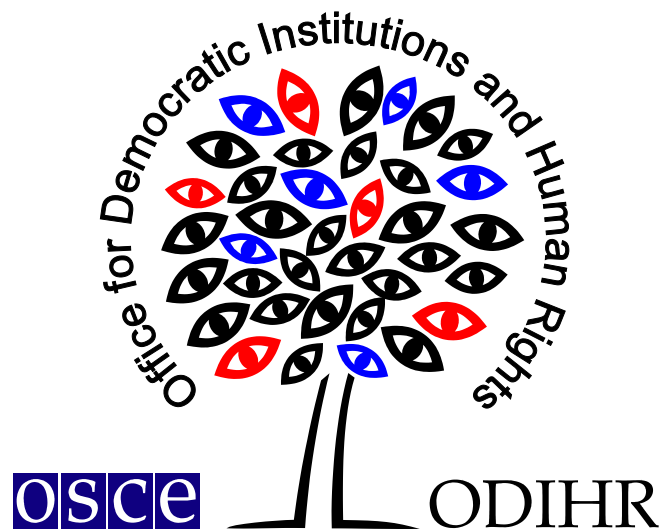


**OSCE**  
**Office for Democratic Institutions and Human Rights**

**Report**  
**Monitoring of Freedom of Peaceful Assembly in Selected**  
**OSCE Participating States**  
**(May 2017–June 2018)**



Warsaw  
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## LIST OF ABBREVIATIONS AND ACRONYMS

|       |   |
|-------|---|
| AI    | Amnesty International   |
| CCTV  | Closed-circuit television   |
| CRC   | Convention on the Rights of the Child   |
| DIE   | Internal Investigations Department (Hamburg)  |
| ECHR  | European Convention for the Protection of Human Rights and Fundamental Freedoms         |
| ECtHR | European Court of Human Rights  |
| ICCPR | International Covenant on Civil and Political Rights                                    |
| LDL   | Ligue des Droits et Libertés  |
| LGBTI | Lesbian, gay, bisexual, transgender and intersex  |
| LDL   | Ligue des droits et libertés (Canada)   |
| NATO  | North Atlantic Treaty Organization  |
| NHRI  | National human rights institution   |
| ODIHR | Office for Democratic Institutions and Human Rights                                     |
| OSCE  | Organization for Security and Co-operation in Europe                                    |
| RCMP  | Royal Canadian Mounted Police   |
| SPVQ  | Service de police de la Ville de Québec   |
| SQ    | Sûreté du Québec  |
| SWAT  | Special weapons and tactics (special law-enforcement units)                             |
| TULPS | Consolidated Text of Public Safety Laws (Testo Unico delle Leggi di Pubblica Sicurezza) |

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## EXECUTIVE SUMMARY

1. This report presents the main findings of the monitoring of public assemblies undertaken by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in selected OSCE participating States between May 2017 and June 2018. During this period, ODIHR directly observed assemblies and related activities in line with its mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly. The monitoring exercises focused on specific events on the basis of established criteria. The main goal of the monitoring and ensuing analysis was to identify gaps and challenges, as well as examples of good practices, in how participating States meet their human dimension commitments on the protection and promotion of freedom of peaceful assembly. The recommendations contained in this report are aimed at advancing efforts to better implement these commitments and relevant human rights standards in all OSCE participating States by creating a practical guide for law enforcement and other authorities on how to facilitate assemblies in a manner that conforms to international human rights law and standards.
2. ODIHR is the main OSCE institution concerned with the human dimension of security, and it is tasked with assisting in monitoring the implementation of human dimension commitments (Helsinki 1992). ODIHR's monitoring mandate is based on a number of OSCE commitments (Helsinki 1992, Budapest 1994, Oslo 1998, Maastricht 2003). Moreover, ODIHR serves as a point of contact for information provided by participating States (Rome 1993). Participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999).
3. OSCE participating States are committed to guaranteeing freedom of peaceful assembly to every individual without discrimination (Copenhagen 1990, Paris 1990). This freedom is, moreover, enshrined in a number of international human rights treaties. The main international standards used in the analysis stem from the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as the case law of the European Court of Human Rights (ECtHR). The report uses the *Guidelines on Freedom of Peaceful Assembly*,<sup>1</sup> jointly published by ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission), as its main benchmark and reference point for assessing compliance with international human rights standards.
4. Assemblies were monitored between 24 May 2017 and 9 June 2018 in the following participating States: Belgium, Canada, Germany, Italy, Lithuania and Norway. In some participating States, multiple events were observed that took place on the same day or over a period of five days. The observation of one assembly generally also involved the monitoring

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<sup>1</sup> *Guidelines on Freedom of Peaceful Assembly* (Warsaw and Strasbourg: ODIHR and Venice Commission, 2010, 2nd ed.), <<http://www.osce.org/odihr/73405>> (hereinafter, the "Guidelines").

of any counterdemonstrations or parallel assemblies that might have taken place. A table of all events monitored as part of this exercise is included in Annex 4 to this report.

5. A total of six participating States received communications concerning ODIHR's intention to monitor assemblies, all of which welcomed and facilitated ODIHR's monitoring work. To preserve the integrity of the sample, only events selected by ODIHR on the basis of the criteria outlined below were observed.
6. ODIHR monitored 29 public assemblies. The monitoring sample included events that, due to their nature, size or complexity, posed particular difficulties for the authorities and the organizers. These difficulties were related to, *inter alia*, the expression of views or positions that challenge prevailing opinions, the presence of counterdemonstrations and the potential of a resulting conflict between opposing groups, and the need to ensure a proper balance between respect for the freedom of peaceful assembly and public order or national security.
7. The monitoring of the above-mentioned assemblies involved the gathering of firsthand information by observers who were able to witness the conduct of, and interaction among, assembly participants, law-enforcement agents and other relevant state and non-state actors (e.g., representatives of local municipal authorities, journalists, assembly monitors, etc.). The observation findings were, whenever possible, complemented by information gathered at meetings with representatives of the relevant authorities, assembly organizers and participants, civil society organizations and others who could provide background information on the enjoyment of freedom of peaceful assembly in the respective countries and specific information on the monitored events. Secondary sources, including media and NGO reports, were also used. Where relevant, information on, and analysis of, the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly has been included in this report.
8. In all the participating States where ODIHR monitored assemblies, the right to assemble peacefully is recognized in the constitution and/or other specific domestic legislation. In some of the participating States, however, the legal framework restricts the enjoyment of the right to citizens only, in contravention of international human rights law. Efforts should be made to bring such legislation into full compliance with international human rights standards and OSCE commitments.
9. Most participating States where ODIHR monitored assemblies maintain a notification requirement rather than an authorization system for assemblies. Most participating States do not provide for spontaneous assemblies in their legislation, and some even prohibit unannounced or unauthorized assemblies and sanction their organizers. Many states require that the organizer disclose a significant amount of information in the notification or request for a permit, which often goes well beyond the information strictly needed for the facilitation of the assembly. States are primarily responsible for putting into place mechanisms and procedures to ensure that this freedom is enjoyed in practice and is not subject to unduly restrictive or bureaucratic regulation but can be exercised in simple and foreseeable

procedures.

10. In some participating States, assemblies are prohibited at certain public locations, effectively giving rise to blanket prohibitions. Since blanket bans on assemblies are likely to be disproportionate in that they fail to take into account the individual circumstances of the assemblies involved, they should be avoided, and other, less intrusive and more individualized restrictions should be applied if needed. In some participating States where ODIHR monitored assemblies, the authorities imposed restrictions on assemblies. Some events were directly or indirectly affected by time, place and manner restrictions or, more generally, by restrictions on access to particular areas based on security considerations. Restrictions imposed in different participating States that limited the ability of protesters to be within sight and sound of their intended audience varied in their scope and range. Generally, restrictions on assemblies should only be imposed where there are compelling arguments to do so based on grounds that are permissible under OSCE commitments and international human rights standards. Authorities must choose the least restrictive of the available options; they should do so only as far as the chosen option is proportionate to the legitimate objective.
11. ODIHR observed a few simultaneous assemblies and public events, including demonstrations and related counterdemonstrations. It is generally good practice to facilitate, as much as possible, the holding of simultaneous assemblies. When accommodating simultaneous assemblies, emphasis should be placed on practical solutions that can be found through dialogue and negotiation with all parties. Although counterdemonstrations may give rise to public safety and security considerations, the authorities should generally try to facilitate the holding of an assembly and related counterdemonstrations within sight and sound of one another.
12. In some participating States, legislation expressly provides for prompt decision-making by the respective authorities and for opportunities to challenge decisions in an independent court. Practices have also been reported, however, whereby organizers' access to an effective remedy is hampered by delayed decision-making or late communication of decisions by the responsible authorities. In some participating States, there are no legal avenues to challenge prior restrictions or conditions imposed on assemblies. The organizer of an assembly should not be forced to accept restrictions without having an opportunity to challenge them, including before a court.
13. In the majority of the participating States where ODIHR monitored assemblies in this cycle, specific legal provisions exist that describe the duties and responsibilities of organizers in relation to the holding of an assembly and ensuring public order. For example, legislation in some participating States prescribes the involvement of assembly stewards during gatherings and the maintenance of public order. However, stewards should only be provided on a voluntary basis to support the facilitation of assemblies by the police and should in no way detract from the responsibilities of the police to ensure public order or the positive obligation of the state to protect the safety and security of assembly participants and other individuals present.

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14. A failure to comply with relevant legal requirements on notification and authorization of assemblies and on organizing and holding assemblies may result in civil, administrative or criminal liability for the organizers, depending on the jurisdiction. In such situations, the competent authorities may impose fines on the organizers or, in some cases, prison sentences. In some jurisdictions, legislation places administrative or criminal liability directly on the organizer for the unlawful conduct of others, in contravention of international standards. Any sanctions or fines imposed after an assembly should strictly adhere to the principles of proportionality and individual responsibility for one's own intentional conduct. The risk of a heavy and disproportionate fine or other penalty may, in itself, have a chilling effect and inhibit the enjoyment of freedom of peaceful assembly. Organizers or assembly stewards should not be held liable for the failure to perform their responsibilities unless they intentionally and directly violate existing laws governing all participants in an assembly.
  15. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with organizers of assemblies prior to the events. In general, the approach adopted by police forces was to share limited information on their security preparations with assembly organizers, including when assemblies were expected to involve higher security risks. In many cases, communication was considered to be adequate by both police and assembly organizers. During some assemblies, however, ODIHR monitors observed limited communication between the police and the assembly organizers and participants, whereas better communication could have contributed to the de-escalation of tensions. In general, in many of the participating States where observations were carried out, police forces placed communication with the organizers and participants at the centre of their approach. It was widely recognized that good communication facilitated the work of the police and the enjoyment of the freedom of peaceful assembly by participants at public events.
  16. In line with international standards and as observed by ODIHR, law-enforcement personnel accommodated and facilitated most assemblies that occurred in violation of applicable domestic laws as long as they remained peaceful. Violent or unlawful acts by participants in otherwise peaceful protests were dealt with individually and did not lead to the termination of the assembly. In some cases, however, peaceful assemblies ended with group arrests, and on one occasion a march was temporarily halted by law-enforcement personnel.
  17. At most assemblies observed by ODIHR, limited or no interventions were observed, including arrests, detentions or the use of force. This was generally also the case during assemblies that presented specific challenges in relation to the maintenance of public order and the protection of participants. In some individual situations observed by ODIHR, however, the use of force by police officers and arrests of assembly participants appeared overly restrictive, excessive and not in line with the proportionality principle, in contravention of international standards. Efforts should be made to ensure that the use of force by law-enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality.



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18. In a large number of the assemblies observed by ODIHR, law-enforcement personnel photographed and captured video recordings of assemblies and/or the participants throughout the entire duration of the assembly or in a variety of contexts. Whereas transmitting video images and recordings of assemblies seems to be a widespread practice in the majority of the participating States where ODIHR observed assemblies, participants at the assemblies observed by ODIHR did not seem to be informed about the purpose and specific details of the recording—whether only general images were transmitted from the assembly or recordings were being made—about the purpose of those recordings and about the procedures and policies for the retention and processing of the data captured. This practice has implications for other human rights, such as the right to privacy, and can have a significant chilling effect on assembly participants.
  19. In most participating States where ODIHR observed assemblies, ombudsperson institutions function as independent oversight mechanisms over the police and therefore contribute to the fostering and monitoring of the implementation of the right to freedom of peaceful assembly.
  20. During monitoring deployments, ODIHR observers were not restricted in their ability to observe assemblies or to gather information. In the vast majority of cases, both before and after assemblies, ODIHR was able to secure the meetings it had requested with the local authorities of participating States where monitoring was conducted. Co-operation and the exchange of information between ODIHR and state authorities were usually good or very good, often thanks to the efforts and facilitation of contact persons assigned to ODIHR's monitoring exercises. ODIHR would like to express its gratitude to these individuals and to the various other state officials ODIHR observers met in the context of the monitoring exercises. ODIHR observers were able to carry out their activities unhindered and in some cases were granted access to areas where other movement restrictions were in place. However, ODIHR observed some restrictions imposed by state officials on the activities of journalists during one monitored assembly. The promotion and facilitation of the independent observation of assemblies by participating States is a good practice in line with OSCE commitments, while unhindered access on the part of media professionals and citizen journalists to report on assemblies should be ensured.

