.

conditions: (i) the organization's activities revolve around religion; (ii) an organizational structure can be discerned; and (iii) the organization expresses the will to manifest itself as a church. In practice, these minimal conditions do not pose serious obstacles.

26. The process of obtaining legal personality status should be open to as many communities as possible, without excluding any community on the grounds that it is not a traditional or recognized religion or through excessively narrow interpretations or definitions of religion or belief.

27. Moreover, legislation should not make obtaining legal personality contingent on a religious or belief community having an excessive minimum number of members. States should ensure that they take into account the needs of smaller religious and belief communities,[75] and should be aware of the fact that provisions requiring a high minimum number of members make the operational activities of newlyestablished religious communities unnecessarily difficult.

Under para. 5 of the Non-profit Organisations Act of **Estonia**, only a minimum of two persons are required to establish a religious society.

The legal system of **Albania** does not foresee any minimum membership requirements for the three forms of legal personality recognized in Albanian law for religious or belief communities (Associations, Centres and Foundations).

The civil law of **Sweden** only contains a requirement for the number of persons to form the board of an association, which is usually between three and five persons.

28. Legislation should not necessitate a lengthy existence in the country as a requirement for access to legal personality. Such a requirement has the effect of unnecessarily restricting the rights of religious or belief communities that may be new to a particular state.[76]

29. Since freedom of religion or belief is a right that is not restricted to citizens,[77] legislation should not deny access to legal personality status to religious or belief communities on the grounds that some of the founding members of the community in question are foreign[78] or non-citizens, or that its headquarters are located abroad.[79]

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75. UN SR Report on Recognition, para. 44.
76. ECtHR 1 October 2009, *Kimlya v. Russia,* Application nos. 76836/01 and 32782/03.
77. *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 99; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 93.
78. ECtHR 5 October 2006, *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, para. 82.
79. Ibid., paras. 83-85.

30. In particular, the legal personality status of any religious or belief community should not be made dependent on the approval or positive advice of other religious or belief communities, as the legal personality status of a particular religious or belief community is not a matter for other religious or belief communities.[80] To request the opinion of one or more religious or belief communities on matters relating to applications for such status made by another religious or belief community or organization compromises the neutrality and impartiality of the relevant state bodies or officials.[81]

31. The state must respect the autonomy of religious or belief communities when fulfilling its obligation to provide them with access to legal personality.[82] In the regime that governs access to legal personality, states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership,[83] its internal rules,[84] the substantive content of its beliefs,[85] the structure of the community and methods of appointment of the clergy[86] and its name and other symbols. In particular, the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization.[87] Considering the wide range of different organizational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area.[88]

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80. ECtHR 24 June 2004, *Vergos v. Greece*, Application no. 65501/01, para. 34; UN Special Rapporteur Report on Recognition, para. 56.
81. ECtHR 26 September 1996, *Manoussakis v. Greece*, Application no. 18748/91, para. 47.
82. *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR,* CDL-AD(2012)022, para. 72; *Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania*, CDL-AD(2005)037, para. 20; *Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine*, CDL-AD(2006)030, para.30; 2004 Guidelines, section D.
83. ECtHR 22 January 2009, *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria,* Application nos. 412/03 and 35677/04. para. 118-121; see ECtHR 14 March 2003, *Serif v. Greece*, Application no. 38178/97, paras. 49, 52 and 53; ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria,* Application no. 30985/96, paras. 62 and 78; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova,* Application no. 45701/99, paras. 118 and 123; and ECtHR 16 December 2004, *Supreme Holy Council of the Muslim Community*, Application no. 39023/97, para. 96.
84. *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 76.
85. *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, paras. 54 and 90. *Opinion on the draft law on the legal status of a church, a religious community and a religious group of "The former Yugoslav Republic of Macedonia",* CDL-AD(2007)005, adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007), para. 46.
86. UN SR Report on Recognition, para. 56.
87. *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 80.
88. *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary,* CDL-AD(2012)004, para. 39; *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, *CDL-AD(2008)*032, para. 33.

The Constitution of **Poland** (Article 25.1) and the "Law on Guarantees of freedom of religion" of Poland provide that, in carrying out their functions, religious organizations may, among other activities: determine religious doctrine, dogma and rites; organize and publicly perform religious rites; lead the ministry of chaplains; govern themselves in accordance with their own rules (legal autonomy); establish, educate and employ clergy; acquire and dispose of movable and immovable property and manage it; produce, buy and sell objects of worship; use mass media; conduct educational activities; conduct charitable activities; create inter-church organizations at the state level; and belong to international religious organizations.

32. A decision to deny or withdraw the legal personality status of any religious or belief organization must be justified under the strict criteria described in Part I.[89] Decisions to deny access to legal personality to a religious or belief community, or to withdraw it, should state the reasons for doing so.[90] These reasons should be specific and clear.[91] This also facilitates the right to appeal (see para. 35 below).

In **Estonia**, according to the Churches and Congregations Act (CCA), para. 14 (3), upon a refusal to enter a religious association in the register, the registrar (Court) has to indicate the reason for the refusal in writing. The types of reasons the Court may give are described in the law.

According to CCA para. 14 (2), a registrar shall not enter a religious association in the register if:

1) the statutes or other documents submitted by the religious association are not in compliance with the requirements of law;

2) the activities of the religious association damage public order, health, morals, or the rights and freedoms of others.

89. ECtHR 10 June 2010, *Case of Jehova's Witnesses of Moscow and others v. Russia,* Application no. 302/02, para. 102; ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria,* Application no. 40825/98 para. 66, and ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova,* Application no. 45701/99, para. 118; ECtHR 3 April 2008, *Koretskyy and Others v. Ukraine*, no. 40269/02, para. 40, and *Canea Catholic Church v. Greece*, 16 December 1997, para. 30 and 40-41; 2004 Guidelines, para. 9.
90. *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, para. 38.
91. *Jehova's Witnesses and Others* v. Russia, Application no. 302/02, 10 June 2010, Para. 175; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 38. *Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia by the Venice Commission, the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2009)036, para. 29.

33. Considering the wide-ranging and significant consequences that withdrawing the legal personality status of a religious or belief organization will have on its status, funding and activities, any decision to do so should be a matter of last resort.[92] In case of grave and repeated violations endangering public order, such measures may be appropriate, if no other sanctions can be applied effectively, but only when all the conditions described in Part I of these guidelines are fulfilled. Otherwise the principles of proportionality and subsidiarity as a rule would be violated.[93] In order to be able to comply with these principles, legislation should contain a range of various lighter sanctions, such as a warning, a fine or withdrawal of tax benefits, which – depending on the seriousness of the offence – should be applied before the withdrawal of legal personality is contemplated.[94]

In the civil law of the **Netherlands** (Civil Code on "Prohibited legal persons") the dissolution of legal persons, including religious communities with legal personality, is dealt with as follows:

"Article 2:20: Prohibition of a legal person by the court

- 1. Where the activities of a legal person are contrary to the public order, the District Court shall prohibit and dissolve that legal person upon the request of the Public Prosecution Service.

- 2. Where the purpose (objective) of a legal person, as defined in its articles of incorporation, is contrary to the public order [that is, ordre public], the District Court shall dissolve that legal person upon the request of the Public Prosecution Service. Before the dissolution, the District Court may grant the legal person for a specific period of time the opportunity to adjust its purpose (objective) in such a way that it no longer is contrary to the public order."

[…]

Article 2:21: Dissolution of a legal person by the court

[…]

-2. The District Court does not dissolve the legal person if the court has granted the legal person for a specific period of time the opportunity to comply with the necessary statutory requirements and the legal person has fulfilled these requirements within that period.[…]"

92. *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR,* CDL-AD(2012)022, paras. 93-94.
93. *Opinion on the draft law on freedom of Religion, religious organisations and mutual relations with the state of Albania,* CDL-AD(2007)041, adopted by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007), para. 48.
94. ECtHR 8 October 2009, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, Application no. 37083/03, para. 82; ECtHR 10 June 2010, *Jehova's Witnesses of Moscow and others v. Russia*, Application no.302/02, para. 159.

34. The withdrawal of legal personality from a religious or belief *organization* should not in any way imply that the religious or belief *community* in question, or its individual members, no longer enjoy the protection of their freedom of religion or belief or other human rights and fundamental freedoms. Depriving such communities of their basic rights or even deciding to prohibit them may have grave consequences for the religious life of all their members and, for that reason, care should be taken not to inhibit or terminate the activities of a religious community merely because of the wrongdoing of some of its individual members. Doing so would impose a collective sanction on the community as a whole for actions that in fairness should be attributed to specific individuals. Thus, any wrongdoings of individual leaders and members of religious organizations should be addressed to the person in question through criminal, administrative or civil proceedings, rather than to the community and other members.[95]

35. Overall, it should be possible to secure an effective remedy at the national level for a decision not to recognize, or to withdraw, the legal personality of a religious or belief community that has an arguable claim to such a status.[96] States have a general obligation to give practical effect to the array of standards spelled out in international human rights law, as outlined, for example, in Article 2 (3) of the ICCPR and Articles 6(1) and 13 of the ECHR, which require that individuals and communities have access to a court that must provide them with an effective remedy. Religious or belief communities, therefore, have a right to receive prompt decisions on registration applications (where applicable),[97] and a right to appeal.[98] While there are a number of different systems in place to ensure access to legal personality, including those where courts take the initial decision and those where administrative bodies do so, access to court and a proper and effective review of relevant decisions should always be possible. This principle applies regardless of whether an independent tribunal decides on legal personality directly, or whether such a decision is taken by an administrative body, in which case subsequent control of the

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95. *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, para. 99 *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR,* CDL-AD(2012)022, para. 92.
96. ECtHR 27 February 2007, *Biserica Adevărat Ortodoxă Din Moldova and others v. Moldova*, Application no. 952/03, para. 49-54.
97. ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria,* Application no. 40825/98, paras. 78-80; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary,* CDL-AD(2012)004, para. 44.
98. *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 80. *Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan by the Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief*, CDL-AD(2008)032, para. 31; *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary,* CDL-AD(2012)004, para. 82.

decision should be exercised by an independent and impartial court, including the right to appeal to a higher instance.[99]

In **Spain**, a religious community whose application for registration is denied can seek the following remedies:

(1) an administrative remedy before the Ministry of Justice; (2) a judicial procedure before the "Audiencia Nacional" (National Superior Court); (3) a procedure before the Spanish Supreme Court (in case of irregularities attributable to the "Audiencia Nacional"); and (4) a special procedure for the protection of fundamental rights before the Constitutional Court.

In the **Republic of Moldova**, according to the Code of Civil Procedure, applicants first have to go through a non-judicial procedure to resolve the case against the public authorities. First of all, a request must be submitted at the relevant Ministry, and if after 30 days the Ministry does not respond, or if the Ministry's answer does not satisfy the applicant, the applicant can go to court. If the decision of the court of first instance does not satisfy the applicant, then the applicant can appeal to the Court of Appeals and after that, to the Moldovan Supreme Court.

36. In cases where new provisions to the system governing access to legal personality of religious or belief communities are introduced, adequate transition rules should guarantee the rights of existing communities.[100] Where laws operate retroactively or fail to protect the vested interests of religious or belief organizations (for example, requiring reapplication for legal personality status under newly-introduced criteria), the state is under a duty to show that such restrictions are compliant with the criteria set out in Part I of these Guidelines. In particular, the state must demonstrate the objective reasons that would justify a change in existing legislation, and show that the proposed legislation does not interfere with the freedom of religion or belief more than is strictly necessary in light of those objective reasons. Religious or belief organizations should not be subject to excessively burdensome or discriminatory transfer taxes or other fees if the transfer of titles to properties owned by prior legal entities is required by new regulations.

37. States should ensure that the above rights and principles are effectively incorporated into their national legal order, whether in their laws, regulations, practices and/or policies.[101] Furthermore, states should ensure that state officials and bodies dealing with the legal personality of religious or belief communities are aware of and act in accordance with the principles contained in international standards on the freedom of religion or belief.

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99. *Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, paras. 82-83.
100. UN SR Report on Recognition, para. 57.
101. Maastricht 2003, para. 9: [the Ministerial Council] "commits to ensure and facilitate the freedom of the individual to profess and practice a Religion or belief, alone or in community with others, where necessary through transparent and non-discriminatory laws, regulations, practices and policies".

In **Latvia**, the Registry Office examines applications for legal personality status in accordance with the rules of administrative procedure. In accordance with the first subparagraph of Article 4 of the Administrative Procedure Law, general principles of law are applied, including:

- *The principle of compliance with individuals' rights,* which requires that, when making a decision, a state institution must act in accordance with the protection of the rights and legal interests of the individual;
- *The principle of justice*, which requires that a state institution shall act under the powers determined in legislation and can use its powers only in accordance with their meaning and purpose;
- *The principle of reasonable application of law,* according to which a state institution applies the law using basic methods of legal interpretation in order to achieve the most equitable and useful result;
- *The principle of the prohibition of arbitrariness*, which requires that an administrative act may only be based on facts that are necessary to reach a decision and on objective and rational legal considerations;
- *The principle of legality*, according to which a state institution may only issue a decision based on the Constitution, the law and/or international law;
- *The principle of proportionality*, which requires that a state institution, when applying the law, must consider whether an administrative act adverse to the individual is necessary in a democratic society;
- *The principle of procedural fairness*, which requires that a state institution, when making decisions, must do so impartially and give participants in the process a reasonable opportunity to be heard and to present evidence, and that an official whose objectivity in a particular matter may be in reasonable doubt does not participate in the decision-making process.

Part IV. Privileges of religious or belief communities or organizations

38. States may choose to grant certain *privileges* to religious or belief communities or organizations. Examples include financial subsidies, settling financial contributions to religious or belief communities through the tax system or providing membership in public broadcasting agencies.[102] It is only when granting such benefits that additional requirements may be placed on religious or belief communities, as long as those requirements remain proportionate and non-discriminatory.

In the **United States**, non-profit religious institutions enjoy numerous benefits, including:

i. All those benefits typically conferred upon corporations, such as the ability to commence lawsuits, engage in contractual relationships and file applications for land use permits;

ii. Tax-deductibility of donations;

iii. No corporate income tax;

iv. No sales tax under most circumstances;

v. Discounted postage rates for mailings over 250 identical pieces of mail;

vi. Limited liability for directors and officers for operations of the organization; and

vii. Access to government and private grants.

In **Germany**, in accordance with §3 number 6 of the Trade Tax Act (Gewerbesteuergesetz), religious communities that are public law corporations are, to a certain extent, exempt from trade tax. Corporations, associations of persons and estates that, in accordance with their statutes, the act of foundation or constitution, and which, in accordance with the actual management of business, exclusively and directly pursue ecclesiastical ends, are exempt from trade tax. This does not apply to the extent that they operate an economic business establishment, with the exception of agriculture and forestry.

102. UN SR Report on Recognition, para. 59.

39. It is within the power of the state to grant such privileges, but in doing so, it must be ensured that they are granted and implemented in a non-discriminatory manner.[103] This requires that the treatment has an objective and reasonable justification, which means that it pursues a legitimate aim and that there is a reasonable relationship of proportionality between the means employed and the intended aim.[104]

40. In particular, the existence or conclusion of agreements between the state and a particular religious community, or legislation establishing a special regime in favour of the latter, does not, in principle, contravene the right to non-discrimination on the grounds of religion or belief, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so.[105] Agreements and legislation may acknowledge historical differences in the role that different religions have played and play in a particular country's history and society.[106] A difference in treatment between religious or belief communities resulting in the granting of a specific status in law – to which substantial privileges are attached – while refusing this preferential treatment to other religious or belief communities that have not been acceded to this status is compatible with the requirement of non-discrimination on the grounds of religion or belief as long as the state sets up a framework for conferring legal personality on religious groups, to which a specific status is linked. All religious or belief communities that wish to do so should have a fair opportunity to apply for this status, and the criteria established are applied in a non-discriminatory manner.[107]

41. The fact that a religion is recognized as a state religion, that it is established as an official or traditional religion or that its followers comprise the majority of the population may be an acceptable basis for according special status, provided, however, that this shall not result in any impairment of the enjoyment of any human rights and fundamental freedoms, or in any discrimination against adherents to other religions or non-believers.[108] In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service or according economic privileges to members of the state religion or predominant religion, or imposing special restrictions on the practice

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103. UN SR Report on Recognition, para. 61; ECtHR 25 September 2012, *Jehovas Zeugen in Österreich v. Austria*, Application no. 27540/05, para. 32; 2004 Guidelines, para. F (2).
104. ECtHR 9 December 2010, *Savez Crkava "Riječ Života" and others v. Croatia,* Application no. 7798/08, para. 86; ECtHR 16 March 2010, *Oršuš and Others v. Croatia*, Application no. 15766/03, para. 156.
105. ECtHR 9 December 2010, *Savez Crkava "Riječ Života" and others v. Croatia,* Application no. 7798/08, para. 85; ECtHR 10 December 2009, *Koppi v. Austria,* Application no. 33001/03, para. 33.
106. 2004 Guidelines, section II.B (3).
107. ECtHR 10 December 2009, *Koppi v. Austria,* Application no. 33001/03, para. 92; *Opinion on act ccvi of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, para. 46.
108. UN Human Rights Committee, General Comment 22, para. 9; *Observations on the final draft Constitution of the Republic of Tunisia,* CDL-AD(2013)034, adopted by the Venice Commission at its 96th Plenary Session (Venice 10-11 October 2013), para.27.

of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection.[109]

42. The rights discussed in the second and third part of this document, including the freedom to manifest religion or belief in community with others and the right to legal personality, must not be seen as a privilege, but as a right which forms a fundamental element of the freedom of religion or belief.[110] In particular, as noted above, the right to legal personality must not be abused as a means to restrict the rights of individuals or communities seeking to exercise their freedom of religion or belief by making their ability to do so in any way conditional upon registration procedures or similar restrictions. On the other hand, access to legal personality should be open to as many communities as possible, and should not exclude any community on the ground that is not a traditional or recognized religion or belief. Differential treatment relating to the procedure to be granted legal personality is only compatible with the principle of non-discrimination if there is an objective and reasonable justification for it, if the difference in treatment does not have a disproportionate impact on the exercise of freedom of religion or belief by (minority) communities and their members and if obtaining legal personality for these communities is not excessively burdensome.[111]

109. UN Human Rights Committee, General Comment 22, para. 9; *Observations on the final draft Constitution of the Republic of Tunisia,* CDL-AD(2013)034, adopted by the Venice Commission at its 96th Plenary Session (Venice 10-11 October 2013), paras. 27-37.

110. UN SR Report, para. 30: "the State has to respect everyone's freedom of religion or belief as an inalienable – and thus non-negotiable – entitlement of human beings, all of whom have the status of right holders in international law by virtue of their inherent dignity."

111. *Opinion on the draft Law on amendment and supplementation of Law no 02/L-31 on freedom of religion,* CDL-AD(2014)012, paras. 41-67.

Annex – Selected OSCE commitments in the area of the freedom of religion or belief

Helsinki, 1975 (Questions Relating to Security in Europe: 1.(a) Declaration on Principles Guiding Relations between Participating States – Principle VII):

"The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion."

(…)

"Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience."

Helsinki, 1975 (Co-operation in Humanitarian and Other Fields):

"The participating States (…) confirm that religious faiths, institutions and organizations, practising within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information."

Madrid, 1983 (Questions Relating to Security in Europe: Principles):

"The participating States (…) furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience. In this context, they will consult, whenever necessary, the religious faiths, institutions and organizations, which act within the constitutional framework of their respective countries.

They will favourably consider applications by religious communities of believers practicing or prepared to practise their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations."

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

(…)

"(11) [The participating States] confirm that they will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They also confirm the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and security necessary to ensure the development of friendly relations and cooperation among themselves, as among all States."

(…)

"(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will*, inter alia,*

(16.1) - take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) - foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) - grant upon their request to communities of believers, practising or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

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

• establish and maintain freely accessible places of worship or assembly,

• organize themselves according to their own hierarchical and institutional structure,

• select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,

• solicit and receive voluntary financial and other contributions;

(16.5) - engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;

(16.6) - respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;

(16.7) - in this context respect, *inter alia,* the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

(16.8) - allow the training of religious personnel in appropriate institutions;

(16.9) - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,

(16.10) - allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(16.11) - favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief."

(…)

"(32) They will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia* through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief."

Copenhagen, 1990:

"The participating States reaffirm that […]

(9.4) - everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards";

(…)

"(32) (…) Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

(…)

(32.3) - to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue"

(…)

"(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned."

Budapest, 1994 (Decisions: VIII. The Human Dimension)"

"27. [the participating States] Reaffirming their commitment to ensure freedom of conscience and religion and to foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers, they expressed their concern about the exploitation of religion for aggressive nationalist ends."

Maastricht, 2003 (Decisions: Decision No. 4/03 on Tolerance and Non-discrimination):

"9. [The Ministerial Council] Affirms the importance of freedom of thought, conscience, religion or belief, and condemns all discrimination and violence, including against any religious group or individual believer. Commits to ensure and facilitate the freedom of the individual to profess and practice a Religion or belief, alone or in community with others, where necessary through transparent and non-discriminatory laws, regulations, practices and policies.

Encourages the participating States to seek the assistance of the ODIHR and its Panel of Experts on Freedom of Religion or Belief."

Kyiv, 2013:

"The Ministerial Council […]:

Calls on participating States to:

- Fully implement OSCE commitments on the freedom of thought, conscience, religion or belief;
- Fully implement their commitments to ensure the right of all individuals to profess and practice religion or belief, either alone or in community with others, and in public or private, and to manifest their religion or belief through teaching, practice, worship and observance, including through transparent and non-discriminatory laws, regulations, practices and policies;
- Refrain from imposing restrictions inconsistent with OSCE commitments and international obligations on the practice of religion or belief by individuals and religious communities;
- Promote and facilitate open and transparent interfaith and interreligious dialogue and partnerships;
- Aim to prevent intolerance, violence and discrimination on the basis of religion or belief, including against Christians, Jews, Muslims and members of other religions, as well as against non-believers, condemn violence and discrimination on religious grounds and endeavour to prevent and protect against attacks directed at persons or groups based on thought, conscience, religion or belief;
- Encourage the inclusion of religious and belief communities, in a timely fashion, in public discussions of pertinent legislative initiatives;
- Promote dialogue between religious or belief communities and governmental bodies, including, where necessary, on issues related to the use of places of worship and religious property;

- Take effective measures to prevent and eliminate discrimination against individuals or religious or belief communities on the basis of religion or belief, including against non-believers, by public officials in the conduct of their public duties;
- Adopt policies to promote respect and protection for places of worship and religious sites, religious monuments, cemeteries and shrines against vandalism and destruction."

About ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the specialized institution of the OSCE dealing with elections, human rights and democratization.

Based in Warsaw, Poland, ODIHR:

- Promotes democratic election processes through the in-depth observation of elections and conducts election assistance projects that enhance meaningful participatory democracy;
- Assists OSCE participating States in the implementation of their human dimension commitments by providing expertise and practical support in strengthening democratic institutions through longer-term programmes to strengthen the rule of law, civil society, and democratic governance;
- Assists OSCE field missions in implementing their human dimension activities, including through training, legislative support, exchange of experiences, and regional co-ordination;
- Contributes to early warning and conflict prevention by monitoring the implementation of OSCE human dimension commitments by participating States; provides regular human-rights training for government authorities, civil society, and OSCE staff;
- Assists participating States in implementing their commitments on tolerance and non-discrimination and supports efforts to prevent and respond to hate crimes and manifestations of intolerance based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, property, birth or other status;
- Serves as the OSCE Contact Point for Roma and Sinti Issues; promotes the full integration of Roma and Sinti groups into the societies in which they live;
- Organizes regular meetings on the implementation of human dimension commitments, such as the Human Dimension Implementation Meeting, the annual Human Dimension Seminar, and Supplementary Human Dimension Meetings; and
- Implements a gender strategy by developing and adjusting its policies and actions to ensure gender mainstreaming while implementing, in parallel, activities designed to improve the situation of women in the OSCE region.

Expertise

Within the broader fields of human rights and democratization, ODIHR's expertise and activities focus on the following areas: democratic elections, monitoring the implementation of OSCE human-rights commitments by participating States, Roma

and Sinti issues, protecting human rights in the fight against terrorism, freedom of religion or belief, civil society, freedom of movement, rule of law, gender equality, and addressing intolerance and discrimination.

About the Venice Commission

The **European Commission for Democracy through Law** - better known as the Venice Commission as it meets in Venice - is the Council of Europe's advisory body on constitutional matters.

The role of the Venice Commission is to ***provide legal advice*** to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

It also helps to ensure ***the dissemination and consolidation of a common constitutional heritage***, playing a unique role in conflict management, and provides "emergency constitutional aid" to states in transition.

The Commission has **59 member states**: the ***47 Council of Europe member states***, plus ***12 other countries*** (Algeria, Brazil, Chile, Israel, Kazakhstan, the Republic of Korea, Kyrgyzstan, Morocco, Mexico, Peru, Tunisia and the USA). The European Commission and OSCE/ODIHR participate in the plenary sessions of the Commission.

Its **individual members** are university professors of public and international law, supreme and constitutional court judges, members of national parliaments and a number of civil servants. They are ***designated for four years*** by the member states, but ***act in their individual capacity***. Gianni Buquicchio has been President of the Commission since December 2009.

The Commission works in **three areas**:

- Democratic institutions and fundamental rights
- Constitutional justice and ordinary justice
- Elections, referendums and political parties.

Its **permanent secretariat** is located ***in Strasbourg***, France, at the headquarters of the Council of Europe. Its **plenary sessions** are held ***in Venice***, Italy, at the Scuola Grande di San Giovanni Evangelista, ***four times a year*** (March, June, October and December).

JOINT GUIDELINES ON FREEDOM OF ASSOCIATION

Adopted by the Venice Commission
at its 101st Plenary Session
(Venice, 12-13 December 2014)

Introduction

These *Guidelines on Freedom of Association* have been developed to further the goal of implementing the right to freedom of association. The added value of this document is that it incorporates the long-standing and in-depth expertise of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Council of Europe's Commission for Democracy through Law (Venice Commission) in providing legislative assistance in matters pertaining to the right to freedom of association. The Guidelines are primarily, but not exclusively, intended for use by legislators tasked with drafting laws that regulate or affect associations. These Guidelines are also intended to serve public authorities, the judiciary, legal practitioners and others concerned with the exercise of the right to freedom of association, including associations and their members. In addition, the OSCE/ODIHR and Venice Commission hope that these Guidelines will be a useful source of information for the general public.

The present Guidelines serve as an "umbrella" document in relation to already existing OSCE/ODIHR-Venice Commission guidelines addressing political parties and religious organizations. These include the *Guidelines on Political Party Regulation*,[1] the *Guidelines for Review of Legislation Pertaining to Religion or Belief*[2] and the *Joint Guidelines on the Legal Personality of Religious or Belief Communities*.[3] In addition, the OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders*[4] are also relevant to these Guidelines.

1. OSCE/ODIHR and Council of Europe's Commission for Democracy through Law (hereafter: Venice Commission), *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), <http://www.osce.org/odihr/77812>.
2. OSCE/ODIHR and Venice Commission, *Guidelines for Review of Legislation Pertaining to Religion or Belief* (Warsaw: ODIHR, 2004), <http://www.osce.org/odihr/13993>.
3. OSCE/ODIHR and Venice Commission, *Joint Guidelines on the Legal Personality of Religious or Belief Communities* (Warsaw: ODIHR, 2014), <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e>.
4. OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), <http://www.osce.org/odihr/119633?download=true>.