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## CONSOLIDATED RECOMMENDATIONS FOR OSCE PARTICIPATING STATES

### *On the main definitions and scope of the legal protection*

- to guarantee in law, in clear and explicit terms, a presumption in favour of holding peaceful assemblies;
- to ensure that the freedom of peaceful assembly is guaranteed in law to everyone under the jurisdiction of participating States, including children and non-citizens;
- to ensure the broadest-possible protection in law of all expressive activities within the scope of the right to freedom of peaceful assembly, including peaceful assemblies that do not have an identifiable organizer;
- to recognize and expressly provide in the law for spontaneous assemblies where timely notification is not possible or practicable (such as in cases where an assembly responds to an event that could not reasonably have been anticipated); such assemblies should be exempt from the requirement for prior notification;
- to ensure that clear and foreseeable procedures are promulgated to enable individuals to assess whether their conduct would breach the law and the consequences of doing so, to indicate clearly, among other things, the definition of various types of assemblies and the corresponding legal requirements, the body with authority and responsibility for receiving and responding to notifications or authorizations, the criteria for imposing conditions and restrictions and the consequences for failing to hold an assembly in compliance with the law;
- to ensure easy, prompt, effective and practical access to all laws, regulations, government policies and other information relevant to the exercise of the freedom of peaceful assembly.

### *On notification and authorization requirements for assemblies*

- to ensure that authorization/notification requirements are only imposed when necessary to facilitate the freedom of peaceful assembly or necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others and only to the minimum extent necessary;
- to ensure that the notification process is prompt, not unduly bureaucratic, widely accessible, free of charge and that the lack of notification or infringements of the notification process does not result in automatic prohibition or dispersal of an otherwise peaceful assembly or in imprisonment or heavy fines;
- to ensure that the advance notification period is as short as possible, while still allowing the authorities sufficient time to prepare for an assembly and that the notification requirements

are not unduly burdensome (the requested information should merely contain the date, time and location of the assembly and, where relevant, the name, address and contact details of the organizer);

- to ensure that the requirements for prior notification are not applied in a way that amounts to a *de facto* requirement for prior authorization;
- to require that the primary regulatory body give a prompt official response to an initial notification and that the regulatory body must communicate with all state bodies involved in the regulatory process, including the relevant law-enforcement agencies;
- to ensure that the absence of an official response to a notification may not prevent an assembly from being held.

#### *On prior restrictions on assemblies*

- to ensure that any restrictions on assemblies have a basis in primary law and strictly adhere to the principle of proportionality, ensuring in particular that restrictions are narrowly tailored to meet the specific and legitimate aims pursued by the authorities and are necessary in a democratic society;
- to ensure that any prior restrictions on assemblies are put in writing and are justified and communicated to the organizers in the time frame prescribed by law, allowing sufficient time for an appeal or other application for urgent interim relief to be completed before the proposed time of the assembly;
- to refrain from imposing blanket restrictions on assemblies, which are likely to be disproportionate, and to ensure that each assembly is assessed individually; to this end, to remove provisions from the law or from temporary measures adopted on the occasion of large summits or similar events that can result in blanket provisions banning assemblies at specific times or in specific public places, or prohibiting outright certain forms of assembly or particular types of activity within assemblies;
- to ensure that assembly participants are able to convey their message within sight and sound of their intended audience and that limitations in that regard based on security or other considerations are only imposed on an exceptional basis and in a proportionate manner;
- to ensure that, where security or other considerations may result in time, place and manner restrictions on assemblies, these are necessary under the circumstances and, whenever possible, previously discussed with the organizers of assemblies prior to the event so that suitable alternatives consistent with the sight-and-sound principle can be identified.

#### *On decision-making and review*

- to ensure that the regulation of assemblies is conducted in a transparent manner, giving organizers timely notice of prompt regulatory decisions with justified reasons and recourse to a prompt and effective remedy through administrative and judicial review;
- to ensure that any restriction placed on an assembly is communicated in a timely manner in writing to the assembly organizers, including a detailed explanation of the reasons behind each restriction;
- to ensure that appropriate time limits are set for each stage in the regulatory process that enable organizers to respond to and/or challenge any proposed restrictions in an expedited appeal procedure so that assembly organizers are not compelled to accept, and are able to challenge in court, the substance of any restriction before the date of the assembly.

*On the role of the organizer*

- to ensure that the official duty to maintain public order during assemblies, including by protecting participants, is clearly defined in the law and is understood by law-enforcement officials and policymakers at all levels as a central responsibility of the state;
- to ensure that assembly organizers are not held responsible for the maintenance of public order, which would essentially ask them to replace law-enforcement bodies, and that assembly organizers and participants are not held liable for the unlawful conduct of other people;
- to ensure that the role of assembly stewards, in law and in practice, is clearly defined as the role of facilitators who assist organizers in managing events on a voluntary basis and that they are not tasked with government functions that directly pertain to the maintenance of public order during assemblies;
- to ensure that the role of assembly organizers is limited to making reasonable efforts to meet legal requirements for assemblies, which include making reasonable efforts to ensure that their assemblies are peaceful and that lawful instructions by law-enforcement officials are obeyed;
- to ensure that insurance requirements, fees to cover the costs of clean-up after assemblies or costs of other public services (such as policing and medical services) are not imposed on assembly organizers;
- to ensure that any sanctions applied against organizers who fail to comply with legal requirements for assemblies are proportionate. Where there is no genuine criminal activity punishable by other laws, a violation of these requirements should be addressed by fines of a proportionate amount, allowing for the imposition of minor sanctions where the offence is of a minor nature;
- to ensure that laws related to public assemblies do not contain vague and broadly defined offences that confer excessive discretion upon law-enforcement officials or that enable the imposition of excessive and disproportionate sanctions on protesters.

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

- to create conditions for effective communication between assembly organizers, participants and law-enforcement bodies before and during assemblies in order to better protect and facilitate the exercise of rights, create mutual trust and understanding, avoid unnecessary confrontation, reduce tension, prevent violence or stop any disruptive or unlawful incidents quickly, should such incidents occur;
- to ensure that the law-enforcement authorities appoint easily accessible liaison officers or other appropriate intermediaries whom organizers can contact before, during and after an assembly, and that such appointments do not absolve other law-enforcement officials directly engaged in the facilitation of assemblies from the need to communicate effectively, as appropriate;
- to ensure that law-enforcement authorities proactively seek a dialogue with assembly organizers while those exercising their right to assemble are not compelled to negotiate with the authorities, and that, generally, their participation in any such process is entirely optional and voluntary;
- to adopt a “no surprises” approach in policing assemblies by disclosing as much planning information as possible to the organizers and by withholding information only if there is a clear and justifiable need to do so. This approach may also extend to dialogue and communication with all involved groups, including potentially violent groups at the pre-assembly stage;
- to ensure that law-enforcement officials co-operate with assembly stewards, where organizers choose to use them for an assembly;
- to hold post-event debriefings for law-enforcement officials and, where relevant, other state authorities (particularly after non-routine events), with the involvement of willing assembly organizers as a standard practice;
- to promote diversity in law enforcement, including better representation of women and minority groups, including for positions entailing operational work, such as policing assemblies, and for command positions.

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

- to ensure effective co-ordination and co-operation between the various authorities and agencies involved in the facilitation of the exercise of freedom of peaceful assembly;
- to ensure effective co-ordination among the various law-enforcement units and uniform application of the relevant codes governing police behaviour in the context of facilitating

assemblies;

- to explore ways to share experiences and good practices among the various agencies and authorities on the human rights-compliant facilitation of peaceful assemblies, both nationally and internationally, and to consider enlisting ODIHR's expertise in this regard;
- to regularly collect and publish statistical data on public assemblies that provides disaggregated information on the number and type of assemblies, as well as restrictions or bans imposed.

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

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

*On the use of force, firearms, detention and containment, as well as dispersals of assemblies*

- to ensure that rules on the use of force, including the circumstances in which force may be used, by law-enforcement officials policing assemblies are established in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and made publicly accessible;
- to ensure that the use of force by law-enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality and is consistent with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- to ensure that assembly policing tactics and training emphasize prevention of the use of force and de-escalation based on communication, negotiation and dialogue;
- to develop and make public comprehensive guidelines on the dispersal of assemblies in accordance with international human rights law and principles detailing the following: 1) the circumstances that warrant dispersal; 2) all steps required to be taken before a decision to disperse (including de-escalation measures); 3) the individual or individuals who may issue a dispersal order; and 4) the preference for voluntary dispersal before resorting to any use of force;
- to ensure that assembly participants are only detained when there are legitimate grounds for

the deprivation of liberty and without excessive use of force during arrests;

- to provide training for law-enforcement officials on facilitating the enjoyment of the right to freedom of peaceful assembly with a strong emphasis on human rights-compliant planning and preparation, crowd management measures consistent with OSCE commitments and human rights standards, and to consider enlisting ODIHR's support in this regard;
- to ensure that law-enforcement officials are adequately trained, resourced and equipped (including with less-lethal technologies) so as to best enable differentiated and proportionate use of force in the context of policing assemblies.

*On photographing and video recording of assemblies by law-enforcement personnel*

- to legally regulate the permissible purpose and basic conditions for overt filming and photography at public assemblies, as well as the related human rights guarantees;
- to develop and publish a detailed policy relating to the use of overt filming/photography at public assemblies, including a description of the purposes of such activities and the circumstances in which they may take place, as well as procedures and policies for the retention and processing of the resulting data, and to limit retention to the purpose of the recording and to ensure the deletion of data once it is no longer relevant for the purpose for which it was originally captured;
- to ensure that law-enforcement authorities always inform the public when they are, or may be, recording photographic and video materials during an assembly and about the collection, use and retention of the data;
- to ensure that regulations on the use of facial recognition technologies (the purpose and conditions of the use and retention of related data) are developed and made publicly available;
- to put in place mechanisms whereby individuals can ascertain whether information has been stored—and, if so, what information—and whereby they are provided with access to an effective process for making complaints or seeking redress relating to the collection, retention and use of their personal information.

*On the accountability of law-enforcement personnel*

- to establish accessible and effective accountability mechanisms—if such mechanisms do not already exist—that are able to independently, promptly and thoroughly investigate allegations of human rights violations or abuses by law-enforcement officials in the context of policing assemblies;
- to promptly, impartially and effectively investigate any allegations of abuse or violation of protesters' rights by law-enforcement officials, and, in the absence of an express complaint, whenever there are reasonable grounds to believe that such an abuse or rights violation has

taken place, the investigation must be capable of identifying and bringing to justice those responsible, with penalties commensurate with the gravity of the violation;

- to ensure that those who violate and/or abuse the rights of individuals to freedom of peaceful assembly are held fully accountable; to this end, to ensure that law-enforcement officers are easily and clearly identifiable at all times while policing assemblies (including when wearing protective or other special gear);
- to facilitate the work of independent national human rights institutions (NHRIs) to receive and investigate allegations of human rights violations and abuses in the context of assemblies and to monitor the implementation of the right to freedom of peaceful assembly;
- to enhance monitoring and peer review of the policing of assemblies by law-enforcement personnel and to explore possibilities for international co-operation and the exchange of good practices in this regard.

*On access and restrictions for media and independent monitors*

- to recognize and raise awareness about the important contribution of independent monitoring to the full enjoyment of the freedom of peaceful assembly;
- to actively facilitate the independent monitoring of, and reporting on, the facilitation of assemblies and protection of the freedom of peaceful assembly by international and local observers, including by:
  - refraining from imposing unnecessary or disproportionate restrictions on assembly-monitoring activities and ensuring that any restrictions that may be imposed on monitored assemblies do not limit the ability of international or local monitors to carry out their activities without impediments and to observe all aspects of an assembly, such as during curfews, dispersals or arrests;
  - ensuring that assembly monitors are able to photograph or otherwise record actions and activities at public assemblies, including law-enforcement operations or individual law-enforcement officials, and that such video or audio recordings may not be confiscated, seized and/or destroyed without due process and may be used as evidence in relevant disciplinary, administrative or criminal proceedings;
  - demonstrating willingness on the part of the state authorities to engage with monitors before, during and after an assembly, where such engagement is sought, and to give due consideration to the findings and recommendations resulting from their assessment of the facilitation of assemblies so as to inform institutional learning and, more broadly, in the drafting of legislation and policies affecting the enjoyment of freedom of peaceful assembly;



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- facilitating information gathering by NHRIs or other relevant independent oversight or monitoring bodies or civil society organizations working in the area of freedom of assembly about any anticipated assembly;
  - to ensure that both traditional and citizen journalists are able to provide coverage of public assemblies, including the actions of law-enforcement personnel, without official hindrance;
  - to facilitate ODIHR's independent assembly monitoring, including by:
    - issuing a standing invitation to ODIHR to carry out independent assembly monitoring in participating States and to observe assemblies on the basis of ODIHR's established methodology, without prejudice to ODIHR's responsibility to select the events to be monitored;
    - engaging with ODIHR with a view to giving due consideration to its assembly-monitoring findings and to implementing its recommendations, including by taking advantage of ODIHR's tools and assistance in the area of freedom of peaceful assembly;
    - supporting ODIHR in building the capacity of civil society organizations, NHRIs and OSCE field operations regarding the independent monitoring of public assemblies based on ODIHR's established observation methodology and in raising awareness among state bodies and authorities about how to effectively facilitate the work of independent assembly monitors.

## INTRODUCTION

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

21. Freedom of peaceful assembly is a fundamental freedom that is recognized as a core principle of democracy. The ability to assemble and act collectively is vital to democratic, economic and social development and to fostering an engaged citizenry.<sup>2</sup> Assemblies are a fundamental tool of democratic engagement; therefore, facilitating participation in peaceful assemblies helps ensure that all people in a society have the opportunity to express opinions that they hold in common with others. Peaceful assemblies therefore can make a positive contribution to the development, strengthening and effectiveness of democratic systems and to democratic processes.<sup>3</sup> Assemblies, alongside elections, play a fundamental role in public participation. When duly protected and facilitated, freedom of peaceful assembly offers a viable opportunity for minority and marginalized groups to express their views publicly. This, in turn, serves an important purpose by allowing a greater degree of political participation for groups, such as young people, that may otherwise face limitations in their participation in formal democratic institutions. Therefore, this fundamental freedom is also a tool for protecting minorities and furthering pluralism.
22. Assemblies have historically played an important social and political role in the development of more just and accountable societies<sup>4</sup> by allowing the population to express its will or grievances, influence public policy or hold governments accountable.<sup>5</sup> The freedom of peaceful assembly allows individuals not only to engage with the state or other powers in society. It also enables the direct expression, promotion or protection of values or opinions, thereby fostering dialogue among different stakeholders or groups.
23. Assemblies are an instrument through which other social, economic, political, civil and cultural rights can be expressed. The exercise of this fundamental freedom is closely linked with other important rights and liberties. It can play a critical role in the full enjoyment of freedom of association; freedom of movement; freedom of expression; freedom of thought, conscience, religion or belief; and the right to participate in the conduct of public affairs. Moreover, it is closely tied to the promotion of economic, social and cultural rights. In addition, participants in assemblies have a number of other protected rights that can be engaged by the exercise of this freedom, such as the right to bodily integrity; the right to be free from cruel, inhuman or degrading treatment or punishment; and the rights to life, dignity,

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<sup>2</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, United Nations Human Rights Council, A/HRC/31/66, 4 February 2016, para. 5, <[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66\\_E.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx)>.

<sup>3</sup> “The promotion and protection of human rights in the context of peaceful protests”, United Nations Human Rights Council Resolution 38/11, 16 July 2018.

<sup>4</sup> *Ibid.*

<sup>5</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 6.

privacy and an effective remedy for all human rights violations.<sup>6</sup> Therefore, the proper facilitation of assemblies requires that the entire broad range of rights involved be respected, protected and fulfilled.

24. Thus, in the Helsinki Final Act (1975) OSCE participating States committed to “promote and encourage the effective exercise of civil, political [...] and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development”. Furthermore, in the Vienna 1989 Document, states agreed to “prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices”.<sup>7</sup>
25. OSCE participating States have committed themselves to guaranteeing freedom of peaceful assembly to every individual without discrimination (Copenhagen 1990, Paris 1990).<sup>8</sup> States are required to “respect and fully protect” the rights of all individuals to assemble peacefully,<sup>9</sup> and freedom of peaceful assembly is protected by a number of international human rights standards, including Article 21 of the ICCPR and Article 11 of the ECHR.<sup>10</sup>
26. Like any other human right, the freedom of peaceful assembly is a legitimate subject for international law and international scrutiny.<sup>11</sup> ODIHR, often in co-operation with the Council of Europe, has been active in assisting participating States in promoting full respect for the freedom of peaceful assembly. As part of this work, ODIHR and the Council of Europe’s Venice Commission jointly developed *Guidelines on Freedom of Peaceful Assembly*,<sup>12</sup> which are aimed at clarifying the obligations that states have in relation to the freedom of peaceful assembly and at providing examples of good practice in meeting such obligations.
27. In addition, ODIHR, in collaboration with the OSCE’s Strategic Police Matters Unit, has published a *Human Rights Handbook on Policing Assemblies*<sup>13</sup> to serve as a tool for law-

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<sup>6</sup> *Ibid.*, para. 8.

<sup>7</sup> Please also see the 1990 OSCE Copenhagen Document, CSCE Budapest Document 1994 Towards a Genuine Partnership in a New Era, Moscow 1991 Meeting of the Conference on the Human Dimension of the CSCE, Helsinki 2008 Ministerial Declaration on the Occasion of the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, Ljubljana 2005 Thirteenth Meeting of the Ministerial Council.

<sup>8</sup> Please see the compilation of relevant OSCE commitments in Annex 2. In this context, participating States set out to facilitate more balanced participation of women and men in political and public life. See OSCE Ministerial Council Decision No. 7/09, “Women’s Participation in Political and Public Life”, Athens, 2 December 2009, <<http://www.osce.org/mc/40710?download=true>>.

<sup>9</sup> “The rights to freedom of peaceful assembly and of association”, United Nations Human Rights Council, A/HRC/RES/21/16, 11 October 2012, <<http://www.refworld.org/docid/50ae29fb17.html>>; and “The rights to freedom of peaceful assembly and of association”, United Nations Human Rights Council, A/HRC/RES/24/5, 8 October 2013, <<http://www.refworld.org/docid/53bcf29f4.html>>.

<sup>10</sup> For a full list, please see the compilation of relevant international and regional standards in Annex 3. This report relies heavily on the jurisprudence of the ECtHR, given its applicability to all of the participating States under consideration, except for Canada. In addition, the jurisprudence of the Human Rights Committee is also recalled, the standards of which are also applicable in Canada.

<sup>11</sup> Charter of the United Nations, Preamble, Article 1 and Article 55(c).

<sup>12</sup> *Guidelines, op. cit.*, note 1.

<sup>13</sup> *Human Rights Handbook on Policing Assemblies* (Warsaw: ODIHR, 2016), <<http://www.osce.org/odihr/226981?download=true>>.

enforcement officials and commanders with key information on upholding human rights standards in the context of assemblies and public-order management. ODIHR has developed a training curriculum based on the internationally recognized good practices promoted in the *Handbook* and has conducted training sessions on human rights-compliant policing of assemblies in a number of OSCE participating States.<sup>14</sup>

28. ODIHR has also provided assistance to civil society actors to build their capacity to systematically monitor public assemblies. The reports that have been produced by NGOs as part of these exercises have been used to engage in a dialogue with the local authorities, to identify examples of good practice to be promoted and to address gaps and challenges in the regulation and policing of assemblies.<sup>15</sup> Building on this work, ODIHR produced a *Handbook on Monitoring Freedom of Peaceful Assembly*,<sup>16</sup> which sets out a methodology for the observation of public assemblies with a view to assessing compliance with human rights principles.<sup>17</sup>
29. In order to support participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been monitoring public assemblies across the OSCE area since 2011. The results of the first three monitoring cycles were published in thematic reports on 9 November 2012,<sup>18</sup> 17 December 2014<sup>19</sup> and 16 December 2016.<sup>20</sup> The fourth monitoring cycle, conducted between 24 May 2017 and 9 June 2018, covered six participating States. It focused on specific events that, due to their nature, size or complexity, or because of the fact that more assemblies were running in parallel, entailed particular challenges for the authorities and the organizers. Monitoring was carried out by ODIHR observers in line with the Office's mandate and ODIHR's established assembly-monitoring methodology, and the key findings of the monitoring are included in this thematic report. As in the case of the previous monitoring cycles, the main goal of the monitoring exercises was to identify gaps and challenges, as well as examples of good practice, in how participating States meet their obligations regarding the promotion and protection of freedom of peaceful assembly. In the context of the monitoring exercise, ODIHR gathered much more information than can be presented in a thematic report of this scope, but the Office hopes that it can engage or continue working with the 30 participating States that have so far facilitated and hosted ODIHR assembly-monitoring missions, capitalizing also on country-specific findings (good practices and gaps) that go beyond the scope of these thematic reports. ODIHR is ready to work with all participating States, upon request, in addressing the identified shortcomings

<sup>14</sup> Such capacity-building activities were carried out in Armenia, Bosnia and Herzegovina, Georgia, Kyrgyzstan, Poland and Ukraine.

<sup>15</sup> Such activities were carried out in Armenia, Georgia, Kazakhstan, Moldova and Serbia and are ongoing in Ukraine.

<sup>16</sup> *Handbook on Monitoring Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2011), <<http://www.osce.org/odihr/82979>>.

<sup>17</sup> Work on the revision and publication of a new ODIHR monitoring handbook is ongoing.

<sup>18</sup> "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2011–June 2012", OSCE/ODIHR, 9 November 2012, <<http://www.osce.org/odihr/97055>>.

<sup>19</sup> "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2013–July 2014", OSCE/ODIHR, 17 December 2014, <<http://www.osce.org/odihr/132281?download=true>>.

<sup>20</sup> "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, April 2015–July 2016", OSCE/ODIHR, 16 December 2016, <<https://www.osce.org/odihr/289721?download=true>>.

and to provide a forum for the exchange of experiences and good practices in facilitating peaceful assemblies across the OSCE space.

#### *ODIHR's mandate*

30. ODIHR is the principal OSCE institution that deals with the human dimension, one of the three dimensions of the OSCE's comprehensive approach to security. ODIHR is mandated, among other tasks, to assist in the monitoring of the implementation of OSCE human dimension commitments. Its monitoring mandate is based on a number of OSCE commitments.<sup>21</sup> Notably, the 2003 Maastricht Document reaffirms the participating States' commitment to make "[f]ull use [...] of ODIHR's monitoring capacity, and [to promote] operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis [...] in order to have the fullest picture of developments".
31. ODIHR serves as a point of contact for information provided by participating States in accordance with OSCE commitments (Rome 1993), and participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999).
32. The ultimate goal of ODIHR's assembly-monitoring activities is to advise and assist in meeting relevant OSCE human dimension commitments in all OSCE participating States, not just those where ODIHR has monitored assemblies. ODIHR thus stands ready to offer additional support to participating States, *inter alia*, in the form of opinions on laws and draft laws, the exchange of good practices and targeted training courses to promote and enhance the enjoyment of freedom of peaceful assembly in the OSCE area.<sup>22</sup>

#### *Methodology*

33. As part of the fourth assembly-monitoring cycle, a total of six participating States—Belgium, Canada, Germany, Italy, Lithuania and Norway—received communication of ODIHR's intention to carry out assembly-monitoring exercises, and they all subsequently invited ODIHR to monitor assemblies. Assemblies were monitored between 24 May 2017 and 9 June 2018. In its choice of participating States and events to be monitored, ODIHR attempted to ensure geographical balance and the coverage of a variety of different contexts across the OSCE area.

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<sup>21</sup> For a compilation of these commitments, please see Annex 1 to this report.

<sup>22</sup> An overview of the tools developed by ODIHR to aid the work of governments and civil society in the area of freedom of peaceful assembly can be found in Annex 6.

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34. These challenges included, *inter alia*, assemblies convened by minority groups espousing views or positions that are unpopular with, or are seen as controversial by, mainstream society. They also included the potential of ensuing conflicts between opposing groups, as well as the need to ensure a proper balance between public order considerations and protecting the rights of others, on the one hand, and respect for freedom of peaceful assembly, on the other.
  35. Given that monitoring focused only on one or more related events in each participating State, monitoring findings cannot be used to draw any comprehensive conclusions on the situation of freedom of peaceful assembly in any of the participating States covered in this report in general. In addition, the events included in this assembly-monitoring cycle showed significant differences in size and complexity; therefore, the analysis cannot provide a comparative assessment of the facilitation of assemblies in these participating States. Rather, the report looks at these assemblies as a series of case studies to identify and highlight some of the common trends and patterns related to the enjoyment of freedom of peaceful assembly observed across the OSCE area. Due to space constraints, the thematic sections select only illustrative examples based on events in some of the participating States included in the monitoring. This selection should not be interpreted as an exhaustive overview of issues that arose in relation to each particular topic and in all the participating States covered in the report. Moreover, whenever reference is made in the report to a practice in a participating State or at a specific event, this does not represent a judgement about the overall quality of assembly policing in the respective country, nor does it mean that the presented (positive or negative) practice is necessarily representative of the overall practice in that country.
  36. The monitoring of assemblies involved the gathering of first-hand information by ODIHR observers who witnessed the conduct of, and interaction among, participants at assemblies, law-enforcement agents and other relevant state and non-state actors (e.g., representatives of local self-government bodies, journalists, assembly monitors, etc.). Monitoring teams always included ODIHR staff trained in ODIHR's assembly-monitoring methodology and governed by a code of conduct. Nineteen women and 11 men participated in the monitoring exercises as monitors from 13 OSCE participating States.
  23. The observation focused on events and activities that took place in public spaces in the run-up to and during assemblies. It should be noted that, following an assembly, further actions by the state and its officials might affect the enjoyment of the right to freedom of assembly or other human rights (for instance, imposing sanctions on the organizers or assembly participants, including their arrest and detention). These events fall beyond the scope of this analysis, and no attempt was made to gather systematic information about them.
  24. Although independent assembly monitoring places particular emphasis on the gathering of firsthand information, the monitors' observations were, whenever possible, complemented by information gathered at meetings with representatives of the relevant authorities, assembly organizers, civil society organizations, NHRIs, lawyers and others who could provide

background information on freedom of peaceful assembly and specific information on the monitored events.

25. Where relevant, information on the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly has been included in this report. Owing to the fact that an official English translation of the legal framework was available for analysis in only a handful of cases, there might be discrepancies resulting from the translation. The report does not attempt to provide a comprehensive analysis of the degree to which the relevant laws comply with international human rights standards and OSCE commitments. For such a comprehensive analysis, OSCE participating States are encouraged to request a legal review from ODIHR.<sup>23</sup>
26. ODIHR monitoring teams generally attempted to communicate and/or hold meetings with the main groups involved in organizing assemblies. Such communication took place both before and after assemblies.
27. ODIHR wishes to thank the authorities of the participating States where monitoring took place for their openness and co-operation and for their assistance in organizing, and their willingness to take part in, meetings for the purpose of gathering information. Information gathering was also greatly facilitated through responses to detailed questions and the provision of relevant documents by participating States. ODIHR is grateful to the many organizations and individuals who shared information about their experiences as organizers of, or participants in, assemblies or, more broadly, about the enjoyment of freedom of peaceful assembly in their respective countries. The monitoring exercise could not have been carried out successfully without the capable support of research consultants, security experts and interpreters hired in some of the participating States where monitoring took place.