The Guidelines consist of an introduction and three sections. Section A introduces the definition of associations, the importance of associations, the fundamental rights of associations and the need for well drafted legislation in this regard. Section B outlines the guiding principles of the right to freedom of association, while Section C contains interpretative notes that elaborate on the guiding principles. These interpretative notes are made up of two parts: the first part, Subsection 1, provides a more detailed interpretation of the Guiding Principles set out under Section A, while the second part, Subsection 2, focuses on some of the more problematic aspects of giving effect to the Guiding Principles when developing a legal framework to regulate associations. All sections should be read together. In particular, Sections B and C should be read in concert, as the interpretative notes constitute an integral part of the guiding principles.

The Guidelines are based on existing international standards and practice. They have been further informed by a review of international and domestic practice conducted by experts during the drafting process.

The Guidelines were developed by the Working Group of OSCE/ODIHR-Venice Commission Experts over the course of a year and were supplemented by extensive consultations, including two roundtables, as well as a consultation seminar.[5]

The Guidelines were adopted by the Commission, at its 101st Plenary Session (Venice, 13-14 December 2014)

5. A Consultation Seminar on "Freedom of Association and New Technologies" was held on 11 March, 2014, at the European University Institute in Florence, Italy; a Roundtable on "Funding, Independence, and Accountability of Associations" was held on 6-7 May, 2014, in Warsaw, Poland; and a Roundtable on "Enabling Legal Framework for Freedom of Association: Focus on Formation of Associations, Objectives and Activities, Liability and Sanctions" was held on 8-9 September, 2014, in Warsaw, Poland.

SECTION A: THE RIGHT TO FREEDOM OF ASSOCIATION

1. It is generally recognized that "a vigorous democracy depends on the existence of an extensive range of democratic institutions".[6] These include associations, such as political parties, non-governmental organizations, religious organizations, trade unions and others. The key role played by associations in a democracy has long been acknowledged by international instruments that establish and seek to ensure the right to freedom of association.[7]

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6. See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990 (hereafter: Copenhagen 1990), para. 26: "The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:
— constitutional law, reform and development,
— electoral legislation, administration and observation,
— establishment and management of courts and legal systems,
— the development of an impartial and effective public service where recruitment and advancement are based on a merit system,
— law enforcement,
— local government and decentralization,
— access to information and protection of privacy,
— developing political parties and their role in pluralistic societies,
— free and independent trade unions,
— co-operative movements,
— developing other forms of free associations and public interest groups,
— journalism, independent media, and intellectual and cultural life,
— the teaching of democratic values, institutions and practices in educational institutions and the fostering of an atmosphere of free enquiry.
Such endeavours may cover the range of co-operation encompassed in the human dimension of the CSCE, including training, exchange of information, books and instructional materials, co-operative programmes and projects, academic and professional exchanges and conferences, scholarships, research grants, provision of expertise and advice, business and scientific contacts and programmes.
7. See, for example, Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950 (hereafter: ECHR), Article 11, <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (hereafter: ICCPR), Article 22, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) (hereafter: UDHR), Article 20, <http://www.un.org/en/documents/udhr/index.shtml>; and Copenhagen 1990, paras. 9, 10 and 26, <http://legislationline.org/topics/organisation/3/topic/1>.

2. The Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) have developed a comprehensive body of standards and political commitments in the field of freedom of association. The European Convention on Human Rights (ECHR) of the Council of Europe[8] and the OSCE Copenhagen document of 1990[9] both include this specific right.

3. The right to freedom of association is reaffirmed by other international treaties, such as the International Covenant on Civil and Political Rights (ICCPR),[10] the International Covenant on Economic, Social and Cultural Rights (ICESCR),[11] the American Convention on Human Rights (ACHR),[12] the Charter of Fundamental Rights of the European Union (CFREU)[13] and the African Charter on Human and Peoples' Rights (AfCHPR).[14] The Arab Charter on Human Rights[15] also provides for the right to freedom of association, but makes it applicable only to citizens. Similarly, other international documents protect this right with respect to trade unions and employers' organizations, including several conventions of the International Labour Organization (ILO)[16] and the European Social Charter (ESC).[17]

4. Various other international and regional human rights instruments also specifically recognize the right to freedom of association of particular persons or groups, such as refugees (the *Convention and Protocol Relating to the Status of Refugees*),[18] women (the *Convention on the Elimination of All Forms*

8. ECHR, Article 11.
9. Copenhagen 1990, paras. 9.3, 10.3, 26 and 32.6.
10. ICCPR, Article 22.
11. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 8, <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.
12. Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969 (hereafter: American Convention on Human Rights), <http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm>. See also Organization of American States (OAS), *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, OAS Treaty, Series No. 69, 1988; and Inter-American Commission on Human Rights (IACHR), *American Declaration of Rights and Duties of Man,* Res. XXX, Final Act, Ninth International Conference of OAS, 1948, OR OAS/Ser.L/VII.23/Doc 21 rev. 6, 1979.
13. European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, Article 12, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2012:326:TOC>.
14. Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 10, <http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf>.
15. Article 24 of the Arab Charter on Human Rights adopted by the Council of the League of Arab States on 22 May 2004, states that "Every citizen has the right: […] 6. To freedom of association and peaceful assembly". See League of Arab States, *Arab Charter on Human Rights,* 15 September 1994, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b38540>.
16. See Annex A for the relevant excerpts of International Labour Organization conventions.
17. Council of Europe, *European Social Charter*, 18 October 1961, ETS 35 (hereafter: ESC). The European Committee of Social Rights rules on the conformity of the situation in states with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. Part 1, paragraph 5 of the Charter states that "All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests."
18. UN General Assembly, *Convention and Protocol Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 15, <http://www.unhcr.org/3b66c2aa10.html>.

of Discrimination against Women),[19] children (the *Convention on the Rights of the Child*),[20] migrant workers and members of their families (the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*),[21] persons belonging to national minorities (the *Council of Europe Framework Convention for the Protection of National Minorities*)[22] and persons with disabilities (the *Convention on the Rights of Persons with Disabilities*).[23]

5. In addition, the right to freedom of association is supported by a plethora of both international and domestic case law. As such, there is a robust body of law governing this right, providing a strong case for the recognition that the right of persons to associate is intrinsic to the democratic societies that OSCE participating States and Council of Europe member states have committed to build.

6. Further, many documents have been drafted and adopted by international governmental and non-governmental organizations that serve to underscore the importance of the right to freedom of association and to bring it to life.[24] These documents take the form of, in particular, recommendations, resolutions, interpretative decisions of treaty bodies and United Nations Special Rapporteur reports, and constitute important sources of soft law relevant to these Guidelines (for more information, see Annex D).

Definition of associations

7. For the purposes of the present Guidelines, an association is an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure.

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19. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 (hereafter: UN CEDAW), Article 7, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>, which states that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right […] (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country."
20. UN General Assembly, *Convention on the Rights of the Child* (hereafter: UN CRC), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 15, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.
    UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 December 1990, United Nations, Treaty Series, vol. 2220, p. 3, Article 29, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>.
21. *Ibid.*, Article 26.
22. Council of Europe, *Framework Convention for the Protection of National Minorities*, 1 February 1995, ETS 157, Articles 7 and 8, <http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>.
23. UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, United Nations, Treaty Series, vol. 2515, p. 3, Article 29, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>.
24. See *Annex C: Selected Reference Documents*.

Importance of associations

8. Freedom of association is a human right, crucial to the functioning of a democracy, as well as an essential prerequisite for other fundamental freedoms.[25]

9. Furthermore, associations often play an important and positive role in achieving goals that are in the public interest, as has been recognized in international jurisprudence and in general comments and recommendations made by the UN treaty bodies, as well as in resolutions of the Human Rights Council and other international and regional documents. Associations work on a wide range of issues, including human rights (such as combating discrimination[26] and racist hate speech,[27] monitoring,[28] assisting the work of national human rights institutions,[29] promoting, recognizing and monitoring the implementation of the rights of children,[30] preventing and combating domestic violence and violence against women,[31] including eradicating female genital mutilation,[32] and

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25. See Venice Commission, "Compilation of Venice Commission Opinions on Freedom of Association" (3 July 2014) CDL-PI(2014)004, para. 2.2, which refers to: Venice Commission, "Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan" (14-15 October 2011) CDL-AD(2011)035, para. 45; and Venice Commission, "Opinion on the Federal law on combating extremist activity of the Russian Federation" (15-16 June 2012) CDL-AD(2012)016 , para. 64.
26. See UN Committee on the Elimination of Racial Discrimination (hereafter: UN CERD Committee), *General Recommendation No. 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, (Sixty-seventh session, 2005), A/60/18 (SUPP), paras. 9 and 17; and UN Committee on the Elimination of Discrimination against Women (hereafter: UN CEDAW Committee), *General recommendation No. 25, on article 4, paragraph 1, of the CEDAW, on temporary special measures,* 2004, para. 2.
27. See UN CERD Committee, *General recommendation No. 35: Combating racist hate speech*, 26 September 2013, CERD/C/GC/35, paras. 36 and 43.
28. See, for example, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms*, 9 December 2010, CAT/OP/12/5, para. 16; UN Committee against Torture, *Concluding observation of the fourth periodic report of Belarus*, 7 December 2011, CAT/C/BLR/CO/4, para. 14.
29. See UN Committee on the Rights of the Child (hereafter: UN CRC Committee), *General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, 15 November 2002, CRC/GC/2002/2; and UN CRC Committee, *Report of the UN Committee on the Rights of the Child*, 23 July 2004, A/59/41, para. 82.
30. See UN CRC Committee, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, 27 November 2003, CRC/GC/2002/5, paras. 46 and 59; UN CRC Committee, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, 27 November 2003, CRC/GC/2002/5, paras. 56 and 58; UN CRC Committee, *General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment* (arts. 19; 28, para. 2; and 37, inter alia), 2 March 2007, CRC/C/GC/8, para. 52; UN CRC Committee, *General Comment No. 9 (2006): The rights of children with disabilities,* 27 February 2007, CRC/C/GC/9, para. 25; UN CRC Committee, *General Comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, para. 75 and UN CRC Committee, *General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, 17 April 2013, CRC/C/GC/16, paras. 77 and 84.
31. Council of Europe, *Convention on preventing and combating violence against women and domestic violence,* 12 April 2011, ETS 210, Article 9, <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>.
32. UN CEDAW Committee, *General recommendation No. 14 (1990): Female circumcision*, A/45/38 (SUPP).

other gender based violence, as well as preventing, suppressing and punishing trafficking in persons, especially women and children[33]); democratic reforms (such as promoting good governance[34] and equal participation in political and public life,[35] as well as securing remedies[36]); security and international co-operation (such as facilitating conflict prevention,[37] promoting reconciliation and peace,[38] achieving the purposes and principles of the United Nations[39] and contributing to the work of international organizations[40]); and social, economic and development issues (such as achieving inclusion in education,[41]

33. UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, United Nations, Articles 6, 9 and 10, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.
34. See UN Human Rights Council, *The rights to freedom of peaceful assembly and of association*, 8 October 2013, A/HRC/RES/24/5 (hereafter: UN Human Rights Council Resolution 24/5), which states that "*Recognizing* the importance of the freedoms of peaceful assembly and of association, as well as the importance of civil society, to good governance, including through transparency and accountability, which is indispensable for building peaceful, prosperous and democratic societies, *Aware* of the crucial importance of the active involvement of civil society in processes of governance that affect the life of people", as well as the recital to the UN Human Rights Council, *Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment*, 9 October 2013, A/HRC/RES/24/21 (hereafter: UN Human Rights Council Resolution on civil society space), which states that "*Recognizing* the crucial importance of the active involvement of civil society, at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels, which is indispensable for building peaceful, prosperous and democratic societies".
35. UN CERD Committee, *General recommendation No. 27 on discrimination against Roma* (2000), 16 August 2000, U.N. Doc. A/55/18 (hereafter: UN CERD General Recommendation on Discrimination Against Roma), paras. 42 and 43. See also UN Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice,* 19 April 2013, UN Doc., A/HRC/23/50, paras. 34 and 46, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50_EN.pdf>, which states that "For women to have the capacity to participate in political and public life on equal footing with men, including to build autonomous movements for their own empowerment, they must be able to exercise their rights to freedom of thought, conscience, religion, expression, movement and association. It is imperative to recognize and secure these rights as individual rights for women's effective participation in political and public life." See also UN High Commissioner for Human Rights, *Report on factors that impede equal political participation and steps to overcome those challenges*, 30 June 2014, A/HRC/27/29, paras. 22-25, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_29_FRE.doc>.
36. See UN Committee on Economic Social and Cultural Rights*, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Convention)*, 11 August 2000, E/C.12/2000/4, para. 59; UN CRC Committee, *General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24 of the Convention)*, 17 April 2013, CRC/C/GC/15, para. 120; and UN CRC Committee, *General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31 of the Convention)*, 17 April 2013, CRC/C/GC/17, para. 58.
37. See UN CERD General Recommendation on Discrimination Against Roma, para. 14.
38. See UN CEDAW Committee, *Concluding observation of the combined sixth and seventh periodic reports of Cyprus adopted by the Committee at its fifty fourth session (11 February – 1 March 2013)*, 1 March 2013, CEDAW/C/CYP/CO/6-7, para. 24.
39. See UN Human Rights Council, *The rights to freedom of peaceful assembly and of association*, 11 October 2012, A/HRC/RES/21/16, Article 3; UN Human Rights Council Resolution 24/5, Article 4; and recital to UN Human Rights Council Resolution on civil society space.
40. See UN Human Rights Council Resolution on civil society space, para. 5.
41. See UN CERD General Recommendation on Discrimination Against Roma, para. 17.

bringing about improvements in living conditions,[42] providing disaster relief and humanitarian assistance,[43] promoting employment[44] and contributing to health and development[45]).

10. In addition, associations are often active in "addressing and resolving challenges and issues that are important to society, such as the environment, sustainable development, crime prevention, empowering women, social justice, consumer protection and the realization of all human rights".[46] The role that associations can play with respect to the implementation of human rights commitments is also underscored by the emphasis placed by UN treaty bodies on the participation of associations in the preparation, consideration and follow-up of reports submitted by States Parties.[47]

11. A number of OSCE documents – most significantly the 1990 Copenhagen Document of the OSCE – specify that all forms of associations, interest groups, trade unions and political parties are crucial to a vibrant democracy.[48] The Copenhagen Document, for example, underscores the importance of respecting "the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards."[49]

12. Within the Council of Europe, the obligations contained in the ECHR concerning the right to freedom of association have been interpreted by the European Court of Human Rights (ECtHR) on a number of occasions. The ECtHR has often referred to the importance of respect for freedom of association in a democracy, asserting that "the state of democracy in the country concerned can be gauged

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42. *Ibid.*, paras. 30 and 34.
43. See UN Committee on Economic, Social and Cultural Rights (hereafter: UN CESCR Committee), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, para. 65; UN CESCR Committee, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, para. 60; and UN CESCR Committee, *General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant)*, 12 January 2006, E/C.12/GC/17, para. 54.
44. See UN CESCR Committee, *General Comment No. 18: The Right to Work (art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, para. 42.
45. See UN CRC Committee, *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child,* 1 July 2003, CRC/GC/2003/4, paras. 38-39.
46. See UN Human Rights Council Resolution 21/16, para. 4; and UN Human Rights Council Resolution 24/5, Article 5. See also UN Human Rights Council, *Protecting human rights defenders*, 12 April 2013, A/HRC/RES/22/6, in particular paras. 5 and 13 to 20. See also African Commission on Human and Peoples' Rights, *Concluding observation of the African Commission on Human and Peoples' rights in respect of Egypt*, 3rd Period Report, 27 April – 11 May 2005, para. 29.
47. See, for example, the UN CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women in respect of Comoros*, 8 November 2012, CEDAW/C/COM/CO/1-4, paras. 17-18); and UN CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women in respect of Panama*, 5 February 2010, CEDAW/C/PAN/CO/7, paras. 20-21.
48. Copenhagen 1990, para. 26.
49. *Ibid*., para. 10.2.

by the way in which this freedom is secured under national legislation and in which the authorities apply it in practice".[50] Meanwhile, the Venice Commission has stated that "[t]he way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned".[51]

13. In relation to non-governmental organizations, the member states of the Council of Europe have acknowledged "the essential contribution made by non-governmental organizations (NGOs) to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, and of the equally important contribution of NGOs to the cultural life and social well-being of democratic societies".[52]

14. Regarding trade unions, the Preamble to the Constitution of the ILO declares that recognition of the principle of freedom of association is a means to improving conditions of labour and to establishing peace.[53] Indeed, the right to associate in trade unions has, historically, been a catalyst for democratic reform and the development of states more generally. Trade unions have also played a critical role in promoting gender equality.[54]

15. Political parties are also associations,[55] and have been recognized as integral players in the democratic process and as "foundational to a pluralist political society".[56] In particular, legislation on political parties can promote and support the full participation and representation of women and minorities in political processes and in public life.[57]

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50. European Court of Human Rights (hereafter: ECtHR), *Gorzelik and Others v. Poland* [GC] (Application no. 44158/98, judgement of 17 February 2004), para. 88, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61637>.
51. Venice Commission, "Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus" (14-15 October 2011) CDL-AD(2011)036, para. 72. See also the Inter-American Court of Human Rights, *Baena Ricardo et al. v. Panama*, 28 November 2003, Series C no. 104, para. 166 and subsequent paragraphs.
52. Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, preamble, para. 2.
53. See, for example, International Labour Organization (ILO), *Constitution of the International Labour Organization*, 1 April 1919, <http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO>. See also the Preamble to International Labour Organization, *Freedom of Association and Protection of the Right to Organise Convention, C87*, 1948.
54. See ILO, *Gender Equality and Social Dialogue: An Annotated Bibliography*, 2012, <http://www.ilo.org/public/english/dialogue/download/bibliogender.pdf>.
55. See ECtHR, *United Communist Party of Turkey v. Turkey* [GC] (Application no. 19392/92, judgement of 30 January 1998), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58128>.
56. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 10, <http://www.osce.org/odihr/77812>.
57. *Ibid.*, para. 84. See also OSCE/ODIHR, *Handbook on Promoting Women's Participation in Political Parties* (Warsaw: ODIHR, 2014), pages 15-17, <http://www.osce.org/odihr/120877>.

Fundamental rights of associations

16. The right to freedom of association is a right that has been recognized as capable of being enjoyed individually or by the association itself in the performance of activities and in pursuit of the common interests of its founders and members.[58]

17. The right to freedom of association is interrelated with other human rights and freedoms, such as the rights to freedom of expression and opinion, freedom of assembly and freedom of thought, conscience and religion.[59]

18. Indeed, the OSCE/ODIHR and Venice Commission have highlighted that "freedom of association must also be guaranteed as a tool to ensure that all citizens are able to fully enjoy their rights to freedom of expression and opinion, whether practiced collectively or individually."[60]

19. Furthermore, the OSCE/ODIHR and Venice Commission have stated that "although applicable international, European and other regional treaties conceptualize such rights as relevant to the individual, it is the free exercise of association itself that allows these protections to be extended to parties as a representative body of protected individuals".[61] This means that associations shall themselves enjoy other human rights, including the right to freedom of peaceful assembly, the right to an effective remedy, the right to a fair trial, the right to the protection of their property, private life and correspondence and the right to be protected from discrimination.[62]

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58. See, for example, ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey [*GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003), paras. 87-88. See also ECtHR, *National Union of Belgian Police v. Belgium*, Application no. 4464/70, 27 October 1975, paras. 39-40; and Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 5 which states that "NGOs should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them." See also Inter-American Court of Human Rights, *Huilca-Tesce v. Peru*, 3 March 2005, Series C no. 121, paras. 69-71, < http://www.corteidh.or.cr/docs/casos/articulos/seriec_121_ing.pdf>.
59. "The right to freedom of association is intertwined with the right to freedom of thought, conscience, religion, opinion and expression. It is impossible to defend individual rights if citizens are unable to organize around common needs and interests and speak up for them publicly." See European Commission for Democracy through Law (the Venice Commission), "Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan" (14-15 October 2011) CDL-AD(2011)035, para. 84.
60. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 37. This approach has also been endorsed by the Inter-American Court of Human Rights; see, for example, *García y Familiares v. Guatemala*, 29 November 2012, Series C no. 258, para. 122.
61. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 11.
62. Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 2 and 22; and ECtHR, *Staatkundig Gereformeerde Partij v. Netherlands* (Application no. 58369/10, decision of 10 July 2012), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340>.

Importance of well drafted legislation and an enabling environment

20. Legislation that affects the exercise of the right to freedom of association should be drafted with the purpose of facilitating the establishment of associations and enabling them to pursue their objectives. It should also be drafted with sufficient clarity and precision so as to enable the legislation's correct application by the relevant implementing authorities.

21. The ECtHR has recognized that the state has a positive obligation to secure the enjoyment of the right to freedom of association. In particular, it has found that a "genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere; […] Accordingly, it is incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas they are seeking to promote".[63] In addition, the ILO Committee on Freedom of Association has emphasized the value of consulting organizations of employers and workers during the preparation and application of legislation that affects their interests.[64]

22. For this reason, legal provisions concerning associations need to be well crafted. They need to be clear, precise and certain. They should also be adopted through a broad, inclusive and participatory process, to ensure that all parties concerned are committed to their content. In addition, they should be subject to regular review to ensure that they continue to meet the needs of associations, and should be adapted in a timely manner to reflect the ever-changing environment in which associations operate, including as a result of the advancement and use of new technologies.

23. Legal provisions concerning associations should be interpreted and applied in a manner consistent with the effective exercise of the right to freedom of association to ensure that the enjoyment of this right is practical and effective rather than theoretical or illusory.[65]

24. Furthermore, international standards recognize that restrictions of this right are only permissible in strictly limited circumstances. Article 22 of the ICCPR states that restrictions are permissible only when "prescribed by law and […] 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

63. ECtHR, *Ouranio Toxo and Others v. Greece (*Application no. 74989/01, judgement of 20 October 2005), para. 37, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70720>. See also Inter-American Court of Human Rights, *Huilca-Tesce v. Peru*, 3 March 2005, Series C no. 121, para. 77; and Inter-American Court of Human Rights, *García y Familiares v. Guatemala*, 29 November 2012, Series C no. 258, paras. 117-118

64. International Labour Organization, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, 2006, Geneva, para. 1072.

65. See ECtHR, *Airey v. Ireland* (Application no. 6289/73, judgment of 9 October 1979), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57420>, in which the Court stated that "[t]he Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective."

or the protection of the rights and freedoms of others." Similarly, Article 11 of the ECHR states that the only restrictions permissible are those that 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." These standards also embody a proportionality test, meaning that the least intrusive means should govern the framing of restrictions. Furthermore, restrictions must never entirely extinguish the right nor deprive it of its essence.[66] These Guidelines will serve to further understanding of the limited cases in which restrictions may be applied

25. Finally, the interpretation and application of provisions concerning associations, including those that serve to restrict their operations, should be open to review by a court or other independent and impartial body.

66. This approach is also followed by the Inter-American Court of Human Rights; see, for example, the case of *Castaneda Gutman v. Mexico*, 6 August 2008, Series C no. 184, paras. 175-205, <http://www.corteidh.or.cr/docs/casos/articulos/seriec_184_ing.pdf>.

SECTION B: GUIDELINES ON LEGISLATION PERTAINING TO THE RIGHT TO FREEDOM OF ASSOCIATION

Guiding principles

Principle 1: Presumption in favour of the lawful formation, objectives and activities of associations

26. There shall be a presumption in favour of the lawfulness of the establishment of associations and of their objectives and activities, regardless of any formalities applicable for establishment.

Principle 2: The state's duty to respect, protect and facilitate the exercise of the right to freedom of association

27. The state shall not interfere with the rights and freedoms of associations and of persons exercising their right to freedom of association. It shall protect them from interference by non-state actors. The state shall also facilitate the exercise of freedom of association by creating an enabling environment in which associations can operate. This may include simplifying regulatory requirements, ensuring that those requirements are not unduly burdensome, facilitating access to resources and taking positive measures to overcome specific challenges confronting disadvantaged or vulnerable persons or groups.

Principle 3: Freedom of establishment and membership

28. All persons, natural and legal, national and non-national and groups of such persons, shall be free to establish an association, with or without legal personality. Everyone shall be free to decide whether or not to join or remain a member of an association. No one shall be compelled to belong to an association or be sanctioned for belonging or not belonging to an association. Associations shall be free to determine their rules for membership, subject only to the principle of non-discrimination.

Principle 4: Freedom to determine objectives and activities, including the scope of operations

29. Founders and members of associations shall be free in the determination of the objectives and activities of their associations, within the limits provided for by laws that comply with international standards. In pursuing their objectives and in conducting their activities, associations shall be free from interference with their internal management, organization and affairs. Associations have the freedom to determine the scope of their operations, meaning that they can determine whether or not they wish to operate locally, regionally, nationally or internationally. Associations shall also be free to be members of other associations, federations and confederations, whether national or international.

Principle 5: Equal treatment and non-discrimination

30. Legislation and policy concerning associations shall be uniformly applied and must not discriminate against any person or group of persons on any grounds, such as age, birth, colour, gender, gender identity, health condition, immigration or residency status, language, national, ethnic or social origin, physical or mental disability, political or other opinion, property, race, religion or belief, sexual orientation or other status. No person or group of persons wishing to form an association shall be unduly advantaged or disadvantaged over another person or group of persons. Membership or non-membership in an association shall not constitute grounds for the discriminatory treatment of persons.

Principle 6: Freedom of expression and opinion

31. Associations shall have the right to freedom of expression and opinion through their objectives and activities.[67] This is in addition to the individual right of the members of associations to freedom of expression and opinion. Associations shall have the right to participate in matters of political and public debate, regardless of whether the position taken is in accord with government policy or advocates a change in the law.

Principle 7: Freedom to seek, receive and use resources

32. Associations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. In particular, states shall not restrict or block the access of associations to resources on the grounds of the nationality or the country

67. ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey [*GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003), para. 88, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60936>; and ECtHR, *Gorzelik and other v. Poland*[GC] (Application no. 44158/98, judgment 17 February 2004), para. 91.

of origin of their source, nor stigmatize those who receive such resources. This freedom shall be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.

Principle 8: Good administration of legislation, policies and practices concerning associations

33. The implementation of legislation, policies and practices relevant to associations shall be undertaken by regulatory authorities, including administrative bodies, that act in an impartial and timely manner and that are free from political and other influence. Regulatory authorities shall also ensure that the public has relevant information as to their procedures and functioning, which shall be easy to understand and comply with. The scope of the powers of regulatory authorities shall be clearly defined in law, and all staff employed by them shall be appropriately qualified and properly supervised. The decisions and acts of regulatory authorities shall be open to independent review. The staff of regulatory authorities shall perform their tasks diligently, and any failings shall be rectified and abuses sanctioned. Associations shall be consulted in a meaningful way about the introduction and implementation of any legislation, policies and practices that concern their operations. Legislation, policies and practices shall be kept under review in order to facilitate the exercise of freedom of association in the ever changing environment in which associations operate.

Principle 9: Legality and legitimacy of restrictions

34. Any restriction on the right to freedom of association and on the rights of associations, including sanctions, shall be in strict compliance with international standards.[68] In particular, any restriction shall be prescribed by law and must have a legitimate aim. Furthermore, the law concerned must be precise, certain and foreseeable, in particular in the case of provisions that grant discretion to state authorities.[69] It shall also be adopted through a democratic process that ensures public participation and review, and shall be made widely accessible. The only legitimate aims recognized by international standards for restrictions are national security or public safety, public order (*ordre public*), the protection of public health or morals and the protection of the rights and freedoms of others. The scope of these legitimate aims shall be narrowly interpreted.