### *Report structure*

28. The report is organized thematically based on standards concerning freedom of peaceful assembly. The *Guidelines* and ODIHR's *Human Rights Handbook on Policing Assemblies* constitute the main benchmark for the assessment of compliance with international human rights standards and examples of good practice.<sup>24</sup> In addition, the relevant jurisprudence of the United Nations Human Rights Committee is referenced. The report also draws on the good practices identified by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his thematic reports, as well as the practical recommendations for the proper management of assemblies made by the UN Special Rapporteurs on the rights

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<sup>23</sup> For more information on ODIHR's legislative assistance activities, please visit <<http://www.osce.org/odihhr/108503>>.

<sup>24</sup> The UN Special Rapporteur has stated that he considers these guidelines to be the most advanced set of good practices available. See "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf)>, footnote 7.

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to freedom of peaceful assembly and of association and on extrajudicial, summary or arbitrary executions.<sup>25</sup>

29. The various sections and subsections of this report begin with a preliminary discussion of international standards and generally accepted good practices and are followed by a description of findings from the monitoring exercise that illustrate some of the key issues involved. Each subsection ends with conclusions and recommendations that could be relevant to all OSCE participating States. This structure is meant to facilitate an assessment of domestic law and practice, as documented and observed by ODIHR, against OSCE commitments, relevant international human rights standards and the identification of practices that may contribute to the effective facilitation of assemblies while maintaining peace and order and protecting human rights.

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<sup>25</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2.



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

### *The right to assemble peacefully: main definitions and scope of legal protection—international standards and good practice*

30. The freedom of peaceful assembly is expressly recognized in OSCE human dimension commitments and is enshrined in key international and regional human rights treaties. This right is guaranteed to everyone without discrimination.<sup>26</sup> Numerous international and regional human rights instruments, as well as OSCE human dimension commitments, contain prohibitions of discrimination both in general and in relation to specific groups. States have the obligation not only to refrain from violating the rights of individuals involved in an assembly, but also to ensure the rights of those who participate in, or are affected by, them and to facilitate an enabling environment for the enjoyment of freedom of peaceful assembly.<sup>27</sup> It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that this freedom is enjoyed in practice and is not subject to unduly restrictive or bureaucratic regulation or unduly restrictive policing.<sup>28</sup> This includes enacting and implementing laws regulating the exercise of this right that are fully in line with international human rights standards. Moreover, ensuring this right requires positive measures on the part of the state to prevent interference with the exercise of freedom of peaceful assembly by individuals or groups, including *agents provocateurs* and counterdemonstrators who aim to disrupt or disperse an assembly.<sup>29</sup>
31. A range of different assemblies are protected by the right to freedom of peaceful assembly, including static assemblies (such as public meetings, mass actions, flash mobs, demonstrations, sit-ins and pickets) and moving assemblies (such as parades, processions, funerals and certain forms of pilgrimages and convoys). Domestic legislation should frame the types of assembly to be protected as broadly as possible.<sup>30</sup> Moreover, the right to freedom of peaceful assembly encompasses not just organizing and participating in assemblies but also other activities, including observing, monitoring and recording assemblies (for more information, see the part on monitoring and recording assemblies in Section IV).
32. The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of ethnic, national, sexual and religious minorities; to nationals and non-nationals (including

<sup>26</sup> Article 2 of the ICCPR, Human Rights Council Resolutions 15/21, 21/16, 24/5.

<sup>27</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 13.

<sup>28</sup> *Guidelines, op. cit.*, note 1, para. 2.2.

<sup>29</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, p. 10, para. 33.

<sup>30</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 17.

stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; to persons with disabilities and to people without full legal capacity, including people with mental disabilities.<sup>31</sup> The UN Human Rights Council has called on states to pay particular attention to, and take appropriate measures for, the safety and protection of women and children in the context of their exercise of the right to assemble peacefully.<sup>32</sup>

33. An assembly requires the intentional and temporary presence of at least two people for a common expressive purpose.<sup>33</sup> Nonetheless, individual protesters exercising their right to freedom of expression, where their physical presence is an integral part of that expression, should also be afforded, at a minimum, the same protections as those who gather as part of an assembly.<sup>34</sup>
34. Only peaceful assemblies are protected by the right to freedom of assembly. In determining whether a demonstration is peaceful, the ECtHR has focused on both the intentions of the organizers and the conduct of the participants. It has held that: “[T]he right to peaceful assembly is secured to everyone who has the intention of organizing a peaceful demonstration [...]. [T]he possibility of violent counterdemonstrations or the possibility of extremists with violent intentions [...] joining the demonstration cannot as such take away that right.”<sup>35</sup>
35. Participants must refrain from using violence.<sup>36</sup> The right to freedom of peaceful assembly is held by each individual participating in 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 a demonstration if the individual in question remains peaceful in his or her own intentions or behaviour.<sup>37</sup> However, even when participants are not peaceful and, as a result, forfeit their right to peaceful assembly, they retain all the other rights that can be affected by their participation, including the rights to due process of law, bodily integrity, dignity and freedom from torture, cruel, inhuman or degrading treatment or punishment.
36. “Peaceful” implies the absence of violence, whereas even intentionally disruptive conduct may be protected by the right to freedom of peaceful assembly. The ECtHR has determined that instances of non-violent resistance or civil disobedience fall within the scope of protection of the right to freedom of peaceful assembly. It noted that, even where protesters engage in “physical conduct purposely obstructing traffic and the ordinary course of life in

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<sup>31</sup> *Ibid.*, Principle 2.5, p. 16.

<sup>32</sup> “The promotion and protection of human rights in the context of peaceful protests”, *op. cit.*, note 3, paras. 6–7.

<sup>33</sup> *Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 1.2.

<sup>34</sup> *Ibid.*, Explanatory Notes, para. 16.

<sup>35</sup> *Christians against Racism and Fascism v. The United Kingdom* (1980).

<sup>36</sup> The Strasbourg Court has differentiated between a disturbance and violence. In *Taranenko v. Russia* (2014), it opined that pushing past a guard is not considered violence. See para. 93.

<sup>37</sup> ECtHR, decision on admissibility, *Ziliberberg v. Moldova*, 4 May 2004; also see “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, p. 8, para. 25.

order to seriously disrupt the activities carried out by others”, this conduct is not of “such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention”.<sup>38</sup> Similarly, “where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance”.<sup>39</sup> Tolerance has been held to imply, among other things, that assemblies should not be dispersed merely because formalities such as a notification requirement were not complied with,<sup>40</sup> that, where dispersal is in principle justified, public authorities should nevertheless act with patience and ordinarily allow demonstrators an opportunity to make their point.<sup>41</sup>

37. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (hereinafter, the “UN Special Rapporteur”) and the OSCE/ODIHR Panel of Experts on the Freedom of Peaceful Assembly (hereinafter, the “ODIHR Panel of Experts”) consider as a good practice, and thus call upon states to establish in their law (either in their constitution or laws governing peaceful assemblies), a clear and explicit presumption in favour of holding assemblies, according to which the peaceful intentions of individuals and groups wishing to assemble should be presumed.<sup>42</sup> This presumption also means that unclear legal provisions should be clarified; in the absence of clarity, however, such provisions should be interpreted in favour of those wishing to exercise their right to freedom of peaceful assembly.<sup>43</sup>
38. Besides the constitutional protection that should be accorded to the freedom of peaceful assembly, domestic regulations should provide for the specific details and procedures related to the exercise of this freedom. Everything not regulated by law should be presumed to be lawful. When drafting legislation on peaceful assembly, it is important to ensure that grounds for regulation are clear and predictable. To protect the right, it may be necessary to specify precisely the circumstances in which assemblies are subject to particular legal obligations,

<sup>38</sup> ECtHR, *Kudrevičius and Others v. Lithuania*, Application no. 37553/05, judgment of 15 October 2015 [GC], paras. 97–98: the Court observed that such conduct “is not at the core of that freedom as protected by Article 11 of the [ECHR]”, but the Court ultimately concluded that the participants in this conduct were “entitled to invoke the guarantees of Article 11” (para 99)

<sup>39</sup> ECtHR, *Oya Ataman v. Turkey*, Application No. 74552/01, judgment of 5 December 2006, paras. 41–42.

<sup>40</sup> See UN Human Rights Council, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, UN Doc. A/HRC/23/39, 24 April 2013, para. 29 (“Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically [...] and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment”); *Kudrevičius and Others v. Lithuania*, *op. cit.*, note 38, para. 150 (“An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person’s right to freedom of assembly”).

<sup>41</sup> See, for example, *Oya Ataman v. Turkey*, ECtHR, Judgment of 5 December 2006, paras. 41–42.

<sup>42</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 26; *Guidelines*, *op. cit.*, note 1, Principle 2.1.

<sup>43</sup> “Summary of the Human Rights Council high-level panel discussion to commemorate the twentieth anniversary of the adoption of the Vienna Declaration and Programme of Action”, United Nations Human Rights Council, A/HRC/23/29, 1 May 2013, paras. 49 and 50, <[http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/SummaryHLPaneldiscussionVDPA\\_item5.pdf](http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/SummaryHLPaneldiscussionVDPA_item5.pdf)>.

legitimate grounds for restriction, and the overall content and time frame of such restrictions.<sup>44</sup> Any restrictions imposed must have a formal basis in primary law, which should be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee what the consequences of such a breach would likely be.<sup>45</sup>

39. In order to ensure clear and foreseeable procedures for organizing and holding peaceful assemblies, individuals' ability to access relevant information enabling them to exercise their assembly rights is also essential. In this context, the UN Special Rapporteur recommended that states proactively disseminate key information relating to the management of assemblies, such as laws and regulations relating to the management of assemblies; information regarding the responsibilities and procedures of agencies and bodies that manage assemblies; standard operating procedures and policies governing the policing of assemblies, including codes of conduct; the types of equipment routinely used in policing assemblies; information on the training of law-enforcement officers; and information on how to access accountability processes.<sup>46</sup>

*The right to assemble peacefully: main definitions and scope of legal protection in selected participating States*

40. The constitutions of all the participating States where ODIHR monitored assemblies - Belgium,<sup>47</sup> Canada,<sup>48</sup> Germany,<sup>49</sup> Italy,<sup>50</sup> Lithuania<sup>51</sup> and Norway<sup>52</sup> - guarantee the right of peaceful assembly. Notably, the Norwegian Constitution also recognizes that the human rights contained in the Constitution and in human rights treaties binding on Norway are respected and ensured, which includes the rights enshrined in the ICCPR.<sup>53</sup>

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<sup>44</sup> Michael Hamilton, "Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests", United Nations Human Rights Council, A/HRC/19/40, 19 December 2011, § 28.

<sup>45</sup> See, for example, *The Sunday Times v. United Kingdom* (No. 1), 26 April 1979, para. 49; *Rekvényi v. Hungary*, No. 25390/94, para. 34.

<sup>46</sup> "Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies", A/HRC/31/66, *op. cit.*, note 2, para. 82.

<sup>47</sup> See Article 26 of the Belgian Constitution: "Belgians have the right to gather peaceably and without arms".

<sup>48</sup> See Section 2(c), Canadian Constitution, Charter of Rights and Freedoms: "Everyone has the following fundamental freedoms [...] freedom of peaceful assembly". Similarly, in Quebec, where ODIHR monitored assemblies, Article 3 of the province's Charter of Human Rights and Freedoms provides that everyone has the right to freedom of peaceful assembly.

<sup>49</sup> See Article 8 of the Basic Law of Germany: "All Germans shall have the right to assemble peacefully and unarmed".

<sup>50</sup> See Article 17 of the Italian Constitution: "Citizens may assemble peaceably and unarmed."

<sup>51</sup> See Article 36 of the Lithuanian Constitution: "Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings."

<sup>52</sup> See Article 101 of the Constitution of Norway: "All people may meet in peaceful assemblies and demonstrations".

<sup>53</sup> Article 92, Norwegian Constitution. Also see the Act Relating to the Strengthening of the Status of Human Rights in Norwegian Law.

41. Some states also outline the existence of this right in domestic legislation. Germany<sup>54</sup> and Lithuania<sup>55</sup> have adopted specific domestic laws that outline the rules and responsibilities associated with freedom of peaceful assembly. In Germany, the legislative competence to regulate freedom of assembly rests with the federal states. The Federal Act on Assemblies and Processions of Germany (German Federal Assembly Act), adopted on 24 July 1953, continues to be applicable in those federal states that have not passed their own legislation. Among those states that have not passed state legislation is Hamburg, where the ODIHR monitoring took place. Italy<sup>56</sup> maintains laws that govern some aspects of peaceful assembly, while the legislation governing the police, as well as local by-laws, regulate and provide guidance on assemblies in Norway. Meanwhile, Belgium and Canada do not maintain specific comprehensive national legislation on freedom of peaceful assembly. Thus, relevant provisions are contained in various laws and differ according to local regulations and by-laws.
42. Only two of the participating States where ODIHR monitored assemblies have constitutions that specifically guarantee everyone the right of peaceful assembly: the constitutions of Canada and Norway guarantee this right to “everyone”<sup>57</sup> or “all people”,<sup>58</sup> respectively. Although Article 26 of the Belgian Constitution provides that only Belgians have the “right to gather peaceably and without arms”, Article 191 of the Constitution provides this right to foreigners by stipulating that “[a]ll foreigners on Belgian soil” are to benefit from the protection provided to persons and property “except for those exceptions provided for by the law”.<sup>59</sup> In contrast, Lithuania’s Constitution and its Law on Meetings do not specifically guarantee non-citizens the right to peaceful assembly.<sup>60</sup> In fact, Lithuania’s Constitution only guarantees that “citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings” and that assembly organizers are limited to 1) Lithuanian citizens and EU member state nationals who are at least 18 years old and have legal capacity; 2) foreign nationals with permanent residence in Lithuania; and 3) registered legal persons operating in Lithuania.<sup>61</sup>
43. Domestic legislation may extend the right to peaceful assembly to non-citizens in other participating States. Germany’s Constitution provides only Germans with the right to peaceful

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<sup>54</sup> In Germany, the legislative competence to regulate freedom of assembly rests with the federal states. The Federal Act on Assemblies and Processions of Germany, 24 July 1953 (hereinafter, “German Federal Assembly Act”) continues to be applicable in those federal states that have not passed their own legislation.