68. See Annex A.

69. See ECtHR, *Hasan and Chausch v. Bulgaria* [GC] (Application no. 30985/96, judgement of 26 October 2000), para. 84, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58921>; and ECtHR, *Aliyev and others v. Azerbaijan* (Application no. 28736/05, judgement of 18 December 2008), para. 35, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90340>.

Principle 10: Proportionality of restrictions

35. Any restriction on the right to freedom of association and on the rights of associations, including sanctions, must be necessary in a democratic society and, thus, proportional to their legitimate aim. The principle of necessity in a democratic society requires that there be a fair balance between the interests of persons exercising the right to freedom of association, associations themselves and the interests of society as a whole. The need for restrictions shall be carefully weighed, therefore, and shall be based on compelling evidence. The least intrusive option shall always be chosen. A restriction shall always be narrowly construed and applied[70] and shall never completely extinguish the right nor encroach on its essence. In particular, any prohibition or dissolution of an association shall always be a measure of last resort, such as when an association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law, and shall never be used to address minor infractions. All restrictions must be based on the particular circumstances of the case, and no blanket restrictions shall be applied.

Principle 11: Right to an effective remedy for the violation of rights

36. Associations, their founders and members and all persons seeking to exercise their right to freedom of association shall have access to effective remedies in order to challenge or seek review of decisions affecting the exercise of their rights. This means providing associations and all relevant persons with the right to bring suit or to appeal against and obtain judicial review of any actions or inactions of the authorities that affect their rights, including those actions concerning the establishment of associations and their compliance with charter or other legal requirements. To ensure effective remedy, it is imperative for the judicial procedures, including appeal and review, to be in accordance with fair trial standards. Furthermore, the procedures shall be clear and affordable. Remedies shall be timely and shall include adequate reparation, including compensation for moral and pecuniary loss.

70. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), Principle 4: Proportionality.

SECTION C: INTERPRETATIVE NOTES

Introduction

37. These interpretative notes are intended to provide a better understanding of the Guidelines and should be read in concert with them. They not only expand on and provide tools for the interpretation of the Guidelines, but also present examples of good practices aimed at ensuring the proper functioning of legislation and regulations concerning associations. The interpretative notes are made up of two parts: Subsection 1 which provides a more detailed interpretation of the Guiding Principles set out under Section A and Subsection 2 focusing on some of the more problematic aspects of giving effect to the Guiding Principles when developing a legal framework to regulate associations.

Definition of "association"

38. For the purposes of these Guidelines, an association is **"an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure."**

39. It should be emphasized that, regardless of how legislation classifies a given entity, it is the substance of an entity that determines whether it falls within the protection of the right to freedom of association. Legislation aimed at denying an entity the status of association, or at removing an entity from the scope of freedom of association and the rights associated with it, is not permissible.

Self-governing and organized nature

40. An association should be self-governing in order to benefit from the protection of the right to freedom of association. While this implies that associations should have some form of institutional structure, the self-governing and organized nature of associations should not be interpreted as a requirement to obtain legal personality in order to exist.

Independence

41. An association must be independent and free from undue interference of the state or of other external actors.[71] An association is not independent if decisions

71. For the special role of political parties during elections and in parliament, see OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), "Parties in Elections", p. 55-64.

concerning its activities and operations are taken by anyone other than the members of the association or a body designated by its members to do so. The fact of having a single or a primary funder does not automatically result in the loss of an association's independence. An association that is openly comprised of businesses and that promotes their interests is a legitimate association and should enjoy protection of the right to freedom of association.

42. Certain types of associations do not fall within the scope of international guarantees of the right to freedom of association, owing to their lack of independence, as described above. However, it is the *de facto* status of the organization that should be assessed in order to ascertain whether or not it is independent rather than any label that may be attached to it by a legislative provision. Legislation and regulations may classify certain entities differently, where those entities do not demonstrate such independence. The ECtHR uses certain criteria to assess whether an entity is independent from the state. These are: (1) whether it owes its existence to the will of parliament; (2) whether it is set up in accordance with the legislation on private associations; (3) whether it remains integrated within the structures of the state; (4) whether it enjoys prerogatives outside the orbit of ordinary law, such as administrative, rule-making or disciplinary prerogatives; and (5) whether it acts like a public authority, such as in the case of certain professional associations and bodies.[72]

Not-for-profit

43. An association should be not-for-profit, meaning that the generation of income must not be its primary purpose. Further, an association must not distribute any profits that might arise from its activities among its members or founders, but should invest them in the association and use them for the pursuit of the association's objectives.[73]

Establishment and Voluntary Nature of Associations

44. The right to form an association is enjoyed by natural and legal persons and groups of persons.

45. Membership of an association is voluntary; a person should be free to choose whether or not to belong to an association.[74] In some cases, the compulsion to belong to an association is not compatible with the right to freedom of

72. See ECtHR, *Chassagnou and Others v. France* [GC] (Application nos. 25088/94, 28331/95 and 28443/95, judgement of 29 April 1999).
73. See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 9.
74. See *Chassagnou and Others v. France* [GC] (Application nos. 25088/94, 28331/95 and 28443/95, judgement of 29 April 1999). See UDHR, Article 20(2), and Inter-American Court of Human Rights, "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism" (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85, 13 November 1985, Series A no. 5.

association (for more detailed information on these cases, see Section C, Subsection 2 [C] of these Guidelines, paragraphs 80 and 81).

46. The voluntary nature of membership[75] also means that a person not wishing to join a particular association cannot be sanctioned or disadvantaged by, for example, suffering negative consequences as a result of her or his refusal to join.[76] In addition, voluntary membership means that a person must have the freedom to establish, with others, an association of her or his own liking,[77] or to join an existing association, without facing negative consequences as a result. Voluntariness also means that a person must be free to leave an association and to cancel her or his membership thereof. Depending on the nature of the association, membership does not need to take a structured form.

Goals and Objectives

47. The most important aspect of the definition of "association" – and, indeed, the most important aspect of the right to freedom of association – is that persons are able to act collectively in pursuit of common interests, which may be those of the members themselves, of the public at large or of certain sectors of the public. The founders and members of an association should be free to determine the scope of its goals and objectives. Associations should be free to pursue these goals and objectives without undue interference of the state or third parties. These goals and objectives must, however, comply with the requirements of a democratic society.[78]

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75. See, however ECtHR, *Chassagnou and Others v. France* [GC] (Application nos. 25088/94, 28331/95 and 28443/95, judgement of 29 April 1999); and ECtHR, *A.S.P.A.S. and Lasgrezas v. France* (Application no. 29953/08, judgment of 22 September 2011), paras. 52-57.
76. See UN Human Rights Committee, *Gauthier v. Canada* (Communication no. 633/95, 5 May 1999). See also ECtHR, *Wilson v. United Kingdom*, (Applications nos. 30668/96, 30671/96 and 30678/96, judgment of 2 July 2002). The ECtHR held that the effect of a United Kingdom law introduced in relation to union membership, was to allow employers to treat employees that were unprepared to renounce the right to consult a union, less favourably. The Court found that such use of financial incentives to induce employees to surrender union rights violated Article 11 of the ECHR, since it effectively frustrated the union's ability to strive for protection of its members. See also Inter-American Court of Human Rights, *Baena Ricardo et al. v. Panama*, 28 November 2003, Series C no. 104, paras. 160 and 171-173.
77. See European Commission for Democracy through Law (Venice Commission), Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan (14-15 October 2011) CDL-AD(2011)035, para. 42, which states that "[t]he freedom of association encompasses the right to found an association, to join an existing association and to have the association perform its function without any unlawful interference by the state or by other individuals. Freedom of association entails both the positive right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law".
78. ECtHR, *United Communist Party of Turkey v. Turkey* [GC] (Application no. 19392/92, judgement of 30 January 1998), *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003) and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania* (Application no. 46626/99, judgement of 3 February 2005). See also "Objectives and Activities: Basic Principles", associationline.org, <http://associationline.org/guidebook/action/read/chapter/7>; and Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 11.

Legal Personality

48. Legislation must recognize both informal and formal associations[79] or, at a minimum, permit the former to operate without this being considered unlawful.[80] This principle is particularly important, since those persons or groups who may face legal, practical, social, religious or cultural barriers to formally establishing an association should still be free to form or join informal associations and to carry out activities.[81] Legislation should not compel associations to gain formal legal personality, but it should provide associations with the possibility of doing so.[82]

49. In particular, legislation should not require associations to go through formal registration processes. Rather, associations should be able to make use of a protective legal framework to assert their rights regardless of whether or not they are registered. Associations should not be banned merely because they do not have legal personality. Where an association wishes to register to acquire legal personality, procedures for doing so should not be burdensome, but should be simple and swift to facilitate the process.

50. An association that obtains legal personality thereby acquires legal rights and duties, including the capacity to enter into contracts and to litigate and be

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79. In the case of non-governmental organizations, the principle of freedom of informal association is crystallized in the Fundamental Principles on the Status of Non-Governmental Organizations in Europe which provide that "NGOs can be either informal bodies, or organizations which have legal personality." See Council of Europe, *Fundamental Principles on the Status of Non-Governmental Organizations in Europe*, 13 November 2002, Principle 5. See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 3, which states that "NGOs can be either informal bodies or organisations or ones which have legal personality".

80. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 82, http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 55, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC.

81. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 56, http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf. In the case of non-governmental organizations, the principle of freedom of informal association is crystallized in the Fundamental Principles on the Status of Non-Governmental Organizations in Europe, which provide that "NGOs can be either informal bodies, or organizations which have legal personality" (see Council of Europe, "Fundamental Principles on the Status of Non-Governmental Organizations in Europe", Strasbourg, 13 November 2002, Principle 5). See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 3, which states that: "NGOs can be either informal bodies or organisations or ones which have legal personality".

82. See ECtHR, *Sidiropoulos and Others v. Greece* (Application no. 26695/95, judgement of 10 July 1998); and ECtHR, *Gorzelik and Others v. Poland* [GC] (Application no. 44158/98, judgment 17 February 2004), in which the ECtHR stated that the right to act collectively would have no practical meaning without the possibility of creating a legal entity in order to pursue the objectives of an organization.

litigated against. Informal associations depend upon the legal personality of their members for any such actions required for the pursuit of their objectives.

Legal Framework

51. Legal regulations pertaining to associations vary substantially among OSCE participating States and among Council of Europe member states. It is vital that the role and functioning of associations and the right to freedom of association be effectively facilitated and protected by member states' constitutions and other laws. Practice shows that a specific law on associations is not essential for the proper exercise and protection of the right to freedom of association. Instead, it is sufficient to have a number of legal regulations in place that serve the purpose of facilitating the establishment and existence of associations.

52. Where specific laws and/or provisions of laws pertaining to associations are enacted, they must be in conformity with the treaty and non-treaty standards upon which these Guidelines are based.

53. The legal framework should be designed to ensure the enjoyment of the right to freedom of association and its implementation, and not to stifle the exercise of this right.[83]

Specific Types of Associations

54. Certain types of associations warrant separate mention. Owing to the specific nature of these associations, they may be subject to some additional constitutional provisions, laws and regulations. These include, in particular, religious organizations, political parties, trade unions, human rights defenders and many non-governmental organizations.

Religious organizations

55. Religious organizations serve as a conduit for exercising the fundamental right to freedom of religion or belief. The 2004 OSCE/ODIHR and Venice Commission *Guidelines for Review of Legislation Pertaining to Religion or Belief* state that special legislation relating to religious organizations may not be necessary,[84] and that laws applicable to other associations can also be applied to religious organizations. These 2004 Guidelines and the complementary Joint OSCE/ODIHR-Venice Commission *Guidelines on the Legal Personality of Religious or Belief Communities* (2014) provide relevant guidance for legislators on how issues concerning religion or belief should be dealt with by legislation, whether ordinary or special, and should be referred to for more specific guidance in this field.

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83. For further discussion, see Part 2 of Section C of the Guidelines on Regulatory Framework, which provides detailed information on how the law should facilitate the exercise of this right.
84. OSCE/ODIHR and Venice Commission, *Guidelines on Legislation Pertaining to Religion or Belief* (Warsaw: ODIHR, 2004), para. 1.

Political parties

56. A political party is "a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections".[85] Moreover, "political parties are collective platforms for the expression of individuals' fundamental rights to association and expression and have been recognized by the European Court of Human Rights as integral players in the democratic process. Further, they are the most widely utilized means for political participation and the exercise of related rights. Parties are foundational to a pluralist political society and play an active role in ensuring an informed and participative electorate".[86]

57. Owing to the special role that political parties play in democracies and their specific objectives, their regulation is the subject of separate guidelines drafted by OSCE/ODIHR and the Venice Commission for the primary purpose of assisting the work of legislators. As such, the *Guidelines on Political Party Regulation* (2010)[87] should be referred to for more specific guidance in the field of political party regulation.

Trade unions

58. Trade unions are organizations through which workers seek to promote and defend their common interests.[88] As associations, they warrant particular mention due to their special role in a democratic society. Specific reference to trade unions is made in Article 11 of the ECHR and Article 22 of the ICCPR.

59. The right to form trade unions includes the right of trade unions to draw up their own rules, freely elect their representatives, administer their affairs and to join trade union federations and confederations. In addition, the right to freedom of association guarantees the right of a worker to join an organization of her or his own choosing and to found new trade unions without previous authorization. While these rights may not differ from those of other associations, the ECtHR has recognized that Article 11 of the ECHR includes the freedom of trade unions to take up collective bargaining with employers, which state authorities are obliged to facilitate.[89] The right to collective bargaining is guaranteed by Article 4 of ILO Convention No. 98,[90] which imposes an obligation to adopt

85. OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 9.
86. *Ibid*., para. 10.
87. *Ibid*.
88. See also the ILO Convention concerning Freedom of Association and Protection of the Right to Organise (Entry into force: 04 Jul 1950), No. 87, Article 10 which states that, "In this Convention, the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers."
89. ECtHR, *Wilson, National Union of Journalists and Others v. the United Kingdom*, (Applications nos. 30668/96, 30671/96 and 30678/96, judgment of 2 July 2002) and ECtHR, *Demir and Baykara v. Turkey* [GC] (Application no. 34503/97, 12 November 2008).
90. ILO, *C089 - Right to Organise and Collective Bargaining Convention, 1949 (No. 89)*, Article 4 which establishes that: "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements".

measures to encourage and promote the full development and utilization of collective bargaining. Notably, according to Article 1 of this Convention, workers shall enjoy adequate protection against acts of anti-union discrimination with respect to their employment, including protection from any prejudice suffered by reason of union membership or because of participation in union activities.

60. Furthermore, Article 11 of the ECHR implies that the "protection of interests" of trade unions includes the requirement that they be heard by the competent authorities.

61. Finally, the right to strike is important to the operations and functioning of trade unions.[91] The ECtHR has held that this right is essential for trade unions and that, without this right, all other rights and freedoms of trade unions would be illusory.[92] While the right to strike has not been formulated in absolute terms and may be subject to restrictions, numerous recommendations of the ILO's Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, as well as judgments of the ECtHR have clearly stated that a prohibition on the right to strike would not be compatible with the guarantees laid down for trade unions in ILO Convention No. 87 and Article 11 of the ECHR, respectively.[93]

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91. Explicitly recognized in the ICESCR, Article 8, para. 1, which states that "1. The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; […] (d) **The right to strike,** provided that it is exercised in conformity with the laws of the particular country"; and in the European Social Charter, "Article 6 – The right to bargain collectively", which states that, "With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:
    1. to promote joint consultation between workers and employers;
    2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
    3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
    4. the right of workers and employers to collective action in cases of conflicts of interest, including the **right to strike**, subject to obligations that might arise out of collective agreements previously entered into."
92. ECtHR, *Wilson, Enerji Yapi-Yol Sen v. Turkey* (Application no. 68959/01, judgement of 21 April 2009) and *National Union of Rail, Maritime and Transport Workers v. United Kingdom,* (Application no. 31045/10, judgement of 8 April 2014).
93. See ILO, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 5th revised edition (2006), particularly paras 525, 532, 534, 541, 544 and 568, available at <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf>. See also ECtHR, *Schmidt and Dahlström v. Sweden* (Application no. 5589/72, judgement of 06 February 1976), para. 36 which states that "Article 11 [of the ECHR] [...] leaves each State a free choice of the means to be used [to make collective action possible]. The grant of a right to strike represents without any doubt one of the most important of these means, but there are others".

Human rights defenders

62. Human rights defenders are persons who act "individually or in associations with others to promote and strive for the protection and realization of human rights and fundamental freedoms" at the local, national and international levels.[94] Owing to the nature of their work, human rights defenders require special protection at the local, national and international levels, as their human rights work often exposes them to specific risks and makes them a target of abuse. The general rights of human rights defenders have been set out in the OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders*.

Non-governmental organizations

63. A non-governmental organization can be an association. There is no universal definition of what constitutes a non-governmental organization,[95] although many relevant international and regional documents have attempted to outline the form that such organizations take. This includes the Council of Europe's recommendation on the legal status of non-governmental organizations in Europe, which states that non-governmental organizations are "voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members", and do not include political parties.[96] The recommendation goes on to state that non-governmental organizations "encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons".[97] For the purposes of these Guidelines, non-governmental organizations that are not membership-based or do not have several founders do not fall under the definition of an association.

94. OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014) para. 2, p. 1.
95. See also Council of Europe, "Fundamental Principles on the Status of Non-Governmental Organisations in Europe", Strasbourg, 13 November 2002, which state that "[t]here is no general definition of an NGO in international law and the term covers an extremely varied range of bodies within the member states. Reference should be to the different practices followed in each state, notably concerning the form that an NGO should adopt in order to be granted legal personality or receive various kinds of advantageous treatments. Some types of NGOs, trusts, for example, exist only in certain states. NGOs' sphere of action also varies considerably, since they include both small local bodies with only a few members, for example a village chess club, and international associations known worldwide, for example certain organisations engaged in the defense and promotion of human rights".
96. Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, "Basic principles", para. 1.
97. *Ibid.*, para. 2.

Other associations

64. Certain types of associations, such as foundations,[98] organizations focused on women's empowerment, organizations promoting the rights of minorities and/or vulnerable groups, youth and children's organizations, ecological organizations and housing associations, may also be subject to special provisions in law. Such special provisions may recognize the differing needs of these associations and, thus, should be aimed at facilitating their operations and not at hampering them. Provisions that favour certain types of associations have to be in keeping with the principles of equal treatment and non-discrimination.

65. Military associations are also often subject to special provisions, which, contrary to the above, serve to restrict their operations, usually for reasons of national security. However, the right to freedom of association of military personnel should nonetheless be respected, notwithstanding certain permissible restrictions.[99]

Other Relevant Rights

66. Although the right to freedom of association is the basic right that is the focus of these Guidelines, securing other interrelated rights is also relevant to the process of drafting, adopting and implementing legislation concerning freedom of association.

67. In particular, related rights include, but are not limited to, the right to freedom of expression and opinion, the right to freedom of peaceful assembly, the right to freedom of religion or belief, the right to be free from discrimination, the right to property, the right to an effective remedy, the right to a fair trial, the right to freedom of movement and the right to privacy and data protection, as well as the right for members of trade unions to strike. These rights belong to both individuals and to associations as entities. The need to guarantee and protect these rights should also be borne in mind when drafting legislation touching on the freedom of association.

98. ECtHR, *Özbek and Others v. Turkey* (Application no. 35570/02, 06 October 2009), paras. 34-35 and 38.

99. See OSCE/ODIHR and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (Warsaw: ODIHR, 2008), pp. 65 -73.

SUBSECTION 1 - GUIDING PRINCIPLES

Principle 1: Presumption in favour of the lawful formation, objectives and activities of associations

68. There should be a presumption in favour of the formation of associations, as well as in favour of the lawfulness of their establishment, objectives, charter, aims, goals and activities.[100] This means that, until proven otherwise, the state should presume that a given association has been established in a lawful and adequate manner, and that its activities are lawful. Any action against an association and/or its members may only be taken where the articles of its founding instrument (including charters, statutes and by-laws) are unambiguously unlawful, or where specific illegal activities have been undertaken.

69. This presumption should exist even where legislation stipulates that certain requirements, such as registration formalities, be fulfilled in order to establish an association. It is important to recall, however, that an unregistered association can also benefit from the protection conferred by Article 22 of the ICCPR and Article 11 of the ECHR, as well as by other international and regional instruments that reaffirm this freedom.[101]

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100. Venice Commission, "Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus", CDL-AD(2011)036, 18 October 2011, para. 89, where it is stated that "The Venice Commission recalls that the mere fact that an association does not fulfil all the elements of the legal regulation concerned does not mean that it is not protected by the internationally guaranteed freedom of association. In ECtHR, *Chassagnou and Others v. France* [GC] (Applications nos. 25088/94, 28331/95 and 28443/95, judgment of 29 April 1999), para. 100, the ECtHR emphasized the autonomous meaning of "association": "The term 'association' […] possesses an autonomous meaning; the classification in national law has only relative value and constitutes no more than a starting-point".

101. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 96, http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf.

70. Furthermore, legislation should be drafted and implemented in such a way as to ensure that the actions of an individual member of an association are not automatically attributed to the association as a whole, and that such actions do not negatively impact on the association's existence or on the legality of its founding instrument, objectives or activities.[102]

Principle 2: The state's duty to respect, protect and facilitate the exercise of the right to freedom of association

71. It is the responsibility of the state to respect, protect and facilitate the exercise of the right to freedom of association.

72. The state should not interfere with the rights and freedoms of associations and their members. This means that the state has the obligation to respect these fundamental rights and freedoms. While the primary objective of the right to freedom of association is to protect associations and their members from interference by the state, the latter is responsible for violations of this right when the infringement occurs as a result of its failure to secure the right in domestic law and practice.

73. Further, the state has a positive obligation to enact legislation and/or implement practices to protect the right to freedom of association from the interference of non-state actors, in addition to refraining from interference itself. This principle extends to cases of infringements committed by private individuals that the state could or should have prevented.

74. The positive obligation of the state to facilitate the exercise of the right to freedom of association includes creating an enabling environment in which formal and informal associations can be established and operate. This may include an obligation to take positive measures to overcome specific challenges that confront certain persons or groups, such as indigenous peoples, minorities, persons with disabilities, women and youth, in their efforts to form associations,[103] as well as to integrate a gender perspective into their efforts to create a safe and enabling environment.[104]

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102. See, for example, the finding of dissolution to be disproportionate where this was based on remarks of a political party's former leader in ECtHR, *Dicle on behalf of the DEP (Democratic Party) v. Turkey* (Application no. 25141/94, judgment of 10 December 2002), para. 64. On the other hand, the acts and speeches of a political party's members and leaders were considered as capable of being imputed to the whole party in the particular circumstances examined in ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC] (Application nos. 41340/98, 41342/98. 41343/98 and 41344/98, judgment of 13 February 2003), paras. 101-103.

103. UN Human Rights Committee, General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 12. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 56, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC.

104. Regarding specifically systemic and structural discrimination and violence faced by women human rights defenders of all ages, see UN General Assembly, Resolution 68/181, December 2013, para. 5.

75. This also means that legislation should strive to simplify all conditions and procedures relating to the various activities of associations. Importantly, the creation of an enabling environment also requires that the state provides access to resources and permits associations to seek, receive and use resources.

Principle 3: Freedom of establishment and membership

76. All persons, natural and legal, national and non-national, and groups of such persons, shall be free to establish an association, with or without legal personality. Persons may establish or join an association as members. An association may serve the common interests of its founders and members or serve those of the public at large, or a particular section of it. Legislative measures concerning the membership of associations, where these exist, should clearly express that all persons are free to establish associations, as well as to join and leave them.

77. Admissible restrictions on the capacity to establish associations are limited in scope and may be established for children, public officials – including members of the police and military personnel – and non-nationals (this is discussed in further detail below, in Section C, Subsection 2 [B] of these Guidelines).

78. Legal personality is not a prerequisite for the establishment of an association, and the decision whether or not to seek legal personality should be at the discretion of the association. However, legislation may require that there be an agreement between at least two persons to found an association and, where that association seeks to obtain, by choice, legal personality, there may be a requirement for the association to have some founding documents.

79. Associations should be free to determine their membership, subject to the principle of non-discrimination (described below) and their own rules.

80. A person should be free to choose whether or not to belong to an association.[105] This principle also means that a person is free to choose to which organization he or she wishes to belong, and that a person has the freedom to establish an association of his or her own.[106]

81. Consequently, individuals should also generally not be compelled to belong to an association.[107] The UN Human Rights Council has also reaffirmed that "no one may be compelled to belong to an association".[108] In some cases, the

105. See also UDHR, Article 20(2) and Inter-American Court of Human Rights, *Baena Ricardo et al. v Panama*, 28 November 2003, Series C no. 104, para. 159.

106. Venice Commission, "Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan", CDL-AD (2011)035, 19 October 2011, para. 42, which states that "The freedom of association encompasses the right to found an association, to join an existing association and to have the association perform its function without any unlawful interference by the state or by other individuals. Freedom of association entails both the positive right to enter and form an association and the negative right not to be compelled to join an association that has been established pursuant to civil law".

107. See also UDHR, Article 20(2).

108. UN Human Rights Council, *Resolution 15/21 on the rights to freedom of peaceful assembly and of association*, 17 June 2011, adopted by a recorded vote of 21 to 5, with 19 abstentions. See also UDHR, Article 20(2).

compulsion to belong to certain associations – for example, bar and other professional associations, chambers of commerce, housing associations and student unions – as is the case in some countries, is not incompatible with the right to freedom of association. This is due to the aim being served by the compulsion to belong, and the absence of any prohibition on the members to form their own entity.[109] Such entities are, however, not covered by these Guidelines, as they do not comply with the requirement of voluntariness and of independence from the state. In some jurisdictions, for example, the problem of compulsion is avoided by permitting individuals who refuse to become members of a trade union, while enjoying union benefits, to pay the portion of dues allocated for activities addressing wages and conditions of employment in the workplace.[110] This payment does not cover the portion of dues allocated for ideological activities such as lobbying, supporting the election of public officials or addressing public issues outside of the immediate workplace.

82. Apart from the limited cases noted above, compulsion to belong to an association may be admissible in cases where there is a pressing social need. This also applies even where the association's objectives are fundamentally contrary to the convictions of those compelled to belong, provided that a reasonable possibility of being able to cancel membership exists and there is no less restrictive alternative to achieving the intended aim.[111] However, compulsion to belong to a trade union is unlikely to be regarded as necessary for the effective enjoyment of trade union freedoms, even where there is no philosophical objection to membership in the union concerned.[112] Overall, any compulsion to belong to an association that arises as an indirect consequence of advantages derived from membership or legitimate trade union activities has not been considered as constituting a violation of the ECHR.[113]

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109. See, for example, ECtHR, *Le Compte, Van Leuven and De Meyere v. Belgium* (Application nos. 6878/75 7238/75, judgment of 23 June 1981) and *Langborger v. Sweden* (Application no. 11179/84, 22 June 1989) and UN Human Rights Committee, *Wallman et al. v. Austria*, (Communication no. 1002/2001, 1 April 2004).

110. See, for example, in the United States of America, *Abood v. Detroit Board of Education*, 433 U.S. 915, 97 S.Ct. 2989 (23 May 1977).

111. See ECtHR, *Chassagnou and Others v. France* [GC] (Applications nos. 25088/94, 28331/95 and 28443/95, judgment of 29 April 1999) and ECtHR, *A.S.P.A.S. and Lasgrezas v. France* (Application no. 29953/08, judgment of 22 September 2011), paras. 52-57.

112. See ECtHR, *Sørensen and Rasmussen v. Denmark* [GC] (Applications nos. 52562/99 and 52620/99, judgement of 11 January 2006). Please note that in the view of the ILO supervisory bodies, the ILO Conventions leave it to each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice. The only conditions imposed by the ILO supervisory bodies is that such clauses are the result of free negotiation between workers' organizations and employers including public employers and that they refrain from imposing "unreasonable conditions" upon persons seeking such membership, in which case they could be found to be discriminatory.

113. See European Commission of Human Rights, *X v. Netherlands* (Application no. 2290/64, decision 6 February 1967); ECtHR, *Sigurdur A. Sigurjónsson v. Iceland* (Application no. 16130/90, judgment of 30 June 1993); and ECtHR, *Gustafsson v. Sweden* (Application no. 15773/89, judgment of 25 April 1996). In the US the law can compel non-members to comply with certain obligations such as payment of dues and compliance with the union shop contract so as to prevent free riders, instead of compelling membership as such.

CONSTITUTION OF THE REPUBLIC OF ICELAND (17 JUNE 1944)

Article 74

(…)

No one may be obliged to be a member of any association. Membership of an association may however be made obligatory by law if this is necessary in order to enable an association to discharge its functions in the public interest or on account of the rights of others.

(…)

83. Legislation should not contain provisions that might directly or indirectly sanction persons for belonging or not belonging to an association. The voluntary nature of membership[114] means that a person not wishing to join a particular association must not suffer negative consequences as a result of this decision.[115] Similarly, membership in an association should not trigger negative consequences. Thus, the ECtHR found in the case of *Vogt v. Germany*[116] that the right to freedom of association is violated when an individual is punished, harassed or sanctioned, or otherwise treated unfavourably because of her or his membership in an association.

84. Financial incentives provided by the state or third parties to support the existence and flourishing of an association can be useful and justified. At the same time, their use as a disincentive to membership may impinge on the voluntary nature of the right to freedom of association,[117] as well as breach the principle of equal treatment. Therefore, their practical effect should be borne in mind when crafting or implementing any such financial incentives.

85. The right of an association to determine its own membership should also be protected.[118] An association may determine special requirements for its members, as long as those who do not satisfy those requirements and, as such, cannot be members of the association, have the right to establish an association of their liking.

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114. See ECtHR, *Chassagnou and Others v. France* [GC] (Applications nos. 25088/94, 28331/95 and 28443/95, judgment of 29 April 1999).
115. See UN Human Rights Committee, *Gauthier v. Canada* (Communication no. 633/95, 5 May 1999).
116. ECtHR, *Vogt v. Germany* [GC] (Application no. 17851/91, judgment of 26 September 1995), paras. 57-61 and 66-68.
117. ECtHR, *Wilson, National Union of Journalists and others v. the United Kingdom* (Applications nos. 30668/96, 30671/96 and 30678/96, judgment of 2 July 2002) where the legislation permitting employers to use financial incentives to induce employees to surrender union rights was considered to violate Article 11 of the ECHR, since it effectively frustrated the union's ability to strive for protection of its members.
118. In the case of trade unions, see ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (Application no. 11002/05, judgement of 27 February 2007), para. 39.

Principle 4: Freedom to determine objectives and activities, including scope of operations

86. Founders and members shall be free in the determination of the objectives and activities of their associations. This includes adopting their own constitutions and rules, determining their internal management structure and electing their boards and representatives.

87. Subject to the restriction on profit-making considered above, associations should be able to pursue all the objectives and undertake all the activities open to individual persons acting alone. Furthermore, legislation pertaining to associations should not dictate or restrict the objectives and activities that associations wish to pursue and undertake, including by providing a restrictive list of permissible objectives or activities or through a narrow interpretation of the legislation relating to the objectives and activities of associations.

88. However, bearing in mind that the right to freedom of association is not an absolute right, some limitations to this general principle may be permissible, so long as they are compatible with international human rights standards. Therefore, any such limitation must always be prescribed by law, have a legitimate aim and be necessary in a democratic society (see Principle 9). What is deemed an 'unlawful' objective or activity must be considered and assessed based on international human rights standards. For instance, organizations promoting propaganda for war or inciting national, racial or religious hatred can be prohibited if this constitutes incitement to discrimination, hostility or violence.[119] On the other hand, the promotion of minority consciousness should not be treated as an unlawful threat to a state's territorial integrity.[120]

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119. See also ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013), para. 55. And; UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 993, p. 3 (hereafter: UN ICERD), Article 4, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>, which states that "States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: […] (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law". See also ECHR, Article 17, and ICCPR, Article 5, which states that "1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant" and Article 20 which states that "1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." See also ECHR, Article 17 which states that "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

120. ECtHR, *Sidiropoulos and Others v. Greece* (Application no. 26695/95, judgment of 10 July 1998), para. 44.

Thus, the mere labelling by national legislation or administrative authorities of a certain aim, objective or activity as 'unlawful' does not automatically amount to a justifiable limitation on it being pursued or undertaken by an association.

89. Associations are entitled to promote changes to the law or to the constitutional order so long as they do so by employing peaceful means in exercise of their freedom of expression. The ECtHR has stated that "notwithstanding its autonomous role and particular sphere of application, Article 11 (ECHR) must also be considered in the light of Article 10 (ECHR). The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11 (ECHR)".[121] Such freedom of expression as enshrined in Article 10 of the ECHR is applicable, subject to paragraph 2, not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that "offend, shock or disturb".[122]

90. Therefore, an association should not be prohibited, dissolved or otherwise penalized simply because it peacefully promotes a change in the law or constitutional order.[123] It is imperative, however, that both the means used to achieve such change and the actual outcomes of such change are themselves compatible with fundamental democratic principles.[124]

91. The authorities should always start out with a presumption of lawfulness and not resort to speculation or draw rash conclusions when assessing the admissibility of an association's proposed objectives and activities, as well as when determining the meaning of its name and the terms used in its charter or statute.[125] In general, associations should be allowed to determine whether the activities that they undertake fall within the scope of the objectives prescribed in their charter or statutes.

92. Finally, freedom to determine the scope of its operations means that an association should enjoy the possibility to decide whether it would like to act locally, regionally, nationally or internationally. It also means that an association as an entity should be able to belong to another association, a federation or confederation, whether national or international.[126]

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121. ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgment of 9 July 2013), para. 53; *Young, James and Webster v. United Kingdom* (Application no. 7601/76, judgement of 13 August 1981), para. 57; and *Vogt v. Germany* [GC] (Application no. 17851/91, judgement of 26 September 1995), para. 64.
122. ECtHR, Vona v. Hungary (Application no. 35943/10, judgment of 9 July 2013), para. 53.
123. ECtHR, *Women on Waves v. Portugal* (Application no. 31276/05, judgment of 3 February 2009), paras. 41-42.
124. ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003). See also OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 93.
125. ECtHR, *United Communist Party of Turkey v. Turkey* [GC] (Application no. 19392/92, judgement of 30 January 1998)
126. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Exercise of the rights to freedom of peaceful assembly and of association in the context of multilateral institutions)*, UN Doc. A/69/365, 1 September 2014, para. 96, http://freeassembly.net/wp-content/uploads/2014/10/Multilaterals-report-ENG.pdf.

Principle 5: Equal treatment and non-discrimination

93. Freedom of association should be enjoyed equally by everyone. When introducing regulations concerning freedom of association, the authorities must not discriminate against any group or individual on any grounds, such as age, birth, colour, gender, gender identity, health condition, immigration or residency status, language, national, ethnic or social origin, political or other opinion, physical or mental disability, property, race, religion or belief, sexual orientation or other status.

94. The principle of non-discrimination prohibits both direct and indirect discrimination, requiring that all persons receive equal protection of the law and should not be discriminated against as a result of the practical application of any measure or act. All persons and groups wishing to form an association should be able to do so on the basis of equal treatment before the law and by state authorities. Moreover, the principle of non-discrimination also means that legislation and state authorities should treat associations equally as regards regulations concerning their establishment, registration (where applicable) and activities. The differential treatment of different associations is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the intended aim.[127]

95. The right to freedom of association generally entitles those forming an association and those belonging to one to choose with whom they form it or whom to admit as members. However, this aspect of the right to association is subject to the prohibition on discrimination. As such, there must be a reasonable justification for any differential treatment of persons with respect to the formation or membership of an association based on the above-mentioned personal characteristics or statuses.[128] In case of race, colour, gender and sexual orientation, only "weighty reasons" may justify differential treatment.[129]

96. The principle of equal treatment does not preclude differential treatment based on objective criteria unrelated to viewpoints and beliefs. Where there is a justifiable need to support some associations, certain types of differential treatment may be provided for them. These include special incentives for charitable organizations or state support to associations that introduce policies that further the equality between women and men or between ethnic minority and majority groups.

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127. ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), para. 50.

128. See, for example, ECtHR, *Willis v. United Kingdom* (Application no. 36042/97, judgment of 11 June 2002), para. 48.

129. ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (Application no. 58369/10, decision of 10 July 2012), para. 73, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340#{"itemid":["001-112340"]}>.

Principle 6: Freedom of expression and opinion

97. Freedom of association is intertwined with, and serves as a conduit for, the exercise of freedom of expression and opinion.[130] Associations should have the right to exercise their freedom of expression and opinion with respect to their objectives and activities. In this regard, the Venice Commission has stated that:

> "(…), freedom of association without freedom of expression amounts to little if anything. The exercise of freedom of association by workers, students, and human rights defenders in society has always been at the heart of the struggle for democracy and human rights around the world, and it remains at the heart of society once democracy has been achieved."[131]

98. Associations may sometimes wish to pursue objectives or conduct activities that are not congruent with the thoughts and ideas of the majority of society or, indeed, that run counter to them. However, as already emphasized, according to standing case law, freedom of expression in a vibrant democracy also entails the expression of views that may "offend, shock or disturb" the state or any sector of the population.[132]

99. Restrictions on freedom of expression and opinion may be applicable where the expression or speech in question amounts to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[133] Specific instances of hate speech "may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the [ECHR] to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein".[134]

100. In accordance with Article 19(2) of the ICCPR, the right to freedom of expression includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Legislation should not restrict the dissemination of and access to information with the justification of protecting public health or morals, since this can prevent associations from

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130. Article 10 of the ECHR and Article 19 of the ICCPR; see also Venice Commission, "Opinion on the compatibility of human rights standards of the legislation on non-governmental organisations of Azerbaijan", CDL-AD(2011)035, 19 October 2011, para. 102.

131. Venice Commission, "Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan", CDL-AD (2011)035, 19 October 2011, para. 101.

132. ECtHR, *Handyside v. the United Kingdom* (Application no. 5493/72, judgment of 7 December 1976).

133. Article 20(2) of the ICCPR; see also OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2010), 2nd edition, para. 96. See also ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013), para. 55.

134. Council of Europe, *Recommendation No. R(97)20 of the Committee of Ministers to member States on "hate speech"*, 30 October 1997, Principle 4, as also cited in OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2010), 2nd edition, para. 96.

carrying out advocacy and awareness raising work or from providing services, such as education concerning maternal and reproductive health,[135] or measures to combat gender-based discrimination or discrimination against minority or marginalized groups. National security is frequently used to justify the over-classification of information, thus limiting access to information that is of public interest. Any laws that limit the freedom to seek and impart information beyond what is permissible under international human rights standards and that do not comply with the principles of legality, necessity and proportionality should be promptly repealed or amended.

101. In practical terms, the exercise of freedom of expression and opinion also means that associations should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accordance with government policy or advocates a change to the law.[136]

Principle 7: Freedom to seek, receive and use resources

102. The protection afforded by Article 22 of the ICCPR and by Article 11 of the ECHR extends to all activities of an association.[137] It has also been stressed that associations must have the means to pursue their objectives.[138] Accordingly, fundraising activities are protected under Article 22 of the ICCPR and Article 11 of the ECHR. The right to freedom of association would be deprived of meaning if groups wanting to associate did not have the ability to access resources of different types, including financial, in-kind, material and human resources, and from different sources, including public or private, domestic, foreign or international (for more detailed information on resources, see Section C, Subsection 2 [E] of these Guidelines). Therefore, the ability to seek, secure and use resources is essential to the existence and operation of any association.[139] Furthermore, associations should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities.

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135. ECtHR, *Open Door and Dublin Well Woman v. Ireland* (Application nos. 14234/88 and 14235/88, judgment of 29 October 1992).
136. See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 12-13.
137. See UN Human Rights Committee, *Korneenko et al.* v. *Belarus* (Communication No. 1274/2004, 31 October 2006), para. 7.2.
138. ECtHR, *The Holy Monasteries v. Greece* (Application nos. 13092/87 and 13984/88, judgment of 9 December 1994), paras. 86-87; *Wilson, National Union of Journalists and Others v. United Kingdom* (Application no. 30668/96, judgment of 2 July 2002), para. 45; *Demir and Baykara v. Turkey* [GC] (Application no. 34503/97, judgement of 12 November 2008), para. 157.
139. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies),* UN Doc. A/HRC/23/39, 24 April 2013, Part III (Ability of associations to access financial resources: a vital part of the right to freedom of association), <http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf>. See also UN General Assembly, Declaration on Human Rights Defenders, Resolution A/RES/53/144, 9 December 1998, Article 13, < http://www.ohchr.org/documents/issues/defenders/declaration/declaration.pdf>.

103. Restrictions on the freedom to have access to and to seek, secure and use resources may in certain cases be justified. However, any restriction must be prescribed by law, necessary in a democratic society and 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. Restrictions on access to resources that reduce the ability of associations to pursue their goals and activities may constitute an interference with the right to freedom of association.

104. The resources received by associations may legitimately be subjected to reporting and transparency requirements. However, such requirements shall not be unnecessarily burdensome, and shall be proportionate to the size of the association and the scope of its activities, taking into consideration the value of its assets and income.

Principle 8: Good administration of legislation, policies and practices concerning associations

105. The implementation of legislation and practices relevant to associations must be undertaken by regulatory authorities in an impartial and timely manner and with a view to securing the right to freedom of association. The scope of the powers of regulatory authorities should be clearly defined in law. These authorities should also ensure that the public has relevant information concerning their procedures and functioning, in order to promote their accountability.

106. Associations and their members should be consulted in the process of introducing and implementing any regulations or practices that concern their operations. They should have access to information[140] and should receive adequate and timely notice about consultation processes. Furthermore, such consultations should be meaningful and inclusive, and should involve stakeholders representing a variety of different and opposing views, including those that are critical of the proposals made. The authorities responsible for organizing consultations should also be required to respond to proposals made by stakeholders, in particular where the views of the latter are rejected.[141]

107. Further, regulations and practices concerning the operations of associations should be constantly reviewed in order to facilitate the exercise of the right to freedom of association in the ever-changing environment in which associations operate. This may, for example, mean that associations should be able to submit required documentation electronically and conduct their activities

140. UN Human Rights Committee, *General Comment No. 34 on the Freedom of Expression and Opinion*, 12 September 2011, CCPR/C/GC/34; para. 18 which states that "Article 19, paragraph 2 *[of the ICCPR, on freedom of expression and opinion]* embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production".

141. Recommendation from "Session II: Access to Funding from Natural and Legal Persons, whether Domestic, Foreign or International" of the OSCE/ODIHR and Venice Commission, "Consultation Roundtable on Funding, Independence, and Accountability of Associations", Warsaw 6-7 May, 2014.

in the form and forum of their choice, including through online and electronic conferences. A regular review of regulations and practices should not, however, result in the need for re-registration of already registered associations.

Principle 9: Legality and legitimacy of restrictions

108. As stated above, the right to freedom of association is not an absolute right and, therefore, limitations of this right are possible. However, any limitations imposed should be subject to strict conditions, and any such restriction should never completely extinguish the right to freedom of association nor encroach on its essence.

109. First, any legal and other restrictions placed on associations should be based on the constitution of the state or on another law. Restrictions must be "prescribed by law" and in such a manner as to avoid their arbitrary application; the legislation in question must be accessible and sufficiently clear to allow individuals and associations to ensure that their activities comply with the restrictions.[142]

110. Second, any legal provision restricting the right to freedom of association must serve a legitimate purpose, in that such a provision must be based only on the legitimate aims recognized by international standards, namely: national security or public safety, public order (*ordre public*), the protection of public health or morals and the protection of the rights and freedoms of others.

111. Third, restrictions must be necessary in a democratic society. This means that any restriction must be proportional to the intended legitimate purpose and that there must be a strong, objective justification for the law and its application. In general, the law must be compatible with international human rights instruments. In addition, it is important that any resulting limitations be construed strictly; only convincing and compelling reasons for introducing such limitations are acceptable. In other words, only indisputable imperatives can interfere with the enjoyment of the right to freedom of association.[143] Finally, the law must be clear, in particular in those provisions granting discretion to state authorities.[144] It must also be precise and certain, and must have been adopted through a democratic process that ensures public participation and review.[145]

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142. ECtHR, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan* (Application no. 37083/03, judgment of 8 October 2009), paras. 56-57.
143. Venice Commission, "Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan", CDL-AD(2011)035, 19 October 2011, para. 85.
144. ECtHR, *Hasan and Chausch v Bulgaria* [GC] (Application no. 30985/96, judgment of 26 October 2000), para. 84; and ECtHR, *Aliyev and other v. Azerbaijan* (Application no. 28736/05, Judgment of 18 December 2008), para. 35.
145. OSCE Document of the Moscow Meeting of 1991, para. 18.1 which states that "Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives."

Principle 10: Proportionality of restrictions

112. Proportionality is a principle that permeates both the ICCPR and the ECHR, and is of special significance in connection with the limitation of rights. The United Nations Human Rights Committee has also assessed the legitimacy of restrictions on rights that may be derogated from, based on the proportionality principle.[146] Ensuring that an interference by the state in the exercise of a fundamental freedom does not exceed the boundaries of necessity in a democratic society requires striking a reasonable balance between all countervailing interests and ensuring that the means chosen be the least restrictive means for serving those interests.

113. At the legislative stage, this should be done by assessing whether a planned interference in the exercise of the right to freedom of association is justified in a democratic society, and whether it is the least intrusive of all possible means that could have been adopted.[147] The state must, therefore, bear the burden of proving that any restrictions pursue a legitimate aim that cannot be fulfilled by any less intrusive actions.[148]

114. In particular, the principle of proportionality becomes essential in the assessment of whether an association may be prohibited or dissolved. The ECtHR has repeatedly stated that any prohibition or dissolution shall always be a measure of last resort,[149] such as when the association has engaged in conduct that creates an imminent threat of violence or other grave violation of the law. Furthermore, the principle of proportionality dictates that prohibition or dissolution should never be used to address minor infractions.

115. In practice, all restrictions must be based on the particular circumstances of the case, and no blanket restrictions should be applied. This means, in particular, that legislation should not include provisions that would outright prohibit or dissolve associations for certain acts or inaction, regardless of the circumstances of the case.

146. UN Human Rights Committee, *General Comment No. 34 on the Freedom of Expression and Opinion*, 12 September 2011, CCPR/C/GC/34, para. 22, citing UN Human Rights Committee, *Velichkin v. Belarus* (Communication no. 1022/2001, 20 October 2005).

147. ECtHR, *Sürek v. Turkey* (No.1) (Application no.26682/95, judgment of 8 July 1999), para. 58; and ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003).

148. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 52, which states that "Proportionality should be considered on the basis of a number of factors including; The nature of the right in question; the purpose of the proposed restriction; the nature and extent of the proposed restriction; the relationship (relevancy) between the nature of the restriction and its purpose and whether there are any less restrictive measures available for the fulfillment of the stated purpose in light of the facts."

149. ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003); and *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013).

Principle 11: Right to an effective remedy for the violation of rights

116. Associations, their founders and members should have the right to an effective remedy concerning all decisions affecting their fundamental rights, in particular those concerning their rights to freedom of association, expression of opinion and assembly. This means providing them with the right to appeal or to have reviewed by an independent and impartial court the decisions or inaction by the authorities, as well as any other requirements laid down in legislation, with respect to their registration, charter requirements, activities, prohibition and dissolution or penalties. If a violation is found to have occurred, proper and effective redress should be made available in a timely manner.[150] The procedure for appeal and review should be clear and affordable, and remedies should include compensation for moral or pecuniary loss.[151]

117. All associations should have equal standing before impartial tribunals and, in case of an alleged violation of any of their rights, have full protection of the right to a fair and public hearing. This is a fundamental aspect of protecting associations from undue control by the executive or administrative authorities.

118. The founders, members and representatives of associations should likewise enjoy the right to a fair trial in any proceedings commenced by or against them. Therefore, in matters concerning restrictions placed on an association, the right to receive a fair hearing by an independent and impartial tribunal established by law is an essential requirement to be secured by legislation.

119. Those associations that do not have legal personality must be allowed to be represented by designated individuals competent to represent their interests.

120. Any appeal against or challenge to a decision to prohibit or dissolve an association or to suspend its activities should normally temporarily suspend the effect of the decision, meaning that the decision should not be enforced until the appeal or challenge is decided. This avoids the creation of a *fait accompli,* since the freezing of accounts and suspension of activities would extinguish the association in practice before the appeal had been heard. This should not apply to cases where there exists exceptionally strong evidence of a crime having been committed by an association.

121. Associations should also benefit from the protection of non-judicial institutions, such as the offices of ombudspersons and human rights commissioners, through complaints procedures in order to assert their rights.[152]

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150. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), Principle 9: Right to an Effective Remedy for Violation of Rights.

151. *Ibid*. In the case of political parties and given their special role, effectiveness means that some decisions and remedies should be provided in an expedited manner (for instance, before and not after an election); see OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), Principle 9: Right to an Effective Remedy for Violation of Rights.

152. See Paris Principles **"**Additional principles concerning the status of commissions with quasi-jurisdictional competence" and General Observation 2.10 as adopted by the International Coordinating Committee Bureau at its meeting in Geneva on 6-7 May 2013, available at http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf

SUBSECTION 2 - THE REGULATORY FRAMEWORK ON ASSOCIATIONS

A. Equal treatment and non-discrimination

122. The principle that fundamental human rights are applicable to all persons within a state's jurisdiction, free from discrimination, is essential to ensure the full enjoyment and protection of such rights. Non-discrimination is defined in Articles 2 and 26 of the ICCPR and in Article 14 of and Protocol 12 to the ECHR, as well as in a number of other universal and regional instruments, including the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[153] and Article 1 of the American Convention on Human Rights (ACHR).[154] Although Article 14 of the ECHR defines discrimination as unlawful only in conjunction with the enjoyment of a right protected under the Convention, Protocol 12 to the ECHR stipulates more broadly that discrimination be prohibited with respect to the enjoyment of any right set forth by law.

153. UN CEDAW, Article 7, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>, which states that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right […] (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.".

154. American Convention on Human Rights, Article 1, "Obligation to Respect Rights", which reads: "1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. 2. For the purposes of this Convention, "person" means every human being."

123. Differential treatment is discriminatory if it is based on a personal characteristic or status, such as age, birth, colour, gender, gender identity, health condition, immigration or residency status, language, national, ethnic or social origin, physical or mental disability, political or other opinion, property, race, religion or belief, sexual orientation or other status, and has no objective and reasonable justification. Differential treatment is also discriminatory if it does not pursue a legitimate aim that is recognized by international standards, or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.[155] The principle of non-discrimination prohibits both direct and indirect discrimination. Direct discrimination refers to acts or regulations that generate inequality, whereas indirect discrimination includes acts or regulations that, although *prima facie* not discriminatory, result in unequal treatment when put into practice.

124. The right to freedom of association should be enjoyed by everyone equally. In particular, all persons and groups wishing to form an association should be able to do so on the basis of equal treatment before the law.

LAW NO. 8788 ON NON-PROFIT ORGANIZATIONS OF THE REPUBLIC OF ALBANIA (2001)

Article 4

Every natural or juridical, local or foreign person has the right to establish a non-profit organization, to be a member of it or to take part in its management organs or in the administrative personnel of the non-profit organization.

125. Consequently, when introducing regulations that concern this right, the authorities must not treat any individual, group or type of association differently, without providing a well-founded justification. Any restrictions on the formation of associations imposed on certain persons or groups should, thus, be narrowly tailored.[156]

126. Furthermore, state authorities should treat associations equally as regards the regulations that concern their establishment, registration (where applicable) and activities. However, certain differences in the treatment of associations – for example, the granting of tax exemptions and other forms of support – can be justified with respect to associations that meet particular social needs, such as furthering equality between women and men, providing education or tackling homelessness. This could also apply with regard to associations that play a special role in securing other fundamental rights, such as the right to freedom of religion or belief (in the case of religious organizations), or the right to stand for office and compete in elections (in the case of political parties). This may also involve taking positive measures to address the needs and

155. ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), para. 50.
156. ECtHR, *Ždanoka v. Latvia* [GC] (Application no. 58278/00, judgment of 16 March 2004).

overcome specific challenges confronting disadvantaged or vulnerable persons or groups,[157] particularly those subjected to intersectional discrimination.[158]

OSCE REPORT ON HUMAN RIGHTS DEFENDERS IN THE OSCE REGION: CHALLENGES AND GOOD PRACTICES (2008)[159]

[…]

Migrant associations [in Portugal] are entitled to state support pursuant to co-operation protocols established with the Office of the High Commissioner for Immigration and Intercultural Dialogue. These protocols are concluded upon request and involve the funding of activities developed by the requesting association (up to 70 per cent of the total amount). Support is also granted through activities aimed at improving the skills of members of such associations, including decision-makers, workers, and volunteers (namely training courses and follow-up to project implementation). Furthermore, associations can be given technical support, namely legal or other advice and the provision of documentation and other materials.

157. UN Human Rights Committee, General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 12. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 56, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>. For example, as regards migrant workers, see Committee on Migrant Workers, *General comment No. 1 on migrant domestic workers*, CMW/C/GC/1, 23 February 2011: "37. The rights of migrant domestic workers should be dealt with within the larger framework of decent work for domestic workers. In this regard, the Committee considers that domestic work should be properly regulated by national legislation to ensure that domestic workers enjoy the same level of protection as other workers. 38. Accordingly, labour protections in national law should be extended to domestic workers to ensure equal protection under the law, including provisions related to minimum wages, hours of work, days of rest, freedom of association ... In this regard, migrant domestic workers should enjoy treatment not less favourable than that which applies to nationals of the State of employment (article 25) […] 47. States parties are encouraged to provide migrant domestic workers with information about relevant associations that can provide assistance in the country/city of origin and employment". See also Committee on Migrant Workers, *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, CMW/C/GC/2, 28 August 2013: "65. […] States parties shall ensure these rights, including the right to collective bargaining, encourage self-organization among migrant workers, irrespective of their migration status, and provide them with information about relevant associations that can provide assistance".

158. The Explanatory Memorandum to Recommendation CM/Rec(2010)5 explains the terms as follows: "Multiple discrimination can be said to occur when a person suffers discrimination based on his or her connection to at least two different protected discrimination grounds, or because of the specific combination of at least two such grounds. The latter situation is often also referred to as intersectional discrimination". See, for example, CEDAW Committee, *General recommendation No. 27 on older women and protection of their human rights*, CEDAW/C/GC/27, 16 December 2010, para. 17, which states that "[o]lder women are often discriminated against through restrictions that hamper their participation in political and decision-making processes. For example, […] In some countries, older women are not allowed to form or participate in associations or other nongovernmental groups to campaign for their rights"; CRC Committee, *General comment No. 9: The rights of children with disabilities*, CRC/C/GC/9, para. 34;

159. OSCE, *Report on Human Rights Defenders in the OSCE Region: Challenges and Good Practices (April 2007-April 2008)*, p. 39 <http://www.osce.org/odihr/35652?download=true>.

Similar support is given to women's associations (by the Commission for Citizenship and Gender Equality), youth associations (by the Portuguese Youth Institute), and associations of disabled people (by the National Institute for Rehabilitation).