<sup>55</sup> Republic of Lithuania, Law on Meetings, 2 December 1993 (amended 15 July 2014 and 12 January 2018), <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/99552/118881/F667087927/I-317%20English.pdf>>.

<sup>56</sup> Italian Consolidated Text of Public Security Laws (Testo Unico delle Leggi di Pubblica Sicurezza (TULPS)), Royal Decree 773/1931, 18 June 1931, <<https://alloggiatiweb.poliziadistato.it/PortaleAlloggiati/Download/TULPS.pdf>> and the Regulation on the Implementation of the TULPS, Royal Decree 635/1940, 6 May 1940, <[https://www.tuttocamere.it/files/psicurezza/1940\\_635.pdf](https://www.tuttocamere.it/files/psicurezza/1940_635.pdf)>.

<sup>57</sup> Section 2(c), Canadian Constitution.

<sup>58</sup> Article 101, Norwegian Constitution.

<sup>59</sup> In addition to Articles 26 and 191 of the Belgian Constitution, see “Comparative study on national legislation on freedom of peaceful assembly”, endorsed by the Venice Commission at its 99th plenary session, Venice, 13–14 June 2014, p. 45.

<sup>60</sup> Article 36 of the Lithuanian Constitution specifies that “[c]itizens have the right to peaceful assembly”. Also see Lithuanian Law on Meetings; Vilnius City Municipal Council Public Tidiness Regulations, 23 November 2011.

<sup>61</sup> Article 3, Lithuanian Law on Meetings.

assembly, but the German Federal Assembly Act<sup>62</sup> extends the “right to organize and participate in public assemblies and processions” to “everyone”.<sup>63</sup> Furthermore, according to some legal commentators, the constitutional provision recognizing only Germans does not hinder the recognition of freedom of assembly as a fundamental or basic right for everyone.<sup>64</sup> Human Rights treaties covering the freedom of peaceful assembly for all (i.e. including non-citizens) are applicable as part of federal law through the respective implementing laws. Thus, the freedom to assemble peacefully is guaranteed to “everyone” except for the exclusions outlined in the Act that relate to those who abuse the freedom of expression and those who intend to promote or are affiliated with parties and associations deemed to be unconstitutional.<sup>65</sup>

44. The Italian Constitution limits the right of peaceful assembly to “citizens”.<sup>66</sup> The Italian Consolidated Text Governing Immigration and the Status of Foreigners, however, recognizes the fundamental rights of foreigners present at borders or on Italian territory and the right of those legally present, as well as holders of an EU residence permit, to participate in local public life.<sup>67</sup> However, individuals deemed to be dangerous for public security and against whom a local court has adopted a preventative measure of special surveillance can only participate in public assemblies after having informed public security authorities in a timely manner.<sup>68</sup> Furthermore, individuals who present themselves as members of the armed forces or police officers in uniform may not participate in assemblies.<sup>69</sup>
45. Several constitutions specifically stipulate that assembly participants must be unarmed.<sup>70</sup> In Belgium, an assembly may not be undermined if it is peaceful and participants are unarmed.<sup>71</sup> In Germany, it is prohibited to carry weapons or any other objects that are meant to be used as defensive weapons both during assemblies and in open spaces on the way to assemblies; the

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<sup>62</sup> The constitutional reform of 28 August 2006 (Federal Assembly Act (BGBl I S 2034) transferred the power to regulate the exercise of the freedom of assembly from the federal government to the states (*Länder*). Each state can now decide whether to adopt a partially or completely new assembly law or to retain partially or in full the Federal Assembly Act. Hamburg, where ODIHR monitored assemblies, is one of the states that retains the Federal Assembly Act to regulate assemblies.

<sup>63</sup> Section 1(1), German Federal Assembly Act.

<sup>64</sup> Orsolya Salát, *The Right to Freedom of Assembly: A Comparative Study* (Oxford: Hart Publishing, 2015), p. 42. Article 2(1) of the Basic Law also protects general freedom of action as a human right.

<sup>65</sup> The exclusions include: 1) those who abuse freedom of expression; 2) anyone who organizes or attends an assembly with the objective of promoting a political party, part or substitute organization declared unconstitutional; 3) any party declared unconstitutional based on Article 21(2) (seeks to undermine or abolish the fundamental democratic order or the Federal Republic of Germany); or 4) any association banned based on Article 9(2) of the constitution (such as those whose aims contravene the Criminal Code or that contravene the constitutional order). Section 1(1), German Federal Assembly Act.

<sup>66</sup> Article 17, Italian Constitution.

<sup>67</sup> Articles 2 and 9, Legislative Decree 286: Consolidated Act of Provisions Concerning Regulations on Immigration and Rules about the Conditions of Aliens, 25 July 1998.

<sup>68</sup> Article 8(4), Code of Anti-Mafia Laws 159/2011.

<sup>69</sup> Article 1470, Military Order Code 66/2010; Article 81, Public Safety Administration Regulation 121/1981.

<sup>70</sup> Article 17, Italian Constitution; Article 26, Belgian Constitution; Article 36, Lithuanian Constitution.

<sup>71</sup> Decision of the Belgian Conseil d'Etat, administration section, nr. 76.815, of 7 November 1998. . Also see “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 46.

distribution of such arms is also prohibited.<sup>72</sup> Participants may, however, carry weapons or similar objects if they receive prior authorization.<sup>73</sup>

46. Some of the participating States where assemblies were monitored define what constitutes an assembly in their legislation. The Canadian Constitution does not define assemblies, and case law has only indicated that freedom of peaceful assembly aims to protect the physical gathering of people.<sup>74</sup> It does not protect riots or gatherings that disturb the public peace. The by-laws of Quebec City, where ODIHR monitored assemblies in Canada, define an assembly as a gathering or a parade of people in the “public domain who express an opinion, a dissatisfaction or support [for] a person, a group of people or [for] a cause”.<sup>75</sup> In Belgium, an assembly involves several people temporarily gathering in a public place that is accessible to everyone.<sup>76</sup> Open-air meetings are subject to police regulations, while indoor meetings are not.<sup>77</sup> Entertainment events are considered protected assemblies.<sup>78</sup> The Norwegian Police Act refers to demonstrations, attendance, meetings, stands or similar.<sup>79</sup>
47. The German Federal Assembly Act does not provide a definition, but the Federal Constitutional Court defines assemblies with regard to their function for shaping public opinion and creating political will in a democratic society.<sup>80</sup> Assemblies are considered a joint expression of several people.<sup>81</sup> The Act distinguishes between open-air assemblies,<sup>82</sup> which may be restricted pursuant to law, and closed/indoor assemblies, which are subject to fewer restrictions, namely those aimed at preserving the life, liberty and property of others.<sup>83</sup> Open-air assemblies may occur indoors, as the defining feature of an open-air assembly is whether it occurs in a public space surrounded by the general public.<sup>84</sup> Freedom of assembly is generally not applicable to public gatherings where the primary aim is entertainment.<sup>85</sup>

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<sup>72</sup> Sections 2(3) and 17a, German Federal Assembly Act.

<sup>73</sup> *Ibid.*, Section 2(3).

<sup>74</sup> *Roach v. Canada*, Federal Court of Canada, 164 N.R. 370, 20 January 1994, <<https://ca.vlex.com/vid/roach-v-can-680638609>>.

<sup>75</sup> Article 1, Quebec City, Regulation on Peace and the Right Order, Regulation RVQ 1091, 15 April 2018 (hereinafter “Quebec City Regulation on Peace and the Right Order”).

<sup>76</sup> See “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 45.

<sup>77</sup> Article 26, Belgian Constitution. Also see “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 45.

<sup>78</sup> “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 46.

<sup>79</sup> Norwegian Police Act, 1 October 2010, <[https://lovdata.no/dokument/NL/lov/1995-08-04-53#KAPITTEL\\_2](https://lovdata.no/dokument/NL/lov/1995-08-04-53#KAPITTEL_2)>, Article 11.

<sup>80</sup> See Vol. 104, 92 (104) of the Entscheidungen des Bundesverfassungsgerichts (BVerfGE), which deals with the subject of sit-down demonstrations. See “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 55.

<sup>81</sup> BVerfGE 69 (1985), para. 61. In Germany, there is a debate on what minimum number of participants constitutes an assembly in the sense of Article 8 of the Basic Law (*Grundgesetz*), i.e. whether two people would suffice or at least three.

<sup>82</sup> Sections 14–20, German Federal Assembly Act.

<sup>83</sup> *Ibid.*, Sections 5–13; “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 58.

<sup>84</sup> BVerfGE, Judgment of 22 February 2011, 1BvR 699/06 – Frankfurt Airport Decision. Also see “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 58, footnote 474.

<sup>85</sup> “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 56.

48. According to the Italian Court of Cassation, an assembly is a gathering of a number of persons characterized by “its own features determinable by an exact location in time and space, as well as [a] specific purpose”.<sup>86</sup> The Italian Constitution differentiates between “private meetings”, “meetings in places open to [the] public” and “meetings in public places”.<sup>87</sup> Places open to the public are those where “access is allowed for an undetermined number or people, albeit subject to an entry ticket”. Public places are those in which “each person can normally freely pass and stay without [...] permission from [the] authorities”.<sup>88</sup> A meeting held privately may be considered public due to its location, the number of persons required to attend or its purpose.<sup>89</sup> Churches and other sacred places may not be used for assemblies unrelated to religion.<sup>90</sup> Assemblies may also not be held in areas designated as military zones.<sup>91</sup>
49. The Lithuanian Law on Meetings refers to assemblies as meetings involving “a peaceful gathering of persons” for the purpose of expressing “their views and opinions publicly and freely” and of ensuring “the expression of individuals’ civic engagement in society and the State”.<sup>92</sup> Meetings may take the form of “meetings, pickets, demonstrations, processions, parades, [or] other unarmed meetings”.<sup>93</sup> It excludes meetings related to government institutions and members; religious activities; political organizations, associations, trade unions and legal persons holding meetings on their own premises; natural persons holding meetings to satisfy private interests; and sporting events, concerts, recreational or any other public event.<sup>94</sup>
50. None of the participating States where ODIHR monitored assemblies acknowledge in their legislation that assemblies may occur without an identifiable organizer. Additionally, the laws of these states do not explicitly establish a presumption in favour of holding peaceful assemblies.

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<sup>86</sup> Court of Cassation, 13 October 1972.

<sup>87</sup> Article 17, Italian Constitution.

<sup>88</sup> Court of Cassation, United Penal Sections, 31 March 1951,  
<<http://www.giurcost.org/decisioni/Corte%20di%20Cassazione%20Sezioni%20Unite%20Penalesentenza%2031%20marzo%201951bis.htm>>.

<sup>89</sup> Article 18, TULPS.

<sup>90</sup> Article 20, Royal Decree 635/1940.

<sup>91</sup> Article 1470, Military Order Code 66/2010.

<sup>92</sup> Article 2(2), Lithuanian Law on Meetings.

<sup>93</sup> *Ibid.*, Article 3.

<sup>94</sup> “This Law shall not regulate meetings which take place or are organized by: 1) state and municipal institutions; 2) the President of the Republic, members of the European Parliament elected in the Republic of Lithuania, members of the Seimas of the Republic of Lithuania and members of municipal councils for meetings with electors; 3) wardens or elders in accordance with the procedure laid down by the Law of the Republic of Lithuania on Local Self-government; 4) State-recognized religious communities and associations in order to perform religious rites at cult premises, cemeteries and other places designated by the law; 5) political parties, political organizations, political associations, trade unions which are registered in accordance with the procedure laid down by the law and which arrange meetings of their members and individually invited persons pursuant to their regulations in their own or other legally possessed and used premises; 6) public and private legal persons, registered in accordance laid down by the law, in their own or other legally possessed and used territories or premises; 7) natural persons in public places, premises of individual use and common premises if the purpose of a peaceful meeting is to satisfy private interests. 3. The Law also shall not regulate meetings if an event is a sports competition, a concert, a recreational or any other public event.” See Article 2(2), Lithuanian Law on Meetings.



51. Non-violent disruption or civil disobedience is not covered by the relevant regulations on freedom of assembly. The German courts, however, have recognized civil disobedience in the form of sit-ins as protected by the freedom of peaceful assembly, but several requirements need to be respected by the protesters and by the state. According to the German Federal Constitutional Court (*Bundesverfassungsgericht*), sit-ins are within the general area of the right to freedom of assembly.<sup>95</sup> Notwithstanding, such forms of demonstration have to meet several conditions. First, a sit-in must be peaceful.<sup>96</sup> There must not be violence against third parties or other participants at a sit-in as a result of rioting or dangerous actions.<sup>97</sup> A sit-in must also be primarily aimed at influencing public opinion instead of enforcing the interests of the organizers, since only “persuasive” forms of civil disobedience are covered by the freedom of assembly.<sup>98</sup> Furthermore, it is the duty of the state to remain neutral towards the substantive position of the protesters.<sup>99</sup> A state may not prohibit any sit-in simply because it disagrees with its stated purpose.
52. The majority of the participating States where assemblies were monitored do not regulate prompt or spontaneous assemblies. Belgian legislation, for example, does not specify whether spontaneous assemblies or flash mobs are allowed. In practice, however, despite using an authorization system, spontaneous assemblies are generally allowed but may be prohibited in areas where assemblies are generally banned (please see the section on bans below).<sup>100</sup> In Germany, urgent assemblies that are organized at short notice to respond to a current event are not included in the Federal Assembly Act but are tolerated as long as notification is provided as soon as an opportunity to notify arises.<sup>101</sup> Based on the interpretation of the German Federal Constitutional Court, when it comes to urgent assemblies, where it is impossible to observe the notification deadline and a need therefore exists to shorten the deadline for notification in a way that accounts for the special nature of the assembly, then notification does not apply. In the case of spontaneous assemblies, notification itself is impossible.<sup>102</sup>
53. National legislation in most of the participating States where ODIHR monitored assemblies, with the exception of Belgium and Canada, contains detailed provisions regulating the exercise of the right to assemble peacefully.