[…]

127. At the same time, equal treatment of associations means that associations should not be treated differently as regards the exercise of their rights to freedom of opinion and expression, assembly and association on account of their objectives. Notably, associations should not be treated differently for reasons such as imparting information or ideas that contest the established order or advocate for a change of the constitution or legislation,[160] for defending human rights or for promoting and defending the rights of persons belonging to national or ethnic, religious, linguistic and other minorities or groups.[161]

128. The right to freedom of association generally entitles those forming an association or belonging to one to choose with whom they form an association or whom to admit as members. However, this aspect of the right to association is also subject to the prohibition on discrimination, so that any differential treatment of persons with respect to the formation or membership of an association that is based on a personal characteristic or status must have a reasonable and objective justification.[162] Legislation must, therefore, ensure that no one is unjustifiably prevented from becoming or remaining a member of an association.

129. Nonetheless, the right of an association to determine its own membership should also be protected.[163] As stated by the ECtHR, "[w]here associations are formed by people, who, espousing particular values or ideals, intend to pursue common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their membership".[164] As such, an association may adopt particular requirements for its members, provided that these requirements have an objective and rational basis and that those persons who do not satisfy these requirements – and therefore, cannot be members of the association – have the right to establish or join another association of their liking. The common purpose for which an association is established may justify membership criteria that in other cases would be discriminatory, provided that these have a reasonable and objective justification.

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160. ECtHR, *Women on Waves v. Portugal* (Application no. 31276/05, judgment of 3 February 2009).
161. ECtHR, *Sidiropoulos and others v. Greece* (Application no. 26695/95, judgment of 10 July 1998), paras. 44-45. ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), paras. 53-55. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 64, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>.
162. See, for example, ECtHR, *Willis v. United Kingdom* (Application no. 36042/97, judgment of 11 June 2002), para. 48.
163. In the case of trade unions, see ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom,* Application no. 11002/05, 27 February 2007, para. 39.
164. ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom,* Application no. 11002/05, 27 February 2007, para. 39.

130. In assessing whether such a justification exists, an association's right to choose its members should be adequately balanced with a person's right to join or remain a member of the association in question.[165] The European Court of Human Rights has used certain criteria to strike such a balance on the issue of membership, in particular in the case of trade unions, such as: (1) the objective and common purpose for which an association is established; (2) the grounds for a refusal to join or a decision to expel a member; (3) whether non-membership in an association triggers any identifiable hardship for the person concerned; (4) whether the decision of the association is in accordance with its rules and whether there has been any abusive or unreasonable conduct on the part of the association; and (5) whether the association has any public duty or role conferred on it and/or benefits from public funding, which could require it to take on or keep members to fulfil some wider purposes.[166]

131. Therefore, requiring members of a religious association to belong to the religion concerned would certainly be admissible.[167] At the same time, an association limiting membership of employees in a particular enterprise or industry to only men or only women would be hard to justify. When the distinction in question operates on grounds such as colour or ethnic origin, or in the intimate sphere of an individual's private life – for example, where a difference of treatment is based on sex or sexual orientation – particularly "weighty reasons" need to be advanced to justify the measure.[168] Associations may justify the use of restrictive membership criteria in certain cases where the objective of the association is to tackle discrimination faced by its members or to seek to redress specific instances of historical exclusion and oppression by the majority, for example, for endangered indigenous groups or marginalized groups. However, any discrimination for reasons unrelated to the purposes of the association should be prohibited in all cases.

FINNISH ASSOCIATIONS ACT (26 MAY 1989)

Section 12

A person wishing to join an association must inform the association of his or her intention. Decisions concerning admission of members shall be taken by the executive committee, unless the rules lay down otherwise.

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165. See, for example, in the case of trade union membership, ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (Application no. 11002/05, judgment of 27 February 2007), para. 50.

166. ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (Application no. 11002/05, judgment of 27 February 2007), paras. 50-52.

167. See ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom (*Application no. 11002/05, judgment of 27 February 2007), para. 39, which states that "it is uncontroversial that religious bodies and political parties can generally regulate their membership to include only those who share their beliefs and ideals."

168. See for example (gender discrimination), ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (Application no. 58369/10, decision of 10 July 2012), para. 73. See also ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), para. 50.

Section 13

A member is entitled to resign from an association at any time by informing the executive committee or its chairperson thereof in writing. A member may also resign by giving a notice thereof at a meeting of the association for entry in the minutes. A provision may be taken in the rules that the resignation will not enter into force until after a specified period of time has passed from the submitting of the notice of resignation. Such period of time may not exceed one year.

Section 14

An association may expel a member on a ground stated in the rules. Nevertheless, the association invariably has the right to expel a member who:

1. has failed to fulfil the obligations to which he or she has committed himself or herself by joining the association;

2. by his or her action within or outside the association has substantially damaged the association; or

3. no longer meets the conditions for membership laid down by law or the rules of the association.

Gender equality and non-discrimination on the basis of gender, sexual orientation and gender identity

132. In addition to general guarantees concerning equality and non-discrimination, a number of international instruments require positive measures to be taken to secure the equal enjoyment/exercise of all rights, including the right to freedom of association, regardless of gender or sexual orientation.[169] Therefore, states should not only guarantee that any person can be a founder and/or member of associations irrespective of gender and sexual orientation, but should also facilitate the exercise of the right to freedom of association of different groups of persons by creating an enabling environment for them.

169. Article 3 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires that states take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men." Article 7 of CEDAW states that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: […]
c. to participate in non-governmental organizations and associations concerned with the public and political life of the country." Through the Beijing Platform for Action, governments have also specifically committed to protect and promote the equal rights of women and men to freedom of association, including membership in political parties, trade unions, and other professional and social organizations, as well as to "[a]dopt policies that create an enabling environment for women's self-help groups, workers' organizations and cooperatives through non-conventional forms of support and by recognizing the right to freedom of association and the right to organize" (Beijing Platform for Action, Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, A/CONF.177/20 and Add.1, <http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en>, Strategic Objectives I.2 and G.1.. See also UN CEDAW Committee, *General Recommendation No. 23: Political and Public Life*, adopted at the Sixteenth Session of the Committee on the Elimination of Discrimination against Women, in 1997 (Contained in Document A/52/38).

133. Furthermore, Article 4 of CEDAW makes it clear that special measures taken by states to ensure the *de facto* equality of women "shall not be considered discrimination… but shall in no way entail as a consequence the maintenance of unequal or separate standards". Therefore, it is recommended that incentives, such as financial incentives, are introduced in legislation applicable to those associations that introduce policies that further equality between men and women.[170]

134. In addition, it should be recalled that, in its case law, the ECtHR has held that "the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention. […] Moreover, the Court has held that nowadays the advancement of the equality of the sexes in the member States of the Council of Europe prevents the State from lending its support to views of the man's role as primordial and the woman's as secondary".[171]

135. As regards trade unions, the UN Committee on Economic, Social and Cultural Rights has underlined the importance of securing the right to form and to join trade unions for domestic workers, rural women, women working in female-dominated industries and women working at home.[172] A similar view has been expressed by the Committee on the Elimination of Discrimination against Women with respect to workers who are women[173] and to migrant workers who are women.[174]

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170. In the case of political parties see OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), paras. 99-105.

171. ECtHR, *Staatkundig Gereformeerde Partij v. the Netherlands* (Application no. 58369/10, decision of 10 July 2012), para. 73.

172. UN Committee on Economic, Social and Cultural Rights, *General Comment No. 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights*, E/C.12/2005/4: "25. Article 8, paragraph 1 (a), of the Covenant requires States parties to ensure the right of everyone to form and join trade unions of his or her choice. Article 3, in relation to article 8, requires allowing men and women to organize and join workers' associations that address their specific concerns. In this regard, particular attention should be given to domestic workers, rural women, women working in female-dominated industries and women working at home, who are often deprived of this right".

173. CEDAW Committee, Concluding Observations on the initial report of the United Arab Emirates, CEDAW/C/ARE/CO/1, 5 February 2010, paras. 36-37, stating: "36. While noting with satisfaction the ratification by the State party of several International Labour Organization (ILO) conventions concerning equality, the increase in women's participation in the labour force and the State party's support to enlarge the number of women employed in the public sector, the Committee regrets the State party's prohibition on forming employee welfare associations [...] 37. [...] The Committee urges the State party to guarantee all workers, including especially female workers, the fundamental principle of freedom of association and to provide equal remuneration for work of equal value, and recommends that it become a party to ILO Conventions No. 87 and No. 98".

174. CEDAW Committee, *General recommendation No. 26 on women migrant workers*, CEDAW/C/2009/WP.1/R, 5 December 2008, para. 26: "States parties in countries where migrant women work should take all appropriate measures to ensure non-discrimination and the equal rights of women migrant workers, including in their own communities. Measures that may be required include, but are not limited to, the following: ... (b) Legal protection for the rights of women migrant workers: States parties should ensure that constitutional and civil law and labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country, including the right to organize and freely associate".

136. Discrimination on the basis of sexual orientation has also been found to be contrary to the ICCPR,[175] the ACHR[176] and the ECHR.[177] In addition, discrimination on the basis of sexual orientation is prohibited by Article 21(2) of the European Union Charter of Fundamental Rights.[178]

137. A number of relevant international documents have stated that states should also ensure that rights, including the right to freedom of association, can be effectively enjoyed without discrimination on the ground of gender identity.[179]

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175. See UN Human Rights Committee, *Toonen v. Australia*, (Communication no. 488/1992, 31 March 1994), para. 8.7, <http://www.ohchr.org/documents/publications/sdecisionsvol5en.pdf>, where the Committee stated that "The State party has sought the Committee's guidance as to whether sexual orientation may be considered an "other status" for the purposes of article 26. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to noting, however, that in its view, the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation."

176. Inter-American Court of Human Rights, *Atala Riffo and daughters v. Chile* (Series C no. 242, Judgment of 24 February 2012), in which a denial of the mother's custody of her child on account of her sexual orientation was held to breach the guarantee of equal protection in Article 24.

177. ECtHR, *X and others v. Austria* (Application no. 19010/07, judgment of 19 February 2013), para. 99. See also ECtHR, *Alekseyev v. Russia* (Applications no. 4916/07, 25924/08 and 14599/09, judgment of 21 October 2010), para. 108, which states that "[w]here a difference of treatment is based on sex or sexual orientation the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require the measure chosen to be suitable in general for realising the aim sought; it must also be shown that it was necessary in the circumstances. Indeed, if the reasons advanced for a difference in treatment were based solely on the applicant's sexual orientation, this would amount to discrimination under the Convention".

178. European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

179. Council of Europe, *Appendix to the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010, para. 9. UN Human Rights Council, *Resolution 17/19 on human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011. United Nations High Commissioner on Human Rights, *Report to the Human Rights Council on violence and discrimination based on sexual orientation and gender identity,* A/HRC/19/41, 17 November 2011. See also the Yogyakarta Principles, "Principles on the application of international human rights law in relation to sexual orientation and gender identity", 26 March 2007, Principle 20, <http://www.yogyakartaprinciples.org/principles_en.htm>. Principle 20 states: "Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities. States shall: a) Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity; b) Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities; c) Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights; d) Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection; e) Ensure that information disclosure rules for voluntary associations and groups do not, in practice, have discriminatory effects for such associations and groups addressing issues of sexual orientation or gender identity, or for their members."

138. Given that the advancement of equality has become a major goal at the national and international levels, as underlined by these provisions, legislation that prohibits associations from discriminating against potential members on the basis of their gender, sexual orientation or gender identity would be a legitimate restriction to the right to freedom of association.

Non-nationals

139. Non-nationals, including stateless persons,[180] refugees[181] and migrants, have the right to freedom of association and must not suffer discrimination with respect to its exercise based on their status.

140. Article 16 of the ECHR implies that this right does not prevent the imposition of restrictions on the political activity of aliens.[182] However, the ECtHR has already recognized that this provision must be narrowly applied in European Union states where nationals of other European Union states are concerned.[183] While the applicability of Article 16 of the ECHR is most likely to be considered justifiable in respect of the formation and activities of a political party, it needs to be noted that, nevertheless, restrictions based on persons' nationality are not always admissible. Notably, "in the particular context of elections, the European Convention on the Participation of Foreigners in Public Life at the Local Level entered into force in 1997, and there is a growing trend within many European countries to allow foreign residents to vote and stand in local election".[184] In any event, non-party political activities are unlikely to be justifiably restricted based on this provision.

Minorities

141. In addition to the guarantees of the right to freedom of association applicable to everyone, this right is also guaranteed for all members of minority groups within the jurisdiction of a state by a number of international instruments specifically

180. UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117. Article 15 of the Convention states that, "As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances."

181. UN General Assembly, *Convention and Protocol Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 15 on the right of association states that "As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances".

182. Article 16 of the ECHR on Restrictions on political activity of aliens states that "[n]othing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens".

183. ECtHR, *Piermont v. United Kingdom* (Application nos. 15773/89, 15774/89, judgment of 27 April 1995), para. 64.

184. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 120.

addressed to this group of persons.[185] They should, thus, be able to join associations and/or establish their own associations, without discrimination. However, it may also be appropriate to adopt legislative incentives aimed at supporting associations that promote the role of minorities in a democratic society.[186]

CONSTITUTION OF THE REPUBLIC OF SERBIA (2006)

Article 80

Members of national minorities may found educational and cultural associations, which are funded voluntarily.

The Republic of Serbia shall acknowledge a specific role of educational and cultural associations of national minorities in their exercise of rights of members of national minorities.

Members of national minorities shall have a right to undisturbed relations and cooperation with their compatriots outside the territory of the Republic of Serbia. (...)

Children

142. Article 15 of the Convention of the Rights of the Child (CRC) expressly vests children with the fundamental rights to freedom of association and assembly.[187]

185. Thus, Articles 7 and 8 of the Council of Europe Framework Convention for the Protection of National Minorities respectively provide that "The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion" and that "The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations" (Council of Europe, *Framework Convention for the Protection of National Minorities (ETS No. 157)*, 1 February 1995). Further, Article 3(1) of the UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that "[p]ersons belonging to minorities may exercise their rights… individually as well as in community with other members of their group, without any discrimination" and Decision VI of the Helsinki Document of 1992 of the OSCE specifically highlights the importance of participation of persons belonging to national minorities in associations and states that "The participating States (…) (24) Will intensify in this context their efforts to ensure the free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to participate fully, in accordance with the democratic decision-making procedures of each State, in the political, economic, social and cultural life of their countries including through democratic participation in decision-making and consultative bodies at the national, regional and local level, inter alia, through political parties and associations (…)".

186. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 107.

187. UN CRC, Article 15, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, which states: "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." The right of children to freedom of association is also specifically recognized in the African Charter on the Rights and Welfare of the Child, adopted in July 1990 by the Assembly of Heads of State and Government in Addis Ababa, Ethiopia, Organisation of African Unity (CAB/LEG/153/Rev 2), states in Article VIII that "Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law".

Moreover, children come within the purview of the term "everyone" in the more general guarantees of this right. Furthermore, the prohibition of discrimination "on any ground" in both Article 26 of the ICCPR and Article 14 of the ECHR extends to age and, thus, is a further guarantee of the enjoyment by children of all rights contained in those instruments.

143. While certain restrictions in terms of the legal capacity of children to form and join associations may be justified, any such restrictions must be based in law, serve a legitimate aim recognized by international standards and be proportionate to that aim, as required for other restrictions on the right to freedom of association.[188] In particular, full account needs to be taken of the principle of the evolving capacity of the child when adopting any limits relating to the formation or membership of an association by children.[189] Furthermore, any legislation that would restrict children's rights in this manner should be adopted and implemented on the basis that children are the holders of rights that the state has a duty to facilitate, respect and protect.[190] There is unlikely to be any justification for preventing children from forming or joining informal associations in which only other children are involved.

Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk), UN Doc. A/HRC/26/29, 14 April 2014, paragraphs 49-50

(…)

49. Some laws limit the type of associations that individuals or groups can join or form. The Committee on the Rights of the Child has noted with concern that in Costa Rica, the Children and Adolescents Code denied adolescents the right to form or join political associations, yet they may form community development associations in which they may actively participate (CRC/C/CRI/CO/4, para. 37). In Turkey, children over the age of 15 may form associations and from the age of 12 may join those associations, but they must be 19 in order to form an

188. The CRC Committee has, for instance, expressed concern about legislation that precludes children and adolescents from the right to join political associations (Costa Rica (CRC/C/CRI/CO/4, 3 August 2011, paras. 37 and 38), as well as the requirement that children under 18 obtain parental consent before joining an association (Japan - CRC/C/15/Add.231, 26 February 2004, paras. 29 and 30). See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, paras. 49-50, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>.

189. UN CRC, Article 5, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, which states that "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention".

190. See Venice Commission, *Report on the Protection of Children's Rights: International standards and national constitutions*, CDL-AD(2014)005-e, 3 April 2014.

organizational committee for outdoor meetings (CRC/C/TUR/CO/2-3, para. 38). The justification for explicitly excluding those groups from forming associations that engage in certain activities is unclear.

50. In an example of good practice, the Supreme Court of Estonia found the provisions of the Non-Profit Associations Act that restricted the right to form and lead associations to persons over the age of 18 years old to be in contravention of article 15 of the Convention on the Rights of the Child.

(…)

Law-enforcement personnel and state officials

144. The ICCPR, the ECHR and the ACHR expressly recognize the possibility of imposing certain restrictions on the exercise of the right to freedom of association by some public officials, including members of the police and armed forces.[191] Such restrictions may be justified in cases where forming or joining an association would conflict with the public duties and/or jeopardize the political neutrality of the public officials concerned.[192]

145. Nonetheless, according to the ECtHR, the category of persons liable to be subjected to these restrictions must be limited, and public employment or public funding for a position are unlikely to be sufficient bases for such restrictions.[193]

146. Moreover, every restriction must still respect the principle of proportionality. For example, membership in a political party would not justify the dismissal of a teacher who does not promote party ideology in school,[194] while a complete ban on trade unions within the armed forces would be unjustified.[195] A complete prohibition on members of the police to belong to a political party has been upheld by the ECtHR, but this was done on the basis that they could still engage in some forms of political activity through other means.[196] Furthermore,

191. Article 22(2) of the ICCPR, which states that "This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right"; Article 11(2) of the ECHR, which states that "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"; and Article 16(3) of the ACHR, which states that "The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police".

192. See ECtHR, *Rekvényi v. Hungary* [GC] (Application no. 25390/94, judgment of 20 May 1999), para. 53.

193. ECtHR, *Vogt v. Germany* [GC] (Application no. 17851/91, judgment of 26 September 1995), para. 67; and ECtHR, *Grande Oriente d`Italia di Palazzo Giustiniani v. Italy* (Application no. 35972/97, judgment of 2 August 2001), para. 31.

194. ECtHR, *Vogt v. Germany* [GC] (Application no. 17851/91, judgment of 26 September 1995).

195. ECtHR, *Matelly v. France (*Application no. 10609/10, judgment of 2 October 2014), para. 75.

196. See ECtHR, *Rekvényi v. Hungary* [GC] (Application no. 25390/94, judgment of 20 May 1999), paras. 49 and 61.

it should be borne in mind that the association of civil servants,[197] police or military personnel[198] in trade unions should be viewed positively, as this permits them to protect their own labour rights.[199]

B. Formation, legal personality and registration

Formation

147. Everyone should be entitled to establish an association subject only to restrictions consistent with the guarantees of equality and non-discrimination discussed in Section A.

148. An agreement between two or more persons or groups of persons should ordinarily be a sufficient basis for the establishment of an association. In case legislation requires that a greater number of persons are required in order to establish an association, the number concerned should be neither excessive nor incompatible with the nature of the association.[200] Such a requirement should, in any event, not apply to informal associations.

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197. ECtHR, *Tüm Haber Sen and Çınar v. Turkey* (Application no. 28602/95, judgment of 21 February 2006), where the Court found a violation of Article 11 of the ECHR by the state which dissolved a trade union solely on the basis of the fact that it was founded by civil servants.

198. Council of Europe, *Recommendation CM/Rec (2010) 4 of the Committee of Ministers and explanatory memorandum on "Human Rights and Members of the Armed Forces"*, paras. 53-57.

199. See, for instance, ILO, *Guidelines for the Police and Military to apply Freedom of Association and Right to Collective Bargaining*, 2013, <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_231646.pdf>. See also Council of Europe, *Recommendation CM/Rec (2010) 4 of the Committee of Ministers of the Council of Europe and explanatory memorandum on human rights of members of the armed forces*, 24 February 2010, paras. 53-57, <http://www.coe.int/t/dghl/standardsetting/hrpolicy/publications/cmrec_2010_4en.pdf>, which states that "Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise and to bargain collectively. Where these rights are not granted, the continued justification for such restrictions should be reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted". See also OSCE/ODIHR and Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (Warsaw: ODIHR, 2008), Chapter 9, <http://www.osce.org/odihr/31393>.

200. See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 54, <http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf>, which states that "The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association considers it best practice for legislation to require no more than two persons to establish an association. While he notes that a higher number may be required to establish a union or a political party, this number should not be set at a level that would discourage people from engaging in associations"; and Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 17, which states that "Two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired, so long as this number is not set at a level that discourages establishment". See also ECtHR, *Zhechev v. Bulgaria* (Application no. 57045/00, 21 June 2007), para. 56, which states

REVISED UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT OF THE UNITED STATES OF AMERICA (2008)

"Unincorporated nonprofit association" means an unincorporated organization consisting of [two] or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes. The term does not include: (A) a trust; (B) a marriage, domestic partnership, common law domestic relationship, civil union, or other domestic living arrangement; (C) an organization formed under any other statute that governs the organization and operation of unincorporated associations; (D) a joint tenancy, tenancy in common, or tenancy by the entireties even if the co-owners share use of the property for a nonprofit purpose; or (E) a relationship under an agreement in a record that expressly provides that the relationship between the parties does not create an unincorporated nonprofit association."

LAW OF THE REPUBLIC OF FRANCE RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2005)

Article 1

An association is an agreement by which two or more people, in a permanent manner, join their knowledge or their activities for an objective other than sharing profits. Regarding its validity, it is governed by the general principles of law applicable to contracts and obligations.

NON-PROFIT ASSOCIATIONS ACT OF ESTONIA (1996, AS LAST AMENDED IN 2012)

Article 5. Founders

A non-profit association may be founded by at least two persons. The founders may be natural persons or legal persons.

149. Whereas the formation of an association with legal personality may be subject to certain formalities, the law should not prohibit or unjustifiably restrict the formation of an informal association.

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that "There is therefore no "pressing social need" to require every association deemed by the courts to pursue 'political' goals to register as a political party, especially in view of the fact that, as noted above, the exact meaning of that term under Bulgarian law appears to be quite vague. That would mean forcing the association to take a legal shape which its founders did not seek. It would also mean subjecting it to a number of additional requirements and restrictions, such as for instance the rule that a political party cannot be formed by less than fifty enfranchised citizens (see paragraph 19 above), which may in some cases prove an insurmountable obstacle for its founders. Moreover, such an approach runs counter to freedom of association, because, in case it is adopted, the liberty of action which will remain available to the founders of an association may become either non-existent or so reduced as to be of no practical value".

150. Furthermore, owing to modern technology, an increasing number of associations are formed online. While such associations might seem to challenge established notions of the formation and membership of associations, their key distinguishing characteristic compared to "regular" associations is, essentially, only the absence of physical gatherings; they still have common objectives and a framework governing their operation. Therefore, the ability to establish and then operate associations in this manner should be supported by legislation, and access to the Internet as a forum for freedom of expression should be ensured.[201]

Acquisition of Legal Personality

151. The acquisition of legal personality is a prerequisite for an association to gain the legal capacity to, in its own name, enter into contracts, make payments for goods and services procured, and own assets and property, as well as to take legal action to protect the rights and interests of associations, among other legal processes that can be essential for the pursuit of the objectives of associations. It is reasonable to put in place registration or notification requirements for those associations that wish to have such legal capacities, so long as the process involves requirements that are sufficiently relevant, are not unnecessarily burdensome and do not frustrate the exercise of the right to freedom of association.[202] The particular legal capacities thereby acquired may vary according to the type of association concerned.

LAW OF THE REPUBLIC OF FRANCE RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2005)

Article 2

Associations of persons will be freely formed without prior authorization or declaration, but will enjoy legal capacity only if they comply with the provisions of Article 5.

(…)

Informal Associations in the Netherlands

In the Netherlands, an association obtains legal personality *ex lege*, by the operation of law. No further formalities are required nor conditions set. The law distinguishes between associations formed through registering by act of a public notary ("formal associations") and associations formed by oral or written

201. See the section on "Associations and New Technologies" in the present Guidelines.

202. ECtHR, *Gorzelik and Others v. Poland* [GC] (Application no. 44158/98, judgment of 17 February 2004), para. 88; European Commission of Human Rights, *Cârmuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova* (Application no. 12282/02, decision of 14 June 2005); and UN Human Rights Committee, *Malakhovsky and Pikul v. Belarus* (Communication no. 1207/2003, 26 July 2005), para. 7.6.

agreement ("informal associations"). The former category has full legal capacity (Article 2:26, paragraph 2 of the Dutch Civil Code). The latter category has limited legal personality (Article 30, paragraph 1 of the Dutch Civil Code); they may at any time have their by-laws registered by act of a public notary in order to obtain full legal capacity (Article 2:28 of the Dutch Civil Code).

The main limitations of the legal capacity of informal associations are: (1) they may not obtain goods registered in a public register, such as real estate, ships and airplanes; (2) they cannot inherit; (3) they cannot participate in legal mergers or separations; (4) they cannot lodge collective actions with courts to protect interests of third parties equal to their own interests; and (5) their board members are severally responsible for any debt incurred by the association (Articles 2: 30 and 3:305 of the Dutch Civil Code). In order to avoid or reduce the consequence mentioned under (5), the board may decide to register the informal association, its by-laws (if these are in writing), its board structure and rules concerning representation and division of powers in the "Commercial Registry" (*Handelsregister*), a public registry that can be accessed by anyone. In that case, the board members are severally responsible only if and to the extent that the creditor can make it plausible that the association as such cannot meet its obligation.

152. The acquisition of legal personality should generally be viewed as a right, and not as an obligation or as mandatory. States may, however, require that associations that are seeking to enjoy various forms of public support, or that wish to be accorded a particular status (such as being recognized as a charity or public benefit organization), first obtain legal personality.

Notification and Registration

153. The acquisition of legal personality may require that the association informs the authorities (sometimes referred to as "notification") of its formation, or that the association goes through a more formal process (often referred to as "registration").

LAW ON ASSOCIATIONS OF THE REPUBLIC OF CROATIA (2001)

Article 14

(1) Registration in the registry book is voluntary and shall be conducted upon the request of the founders of the association.

(…)

154. Submitting a notification of establishment to the authorities should be sufficient for the purpose of obtaining legal personality. Where legislation requires certain formalities to be undertaken to establish an association with legal personality, it is good practice for a state to provide for a "notification procedure". In such

a procedure, associations are automatically granted legal personality as soon as the authorities are notified by the founders that an association has been created. A "prior authorization procedure", on the other hand, requires the approval (official confirmation) of the authorities to establish an association as a legal entity.[203] On account of its simplicity, the availability of a notification procedure clearly serves to promote the establishment of associations with legal personality and should be favoured. If a registration procedure is nevertheless chosen, the legislation should at least provide for an implicit approval mechanism, so that approval is considered to be granted within a certain and adequate number of days following the application to the authorities. If the registration authorities are authorized to reject the application, then a clear legal basis should be provided in the legislation, with an explicit and limited number of justifiable grounds compatible with international human rights standards.

CONSTITUTION OF THE REPUBLIC OF ICELAND (1944)

Article 74

Associations may be formed without prior permission for any lawful purpose, including political associations and trade unions. An association may not be dissolved by administrative decision. The activities of an association found to be in furtherance of unlawful objectives may however be enjoined, in which case legal action shall be brought without undue delay for a judgment dissolving the association. (…)

LAW OF THE REPUBLIC OF FRANCE RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2005)

Article 5

Any association wishing to obtain legal capacity under Article 6 shall be made public by its founders.