### *Conclusions and recommendations on the main definitions and the scope of the legal protection*

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<sup>95</sup> *Sitzblockade I* (n 27).

<sup>96</sup> *Sitzblockade III* [2001] BVerfG 1 BvR 1190/90; 1 BvR 2173/93; 1 BvR 433/96.

<sup>97</sup> *Ibid.*

<sup>98</sup> Quint, *op cit*, 254.

<sup>99</sup> *Ibid.*

<sup>100</sup> “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 50.

<sup>101</sup> VfSlg. 11.866/1988, quoted by Constitutional Court Decision of 6 October 2011, Ref: B877/10, Collection number 19528.

<sup>102</sup> BverfGe 69 (1985).

54. The right to freedom of peaceful assembly is to be guaranteed to everyone without discrimination. This means that participating States may not limit the guarantee to only its citizens, but this right must also be provided to non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists).<sup>103</sup> On a positive note, all participating States where ODIHR monitored assemblies recognize the right to peaceful assembly in their constitutions. In particular, the Canadian and Norwegian constitutions represent good practice in that they explicitly guarantee this right to everyone rather than referring to only citizens or other exclusions. On the contrary, the complete restriction on the part of some states of the right of children, or people without citizenship or full legal capacity to act, such as in Lithuania, is not in line with international norms. Article 15 of the UN Convention on the Rights of the Child (CRC) protects the right of children to assemble peacefully.<sup>104</sup> The CRC also guarantees the right of children capable of forming their own views to express those views freely in all matters affecting them,<sup>105</sup> the right to freedom of expression<sup>106</sup> and the right to access to appropriate information.<sup>107</sup> These rights reflect children's right to participation, which is one of the guiding principles of the CRC. In addition, as stated by the UN Special Rapporteur, "peaceful assemblies are an important tool for allowing the voices of otherwise excluded groups to be heard", and specific measures should be taken to protect groups that are particularly at risk of discrimination or other rights violations, including women, youth, indigenous peoples, people with disabilities, members of minority groups, non-nationals and people at risk because of their sexual orientation or gender identity.<sup>108</sup>
55. International human rights law requires that non-nationals "receive the benefit of the right of peaceful assembly".<sup>109</sup> It is therefore important that the law not limit the exercise of freedom of peaceful assembly to citizens only but that it also afford this right to stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists.<sup>110</sup>
56. Participating States need to be conscious of the fact that the restrictive language of their national legal framework regulating freedom of peaceful assembly, even if not applied in practice, can impact future practice or help legitimize restrictive or repressive practices in other jurisdictions. Efforts should be made to bring such legislation into full compliance with OSCE commitments and other applicable international human rights standards.

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<sup>103</sup> See Article 2 of the ICCPR; *Guidelines, op. cit.*, note 1, Principle 2.5, p. 16.

<sup>104</sup> UN Convention on the Rights of the Child, 2 September 1990, Article 15, <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

<sup>105</sup> *Ibid.*, Article 12(1).

<sup>106</sup> *Ibid.*, Article 13.

<sup>107</sup> *Ibid.*, Article 17.

<sup>108</sup> "Report of the Special Rapporteur on the rights to freedom of assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/26/29, 14 April 2014, para. 25; "Summary of the Human Rights Council high-level panel discussion to commemorate the twentieth anniversary of the adoption of the Vienna Declaration and Programme of Action", United Nations Human Rights Council, A/HRC/23/29, 24 April 2013, para. 43.

<sup>109</sup> "General Comment No. 15: The Position of Aliens under the Covenant", United Nations Human Rights Committee, 11 April 1986.

<sup>110</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 55.

57. Lack of clarity regarding assembly definitions in domestic legislation may be problematic in some situations. For instance, several participating States have different notification requirements for different types of assemblies. Belgium’s Constitution refers to the right to gather peaceably without arms and without requiring notification, but open-air assemblies are subject to police regulations that require notification. Germany’s Constitution has a similar requirement.<sup>111</sup> Italy has “private meetings”, “meetings open to the public” and “meetings in public places”.<sup>112</sup> Organizers and participants need guidance on what constitutes each type of assembly and the corresponding requirements so they are able to hold an assembly while also complying with legal requirements. To protect individuals’ right to freedom of assembly, it may be necessary to specify the precise circumstances in which assemblies are subject to particular legal obligations.<sup>113</sup>
58. In Norway, the organizer of the May Day demonstration in Oslo observed by ODIHR rented the assembly venue in accordance with the procedures for holding an event rather than an assembly, which entailed considerable costs, including a rental fee of NOK 96,000 (EUR 9,900), and liabilities. The organizer seemed unaware that they could have organized the same gathering with the same objectives under the rules and requirements relevant for assemblies. Additionally, the Norwegian National Human Rights Institution<sup>114</sup> indicated that the organizers of the May Day demonstration should not have had to pay for the use of the public space for such a purpose, while the municipality told ODIHR that such payment was required.<sup>115</sup> The full enjoyment of the freedom of peaceful assembly can be restricted if assembly organizers are required to pay such a high fee to be able to use a public place for their demonstration.
59. In Lithuania, the organizer of a static assembly held in the course of a festival in celebration of International Day against Homophobia, Biphobia and Transphobia decided to organize the event in Vilnius under a municipal regulation on public tidiness in order to benefit from quicker and less burdensome procedures compared to the notification process established under the Law on Meetings<sup>116</sup> (for more details, see the section on the role of organizers).
60. The confusion in the above situations may be partly explained by the lack of specific regulations on organizers’ rights and responsibilities in holding an assembly. Accordingly, in addition to constitutional provisions, domestic legislation may enable people to fully realize their right to peaceful assembly by informing them of the requirements for holding an assembly and the consequences of failing to meet such requirements. Furthermore, adequate safeguards should be in place to ensure that municipal authorities and/or the police do not unduly limit the freedom of peaceful assembly. Disseminating key information relating to the management of assemblies may also be considered.<sup>117</sup>

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<sup>111</sup> Article 8, Basic Law of the Federal Republic of Germany.

<sup>112</sup> Article 17, Italian Constitution.

<sup>113</sup> Hamilton, *op. cit.*, note 44, Section 28.

<sup>114</sup> Meeting with the Norwegian National Human Rights Institution, 3 May 2018.

<sup>115</sup> Meeting with the Oslo Agency for Urban Environment, 3 May 2018.

<sup>116</sup> Meeting with the Lithuanian Gay League, 15 May 2018.

<sup>117</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the

61. In some participating States, particularly Belgium and Canada, the main conditions for holding an assembly are either unregulated or are regulated by local by-laws that may differ from town to town. These systems and the lack of detailed regulations may lead to uncertainties for organizers and participants regarding the steps they must complete, the rules they need to abide by and the consequences for failing to do so, thereby potentially hindering the exercise of freedom of assembly. The lack of detailed regulation regarding the exercise of the right to freedom of assembly could hinder the guarantee of, and public access to, clear and foreseeable procedures for organizing and holding peaceful assemblies. The lack of consistent and foreseeable procedures described in primary law could indirectly hinder the full enjoyment of the freedom of peaceful assembly.
62. In the age of modern information and telecommunication technologies, where digital tools are relied on for social mobilization and advocacy and are therefore being increasingly used to organize assemblies, assemblies without identifiable organizers are becoming widespread. Therefore, participating States should also accommodate, protect and facilitate, to the greatest extent possible, peaceful assemblies that have no clearly identifiable organizers.
63. The ability to respond peacefully and immediately to some occurrence, incident, other assembly or speech is an essential element of freedom of assembly. As the participating States do not explicitly authorize spontaneous assemblies and since notification/authorization schemes are in place, it is unclear to what extent spontaneous assemblies are tolerated. Even in participating States that do not interfere with spontaneous assemblies, failing to explicitly authorize spontaneous assemblies when such schemes are in place provides public authorities with complete discretion to decide when to allow or prohibit such assemblies. The *Guidelines* explain that spontaneous assemblies provide an exception to the requirement for prior notification because such assemblies occur under circumstances where the legally established deadline cannot be met. The key defining criterion is that timely advance notification is not possible or is impracticable.<sup>118</sup> According to the UN Special Rapporteur, passing legislation allowing spontaneous assemblies without prior notification is a good practice.<sup>119</sup>
64. In this context, the recognition of the German Federal Constitutional Court of the special nature of “urgent” and spontaneous assemblies with applicable shorter or no notification requirement is a positive good practice. In addition, the recognition of peaceful sit-ins by the German courts as a legitimate form of dissent covered by the freedom of peaceful assembly is a positive development.
65. Recommendations for participating States:

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Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 82.

<sup>118</sup> “Note on the Draft Law Amending the Law on Assemblies of Poland”, OSCE/ODIHR, 21 May 2012, <<http://www.osce.org/odihr/90855?download=true>>.

<sup>119</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 29.

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- to guarantee in law a presumption in favour of holding peaceful assemblies in clear and explicit terms;
  - to ensure that the freedom of peaceful assembly is guaranteed in legislation to everyone under the jurisdiction of participating States, including children and non-citizens;
  - to ensure the broadest-possible protection in law of all expressive activities within the scope of the right to freedom of peaceful assembly, including peaceful assemblies that do not have an identifiable organizer or gatherings causing non-violent disruption or civil disobedience;
  - to recognize and expressly provide in the law for spontaneous assemblies where timely notification is not possible or practicable (such as in cases where an assembly responds to an event that could not reasonably have been anticipated); such assemblies should be exempt from the requirement for prior notification;
  - to ensure that clear and foreseeable procedures are promulgated to enable individuals to assess whether their conduct would breach the law and the consequences of doing so, to indicate clearly, among other things, the definition of various types of assemblies and the corresponding legal requirements, the body with authority and responsibility for receiving and responding to notifications or authorizations, the criteria for imposing conditions and restrictions and the consequences for failing to hold an assembly in compliance with the law;
  - to ensure easy, prompt, effective and practical access to all laws, regulations, government policies and other information relevant to the exercise of the freedom of peaceful assembly.

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

### NOTIFICATION AND AUTHORIZATION REQUIREMENTS

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

66. The freedom of peaceful assembly is an individual right that is exercised collectively. It includes both the protection of the individual against arbitrary restrictions of his or her rights by public authorities and the positive obligations of the state to secure the effective enjoyment of those rights.<sup>120</sup>
67. The UN Human Rights Committee held that a properly framed requirement to give prior notice of an assembly can be compatible with permitted limitations under the ICCPR.<sup>121</sup> However, the purpose of a notification system is to enable the competent authorities to make necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.<sup>122</sup> It is therefore a good practice to require notification only when a substantial number of participants are expected or only for assemblies that require advance official planning and preparation.<sup>123</sup> Notification should not be expected for assemblies that do not require prior preparation by state authorities or where the impact on the public is expected to be minimal.<sup>124</sup> In the opinion of the UN Special Rapporteur, another good practice is to pass legislation allowing spontaneous assemblies, which should be exempt from prior notification.<sup>125</sup>
68. The UN Special Rapporteur also considers that a notification requirement should be subject to a proportionality assessment.<sup>126</sup> Any provisions concerning advance notification should require that the organizers submit a notice of intent to hold an assembly but not a request for

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<sup>120</sup> *Plattform "Ärzte für das Leben" v. Austria* (1988) 13 E.H.R.R. 204, para. 32.

<sup>121</sup> UN Human Rights Committee, *Kivenmaa v. Finland* (1994).

<sup>122</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 113; "Report on the Situation of Human Rights Defenders in the Americas", Inter-American Commission on Human Rights, OEA/Ser.L/V/II.124, para. 57.

<sup>123</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 115.

<sup>124</sup> "Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies", A/HRC/31/66, *op. cit.*, note 2, , para. 21.

<sup>125</sup> "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", A/HRC/20/27, *op. cit.*, note 24, para. 29. The Special Representative of the Secretary-General on human rights defenders, Hina Jilani, also encouraged states "to consider in exceptional circumstances that defenders, with the aim of protesting human rights violations, should have the possibility of responding immediately to an event by holding public, peaceful assemblies". "Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani", United Nations General Assembly, A/61/312, 5 September 2006, para. 97.