A prior declaration will be made to the prefecture of the department or sub-prefecture of the district where the association has its headquarters. It shall mention the title and objectives of the association, the seat of its establishment and the names, occupations and addresses and nationalities of those who, in any capacity, are responsible for its administration. A copy of the bylaws is attached to the declaration. A receipt of the declaration thereof is given within five days.

203. See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012, para. 58, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf>.

155. In the OSCE and Council of Europe regions, many states require associations to undergo formal notification, registration or other similar procedures in order to acquire legal personality.[204] However, in some states, this procedure is so cumbersome that it effectively prevents associations from being registered. Such barriers include: a lack of clarity regarding registration procedures; detailed and complex documentation requirements; prohibitively high registration fees; overly broad discretion of the registration authority in registering associations or in conducting investigations or assessments of the intentions of the association as part of the registration process; and excessive delays in the registration process. Seemingly neutral registration requirements, such as nationality or residency requirements, may have a disproportionate effect on certain persons or groups, making it harder for them to form associations.[205] These practices stifle and unduly restrict the right to freedom of association.

156. Legislation should make the process of notification or registration as simple as possible and, in any case, not more cumbersome than the process created for other entities, such as businesses. For example, "one stop shop" or "one window" approaches, or providing for online registration, allow business and other entities, including associations, to achieve registration very quickly, efficiently and effectively. Any fees charged in the process should take into account the desirability of encouraging the formation of associations and their not-for-profit character. They should not, therefore, be set at a level that discourages or makes applications for registration impractical.

157. The list of documents required for registration should be clearly defined in legislation, and should be minimal and exhaustive. In general, evidence of a founding meeting, a charter or statute and the payment of registration fees (as applicable), as well as relevant details relating to the association's founders, should be sufficient. The state should generally not require the submission of unnecessary documents, such as lists of members, lease agreements, fiscal records of founders and other irrelevant documentation. However, special documentation requirements may exist for certain associations, such as political parties,[206] which may be eligible to obtain public funding once established. Similarly, regulations may also reasonably require that public benefit organizations or charities fulfil additional requirements for the purpose of obtaining the special status enjoyed by such entities. However, actions undertaken to meet these requirements should be separate from the process of acquiring legal personality.

158. Further, apart from the objectives and name of the association, in very limited circumstances, the substance of the documentation submitted to the authorities for registration should not be subject to review (for additional information on objectives, see Section C, Subsection 2 [C] of these Guidelines). Only the association's ability to meet formal requirements should be relevant for the question of registration.

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204. A process of legalization is not tantamount to registration.

205. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 53, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>.

206. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), paras. 76-79 and 77.

159. The law should refrain from restricting the use of names of associations, unless they impinge on the rights of others[207] or are clearly misleading, such as when the name gives the impression of being an official body or of enjoying a special status under the law, or leads to the association being confused with another association.[208] Legislation should also refrain from placing territorial restrictions on the operations of associations,[209] and should maintain the same procedures for registration throughout the whole country.

160. Furthermore, the law should not deny registration based solely on technical omissions, such as a missing document or signature, but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required.[210] The time period provided for rectification should be reasonable, and the association should be able to continue to function as an informal body.

161. Applications for registration should be determined without undue delay and should be dealt with within a matter of weeks.[211]

162. The responsible state agency should be required to provide a detailed written statement of reasons for a decision to refuse the registration of an association. Such reasons should not go beyond what is specified in the applicable law. The reasons set out in law should be compatible with international human rights standards; the rejection of a registration should be exclusively based on non-compliance with the prescribed formalities, or the existence of inadmissible names or objectives, in cases where these do not comply with international standards or with legislation that is consistent with such standards.

163. Associations should have the opportunity to appeal decisions denying their application for registration or any failure to deal with their applications within a reasonable time, and should be able to do so before an independent and impartial tribunal. Persons whose applications to register were unsuccessful owing to a failure to comply with the respective formalities should have the right to reapply to for the registration of their associations.[212]

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207. See European Commission of Human Rights, *X v. Switzerland* (Application no. 18874/91, decision of 12 January 1994), concerning the proposed use of 'Chamber of Commerce' when such an entity already existed.

208. See European Commission of Human Rights, *Apeh Uldozotteinek Szovetsege, Ivanyi, Roth and Szerdahelyi v. Hungary* (Application no. 32367/96, decision of 31 August 1999), which concerned the use of the tax authority's name by a proposed association, and ECtHR, *Gorzelik and Others v. Poland* [GC] (Application no. 44158/98, judgment of 17 February 2004), which concerned the use of a name wrongly suggesting that the proposed association had a special status under election law.

209. ECtHR, *Koretskyy and Others v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008), paras. 53-55.

210. ECtHR, *Tsonev v. Bulgaria* (Application no. 45963/99, judgment of 13 April 2006), paras. 55-57 and *Ramazanova and Others v. Azerbaijan* (Application no. 44363/02, judgment of 1 February 2007), paras. 64-67 and UN Human Rights Committee, *Katsora, Sudalenko and Nemkovich v. Belarus* (Communication no. 1383/2005, 25 October 2010), para. 8.3.

211. ECtHR, *Ismayilov v. Azerbaijan*, no. 4439/04, 17 January 2008), paras. 50-52.

212. European Commission of Human Rights, *Movement for Democratic Kingdom v. Bulgaria* (Application no. 27608/95, decision of 29 November 1995) and ECtHR, *Özbek and Others v Turkey* (Application no 35570/02, 6 October 2009).

164. The state should maintain a database of registered associations that is accessible to the public, with due consideration for data protection principles and the right to associational privacy. In order to ensure public accountability, statistical information on the number of accepted and rejected applications should also be made available.

165. Finally, re-registration should not automatically be required following changes to legislation on associations. Renewals of registration may be required in exceptional cases where significant and fundamental changes are to take effect. In such cases, the competent authorities should first notify the respective association of the need to re-register, and should provide them with a sufficient transitional period to enable the associations to comply with the new requirements.[213] In any case, even if they do not re-register, the associations should be able to continue to operate without being considered unlawful.

166. The foregoing standards should equally be observed with respect to the formation of branches of associations, foreign associations or unions and networks of associations, including those operating at the international level.[214]

C. Membership, internal management, objectives and activities

167. Associations should not be under a general obligation to disclose the names and addresses of its members, since this would be incompatible with both their right to freedom of association and the right to respect for private life.[215] However, individual members of an association could be required to disclose their membership where this could conflict with their responsibilities as employees or office-holders.[216] Moreover, the need to disclose membership lists of political parties seeking public funding based on the number of members may also reasonably be imposed where minimum membership requirements exist.[217]

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213. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association),* UN Doc. A/HRC/20/27, 21 May 2012, para. 62 which states that **"**Newly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities. For instance, the Committee on the Rights of the Child, in its concluding observations on Nepal, expressed concerns over the wide-ranging restrictions, such as re-registration requirements, placed by the authorities on civil society organizations (CRC/C/15/Add.260, paras. 33 and 34)."

214. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association),* UN Doc. A/HRC/20/27, 21 May 2012, para. 59 which states that "The Special Rapporteur believes the formation of branches of associations, foreign associations or unions or networks of associations, including at the international level, should be subject to the same notification procedure".

215. European Commission of Human Rights, *National Association of Teachers in Further and Higher Education v. United Kingdom* (Application no. 28910/95, decision of 16 April 1998). Also see generally: <http://associationline.org/guidebook/action/read/chapter/4>.

216. ECtHR, *Grande Oriente d`Italia di Palazzo Giustiniani v Italy (No 2),* (Application no. 26740/02, judgment of 31 May 2007).

217. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), paras. 76-79.

Furthermore, the membership lists of certain professional associations may need to be disclosed where these perform some regulatory functions. However, any such disclosure must still comply with the principles of data protection, which may restrict who has access to the list concerned and the details that have to be disclosed (see also Section C, Subsection 2 [F] of these Guidelines on the right to privacy in the context of supervision by public authorities).

168. An association should be able to have fluctuating numbers of members throughout the course of its existence. If the number of members of an association falls below the required minimum, this should not be an automatic basis for its termination. Moreover, legal requirements to count or keep record of the existing number of members should not be used by authorities to access membership lists or subject associations to inspection.

169. Associations should generally be self-governing. Any restrictions on their capacity to govern themselves will only be admissible if they have a legal basis, serve a legitimate purpose recognized by international standards and are not disproportionate in their effect.

170. The self-governing nature of associations is specifically recognized in respect of trade unions by Article 3 of Convention No. 87 of the International Labour Organization, which provides that they should be able to draft their own internal rules and regulations and administer their own affairs.[218]

171. The internal functions of associations should, thus, generally be free from state interference. This fundamental premise is subject only to the requirement that associations be not-for-profit, respect the principle of non-discrimination and do not engage in activities characterized as unlawful in accordance with international human rights standards.

172. However, this should not preclude states from encouraging associations to pursue the balanced representation and participation of men and women in the management of associations and in their work.[219]

173. Non-nationals should not be prevented from becoming involved in the management of associations simply on account of their nationality.[220] Furthermore, any restrictions prohibiting public officials from serving on the highest governing

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218. See ILO, *C087 - Freedom of Association and Protection of the Right to Organise Convention*, 1948 (No. 87), <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO>. Its Article 3 reads as follows: "1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

219. CEDAW Committee, *General recommendation No. 23: Political and public life (1997)*, A/52/38/Rev.1, para. 47, which states that the obligation to eliminate all forms of discrimination in all areas of public and political life include such measures designed to: "(a) Ensure that effective legislation is enacted prohibiting discrimination against women; (b) Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work."

220. See Council of Europe, *Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe*, para. 49.

body of an association should be consistent with the admissible restrictions on their ability to be members of such an association in general.

174. Public authorities should not interfere with an association's choice of its management or representatives, except where the persons concerned are disqualified from holding such positions by law, and this law is compliant with international standards. Those responsible for decision-making in a non-governmental organization can, however, be required by public authorities to be clearly identified.[221]

175. Associations should be free to determine their internal management structure, and their highest governing bodies. They should also be free to establish branches (including representative offices, affiliates and subsidiaries), and to delegate certain management tasks to such branches and their leadership. Furthermore, associations should not be required to obtain any authorization from a public authority in order to change their internal management structure, the frequency of meetings, their daily operations or rules, or to establish branches that do not have distinct legal personality.[222]

176. Under no circumstances should legislation mandate or permit the attendance of state agents at non-public meetings of associations,[223] unless they are invited by the association itself.

177. Cases of external intervention in the running or management of associations should only be undertaken in extremely exceptional circumstances. Intervention should only be permissible in order to bring an end to a serious breach of legal requirements, such as in cases where either the association concerned has failed to address this breach, or where there is a need to prevent an imminent breach of said requirements because of the serious consequences that would otherwise follow.[224] Compliance with the rights of individual members should normally be achieved through legal proceedings that they themselves may initiate.

178. Inspections conducted with the primary purpose of verifying compliance with internal procedures of an association should not be permissible (for additional information on inspections and supervision, see Section C, Subsection 2 [F] of these Guidelines). Moreover, under no circumstances should associations suffer sanctions on the sole ground that their activities breach their own internal regulations and procedures, so long as these activities are not otherwise unlawful.

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221. ECtHR, *Hasan and Chaush v. Bulgaria* [GC] (Application no. 30985/96, judgment of 26 October 2000).

222. See ECtHR, *Koretskyy and Others v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008), paras. 52-53; and Council of Europe, *Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe*, paras. 42 and 46-48.

223. See OSCE/ODIHR, *Comments on the Law on Associations of Turkmenistan*, Opinion-Nr.: NGO – TUR/154/2010 (LH), 22 June 2010, available at: <http://www.legislationline.org/documents/id/16059>, para. 41.

224. See ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC] (Application no. 23885/94, judgment of 8 December 1999), paras. 46-47; and Council of Europe, *Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe*, paras. 2, 6 and 70.

179. Legislation pertaining to associations should not restrict or dictate the objectives and spheres of activities that associations must or cannot undertake, beyond those that are incompatible with international human rights standards. Such restrictions or attempts to influence the operations of associations may, in some exceptional cases, be permissible. This includes cases where an association's objectives and activities promote propaganda for war, the incitement of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as well as the achievement of goals that are inconsistent with democracy[225] or that are prohibited by laws that are not themselves contrary to those standards.

180. This means that legislation that restricts, for example, the territory on which certain associations may operate, and punishes them for undertaking activities outside this area, may be in violation of the right to freedom of association.

181. In addition, legislation that seeks to determine which objectives and activities can or cannot be included in the founding instrument of associations should be repealed. This does not apply to objectives and activities that would conflict with international human rights standards or legislation that is consistent with such standards. In practice, this means that associations cannot and should not be prevented from registering and/or being otherwise recognized, unless their aims and objectives clearly conflict with international human rights standards.

182. The legislator must bear in mind that the rights to freedom of expression and to freedom of association entitle associations to pursue objectives or conduct activities that are not always congruent with the opinions and beliefs of the majority or run precisely counter to them. Long-standing ECtHR jurisprudence holds that a vibrant democracy also implies the expression of views that may "offend, shock or disturb" the state or any sector of the population.[226] This includes imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution[227] or legislation by, for example, advocating for the decriminalization of abortion,[228] asserting a minority consciousness,[229] protecting the human rights of LGBTI people,[230] calling for regional autonomy, or even requesting secession of part of the country's

225. ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003) and *Koretskyy and Others v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008).

226. ECtHR, *Handyside v. the United Kingdom* (Application no. 5493/72, judgment of 7 December 1976).

227. ECtHR, *Refah Partisi (the Welfare Party) and Others v Turkey* [GC] (Application nos. 41340/98, 41342/98. 41343/98 and 41344/98, judgment of 13 February 2003).

228. ECtHR, *Women on Waves v. Portugal* (Application no. 31276/05, judgement of 3 February 2009).

229. ECtHR, *Sidiropoulos and others v. Greece* (Application no. 26695/95, judgement of 10 July 1998), paras 44-45.

230. ECtHR, *Genderdoc-M v. Moldova* (Application no. 9106/06, judgement of 12 June 2012), paras 44-45. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Threats to the rights to freedom of peaceful assembly and of association for groups most at risk)*, UN Doc. A/HRC/26/29, 14 April 2014, para. 64, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_29_ENG.DOC>.

territory.[231] In any event, authorities need to avoid drawing hasty and negative conclusions about the proposed objectives of an association.[232]

LAW OF THE REPUBLIC OF ARMENIA ON PUBLIC ORGANIZATIONS (2001)

Article 4

(…)

2. An Organization determines independently its organizational structure, goals, objectives and methods of activity.

(…)

D. Participation in decision-making processes and property, income and assets

183. In a participatory democracy with an open and transparent lawmaking process, associations should be able to participate in the development of law and policy at all levels, whether local, national, regional or international.[233]

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231. ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (Applications nos. 29221/95 and 29225/95, judgment of 2 October 2001), para. 97, which states that "the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. […] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means."

232. ECtHR, *United Communist Party of Turkey and Others v. Turkey* [GC], (Application no. 19392/92, judgment of 30 January 1998). See also OSCE/ODIHR, *Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism* (Warsaw: ODIHR, 2014), p. 42, which states that "Simply holding views or beliefs that are considered radical or extreme, as well as their peaceful expression, should not be considered crimes".

233. See OSCE, Copenhagen 1990, para. 5.8, which states that "legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone"; and OSCE, Moscow 1991, para. 18.1, which states that "[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives". See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 12, 76 and 77; UN General Assembly, *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 8, <http://www.ohchr.org/en/ProfessionalInterest/Pages/RightAndResponsibility.aspx>; United Nations Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention")*, 25 June 1998, Articles 6 and 8 <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>; Council of Europe, *Convention on the Participation of Foreigners in Public Life at Local Level (CETS No. 144)*, entry into force on 1 May 1997, Article 5, <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=144>; and Council of Europe, *Framework Convention for the Protection of National Minorities* (ETS No. 157), 1 February 1995, Article 15.

184. This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government.

185. The participation of associations should involve a genuine two-way process and, in particular, proposals by associations for changes in policy and law should not be seen as inadmissible or unlawful.[234]

186. In addition, associations should be able to comment publicly on reports submitted by states to international supervisory bodies regarding the implementation of obligations under international law, and should be able to do so prior to the submission of such reports.[235] Furthermore, associations should always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.[236]

187. In order to be meaningful, consultations with associations should be inclusive, should reflect the variety of associations that exist and should also involve those associations that may be critical of the government proposals being made.

188. All consultations with associations should allow access to all relevant official information and sufficient time for a response, taking account of the need for the associations to first seek the views of their members and partners.[237]

189. Feedback from associations (and the public in general) should be sought in the form most appropriate to the field in which they operate, and circumstances in a given country, for example, the fact that certain persons, groups and associations may have limited or burdensome access to online resources. Moreover, authorities should acknowledge and respond to such feedback. In order to facilitate this, national human rights institutions may play an important role.[238]

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234. ECtHR, *Koretskyy and Others v. Ukraine* (Application no. 40269/02, judgment of 3 April 2008), para. 52. See also Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 12; Conference of INGOs of the Council of Europe, *Code of Good Practice for Civil Participation in the Decision-making Process* (October 2009), <http://www.coe.int/t/ngo/Source/Code_English_final.pdf>; and UN General Assembly, *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 7, <http://www.ohchr.org/en/ProfessionalInterest/Pages/RightAndResponsibility.aspx>.

235. See UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Articles 5 and 9, <http://www.ohchr.org/en/ProfessionalInterest/Pages/RightAndResponsibility.aspx>; and OSCE, Copenhagen 1990, para. 11.

236. See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 77.

237. See United Nations Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention")*, 25 June 1998, Articles 6 and 8 <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>; see also Conference of INGOs of the Council of Europe, *Code of Good Practice for Civil Participation in the Decision-making Process* (October 2009), <http://www.coe.int/t/ngo/Source/Code_English_final.pdf>.

238. See International Coordinating Committee, Observation1.5. as adopted by the Bureau at its meeting in Geneva on 6-7 May 2013, available at: <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf>: "NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations".

190. In order to pursue their objectives, associations should be able to both generate income from their activities and to seek it from public and private sources within and beyond the state in which they are established. It is important for this purpose that associations are able to approach the widest range of possible donors. The income can be in the form of cash, other forms of financial instruments, proceeds from the sale of property and goods or equipment belonging to the association, as well as in the form of other benefits attributed to an association (for example, income from investments, rent, royalties, economic activities and property transactions).

191. Associations should, thus, be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities, without any special authorization being required, while at the same time being subject to any licensing or regulatory requirements generally applicable to the activities concerned. In addition, due to the not-for-profit nature of associations, any profits obtained through such activities should not be distributed among their members or founders, but should instead be used for the pursuit of their objectives.

192. In addition, the ability of associations to generate or seek income should be subject to the same requirements in laws that are generally applicable to customs, foreign exchange, prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.

193. All income generated or received by associations, as well as any assets into which it is converted, must be used exclusively for the pursuit of the associations' objectives, and must not be distributed among their members.

194. Associations should, however, be able to use their income and assets to pay their staff and to reimburse any expenses incurred on their behalf.[239] Many associations are unlikely to be able to pursue their objectives without employing some staff and/or having volunteers carrying out some activities on their behalf. It is, therefore, legitimate for associations to use their property and assets to pay their employees and to reimburse the expenses of those who act on their behalf. While market conditions and/or legislation should influence the level of payments made to staff, the need to ensure that property is used for the pursuit of an association's objectives could justify imposing a criterion of reasonableness for the reimbursement of expenses.

195. In the case of associations that have legal personality, they should be able to manage and use their income and assets with the assistance of their own banking accounts. Access to banking facilities will be an essential factor for associations' ability to receive donations and to manage and protect their assets. This does not mean that banks should be placed under an obligation to grant such facilities to every association requesting them, but the banks' freedom

239. See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 55.

to select clients should be subject to the principle of non-discrimination. The acquisition of legal personality may be a prerequisite for the association to operate bank accounts in its own name.

196. Associations should be able to protect all their property interests through legal proceedings. This is essential, since any seizure of, loss of control over or damage to their property could frustrate the pursuit of their objectives.[240]

197. However, associations that receive public support may be required to act on independent advice when selling or acquiring land or other major assets.[241] The fact that the assets of some associations have come from public bodies and that their acquisition has been assisted by a favourable fiscal framework are reasons to ensure that these assets are carefully managed, and that the best value is obtained when buying and selling them. It would, therefore, be appropriate to adopt a requirement in these cases that associations be guided by independent advice when engaging in some or all such transactions.

198. The income and assets of associations should not be seized or confiscated as a means of preventing them from pursuing admissible objectives.[242]

199. Once an association has been terminated, any funds, property or assets of the association should be liquidated. This means that all liabilities of the association should first be cleared, and then remaining funds, property and assets transferred. The transfer of funds, property and assets is subject to the prohibition on distributing profits among not-for-profit associations' founders and members. While an association has, in principle, the freedom to decide the conditions and modalities of such transfers, the rules regulating this will also depend on whether the termination was voluntary or involuntary (for additional information on the transfer of funds, property and assets of associations in case of termination, see Section C, Subsection 2 [H] of these Guidelines).

E. State support and access to other resources

Freedom to seek, secure and utilize resources

200. As clearly outlined by Principle 7 of these Guidelines, associations have the freedom to seek, secure and utilize resources. Fundraising activities are protected under Article 22 of the ICCPR, while the ECtHR has likewise considered it important that associations have the means to pursue their objectives. The ability to seek, secure and use resources is essential to the existence and operation of any association.

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240. See ECtHR, *The Holy Monasteries v. Greece* (Application nos. 13092/87 and 13984/88, judgment of 9 December 1994), which concerned a religious entity that had lost the right to bring legal proceedings in respect of its property and so became a victim of a violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the European Convention.

241. See Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 53.

242. See ECtHR, *The Holy Monasteries v. Greece* (Application nos. 13092/87 and 13984/88, judgment of 9 December 1994), paras. 86-88.

201. The term "resources" is a broad concept that includes: financial transfers (for example, donations, grants, contracts, sponsorships and social investments); loan guarantees and other forms of financial assistance from natural and legal persons; in-kind donations (for example, the contribution of goods, services, software and other forms of intellectual and real property); material resources (for example, office supplies and information technology equipment); human resources (for example, paid staff and volunteers); access to international assistance and solidarity; the ability to travel and communicate without undue interference; and the right to benefit from the protection of the state.[243] Resources also include both public and private funding, tax incentives (for example, incentives for donations through income tax deductions or credits), in-kind benefits and proceeds from the sale of goods belonging to the association, as well as other benefits attributed to an association (for example, income from investments, rent, royalties, economic activities and property transactions).

202. Furthermore, associations should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities, without any special authorization being required. Nevertheless, they remain subject to any licensing or regulatory requirements generally applicable to the activities concerned. This is under the condition that associations do not distribute any profits, as such, that might arise from their activities to their members or founders, but that they use them for the pursuit of their objectives.

State support

203. The not-for-profit nature of associations and their importance to society means that state support may be necessary for their establishment and operations.[244] State support, which should also be understood as access to public resources, including public funding, is justified in this case, as certain associations such as non-governmental organizations[245] and political parties[246] play an important role in democracy and promote political pluralism.

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243. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 8.

244. UN Special Rapporteur on the situation of human rights defenders, Report to the UN General Assembly, A/66/203, 28 July 2011, para. 68, which states, in relation to human rights defenders, that "The right to access funding is an inherent element of the right to freedom of association, which is contained in major human rights instruments. The Declaration on Human Rights Defenders explicitly recognizes the right to access funding as a self-standing substantive right under Article 13. The wording of Article 13 covers the different phases of the funding cycle. States are under an obligation to permit individuals and organizations to seek, receive and utilize funding. The Declaration requires States to adopt legislative, administrative or other measures to facilitate or, at a minimum, not to hinder the effective exercise of the right to access funding."

245. See, for instance: Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, paras. 9, 14, 50, 51, 52, 53, 54, 55 and 56.

246. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 190, which states that "[p]ublic funding, by providing increased resources to political parties, can increase political pluralism."

THE LAW ON NON-GOVERNMENTAL ORGANIZATIONS OF MONTENEGRO (2007)

Article 26

The Government of Montenegro shall provide financial aid to non-governmental organizations.

(…)

Article 27

The State shall be obliged to provide tax and other benefits for the operation and development of non-governmental organizations in the Republic.

LAW NO. 8788 ON NON-PROFIT ORGANIZATIONS OF THE REPUBLIC OF ALBANIA (2001)

Article 39

Non-profit organizations have the right to take part, like all other juridical persons, in the field of undertaking projects, tendering and procuring grants, contracting and purchases and sales by state organs of public services, public properties and goods, as well as the transferring of public services and the respective properties from the public sector to the non-profit organizations.

Article 40

Relief and exemptions of non-profit organizations from tax and customs obligations are set by law.

Regardless of the form of organization, the purpose they follow and the activity they exercise, non-profit organizations are exempt from tax on revenues realized from donations and membership dues.

Natural and legal persons who give assistance by donations to non-profit organizations are entitled to obtain relief from income tax according to law.

204. State funding and access to public resources is also capable of promoting the role of women and minority groups in public and political life by, for example, providing financial support to those associations that take positive measures to ensure equality of representation, promote the position of women in society for the purpose of gender equality or enhance the public and political participation of minorities. International and regional standards provide that states should ensure that financial support is provided to associations working on certain issues. This includes associations that: provide education to women about their rights and assistance in seeking remedies;[247] work to

247. CEDAW Committee, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010, para. 34: "States parties should financially support independent associations and centres providing legal resources for women in their work to educate women about their rights to equality and assist them in pursuing remedies for discrimination".

prevent and combat violence against women and domestic violence (including by providing shelters and rehabilitation support);[248] work with women victims of trafficking to facilitate their rehabilitation and reintegration;[249] and facilitate women's access to justice, including through the provision of legal aid.[250] In additions, the state may consider introducing legislative incentives aimed at supporting associations that work on these issues.[251] Equally, state support for organizations working with margin0alized or minority groups should also be considered.

OSCE REPORT ON HUMAN RIGHTS DEFENDERS IN THE OSCE REGION: CHALLENGES AND GOOD PRACTICES (2008)[252]

Granting direct government assistance to human rights defenders

[…]

A variety of organizations [in Portugal] can be granted the status of social partners and thus receive state support, tax exemptions, and other benefits. This recognition implies a second registration with concerned public departments (which often automatically gives the association the status of "public utility legal person"), although registration is never a pre-requisite for operation of non-governmental groups.

Migrant associations are entitled to state support pursuant to co-operation protocols established with the Office of the High Commissioner for Immigration and Intercultural Dialogue. These protocols are concluded upon request and involve the funding of activities developed by the requesting association (up to 70 per cent of the total amount). Support is also granted through activities aimed at improving the skills of members of such associations, including decision-makers, workers, and volunteers (namely training courses and follow-up to project implementation). Furthermore, associations can be given technical support, namely legal or other advice and the provision of documentation and other materials.

Similar support is given to women's associations (by the Commission for Citizenship and Gender Equality), youth associations (by the Portuguese Youth Institute), and associations of disabled people (by the National Institute for Rehabilitation).

248. Council of Europe, *Convention on preventing and combating violence against women and domestic violence,* 12 April 2011, ETS 210, Article 8, <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>.

249. UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, United Nations, Articles 6, 9 and 10, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

250. See, for instance, CEDAW Committee, *Concluding Observations on Kazakhstan*, CEDAW/C/KAZ/CO/3-4, 10 March 2014, para. 13.

251. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 107.