<sup>126</sup> *Ibid.*, para. 28.

permission.<sup>127</sup> A permit requirement is generally more prone to abuse than a notification requirement, and it could devalue the fundamental freedom of assembly and the corresponding principle that everything not regulated by law should be presumed to be lawful.<sup>128</sup> Where permit systems are in place, there must be a strong legal presumption that permits will be granted promptly. In addition, permit systems must clearly prescribe in law the criteria for the issuance of a permit, which should be confined to considerations of time, place and manner, and should not provide a basis for content-based regulation.<sup>129</sup>

69. The notification process itself should not be overly bureaucratic, as this discourages those who might wish to hold an assembly and therefore undermines the freedom of peaceful assembly. According to the UN Special Rapporteur, a notification should be deemed to have been completed when a notice providing sufficient information for the authority to reasonably determine the date, time and location of an assembly and, when relevant, the contact details of the organizer or his/her representative have been received.<sup>130</sup> Furthermore, the period for the filing of a notice prior to an assembly should not be unnecessarily lengthy but should still allow adequate time prior to the notified date of the assembly for the relevant state authorities to plan and prepare for the event, for the regulatory body to provide a (prompt) official response to the initial notification and for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged.<sup>131</sup> When a certain time limit for notification is established by law, it should only be indicative<sup>132</sup> and should not result in the automatic prohibition of an assembly when not met.
70. The receiving authority should promptly issue a receipt explicitly confirming that the organizers of an assembly are in compliance with applicable notice requirements, and the notice should be communicated as soon as possible to all state organs involved in the regulatory process, including the relevant law-enforcement agencies.<sup>133</sup> Should the organizers not hear from the authority prior to the time designated for holding their assembly, it should be assumed that the assembly does not present any problem.<sup>134</sup> Furthermore, notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated.<sup>135</sup>
71. The organizers should send a single notification to a designated primary authority and should not be required to notify multiple authorities (e.g., law-enforcement agencies and/or one or

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<sup>127</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 118.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*, para. 119.

<sup>130</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 28(e).

<sup>131</sup> *Ibid.*, para. 116.

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*, para. 117.

<sup>134</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/26/29, *op. cit.*, note 40, para. 58.

<sup>135</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 115.

several municipal authorities, as is sometimes done in the case of Pride parades).<sup>136</sup> In this regard, the UN Special Rapporteur believes that organizers should be able to notify the designated primary authority in the simplest and fastest way possible, for instance by filling out a clear and concise form that is available in the main local language(s) spoken in the country, preferably online to avoid uncertainties and possible postal delays. The notification procedure should be not only widely accessible but also free of charge.<sup>137</sup>

72. It is generally inappropriate to impose a requirement (formally or informally) on organizers to negotiate the time, place, manner or other aspects of an assembly with the authorities. Such a requirement would be tantamount to restricting the planned assembly and would need to pass the strict test of necessity and proportionality. The UN Special Rapporteur has also warned against authorities imposing an alternative time and place for an assembly when processing a notification, as this would also be tantamount to imposing restrictions on the right to freedom of peaceful assembly and would need to satisfy the aforementioned necessity and proportionality test.<sup>138</sup>
73. According to the UN Special Rapporteur, where there has been a failure to properly notify, organizers should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.<sup>139</sup> Spontaneous assemblies with no identifiable organizer or where prior notice is otherwise impracticable should be exempt from notification requirements.<sup>140</sup>

#### *Notification and authorization requirements for assemblies in selected participating States*

74. Most participating States where ODIHR monitored assemblies maintain a notification requirement rather than an authorization system for assemblies. Canada, Germany, Italy, Lithuania and Norway require notification of an assembly, while an authorization system is utilized in Belgium.
75. Several participating States do not require notification or authorization for some types of assemblies. Under Article 26 of the Belgian Constitution, only open-air assemblies are subject to authorization requirements.<sup>141</sup> Similarly, closed meetings in Hamburg do not require

<sup>136</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, *op. cit.*, note X, para. 52.

<sup>137</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 22. Also, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, *op. cit.*, note X, para. 57.

<sup>138</sup> Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai” A/HRC/23/3, para. 56.

<sup>139</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 29.

<sup>140</sup> ECtHR, *Bukta v. Hungary*, Application No. 25691/04, 17 July 2007.

<sup>141</sup> Article 26, Belgian Constitution.



notification, while outdoor meetings are subject to notification requirements.<sup>142</sup> In Italy, notification is not required for private meetings or meetings held in places open to the public,<sup>143</sup> as well as for assemblies held as part of electoral campaigns.<sup>144</sup>

76. Notification/authorization requirements range from 48 hours to three weeks in advance of an assembly. In Quebec City, however, where ODIHR monitored assemblies in the context of the G7 Summit in June 2018, the municipal law requires that organizers inform the police but does not specify when such notification must be provided.<sup>145</sup> If the organizer plans to use non-city locations, they must seek permission from other authorities. Assemblies held in open spaces in Hamburg must be notified to the competent authority 48 hours prior to the assembly.<sup>146</sup> Assemblies in public places (those places where people may normally pass freely without permission) must be notified to the public safety authority (*questore*) in Italy three days in advance.<sup>147</sup> For assemblies of more than 15 people, organizers in Lithuania must provide written notice to the municipal administration director or their deputy at least five working days before the assembly. For assemblies with 15 people or fewer, no time period is specified for notification, and the organizer's notification may be made free-form.<sup>148</sup> In accordance with the Norwegian Police Act, any person planning an assembly must notify the police in good time in advance.<sup>149</sup> In Oslo, however, where ODIHR observed two May Day demonstrations in 2018, the police specify that they must be notified three weeks prior to the commencement of an assembly.<sup>150</sup> Individuals organizing an assembly in Brussels must submit their assembly plans to the mayor for authorization ten working days before the assembly.<sup>151</sup>
77. The information to be provided along with the notification varies in the participating States where ODIHR monitored assemblies. In Quebec City, written notification must include the organizer's name, birthdate and contact details, the date and start and end time of the assembly, the nature and name of the assembly, the expected number of participants, a description of the event (location, route, hours of activities), equipment to be used and information on stewards.<sup>152</sup> In Germany, the notification must include only the leader's information and the subject of the assembly.<sup>153</sup> In Italy, the notification must contain the date, time, place and purpose of the assembly, the personal details and names of those giving

<sup>142</sup> Article 8, German Constitution; Sections 5 and 14, German Federal Assembly Act.

<sup>143</sup> Article 17, Italian Constitution.

<sup>144</sup> Article 18, TULPS.

<sup>145</sup> See "Tenir une marche ou une manifestation", Ville de Quebec, <[https://www.ville.quebec.qc.ca/citoyens/police/marche\\_manifestation/index.aspx](https://www.ville.quebec.qc.ca/citoyens/police/marche_manifestation/index.aspx)>.

<sup>146</sup> The German Federal Assembly Act says 48 hours prior to its announcement. Section 14, German Federal Assembly Act. See "Comparative study on national legislation on freedom of peaceful assembly", *op. cit.*, note 59, p. 59.

<sup>147</sup> The notification period is not applicable to meetings not held in a public place. Article 18, TULPS; Article 3, Law of 12 July 1961, No. 603, <[http://www.edizionieuropee.it/LAW/HTML/27/zn51\\_04\\_02h.html](http://www.edizionieuropee.it/LAW/HTML/27/zn51_04_02h.html)>; Article 3, Law of 24 November 1981, No. 689, <<http://www.comune.jesi.an.it/MV/leggi/1689-81.htm>>.

<sup>148</sup> Article 6, Lithuanian Law on Meetings.

<sup>149</sup> Section 11, Norwegian Police Act.

<sup>150</sup> "Events", Politiet, <<https://www.politiet.no/en/services/arrangementer/>>.

<sup>151</sup> "Demonstrations", Bruxelles-Ville, <<https://www.bruxelles.be/manifestations-revendicatives>>.

<sup>152</sup> The form for providing written notification is available at <[https://www.ville.quebec.qc.ca/services/formulaires/docs/formulaire\\_tenue\\_marche\\_manifestation.pdf](https://www.ville.quebec.qc.ca/services/formulaires/docs/formulaire_tenue_marche_manifestation.pdf)>.

<sup>153</sup> Section 14, German Federal Assembly Act.

speeches and the organizer's signature.<sup>154</sup> The Lithuanian Law on Meetings stipulates that notice must include: the 1) form and content of the meeting; 2) the date and start and end time of the assembly; 3) the meeting venue and route; 4) the planned number of participants; 5) requests for the police concerning the maintenance of order; and 6) the full name and residence of the organizer or of the organizer's representative if the organizer is a legal person.<sup>155</sup>

78. Notifications in Norway must be provided in writing and must contain the purpose of the event, the scope, the organizer, the time, the ending place and the organizational arrangements planned by the organizer.<sup>156</sup> The notification submitted to Oslo police must also contain the expected number of participants, the use of instruments such as speakers and posters, expected impact on order and traffic, permission from landowners and local authorities' considerations, experience from previous assemblies, use of the organizer's own guards, use of physical barriers and plans related to emergency vehicles, route clearance from police and security and a vulnerability analysis in the case of large events.<sup>157</sup>
79. Applications for authorization of an assembly in Brussels require that an application form be submitted in writing to the police in the Brussels Capital Region. On this basis, the mayor decides on authorization. The application must include the organizer's name, address and telephone number; the assembly's purpose, date and time; the planned route; the place and time for the end of the assembly; the holding of a meeting after the assembly if necessary; an estimate of the number of participants and means of transport and a description of the public-order measures the organizer has planned.<sup>158</sup> Failure to comply with the conditions outlined in the authorization may result in the withdrawal of the authorization.<sup>159</sup>
80. Failure to notify the authorities may result in the prohibition of an assembly, fines or imprisonment. In Italy, organizers who take part in an assembly where the notification period has not been complied with may be punished with up to six months' imprisonment and a fine ranging from EUR 103 to EUR 413.<sup>160</sup> Assembly organizers in Lithuania can be subject to administrative or criminal proceedings for failure to comply with the Law on Meetings and are obliged to terminate an assembly when it no longer complies with the content of the notification.<sup>161</sup> In Quebec City, individuals are forbidden from participating in an illegal demonstration on the public domain. An illegal demonstration is one where the route, time and place have not been notified to the police department, where the notified time, place or

<sup>154</sup> Article 19, Royal Decree 635/1940.

<sup>155</sup> Article 6, Lithuanian Law on Meetings.

<sup>156</sup> Section 11, Norwegian Police Act.

<sup>157</sup> "Events", Politiet, <<https://www.politiet.no/en/services/arrangementer/>>.

<sup>158</sup> "Demonstrations", Bruxelles-Ville, <<https://www.bruxelles.be/manifestations-revendicatives>>.

<sup>159</sup> *Ibid.*

<sup>160</sup> Article 18 had specified that participants would also be held liable, but the Constitutional Court declared this illegitimate "in so far as it provides for the prosecution of those who take the floor in a public meeting being aware of the omission of notice provided in the first paragraph". Article 18, TULPS; Article 3, Law 603; Article 3, Law 689.

<sup>161</sup> Articles 6 and 9, Lithuanian Law on Meetings.

itinerary is not respected or where acts of violence or vandalism are committed.<sup>162</sup> According to the German Federal Assembly Act, failure to notify the authorities of an assembly in Germany may result in the assembly's dispersal.<sup>163</sup> However, despite the seemingly clear wording of section 15(3) of the Federal Assembly Act, failure to notify cannot in itself justify dispersal of an assembly, as has been clarified by the German Federal Constitutional Court.<sup>164</sup> Rather, a specific, immediate threat to public order or security must always be present. In this assessment, it may play a role that, due to the omitted notification, authorities may not be able to take precautionary measures to safeguard public order. Spontaneous assemblies, however, are not subject to this notification requirement.

81. The organizers of the Labour Day parade monitored by ODIHR in Oslo on 1 May 2018 reported on the necessity to apply for a permit from the Oslo Municipality to be able to use Youngstorget, one of the city's most prominent squares and a symbol of the labour movement, for the purpose of the parade.<sup>165</sup> The permission came in the form of a rental agreement involving a fee of NOK 96,000 (approximately EUR 9,900) payable to the Oslo municipal administration to cover municipal fees, equipment, security and clean-up services.<sup>166</sup> The fee was applied even though the purpose of the event was a demonstration and not a commercial activity. The permission of the landowner (in this case the municipality) to be able to use the square for the demonstration was also mentioned as a precondition in the police's official response to the assembly notification.<sup>167</sup> In order to access the application form needed for requesting a permit, the applicant needs to possess at least one of six electronic ID numbers, such as a Norwegian National Population Registration number or a bank account number.
82. On 16 May 2018, ODIHR monitors observed a short public assembly of around 100 participants who gathered for the opening ceremony of a festival and the unveiling of a rainbow-coloured pedestrian crossing at a park with symbolic value for the LGBTI community in Vilnius, Lithuania. The event was organized under a municipal regulation on public tidiness, which covers public and commercial events not regulated by the Law on Meetings. The organizer's reasoning was that, whereas the Law on Meetings in Lithuania offers more protection than the municipal regulation, the chosen process is quicker and less burdensome. Since the notification form can be submitted online, there is no compulsory co-ordination meeting between the organizer and the authorities—the organizer said such meetings could often be intimidating—and the response from the authorities is prompt. In addition, the organizers are required to clean up after events and assemblies organized under both regulations.<sup>168</sup>

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<sup>162</sup> Article 19.2, Quebec City Regulation on Peace and the Right Order.

<sup>163</sup> Section 15(3), German Federal Assembly Act.

<sup>164</sup> BVerfGE 69, 315, 350f

<sup>165</sup> Meeting with the Norwegian Confederation of Trade Unions, Oslo chapter, 20 April 2018.

<sup>166</sup> Contract for the event at Youngstorget, on file at ODIHR.

<sup>167</sup> Response letter from the Oslo Police, 10 April 2018, on file at ODIHR.

<sup>168</sup> Meeting with the Lithuanian Gay League, 15 May 2018.