252. OSCE, *Report on Human Rights Defenders in the OSCE Region: Challenges and Good Practices (April 2007-April 2008)*, p. 39, <http://www.osce.org/odihr/35652?download=true>.

205. Any form of state support for associations should be governed by clear and objective criteria. The nature and beneficiaries of the activities undertaken by an association can be relevant considerations when deciding whether or not to grant it any form of public support. The granting of public support can also be contingent on whether an association falls into a particular category or regime defined by law, or whether an association has a particular legal form. Therefore, a material change in the statutes or activities of an association can lead to the alteration or termination of any state support.[253]

206. The forms of state support for associations vary greatly. Associations, such as non-governmental organizations, may receive direct funding from the state, or they may receive benefits in the form of tax relief, including incentives for private individuals to donate in lieu of tax relief, or an exemption from payment for certain services provided by the state, such as postal or communications services. Above all, any system of state support must be transparent.

LAW ON LOCAL TAXES AND PAYMENTS OF POLAND (1991)

Article 7.

1. The following are exempt from the real estate tax:

(…)

8) Real estate or parts thereof used by societies and associations to engage in statutory work with children and youth as regards education, upbringing, science and technology, physical culture, and sports, with the exception of the real estate or parts thereof serving for business activities, and the land permanently serving as camping grounds and recreational facilities for children and youth. (…)

207. The level of public funding available should be clearly articulated in the relevant laws and regulations. The rights and duties of the state body invested with the ability to set and revise the level of public funding available should also be clearly defined in law. State support may be provided at the national, regional or local level. Associations should be involved in the drafting of legislation and policies on state funding and support.

208. The criteria for determining the level of public funds available for each association must be objective and non-discriminatory, and clearly stated in laws and/or regulations that are publicly available and accessible. State financing and support may be limited to assistance provided to associations that fall into certain categories, such as women and minority groups; in such cases, the basis for preferential treatment of certain groups must be determined in a transparent manner.

253. Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, Sections 58-61.

209. State authorities should inform the public about the allocation of funds by providing data on the beneficiaries and the quantities of funding allocated to each, as well as on the purpose for which the funding has been used. Reporting should disaggregate by immutable characteristics, to render transparent information on the types of groups to which funding has been allocated, as well as information on the amounts of funding and in-kind resources allocated to each group.

210. States may provide funding to associations through a variety of different mechanisms. Such mechanisms should include the procurement of services, usually applied in cases where the government knows the exact quality and quantity of what it wishes to purchase, and grants, generally applied in cases where the government only identifies an issue for which it is willing to fund the best creative solution, without identifying in advance the nature and modalities of services expected from an association. States may also establish mechanisms that allow for long-term funding, the covering of real costs of produced services or implemented projects, or the covering of institutional support provided to associations. States should be especially encouraged to provide support to associations specializing in providing social services, and also to associations involved in human rights protection, policy-making, monitoring and advocacy. There should be no discrimination against associations owing to their fields of operation, including associations specializing in monitoring or human rights, and any practices excluding certain associations from all public financial schemes should be abandoned.

211. As a rule, public funding should be allocated through a transparent procedure and be accompanied by a broad informational campaign delivered to all potentially interested associations. When the allocation of funding is made through a competitive process, the evaluation of applications for public funding should be objective and based on clear and transparent criteria, developed for the competition and publicized in advance. The results of evaluation processes should be made available to the public, as should information concerning the applications of associations that did not receive funding, specifying the reasons for awarding funding to some projects and not to others. Associations' right to privacy in this respect should be maintained, however.

212. The requirements for the submission of applications for public support should be proportional to the value of funding or other benefits received from the state. Nominal assistance should not require overly burdensome application processes, while more substantial forms of support may justifiably carry with them more demanding requirements.

213. In general, states should make every effort to simplify procedures for applying for public funding. One way to approach this is to create a depository of all documents required from organizations when they apply for state funding, such as their by-laws, registration certificate and licenses, where applicable, so that at the time of submission of an application, an association will only be required to submit a minimal number of documents.

214. All associations receiving public support should face the same reporting requirements. In exceptional cases, associations that receive direct public support without going through a competitive and transparent procedure may be required to meet particularly detailed reporting requirements in order to ensure transparency and public awareness. These reporting requirements might be greater compared to those for other associations that receive funding through a competitive and transparent procedure. However, in both cases, reporting requirements relating to public support should not be too burdensome and, at the very least, should be proportionate to the level of public support received.

215. Further, state bodies providing funding to an association should not deprive it of its independence. The state should ensure that associations receiving state funding remain free from the interference of the state or other actors with its activities. In any system that establishes state support for associations, 'state capture' must be avoided and the independence of associations must be maintained. An association is not independent if decisions over its activities and operations are taken by anyone other than the members of the association or an internal governing body, as designated by the members. The fact of having a single or a primary funder does not automatically result in a loss of independence by an association. However, an association is not considered independent in cases where the government has a wide discretion to, directly or indirectly, influence the decision-making processes of its managers and members, thereby rendering decisions on the establishment of the association, its activities and operations, the appointment of its management or on changes to its by-laws.

216. The authorities responsible for allocating state funding should be accountable for their decisions to grant or deny funding, while associations should be able to contest a denial of funding and have access to review by an independent and impartial tribunal.

217. To enhance transparency, it is also advisable to assign the responsibility of distributing funds or resources to various bodies that are, to the extent possible, free from government influence, rather than to just one ministry or other government body.

Private and other forms of non-state funding

218. Associations may also receive funding for their activities from private and other non-state sources, including foreign and international funding. States should recognize that allowing for a diversity of sources will better secure the independence of associations. As stated above, sources may include individuals, private legal entities and public bodies, whether domestic, foreign or international, including international and intergovernmental organizations, as well as foreign governments and their agencies.

219. While the foreign funding of non-governmental organizations may give rise to some legitimate concerns, regulations should seek to address these

concerns[254] through means other than a blanket ban[255] or other overly restrictive measures.

220. As mentioned above, any restrictions on access to resources from abroad (or from foreign or international sources) must be prescribed by law, pursue a legitimate aim in conformity with the specific permissible grounds of limitations set out in the relevant international standards, as well as be necessary in a democratic society and proportionate to the aim pursued. Combating corruption, terrorist financing, money-laundering or other types of trafficking are generally considered legitimate aims and may qualify as being in the interests of national security, public safety or public order.[256] However, any limitations on access to these resources must be proportionate to the state's objective of protecting such interests, and must be the least intrusive means to achieve the desired objective.[257]

221. Any control imposed by the state on an association receiving foreign resources should not be unreasonable, overly intrusive or disruptive of lawful activities.[258] Similarly, any reporting requirements must not place an excessive or costly burden on the organization.[259] The UN Special Rapporteur has considered that, if subject to reporting requirements, associations should, at most, be expected only to carry out a notification procedure on the receipt of funds and to submit reports on their accounts and activities,[260] and should not be expected to obtain prior authorization from the authorities. Moreover, the Venice Commission, while recognizing that "it is justified to require the utmost transparency in matters pertaining to foreign funding", has considered that "An administrative authority may be entrusted with the competence to review

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254. A more nuanced approach, in legislation and policy, is applicable to the receipt of foreign funding by political parties.

255. Venice Commission, "Interim Opinion on the Draft Law on Civic Work Organisations of Egypt", CDL(2013)023, 16 October 2013, para. 35, <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)023-e>. In this Opinion, the Venice Commission states that "[f]oreign funding of NGOs is at times viewed as problematic by States. The Venice Commission acknowledges that there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs."

256. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 35.

257. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 35.

258. OSCE/ODIHR and Venice Commission, "Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of Acts of the Kyrgyz Republic", CDL-AD(2013)030, 16 October 2013, para. 66, <http://www.legislationline.org/download/action/download/id/4857/file/239_FOASS_KYR_16%20Octt%202013_en.pdf>.

259. *Ibid*., para. 69.

260. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, para. 35..

the legality (not the expediency) of foreign funding, using a simple system of notification – not one of prior authorisation. The procedure should be clear and straightforward, with an implicit approval mechanism. The administrative authority should not have the ultimate decision-making power in such matters. This should be left to the courts."[261]

222. State practices that raise the deepest concerns in this area are: outright prohibitions on access to foreign funding; requiring associations to obtain government approval prior to receiving such funding; undue delay in receiving approval for implementing foreign-funded projects; requiring the transfer of funds from foreign sources through a centralized government fund; imposing excessive reporting requirements, banning or restricting foreign-funded associations from engaging in human rights, advocacy or other activities; stigmatizing or delegitimizing the work of foreign-funded associations by requiring them to be labelled in a pejorative manner;[262] initiating audit or inspection campaigns to harass such associations; and imposing criminal penalties on associations for failure to comply with any above-mentioned constraints on funding.

223. As already mentioned above, and as emphasized by the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, the ability of associations to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association. Consequently, such constraints violate Article 22 of the ICCPR and other human rights instruments, including the ICESCR.[263] Indeed, states may instead consider encouraging support of associations from foreign sources by creating tax or other incentives for businesses and natural persons to profit from supporting associations. Other incentives may include reducing costs of bank transfers or making donations from international organizations tax free.

LAW ON ASSOCIATIONS OF SERBIA (2009)

Article 36

The association may acquire assets from membership fees, voluntary contributions, donations and presents (in cash or in kind), financial subsidies, dead persons' estates, interest rates on deposits, rental fees, dividends and in other ways permitted by the law.

261. Venice Commission, "Interim Opinion on the Draft Law on Civic Work Organisations of Egypt", CDL-AD(2013)023, 18 June 2013, para. 43. See also OSCE/ODIHR and Venice Commission, "Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of Acts of the Kyrgyz Republic", CDL-AD(2013)030, 16 October 2013, <http://www.legislationline.org/download/action/download/id/4857/file/239_FOASS_KYR_16%20Octt%202013_en.pdf>.

262. This is the case, for example, if they are labelled as "foreign agents". See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, Section 20.

263. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, Section 20.

Individuals and corporate bodies that make contributions and give presents to the associations may be exempt from particular tax liabilities in accordance with the law introducing the relevant type of public revenue.

F. Accountability, supervision and supervisory authorities

224. The need for transparency in the internal functioning of associations is not specifically established in international and regional treaties owing to the right of associations to be free from interference of the state in their internal affairs. However, openness and transparency are fundamental for establishing accountability[264] and public trust. The state shall not require but shall encourage and facilitate associations to be accountable and transparent. This issue has also been addressed by recommendations of the Committee of Ministers of the Council of Europe in the context of non-governmental organizations.[265]

LAW ON ASSOCIATION OF THE REPUBLIC OF CROATIA (2001)

Publicity of the work of associations

Article 9

(1) The method of implementation of the publicity of work shall be determined in the association's statute.

(2) The association shall inform the members of the activities of the association in accordance with the general act of the association.

225. Reporting requirements, where these exist, should not be burdensome, should be appropriate to the size of the association and the scope of its operations and should be facilitated to the extent possible through information technology tools (see the section on associations and new technologies, below). Associations should not be required to submit more reports and information than other legal entities, such as businesses, and equality between different sectors should be exercised. Special reporting is permissible, however, if it is required in exchange for certain benefits, provided it is within the discretion of the association to decide whether to comply with such reporting requirements or forgo them and forsake any related special benefits, where applicable.

226. For instance, insofar as associations utilize public funding to achieve their goals and objectives, legislation may establish guidelines to ensure that tax payers have access to information regarding the statutes, programmes and financial reports of associations. The publication of such documents may be considered necessary to ensure an open society and prevent corruption. However, any

264. See Council of Europe, *Fundamental Principles on the Status of Non-governmental Organisations in Europe*, 2002, paras. 60-65.

265. Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, Section VII.

such reporting requirements should not create an undue and costly burden on associations and should also be proportional to the amount of funding received. Different reporting rules may apply to special associations, such as political parties.[266]

227. Reporting should be facilitated by the creation of, for example, online web portals where reports can be published, so long as this does not overburden the association. Reporting requirements should not be regulated by more than one piece of legislation, as this can create diverging and potentially conflicting reporting requirements and, thus, diverging liability for failure to fulfil them. Finally, associations should not, to the extent possible, be required to submit the same information to multiple state authorities; to facilitate reporting, the state authorities should seek to share reports with other departments of the state if necessary.

FOUNDATIONS ACT OF THE REPUBLIC OF ESTONIA (1995)

Article 14

(…)

(5) The annual report and documents submitted together with the report shall be submitted to the register electronically (…).

228. All regulations and practices on oversight and supervision of associations should take as a starting point the principle of minimum state interference in the operations of an association. As noted elsewhere in these Guidelines, the right to privacy applies to an association and its members; this means that oversight and supervision must have a clear legal basis and be proportionate to the legitimate aims they pursue.[267] Oversight and supervision of associations should not be invasive, nor should they be more exacting than those applicable to private businesses. Such oversight should always be carried out based on

266. See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 192 of which states that "It is reasonable for states to legislate minimum requirements that must be satisfied before the receipt of public funding. Such requirements may include:

- Registration as a political party;
- Proof of a minimum level of support;
- Gender-balanced representation,
- Proper completion of financial reports as required (including for the previous election); and
- Compliance with relevant accounting and auditing standards."

See also paras. 201-206.

267. Venice Commission, "Opinion on Federal Law N. 121-FZ on Non-Commercial Organizations ("Law on Foreign Agents"), on Federal Laws N. 18-FZ and N. 147-FZ and On Federal Law N. 190-FZ on Making Amendments to the Criminal Code ("Law on Treason") of the Russian Federation", CDL-AD(2014)025, 27 June 2014, para. 90, available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)025-e>.

the presumption of lawfulness of the association and of its activities. Moreover, such oversight should not interfere with the internal management of associations, and should not compel associations to co-ordinate their objective and activities with government policies and administration.

229. The bodies charged with the supervision of associations should be defined by law. Legislation should clearly indicate the scope, purpose and limits of the mandates of such bodies. Requirements for expertise (such as in the case of financial regulations, which may require accountants) may necessitate the need for more than one body for the supervision of associations. Minimizing the number of supervisory bodies involved in the process will help ensure transparency, deter corruption and ensure the proper functioning and simplicity of the regulatory system. State authorities should ensure that they are sufficiently accessible to the association in terms of communication, and that those employed by these bodies are trained and competent to deal with associations. Consideration may be given to ensuring that the government body in charge of granting the status of legal entity to an association is separate from the government body or bodies in charge of their oversight and supervision. To ensure greater transparency and increase regulatory independence, legislation should define the procedure for appointing supervisory bodies, as well as the grounds for inspecting associations, the duration of inspections and the documents that need to be produced during inspection.[268]

LAW ON THE NATIONAL CIVIL FUND OF HUNGARY (2003)

This law establishes a highly detailed procedure, whereby civic sector support funds are raised and distributed and their use monitored. The monitoring body represents both the state and the non-governmental organization sector at national and regional levels. It also provides for a set of transparency requirements concerning the internal workings of the body administering the Fund.

230. In general, legislation should grant supervisory bodies the ability to investigate and pursue potential violations. Without such investigative powers, these bodies are unlikely to be able to effectively implement their mandate. However, the regulations on inspection must be clear, should not be excessive, vaguely defined or provide public authorities with too much discretion. This could lead to abuse and a selective approach being taken, as well as to the misuse of the regulations, potentially leading to harassment.

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268. The OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders* states that "Any administrative and financial reporting requirements must be reasonable and provided for in law. Any inspections of NGO offices and financial records must have a clear legal basis and be fair and transparent. Audits should be specifically regulated by legislation. Such legislation should clearly define in an exhaustive list the grounds for possible inspections and the documents that need to be produced during the inspection. Furthermore, it should provide for a clearly defined and reasonable period of prior warning and maximum duration of inspections." See OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), para. 67.

231. The legislation should specifically define in an exhaustive list the grounds for possible inspections. Inspections should not take place unless there is suspicion of a serious contravention of the legislation, and should only serve the purpose of confirming or discarding the suspicion.[269] Regulations on inspections must also contain clear definitions of the powers of inspecting officers, must ensure respect for the right to privacy of the clients, members and founders of the associations, and must provide redress for any violation in this respect. Any justified need for an inspection should also provide associations with ample warning time before the inspections, as well as information on the maximum duration of an inspection. In addition, where associations are required to provide documents prior to or during inspection, the number of documents required should be defined and reasonable, and associations should be given sufficient time to prepare them.[270] Legislation should also contain safeguards to ensure the respect of the right to privacy of clients, members and founders of associations, as well as provide redress for any violation in this respect.

National Association for the Advancement of Colored People (NAACP) v. Patterson, 357 U.S. 449 (1958)

An association, in the course of judicial proceedings challenging the restrictions imposed on the exercise of its activities, was ordered by the court, on the state's motion, to produce many of the association's records, including its membership lists. For failure to do so, the association was adjudged in contempt and fined $100,000. The Supreme Court of Alabama, which was reviewing the validity of this latter judgement, held that "[i]mmunity from state scrutiny of [the association]'s membership lists is here so related to the right of [the association]'s members to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment. The State has failed to show a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of [the association]'s membership lists is likely to have. […] In the circumstances of this case, compelled disclosure of [the association]'s membership lists is likely to constitute an effective restraint on its members' freedom of association".

232. Finally, there may be situations where audits (understood as the verification of an association's financial and accounting records and supporting documents provided by an independent professional) are required by donors. At least in cases where associations receive public funding, it may be necessary

269. See Venice Commission, *Compilation of Venice Commission Opinions concerning Freedom of Association (revised July 2014)*, CDL-PI(2014)004, page 24 (Section 8.5.4.) available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2014)004-e>.

270. OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), para. 67, <http://www.osce.org/odihr/119633?download=true>.

to provide them with adequate funds to conduct such audits, regardless of whether the funds are from a public or private source. States should assist by providing funds for such audits in cases where associations have difficulties in carrying them out.

233. Where supervisory bodies also have the power to carry such audits, they should not apply more cumbersome procedures to conduct audits of associations' activities, as defined in legislation, than they do to audit other entities, such as businesses. An audit should not be tantamount to an inspection or the reconciliation of accounts. Under no circumstances should the audit process result in the harassment of an association.

234. In case of the non-compliance with requirements on reporting, the legislation, policy and practice of the state should provide associations with a reasonable amount of time to rectify any oversight or error. Sanctions should only apply in cases where associations have committed serious infractions and should always be proportional. The prohibition and dissolution of associations should always be measures of last resort.

G. Liability and sanctions

235. Legislation may introduce administrative, civil and criminal sanctions[271] for associations, as for other entities, in case they are in violation of relevant regulations. These may take the form of fines, the withdrawal of state subsidies or, in extreme cases, the suspension of their activities or their de-registration or dissolution.

LAW ON PUBLIC ORGANIZATIONS AND ASSOCIATIONS OF LATVIA (1993)

Section 7.2

Members of public organisations shall not be liable for the civil legal commitments of the relevant public organisation.

236. In the cases of associations that do not have legal personality, legislation may require that liability is borne by individual members[272] of the association.[273] Nevertheless,

271. On criminal sanctions, see ECtHR, *Christian Democratic People's Party v. Moldova* (Application no. 28793/02, judgment of 14 February 2006), para. 65, where the Court held as follows: "The dominant position the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media (see *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236)".

272. See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27, 21 May 2012,, para. 56, which states that "individuals involved in unregistered associations should be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions".

273. ECtHR, *Fraktion Sozialistischer Gewerkschafter im ÖGB Vorarlberg and 128 of its individual members (Köpruner, Falschlunger and Others) v. Austria* (Application no. 12387/86, decision of 13 April 1989).

the individual acts of one member of an association should not impinge on the entire association, and the member should be held personally accountable.[274]

237. Any sanctions introduced must always be consistent with the principle of proportionality, that is, they must be the least intrusive means to achieve the desired objective. Sanctions must at all times be enforceable and effective to ensure the specific objectives for which they were enacted. When deciding whether to apply sanctions, authorities must take care to apply the measure that is the least disruptive and destructive to the right to freedom of association. For example, if an association is in breach of a legal requirement to submit financial statements, the first response should be to request rectification of the omission(s); a fine or other small penalty should only be issued at a later date, if appropriate. In the case of *Korneenko v. Belarus*, the UN Human Rights Committee examined the prohibition of an unregistered association that was dissolved based on the improper use of equipment that it had received through foreign funding for the production of propaganda materials, as well as for deficiencies in the accompanying documentation. The Committee concluded that the dissolution of an association in response to deficient documentation was a disproportionate response.[275] More generally, any penalties for the late or incorrect submission of reports, or other small offences, should never be higher or harsher than penalties for similar offences committed by other entities, such as businesses.

238. Sanctions should, if circumstances so allow, be preceded by a warning with information as to how a violation may be rectified. In that case, the association should be given ample time to rectify the violation or omission.[276] The law should also clearly define who may institute proceedings against an association.

239. Sanctions amounting to the effective suspension of activities, or to the prohibition or dissolution of the association, are of an exceptional nature.[277] They should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles. In any case, these types of drastic sanctions should ultimately be imposed or reviewed by a judicial authority.

240. Associations should not be sanctioned repeatedly for one and the same violation or action. Appeals against sanctions imposed should have the effect of suspending the enforcement of sanctions until the appeals are completed. This avoids situations in which lengthy appeal procedures lead to the quasi-disappearance of the association due to frozen accounts or high penalties, even where the appeal is ultimately

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274. See OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), para. 209, which state that, "While laws and regulations may require that individual members of an NGO or other association that does not have legal personality bear liability, such provisions must not be abused as a means of exerting pressure on individual human rights defenders for their for their work".

275. See UN Human Rights Committee, *Korneenko et al v. Belarus* (Communication no. 1274/2004, 31 October 2006), paras. 7.6-7.7; see also Conte, A. and Burchill, R., "Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee" Second edition, Ashgate 2009, p. 93-94.

276. ECtHR, *Özbek and Others v. Turkey* (Application no. 35570/02, 6 October 2009), para. 37.

277. ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgment of 9 July 2013).

successful. In cases concerning grave crimes or relating to national security, it is reasonable not to suspend sanctions during appeal procedures, however.

241. The burden of proof for violations leading to sanctions should always be on the authorities. This includes providing adequate evidence to support the claim of a violation leading to sanctions. Procedures leading to the imposition of sanctions should be transparent and clear, but do not always need to be accompanied by a high level of publicity. This is to ensure that the public right to information is adequately balanced with the potential damage to the reputation of the association prior to a finding as to its liability or guilt. Moreover, decisions made by supervisory bodies should be subject to appeal by an independent and impartial tribunal or court. In the framework of supervision, state officials should be held administratively and criminally liable for not protecting or for violating the rights of associations.

Termination, prohibition and dissolution, and access to justice

242. The existence of an association may be terminated by decision of its members or by way of a court decision. Thus, termination may be voluntary or involuntary.

243. Voluntary termination of an association may occur when the association has met its goals and objectives, or, for example, when it wishes to merge with another association or no longer wishes to operate. The voluntary nature of such termination means that this decision must be taken by the association's members, who may be subject to any rules prescribed in the association's charter or statute, where applicable.

244. Involuntary termination of an association, which may take the form of dissolution or prohibition, may only occur following a decision by an independent and impartial court.

245. In the particular case of non-governmental organizations, the Council of Europe Recommendation on the legal status of non-governmental organizations in Europe stipulates that associations may only be dissolved in cases of bankruptcy, prolonged inactivity or serious misconduct.[278]

246. Cases of bankruptcy or of prolonged inactivity have not featured in international case law relating to involuntary termination. However, with respect to bankruptcy, it would not be appropriate to apply different rules to associations than those that are applied to other entities. Furthermore, prolonged inactivity is unlikely to be established without, for example, several years having elapsed since the last meetings of the association and repeated failures to file any annual reports that might be required. Moreover, it would be appropriate for the relevant authorities to double-check whether any apparent prolonged inactivity is actually the result of a failure in communication between the association concerned and the state.

278. Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 44.

247. In its case law on involuntary termination, the ECtHR has been mainly concerned with political parties that have been dissolved or prohibited on account of their objectives and activities being considered inadmissible.

248. The ECtHR leaves a certain margin of appreciation to member states in assessing the necessity to prohibit or dissolve a political party. However, in the numerous judgements that it has handed down on this issue, it has displayed a strict approach to examining the implications of such an action by a state for a democratic system of governance. The standard line of reasoning applied by the ECtHR in such cases is that "the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 (2) exists, the Contracting States have only a limited margin of appreciation [..]".[279] This approach should be translated into an obligation on states to also adopt a strict approach to the use of such sanctions by substantiating the need for their application[280] and then only doing so as a measure of last resort.

249. Furthermore, as already recommended by the OSCE/ODIHR and the Venice Commission,[281] the possibility to dissolve a political party (or to prohibit its formation) should be exceptionally narrowly tailored and applied only in extreme cases. Political parties should never be dissolved for minor infractions, such as minor administrative or operational breaches of conduct. Less intrusive sanctions should be applied in such cases.

250. Thus, the involuntary termination of political parties has only been upheld in cases in which it has been established that a political party's objectives or activities entailed a tangible and immediate threat to democracy.[282]

251. The ECtHR has drawn a distinction between a political party and an ordinary association ("social organization") when assessing their involuntary termination due to the threat that their objectives and activities posed to democracy. In relation to the latter, it held that any such measure "must be supported by relevant and sufficient reasons, just as in the case of dissolution of a political party, although in the case of an association, given its more limited opportunities to exercise national influence, the justification for preventive restrictive measures may legitimately be less compelling than in the case of a political party".[283] Such reasons were found to exist in the case of the large-scale, co-ordinated intimidation by an association, related to the advocacy of racially motivated

279. ECtHR, *United Communist Party of Turkey v. Turkey* [GC] (Application no. 19392/92, judgement of 30 January 1998), para. 46.

280. ECtHR, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan* (Application no. 37083/03, judgement of 8 October 2009).

281. OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), paras. 89-96.

282. ECtHR, *Refah Partisi (the Welfare Party) and others v. Turkey* [GC] (Application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgement of 13 February 2003) paras. 126-135; and *Herri Batasuna and Batasuna v. Spain* (Application nos. 25803/04 and 25817/04, judgement of 30 June 2009).

283. See ECtHR, *Vona v. Hungary* (Application no. 35943/10, judgement of 9 July 2013), para. 57.

policies, on account of the negative consequences that such intimidation has on the political will of the people.[284]

252. In general, any penalty or sanction amounting to the effective dissolution or prohibition of an association must be proportionate to the misconduct of the association and may never be used as a tool to reproach or stifle its establishment and operations.

253. Associations should not be prohibited or dissolved owing to minor infringements, including cases where the association's chosen name is not in line with legislation, or of other infringements that may be easily rectified. In addition, associations should be provided with adequate warning about the alleged violation and be given ample opportunity to correct infringements and minor infractions, particularly if they are of an administrative nature.

254. Furthermore, the individual wrongdoing of founders or members of an association, when not acting on behalf of the association, should lead only to their personal liability for such acts, and not to the prohibition or dissolution of the whole association.

255. Although a less intrusive sanction than termination, any suspension of the activities of an association can still only be justified by the threat that the association in question poses to democracy,[285] and should also only be based on a court order or be preceded by judicial review. A suspension should always be a temporary measure that does not have a long and lasting effect. A lengthy suspension of activities would otherwise effectively lead to a freezing of the operations of an association, resulting in a sanction tantamount to dissolution.

256. It is also essential that any decision leading to the suspension, prohibition or dissolution of an association be communicated in a timely manner and be subject to review by an independent and impartial tribunal.[286]

257. Legislation should clearly state what happens to the assets and property of associations where their termination is involuntary. Where involuntary termination is based on the non-compliance of the association's objectives or activities with international standards or with legislation that is consistent with such standards, the legislation may provide that the funds or assets concerned should pass to the state. In other cases, providing for an automatic transfer may be considered disproportionate.[287]

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284. *Ibid*.

285. ECtHR, *Christian Democratic People's Party v. Moldova* (Application no. 28793/02, judgement of 14 February 2006).

286. See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies)*, UN Doc. A/HRC/23/39, 24 April 2013, which states in para. 81 that "(c) To ensure that a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review".

287. See, for example, Conference of INGOs of the Council of Europe, Report by the Expert Council on NGO Law on "Sanctions and Liability in Respect of NGOs" (January 2011), para. 53, <http://www.coe.int/t/ngo/Source/Expert_Council_NGO_Law_report_2010_en.pdf>.

258. Where the termination is voluntary, it should be initiated by the association itself, for example, in accordance with its founding instrument or by decisions of its members.[288] The association's freedom to determine who should succeed to its assets is only subject to the prohibition on distributing profits that it may have made among its founders and members. Regarding the transfer of assets obtained with the assistance of tax exemptions or other public benefits, it may be legitimate to have them transferred to associations with similar objectives.[289]

LAW OF THE REPUBLIC OF FRANCE RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2005)

Article 9

In case of voluntary dissolution, dissolution provided by the by-laws, or imposed by a court, the assets of the association shall be vested in accordance with the by-laws or, in the absence of provision in the by-laws, according to the rules determined by a general meeting.

DECREE RELATING TO THE IMPLEMENTATION OF THE LAW OF 1 JULY 1901 RELATING TO THE CONTRACT OF ASSOCIATION (1901, AS LAST AMENDED IN 2012)

Article 14

If the by-laws do not provide the modalities of liquidation and transfer of assets of an association in the event of its dissolution, by any method whatsoever, or if the general meeting which decides the voluntary dissolution has not taken decision in this regard, the court, at the request of the public prosecutor [*ministère public*] appoints a curator. The curator organizes, within the time specified by the court, the convening of a general meeting whose mandate is only to decide about the transfer of the assets; the curator exercise his/her powers in accordance with Article 813 of the Civil Code applicable to unsettled estates.

Article 15

When the general meeting is organized to vote on the transfer of assets, regardless of the method of transfer, it cannot, in line with the provisions of Article 1 of the Law of 1 July 1901, allocate any portion of the assets of the association to the members, except for the reversal of their contributions.

288. See in the case of NGOs, Council of Europe, *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, 10 October 2007, para. 56 which states that "NGOs with legal personality can designate a successor to receive their property in the event of their termination, but only after their liabilities have been cleared and any rights of donors to repayment have been honoured. However, in the event of no successor being designated or the NGO concerned having recently benefited from public funding or other form of support, it can be required that the property either be transferred to another NGO or legal person that most nearly conforms to its objectives or be applied towards them by the state. Moreover the state can be the successor where either the objectives or the means used by the NGO to achieve those objectives have been found to be inadmissible".

289. See, for example, Conference of INGOs of the Council of Europe, Report by the Expert Council on NGO Law on "Sanctions and Liability in Respect of NGOs" (January 2011), para. 53, <http://www.coe.int/t/ngo/Source/Expert_Council_NGO_Law_report_2010_en.pdf>.

FINNISH ASSOCIATIONS ACT (1989)

Section 40

When an association has decided to dissolve, the executive committee has to attend to the liquidation measures caused by the dissolution, unless the association has appointed one or more other liquidators for the task to replace the executive committee. No liquidation measures are needed, however, if the association, on deciding on dissolution, has at the same time approved a final account, drawn up by the executive committee, according to which the association has no debts.

LAW NO. 8788 ON NON-PROFIT ORGANIZATIONS OF THE REPUBLIC OF ALBANIA (2001)

Article 44

Dissolution by Court Decision

A court may decide the dissolution of a non-profit organization on the request of its members, its decision-making organs, or the competent state organ in cases when:

a) the activity of the non-profit organization comes into conflict with the Constitution;

b) the non-profit organization performs illegal activity;

c) the non-profit organization was not established according to the requirements of law;

ç) the non-profit organization has gone bankrupt according to the law of bankruptcy.

Except when the activity of the organization constitutes a serious threat to the public, the court shall inform the organization in writing about the violation of law and give it 30 days to correct its activity.

Article 45

Manner of Examining the Request

The examination of a request to dissolve a non-profit organization is done in the presence of representatives of the non-profit organization, of the supervising organ and, as the case may be, the members who presented the request.

When, on the request of the interested parties contemplated in the first paragraph of article 44, the court assesses that it is the case, it preliminarily recommends to the non-profit organization to take action to conform its program or activity with the Constitution and this law, in a set time period, suspending the examination of the case.

When the recommendations are applied properly, the court decides to end the adjudication. Otherwise, it examines the case after the set time period has been completed.

Article 46

Liquidation

When dissolution has been decided by the non-profit organization itself, the liquidation is realized by one or more liquidators, designated according to the charter and always before de-registration by the court.

When the court decides on the dissolution, it also designates a liquidator, vesting in him the competencies necessary for the conduct of the liquidation procedure.

In all cases, the liquidators have authority and responsibility over the assets, the property and the representation of the non-profit organization and of [word missing], from the date of their appointment until the conclusion of the liquidation.

Article 47

The Activity of the Liquidators

The liquidators evaluate the financial condition of the non-profit organization and its property at the moment of the taking of the decision for its dissolution, and they identify all the possible creditors and debtors.

After the payment of the obligations that the organization has to the state and to other creditors and the receipt of obligations from third parties, the liquidator values the property that remains and sees that this property goes to the destination specified by the charter, its competent organ, the court or the law.

In no case is distribution or disposition in favor of the members or other persons who are subjects of the charter or the establishment act of the organization or their relatives permitted.

In cases when the non-profit organization has obtained tax exemptions or fiscal relief, donations from the public or state grants, all property that remains after the payments of obligations is distributed to other non-profit organizations that follow the same goals as or goals similar to the liquidated organization. In cases when a non-profit organization dissolves voluntarily, the organizations profiting from the property that remains are specified in the charter or in a decision of the highest decision making organ. When this specification is not done, the organizations that profit are determined by the court.

I. Associations and new technologies

259. In general and where applicable, associations should enjoy the same rights and freedoms as individuals. At the very least, this should apply to those associations that have legal personality. In particular, this concerns the right to freedom of expression, which is fundamental to the exercise of the right to association. Legislation should take into account that the right of associations

to freedom of expression includes the right to choose, without state interference, the form in which their ideas are conveyed, including through the use of new technologies and media.[290]

United Nations Human Rights Council, "The promotion, protection and enjoyment of human rights on the Internet" (29 June 2012)

1. Affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

[…]

5. Calls upon all States to address security concerns on the Internet in accordance with their international human rights obligations to ensure protection of freedom of expression, freedom of association, privacy and other human rights online, including through national democratic, transparent institutions, based on the rule of law, in a way that ensures freedom and security on the Internet so that it can continue to be a vibrant force that generates economic, social and cultural development;

260. In the last decade, new technologies, in particular the Internet, have greatly facilitated the exercise of the freedom of association, as well as other fundamental rights. In particular, new technologies have enhanced the ability of persons and groups of persons to form, join and participate in all forms of associations, including non-governmental organizations and political parties. Good practices include providing increased access to the Internet, thereby allowing persons who share mutual interests to come together and pursue their common objectives online. Many of the traditional activities undertaken by political parties, non-governmental organizations and other associations can be exercised online. These activities can include registering, gathering signatures, fundraising and making donations. Allowing associations to conduct such activities online can be considered good practice; however, the legislation of some states still requires that associations hold meetings at which members are physically present, for example. The use of new technologies also offers an opportunity to enhance the transparency and accessibility of associations.

261. Legislation should ensure that an association can exist online or, at the very least, can conduct many of its activities online. On the other hand, states must be wary of the fact that persons may be associated online without their express consent and not of their own volition. Such involuntary associations or memberships should not lead to legal consequences for the persons concerned.

290. See OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2nd edition (Warsaw: ODIHR, 2010), para. 163, which states that, in the case of assemblies, the right to freedom of expression includes the right to choose the form in which ideas are conveyed, without unreasonable interference by the authorities.

262. Regulations should remain flexible so that any registration or reporting requirements can be conducted online, and public administration should have in place the necessary infrastructure to facilitate this, thus simplifying the establishment and conduct of business and operations of associations.

263. State authorities must also keep in mind that any restrictions on the online exercise of freedom of expression or freedom of association by, for example, constricting the Internet space within which associations establish and function, may amount to a disproportionate interference with the exercise of these rights. All such restrictions relating to the online activities of associations are subject to the same principles of proportionality, legality and necessity in a democratic society as any other limitations.[291]

264. Given the new means of electronic communication and, as such, the new ways in which persons can associate, states should be wary of stifling the exercise of any of these rights by restricting Internet access or by using new technologies and media to reprimand, target or punish those who exercise their rights.[292] Their positive obligation extends also to ensuring that third parties do not interfere with the exercise of the rights of individuals to associate or of the rights of associations themselves.

265. New technologies also include surveillance technologies, which raise questions and concerns with respect to the exercise of the freedom of association, but also with respect to other rights of associations as entities and of their members, including the right to privacy. To a greater or lesser extent, surveillance is being conducted by states primarily with the aim of fighting crime and protecting national security. While such aims are acceptable, surveillance measures can nonetheless amount to undue limitations on the right to association and the right to privacy of associations and their members and, as such, the extent of their interference must be proportional. In particular, measures of surveillance should comply with the minimum requirements and safeguards provided for in the case law of the European Court of Human Rights.[293]

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291. See Brown, Ian, "Report on Online Freedom Expression, Assembly and Association and the Media in Europe", MCM(2013)007, p. 17, http://www.coe.int/t/dghl/standardsetting/media/belgrade2013/Online%20freedom%20of%20expression,%20assembly,%20association_MCM(2013)007_en_Report_IanBrown.pdf, which states that "Blocking access to associations' websites, and communications tools such as webmail and social networking sites, can have a significant negative impact on assembly and association." See also the 2011 report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27, 16 May 2011, paras 29-21 on arbitrary blocking or filtering of content [online].

292. For examples from the Middles East and North Africa; see Rutzen, Douglas and Zenn, Jacob, "Association and Assembly in the Digital Age", International Journal of Not-for-Profit Law / vol. 13, no. 4, December 2011 / 53.

293. ECtHR, *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (Application no. 62540/00, judgment of 28 June 2007), paras. 76, 85 and 87-88. See also ECtHR, *Uzun v. Germany* (Application no. 35623/05, judgment of 2 September 2010), para. 63. For more information on minimum requirements and safeguards, see OSCE/ODIHR, "Opinion on the Draft Law of Ukraine on Combating Cybercrime", 22 August 2014, paras. 44-47, <http://www.legislationline.org/download/action/download/id/5594/file/255_CRIM_UKR_22Aug2014_en.pdf>.

266. Moreover, the UN Human Rights Committee has considered that any restriction on the operation of information dissemination systems, including that of Internet service providers, is not legitimate unless it conforms with the test for restrictions on freedom of expression under international law.[294] The UN Special Rapporteur on Freedom of Opinion and Expression also noted the importance for states to be transparent about the use and scope of communications surveillance techniques and powers, particularly when dealing with Internet service providers.[295]

267. In the absence of a court order supported by objective evidence, it should be unlawful to compel Internet service providers to share with the authorities all information exchanged online or via other electronic technologies between individuals belonging to an association or between associations themselves. Legislation shall also not force Internet service providers to retain data relating to such communications. Given the impact that such measures may have on the right to respect for private and family life and the right to protection of personal data, they must be prescribed by law and be necessary in a democratic society. In particular, limitations on the material and personal scope of such measures should be provided, and substantive and procedural safeguards should exist to ensure that the public authorities access and use data only when necessary, such as in the context of criminal investigation.

268. As pointed out in the 2009 report of the UN Special Rapporteur on the Promotion and Protection of Fundamental Rights while Countering Terrorism, "The rights to freedom of association and assembly are also threatened by the use of surveillance. These freedoms often require private meetings and communications to allow people to organize in the face of Governments or other powerful actors. Expanded surveillance powers have sometimes led to a 'function creep', when police or intelligence agencies have labelled other groups as terrorists in order to allow the use of surveillance powers which were given only for the fight against terrorism."[296] These powers are then used to impair the operations of an organization by, for example, freezing bank accounts, to the extent that they effectively extinguish the organization from existence.

269. As regards efforts to prevent terrorist activity on the Internet (such as by regulating, filtering or blocking online content deemed to be illegal under international law), all such restrictions should be in compliance with international human rights standards and exercised according to the rule of law, so as not to impact unlawfully on the freedom of expression and the free flow of information.

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294. See UN HRC, *General Comment No. 34 on Freedom of Opinion and Expression*, 12 September 2011, para. 43, <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

295. UN Special Rapporteur on Freedom of Opinion and Expression, Report to the Human Rights Council, A/HRC/23/40, 17 April 2013, paras. 91-92, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf>.

296. UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Human Rights Council, A/HRC/13/37, 28 December 2009, para. 36.

270. The blocking of websites of associations, or of certain sources of information or communication tools, can have a significantly negative impact on associations.[297] Security measures should be temporary in nature, narrowly defined to meet a clearly set out legitimate purpose and prescribed by law. These measures should not be used to target dissent and critical speech.[298]

271. Legislators must, therefore, narrowly tailor any provisions that permit the surveillance of associations, and must ensure that they are always based on a court order. Any provisions constituting an interference with the use of the Internet and other communication tools, including social media, must be proportionate and the least intrusive of all options available. Any surveillance measures must always be open to judicial review.

272. Further, associations and their founders and members should have the right to seek redress for any undue interference with and violation of their right to freedom of association or privacy, or of other related rights, as a result of state surveillance, even where the said surveillance is being conducted based on legislation that aims to protect national security or fight crime.

297. See 2013 Report by Ian Brown, *Report on Online Freedom Expression, Assembly and Association and the Media in Europe*, MCM(2013)007, p. 17. See also ECtHR, *Socialist Party v. Turkey* (Application no. 21237/93, judgment of 25 May 1998), para. 47.

298. See the OSCE Representative on Freedom of the Media, "Freedom of Expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States", OSCE, 2010, available at <http://www.osce.org/fom/80723>.

ANNEXES

Annex A – Selected International and Regional Instruments

This section includes a selection of excerpts from relevant international and regional instruments critical to the regulation and functioning of the right to freedom of association in the OSCE region, as discussed in this document. Treaties such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights represent legal obligations for the states that have ratified them. Other instruments, such as the Universal Declaration of Human Rights and the Copenhagen Document, while not legally binding, are particularly compelling commitments undertaken by the states that have endorsed them.

A. United Nations

ILO Convention (No. 87) on Freedom of Association and Protection of the Right to Organize (1948)

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

(...)

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

Convention relating to the Status of Refugees (28 July 1951)

Article 15

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

UN Convention relating to the Status of Stateless Persons (1954)

Article 13

As regards non-political and non -profit- making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965)

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(…)

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(...)

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:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(...)

(viii) The right to freedom of opinion and expression;

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

International Covenant on Civil and Political Rights (16 December 1966)

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by 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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

International Covenant on Economic, Social and Cultural Rights (16 December 1966)

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the

exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979)

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(…)

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Convention on the Rights of the Child (20 November 1989)

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 Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990)

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;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Convention on the Rights of Persons with Disabilities (13 December 2006)

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:

(…)

b. Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Universal Declaration of Human Rights (10 December 1948)

Article 20

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

2. No one may be compelled to belong to an association.

B. Council of Europe

Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) as amended by Protocols Nos. 11 and 14

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of

national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

European Social Charter (18 October 1961, as revised in 1996)

Part 1

5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (24 April 1986)

Article 1

This Convention shall apply to associations, foundations and other private institutions (hereinafter referred to as "NGOs") which satisfy the following conditions:

a. have a non-profit-making aim of international utility;

b. have been established by an instrument governed by the internal law of a Party;

c. carry on their activities with effect in at least two States; and

d. have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party.

Article 2

1. The legal personality and capacity, as acquired by an NGO in the Party in which it has its statutory office, shall be recognised as of right in the other Parties.

2. When they are required by essential public interest, restrictions, limitations or special procedures governing the exercise of the rights arising out of the legal capacity and provided for by the legislation of the Party where recognition takes place, shall be applicable to NGOs established in another Party.

Article 3

1. The proof of acquisition of legal personality and capacity shall be furnished by presenting the NGO's memorandum and articles of association or other basic constitutional instruments. Such instruments shall be accompanied by documents establishing administrative authorisation, registration or any other form of publicity in the Party which granted the legal personality and capacity. In a Party which has no publicity procedure, the instrument establishing the NGO shall be duly certified by a competent authority. At the time of signature or of the deposit of the instrument of ratification, acceptance, approval or accession, the State concerned shall inform the Secretary General of the Council of Europe of the identity of this authority.

2. In order to facilitate the application of paragraph 1, a Party may provide an optional system of publicity which shall dispense NGOs from furnishing the proof provided for in the preceding paragraph for each transaction that they carry out.

Article 4

In each Party the application of this Convention may only be excluded if the NGO invoking this Convention, by its object, its purpose or the activity which it actually exercises:

a. contravenes national security, public safety, or is detrimental to the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others; or

b. jeopardises relations with another State or the maintenance of international peace and security.

Framework Convention for the Protection of National Minorities (1 February 1995)

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Convention on preventing and combating violence against women and domestic violence (12 April 2011)

Article 9

Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.

C. Other Regional Instruments

American Convention on Human Rights (22 November 1969)

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be 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 and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Charter of Fundamental Rights of the European Union

Article 12

Freedom of assembly and of association

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

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

African Charter on Human and Peoples' Rights

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

(…)

Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need.

2. To serve his national community by placing his physical and intellectual abilities at its service;

3. Not to compromise the security of the State whose national or resident he is;

4. To preserve and strengthen social and national solidarity, particularly when the latter is strengthened;

5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence in accordance with the law;

6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;

7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;

8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Arab Charter on Human Rights

Article 24

Every citizen has the right:

1. To freely pursue a political activity.

2. To take part in the conduct of public affairs, directly or through freely chosen representatives.

3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will.

4. To the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity.

5**.** To freely form and join associations with others.

6. To freedom of association and peaceful assembly.

7. No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others.

D. OSCE Commitments

Madrid 1983 (Questions Relating to security in Europe: Principles)

The participating States will ensure the right of workers freely to establish and join trade unions, the right of trade unions freely to exercise their activities and other rights as laid down in relevant international instruments. They note that these rights will be exercised in compliance with the law of the State and in conformity with the State's obligations under international law. They will encourage, as appropriate, direct contacts and communication among such trade unions and their representative.

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. These individuals, groups and organizations have the right to participate in public debates on environmental issues, as well as to establish and maintain direct and independent contacts at national and international level.

Vienna 1989

(13) In this context [Participating States] will

(…)

(13.5) - respect the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms;

Copenhagen 1990

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(...)

(7.6) — respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(...)

II

(9) The participating States reaffirm that

(...)

(9.3) — the right of association will be guaranteed. The right to form and — subject to the general right of a trade union to determine its own membership — freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards;

(...)

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to

(...)

(10.3) — ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

(10.4) — allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

(...)

III

(26) The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:

(...)

— developing political parties and their role in pluralistic societies,

— free and independent trade unions,

— developing other forms of free associations and public interest groups,

(...)

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

(...)

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

(...)

(32.2) — to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(...)

(32.6) — to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations. (...)

Paris 1990

Human Rights, Democracy and Rule of Law

We affirm that, without discrimination, every individual has the right to (...) freedom of association and peaceful assembly (…)

Non-governmental Organizations

We recall the major role that non-governmental organizations, religious and other groups and individuals have played in the achievement of the objectives of the CSCE and will further facilitate their activities for the implementation of the CSCE commitments by the participating States. These organizations, groups and individuals must be involved in an appropriate way in the activities and new structures of the CSCE in order to fulfil their important tasks. (...)

Bonn 1990 (Preamble)

Recognizing the relationship between political pluralism and market economies, and being committed to the principles concerning:

(...)

· Economic activity that accordingly upholds human dignity and is free from (...) denial of the rights of workers freely to establish or join independent trade unions,

(…)

Moscow 1991

(43) The participating States will recognize as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such organizations to conduct their national activities freely on their territories; to that effect they will

(43.1) - endeavour to seek ways of further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions;

(43.2) - endeavour to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions;

(43.3) - welcome NGO activities, including, inter alia, observing compliance with CSCE commitments in the field of the human dimension;

(43.4) - allow NGOs, in view of their important function within the human dimension of the CSCE, to convey their views to their own governments and the governments of all the other participating States during the future work of the CSCE on the human dimension.

(43.5) During the future work of the CSCE on the human dimension, NGOs will have the opportunity to distribute written contributions on specific issues of the human dimension of the CSCE to all delegations.

(43.6) The CSCE Secretariat will, within the framework of the resources at its disposal, respond favourably to requests by NGOs for non-restricted documents of the CSCE.

(43.7) Guidelines for the participation of NGOs in the future work of the CSCE on the human dimension might, inter alia, include the following:

(i) NGOs should be allotted common space at such meeting sites or in their immediate vicinity for their use as well as reasonable access, at their own expense, to technical facilities, including photocopying machines, telephones and fax machines;

(ii) NGOs should be informed and briefed on openness and access procedures in a timely manner;

(iii) delegations to CSCE meetings should be further encouraged to include or invite NGO members.

The participating States recommend that the Helsinki Follow-up Meeting consider establishing such guidelines. (...)

Helsinki 1992

Relations with international organizations, relations with non-participating states, role of non-governmental organizations

(14) The participating States will provide opportunities for the increased involvement of non-governmental organizations in CSCE activities.

(15) They will, accordingly:

- apply to all CSCE meetings the guidelines previously agreed for NGO access to certain CSCE meetings;

- make open to NGOs all plenary meetings of review conferences, ODIHR seminars, workshops and meetings, the CSO when meeting as the Economic Forum, and human rights implementation meetings, as well as other expert meetings. In addition each meeting may decide to open some other sessions to attendance by NGOs;

- instruct Directors of CSCE institutions and Executive Secretaries of CSCE meetings to designate an "NGO liaison person" from among their staff;

- designate, as appropriate, one member of their Foreign Ministries and a member of their delegations to CSCE meetings to be responsible for NGO liaison;

- promote contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions between CSCE meetings;

- facilitate during CSCE meetings informal discussion meetings between representatives of participating States and of NGOs;

- encourage written presentations by NGOs to CSCE institutions and meetings, titles of which may be kept and provided to the participating States upon request;

- provide encouragement to NGOs organizing seminars on CSCE-related issues;

- notify NGOs through the CSCE institutions of the dates of future CSCE meetings, together with an indication, when possible, of the subjects to be addressed, as well as, upon request, the activations of CSCE mechanisms which have been made known to all participating States.

(16) The above provisions will not be applied to persons or organizations which resort to the use of violence or publicly condone terrorism or the use of violence.

(...)

(15) Non-governmental organizations having relevant experience in the field of the Human Dimension are invited to make written presentations to the implementation meeting, e.g. through the ODIHR, and may be invited by the implementation

meeting, on the basis of their written presentations, to address specific questions orally as appropriate.

(...)

(18) These seminars will be organized in an open and flexible manner. Relevant international organizations and institutions may be invited to attend and to make contributions. So may NGOs with relevant experience. Independent experts attending the seminar as members of national delegations will also be free to speak in their own capacity.

Budapest 1994

Decision on the human dimension

3. The participation of non-governmental organizations (NGOs) was a welcome addition to the implementation review. In their statements, these organizations contributed ideas and raised issues of concern for participating States to take into consideration. They also informed the participating States of their activities, such as in the area of conflict prevention and resolution. The experience of the Budapest Review Conference invites further consideration with regard to promoting within the CSCE the dialogue between governments and NGOs of the participating States, in addition to State-to-State dialogue.

(...)

17. The participating States and CSCE institutions will provide opportunities for increased involvement of NGOs in CSCE activities as foreseen in Chapter IV of the Helsinki Document 1992. They will search for ways in which the CSCE can best make use of the work and information provided by NGOs. The Secretary General is requested to make a study on how participation of NGOs can be further enhanced.

Istanbul 1999

27. Non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law. They are an integral component of a strong civil society. We pledge ourselves to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.

Maastricht 2003

36. (…) Based on its human dimension commitments, the OSCE strives to promote conditions throughout its region in which all can fully enjoy their human rights and fundamental freedoms under the protection of effective democratic institutions, due judicial process and the rule of law. This includes secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society. Civil society has an important role to play in this regard, and the OSCE will continue to support and help strengthen civil society organizations.

Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights (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.

Astana 2010

6. The OSCE's comprehensive and co-operative approach to security, which addresses the human, economic and environmental, political and military dimensions of security as an integral whole, remains indispensable. Convinced that the inherent dignity of the individual is at the core of comprehensive security, we reiterate that human rights and fundamental freedoms are inalienable, and that their protection and promotion is our first responsibility. We reaffirm categorically and irrevocably that the commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. We value the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law.

Annex B – Selected International and Regional Case Law

ASSOCIATIONS

- ECtHR, *Le Compte, Van Leuven and De Meyere v. Belgium*, Application no. 6878/75, 23 June 1981
- ECtHR, *Sigurdur A Sigurjónsson v. Iceland*, Application no. 16130/90, 30 June 1993
- ECtHR, *Chassagnou and Others v. France* [GC], Application no. 25088/94, 29 April 1999
- ECtHR, *Popov and Others, Vakarelova, Markov and Bankov v. Bulgaria* (dec.), Application no. 48047/99, 6 November 2003
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- ECtHR, *Slavic University in Bulgaria & Others v. Bulgaria* (dec.), Application no. 60781/00, 18 November 2004
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FORMATION

Capacity

- ECtHR, *United Communist Party of Turkey and Others v. Turkey* [GC], Application no. 19392/92, 30 January 1998
- ECtHR, *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, 5 October 2006

- ECtHR, *Demir and Baykara v. Turkey* [GC], Application no. 34503/97, 12 November 2008
- ECtHR, *Matelly v. France,* Application no. 10609/10, 2 October 2014

Number of members

- ECtHR, *Zhechev v. Bulgaria,* Application no. 57045/00, 21 June 2007

Informal entities

- ECmHR, *Stankov and United Macedonian Organisation 'Ilinden' v. Bulgaria* (dec.), Application no. 29221/95, 29 June 1998
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- UN HR Committee, *Malakhovsky and Pikul v. Belarus*, Communication no. 1207/2003, 26 July 2005
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- ECtHR, *Ramazanova and Others v. Azerbaijan*, Application no. 44363/02, 1 February 2007
- ECtHR, *Aliyev and Others v. Azerbaijan,* Application no. 28736/05, 18 December 2008
- ECtHR, *Özbek and Others v. Turkey*, Application no. 35570/02, 6 October 2009
- UN HR Committee, *Katsora, Sudalenko and Nemkovich v. Belarus,* Communication no. 1383/2005, 25 October 2010
- UN HR Committee, *Kungurov v. Uzbekistan*, Communication no. 1478/2006, 17 March 2011
- ECtHR, *United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (No. 2)*, Application no. 41561/07, 18 October 2011
- ECtHR, *United Macedonian Organisation Ilinden and Others v. Bulgaria (No. 2)*, Application no. 34960/04, 18 October 2011

MEMBERSHIP

Right to belong

- ECtHR, *Rutkowski v. Poland* (dec.), Application no. 30867/96, 16 April 2002
- UN HR Committee, *Arenz v. Germany,* Communication no. 1138/2002, 24 March 2004
- ECtHR, *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. United Kingdom*, Application no. 11002/05, 27 February 2007
- ECtHR, *Staatkundig Gereformeerde Partij v. Netherlands* (dec.), Application no. 58369/10, 10 July 2012

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