83. On 19 May 2018, ODIHR observed a so-called rainbow bus, i.e., a moving assembly where participants rode in an open bus that stopped at the national parliament, government buildings, the Presidential Palace and the central Cathedral Square in Vilnius. A group of 15 participants got off the bus at each stop to unfurl a 30-metre-long rainbow flag in order to raise awareness of the ongoing Pride festival and to speak out against homophobia in Lithuania. Elaborating on the chosen form of assembly, the organizer noted that, for assemblies with up to 15 participants, there is no formal notification procedure that involves the submission of a notification form by a set deadline or a compulsory co-ordination meeting with the authorities.<sup>169</sup> A representative of the Vilnius municipal government provided more details about the notification process for assemblies that involve more than 15 people. The representative said that the notification received by the municipality is shared with the police. A co-ordination meeting is then held involving the organizer, the municipal administration director or their deputy, the police and representatives of other institutions, such as veterinary services. The outcome of the meeting is recorded in an agreement. This agreement can be challenged at the relevant district court and further appealed at the administrative court.<sup>170</sup>

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

84. It is positive that notification, rather than authorization, systems are used in the overwhelming majority of participating States where ODIHR monitored assemblies, as notification systems are preferable and less prone to abuse. The ECtHR has repeatedly noted that the purpose of notification requirements must be to allow the authorities to take reasonable and appropriate measures to guarantee the smooth conduct of any assembly, meeting or other gathering, and that, while the authorities may use notification requirements to ensure protection of the rights of others or to prevent disorder or crime,<sup>171</sup> they should not “represent a hidden obstacle to the freedom of peaceful assembly protected by the [ECHR]”.<sup>172</sup>
85. Imposing notification requirements only on assemblies that are likely to require advance preparation by state authorities (either to facilitate freedom of assembly or to protect public order, public safety and the rights and freedoms of others) contributes to limiting the regulation of assemblies to the minimum extent necessary.<sup>173</sup> Accordingly, Lithuania’s practice whereby assemblies with 15 people or fewer only require a free-form notification without the notification period being specified represents a good practice.
86. Evidently, the authorities may need notifications in order to prepare and make adequate arrangements that might be necessary in order to ensure the maintenance, protection and promotion of assembly rights. However, the minimum time frame of ten working days for submitting notification in Brussels is significant, while the three-week notification

<sup>169</sup> *Ibid.*

<sup>170</sup> Meeting with the Vilnius City Municipality, 17 May 2018.

<sup>171</sup> See *Sergey Kuznetsov v. Russia* (2009), para. 42; *Bukta and Others v. Hungary* (2007), para. 35; *Oya Ataman v. Turkey* (2007), para. 39; *Rassemblement Jurassien Unité v. Switzerland*, N.8191/78, Commission decision of 10 October 1979, DR 17, p. 119; and *Plattform “Ärzte für das Leben” v. Austria*, 21 June 1988, paras. 32 and 34.

<sup>172</sup> *Éva Molnár v. Hungary* (2009), para. 37.

<sup>173</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 119.

requirement in Oslo is exceedingly lengthy. Lengthy notification periods will inevitably have the effect of significantly reducing people's ability to respond with reasonable promptness to events. The advance notification period should therefore be as short as possible because timely access to the target audience is often of great importance where public advocacy is concerned.

87. Requesting a long list of detailed information at the time of notification puts an undue burden on organizers. Oslo's extensive notification requirements, particularly the need to include the expected impact on traffic, plans related to emergency vehicles and a vulnerability analysis, combined with the Police Act's requirement for an explanation of planned organizational arrangements, are extremely burdensome for organizers. Furthermore, organizers must receive permission from the owner of a public place for use of their land for the purposes of an assembly. Internationally accepted good practice specifies that only one primary regulatory body be notified, which then communicates with all state authorities involved in the regulatory process, including the relevant law-enforcement agencies. Additionally, the process of applying for a permit appears not to be equally accessible to everyone, as a Norwegian ID number or bank account is required to access the application form. The possible conflating of commercial activities and public assemblies by the city administration is an issue of concern. Whereas a rental fee for using a public place for commercial activities is an acceptable burden, it is unduly burdensome to the full enjoyment of the freedom of peaceful assembly in the Norwegian capital.
88. While all interlocutors, including the assembly organizer, reported positively on the legislative and regulatory framework regarding the exercise of the freedom of peaceful assembly in Lithuania, ODIHR is concerned by a number of provisions that are applied in a way that result in an undue burden on the organizers, such as the obligation of the organizer to clean up after an assembly or the treatment of the assembly notification procedure as an authorization procedure by the municipality, including through the *de facto* compulsory participation of the organizer in a co-ordination meeting with the authorities following the assembly notification.
89. In Quebec City, the requirement to provide the number, names and contact details of assembly stewards is burdensome. The UN Special Rapporteur considers it "unduly bureaucratic" to request identification details from anyone involved in an assembly besides the organizer, such as stewards.<sup>174</sup>
90. Additionally, Lithuania's requirement that the organizer must ensure the safety of participants and Brussels' requirement that organizers list their plans for maintaining public order are problematic. Maintenance of public order and providing adequate safety and security must be the primary responsibility of public authorities and not the duty of the organizers. The duty of the state to protect the safety and security of all groups and individuals in their exercise of freedom of peaceful assembly should be clearly defined in law and reinforced by the explicit

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<sup>174</sup> "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", A/HRC/23/39, *op. cit.*, note 40, para. 54.

commitment of the relevant institutions and authorities to fulfil this duty, which should not be based on a specific request from the organizers.

91. According to the UN Special Rapporteur, a notification should be deemed to have been completed when a notice providing sufficient information for the authority to reasonably determine the date, time and location of an assembly and, when relevant, the contact details of the organizer or his/her representative have been received.<sup>175</sup> Overly bureaucratic notification processes discourage those wishing to hold assemblies, thereby undermining freedom of assembly.
92. Oslo's police regulations require that the police be notified in good time before an event is held in a public place where the aim is predominantly entertainment, artistic, corporate or commercial and where significant traffic regulations or guardianship are needed. Municipal grounds may not be used without written permission from the municipal landowner.<sup>176</sup> The notification period for a large event, such as the Labour Day assembly monitored by ODIHR in Oslo, is three weeks, which is exactly the same as the notification requirement for demonstrations.<sup>177</sup> Since the purpose of the notification requirement should be about the proper facilitation of the assembly and not its restriction, the three weeks' advance notice seems unduly burdensome.
93. Failure to meet the specified notification period should not result in the automatic prohibition of an assembly. It is problematic that the failure to notify authorities of an assembly may result in its dispersal in Germany. More concerning is Italy's provision that may result in imprisonment or a significant fine where an assembly occurs when the notification period has not been complied with. Such a practice places a considerable barrier on the exercise of freedom of assembly and does not appear to be proportionate.
94. Recommendations for participating States:
  - to ensure that authorization/notification requirements are only imposed when necessary to facilitate the freedom of peaceful assembly or necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others and only to the minimum extent necessary;
  - to ensure that the notification process is prompt, not unduly bureaucratic, widely accessible, free of charge and that the lack of notification or infringements of the notification process does not result in automatic prohibition or dispersal of an otherwise peaceful assembly or in imprisonment or heavy fines;

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<sup>175</sup> "Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies", A/HRC/31/66, *op. cit.*, note 2 para. 28(e).

<sup>176</sup> Oslo Municipal Police Regulations, 7 June 2007, <[https://lovdata.no/dokument/PV/forskrift/2007-06-06-577/KAPITTEL\\_7#%C2%A77-1](https://lovdata.no/dokument/PV/forskrift/2007-06-06-577/KAPITTEL_7#%C2%A77-1)>, Sections 7-1, 7-3.

<sup>177</sup> "Events", Politiet.

- to ensure that the advance notification period is as short as possible, while still allowing the authorities sufficient time to prepare for an assembly and that the notification requirements are not unduly burdensome (the requested information should merely contain the date, time and location of the assembly and, where relevant, the name, address and contact details of the organizer);
- to ensure that the requirements for prior notification are not applied in a way that amounts to a *de facto* requirement for prior authorization;
- to require that the primary regulatory body provide a prompt official response to an initial notification and that the regulatory body communicate with all state bodies involved in the regulatory process, including the relevant law-enforcement agencies;
- to ensure that the absence of an official response to a notification may not prevent an assembly from being held.

## RESTRICTIONS IMPOSED BEFORE ASSEMBLIES

95. The right to freedom of peaceful assembly is not an absolute right. International and regional human rights instruments allow states to impose certain narrowly construed limitations. This chapter examines the grounds for the imposition of restrictions on public assemblies. Restrictions applied following an assembly, such as sanctions, are discussed in the chapter on the duties and responsibilities of the organizers.<sup>178</sup>

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

96. OSCE participating States are committed to guaranteeing the right to freedom of peaceful assembly, ensuring that any restriction that may be placed on this right be prescribed by law and be consistent with international standards (Copenhagen 1990). As the UN Human Rights Committee has observed, restrictions should be guided by the objective of facilitating the right rather than placing unnecessary or disproportionate limitations on it. The state has an obligation to justify any limitations of the right protected by Article 21 of the ICCPR.<sup>179</sup>

97. According to Article 21 of the ICCPR, restrictions on freedom of peaceful assembly must be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Any restrictions imposed must have a basis in primary law, as must the mandate and

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<sup>178</sup> For the ECtHR, the term “restrictions” within the meaning of Article 11(2) of the ECHR must be interpreted as including measures taken following a meeting. *Ezelin v. France* (1991), para. 39.

<sup>179</sup> Human Rights Committee, *Denis Turchenyak et al. v. Belarus*, Comm. No. 1948/2010, UN doc. CCPR/C/108/D/1948/2010, 10 September 2013, para. 7.4.

powers of the restricting authority (principle of legality).<sup>180</sup> Furthermore, they must be proportionate to the achievement of a legitimate aim. Given that a wide range of interventions might be suitable, the least restrictive means of achieving a legitimate purpose should always be given preference.<sup>181</sup> Any restriction must not only have a basis in domestic law, but the domestic law must be sufficiently precise and accessible to enable the individual to foresee, to a degree that is reasonable under the circumstances, the consequences that a given action may entail.<sup>182</sup>

98. Any restriction needs to be narrowly tailored to accommodate the relevant and legitimate concerns raised in every case. It follows that general bans on the holding of assemblies (for instance, forbidding any assemblies from being held in central areas or during peak hours) are contrary to the freedom of assembly.<sup>183</sup> As stated by the UN Special Rapporteur, “only ‘certain’ restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception”.<sup>184</sup> Indeed, blanket bans, including bans on the exercise of the right in its entirety or on any exercise of the right in specific places or at particular times are intrinsically disproportionate because they preclude consideration of the specific circumstances of each proposed assembly.<sup>185</sup> The UN Special Rapporteur holds as best practice “laws governing freedom of assembly [that] both avoid blanket time and location prohibitions, and provide for the possibility of other less intrusive restrictions”.<sup>186</sup>
99. The legitimate grounds for restriction are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation nor be loosely interpreted by the authorities.<sup>187</sup> The regulatory authorities must not create obstacles to freedom of assembly unless there are compelling arguments to do so, and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.<sup>188</sup>
100. Since speech and other forms of expression enjoy human rights protection, restrictions on assemblies should not be based on the content of the message they aim to communicate. Based on the ICCPR, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence<sup>189</sup> or acts aimed at

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<sup>180</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 35.

<sup>181</sup> *Ibid.*, para. 39.

<sup>182</sup> *Ezelin v. France* (1991), para. 45.

<sup>183</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, paras. 109–112; ECtHR, *Ezelin v. France* (1991), para. 53.

<sup>184</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 16.

<sup>185</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 40, para. 63.

<sup>186</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 39.

<sup>187</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 69.

<sup>188</sup> *Ibid.*, para. 70.

<sup>189</sup> Article 20, ICCPR.



the destruction of the rights and freedoms enshrined in international human rights law<sup>190</sup> should be deemed unlawful. Even where a content-based restriction is justified, authorities should take the least intrusive and restrictive measures to address the issue.<sup>191</sup> The use of speech with prohibited content by participants in an assembly does not of itself necessarily justify the dispersal of the event, and law-enforcement officials should take measures (such as arrest) only against the particular individuals involved (either during or after the event).<sup>192</sup>

101. So-called time, place and manner restrictions do not interfere with the message communicated and involve a wide array of possibilities available to the regulatory authorities.<sup>193</sup> Such limitations, rather than involving a choice between non-intervention and prohibition, are related to necessary changes to the time or place of an event—without preventing access to the target audience—or the manner in which it is conducted.<sup>194</sup> Such restrictions should never be used to undermine the message or the expressive value of an assembly or to dissuade the exercise of the right to freedom of assembly.<sup>195</sup>
102. The ECtHR confirmed that the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly.<sup>196</sup> Importantly, if there is a proper basis for imposing time or place restrictions on assemblies, suitable alternative times or places should be identified. Any alternative must be such that the message that the assembly aims to convey can be effectively communicated to those it is directed at, in other words, within “sight and sound” of the target audience.<sup>197</sup> Moreover, the organizer of an assembly should not be compelled or coerced to accept whatever alternative(s) the authorities propose. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.<sup>198</sup>
103. Freedom to choose the manner of an assembly is an important aspect of the right, as its form is often an integral part of its message, particularly in the case of symbolic protest, so a ban on a particular form of assembly needs to meet the relevant necessity and proportionality test.<sup>199</sup>
104. Restrictions on assemblies based on public-order grounds should be based on objective evidence of necessity and should not be imposed where there is only a hypothetical or an

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<sup>190</sup> *Ibid.*, Article 5.

<sup>191</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 33.

<sup>192</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 96.

<sup>193</sup> *Ibid.*, para. 99.

<sup>194</sup> *Ibid.*

<sup>195</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 34.

<sup>196</sup> *Sáska v. Hungary* (2012).

<sup>197</sup> *Ibid.*, para. 45.

<sup>198</sup> *Ibid.*, para. 103.

<sup>199</sup> In *Women on Waves and Others v. Portugal*, the ECtHR rejected the government’s argument that the applicant NGO could just as well carry out its advocacy for reproductive rights on land as on its vessel, which had been denied entry to territorial waters.

unsubstantiated risk of public disorder or the mere presence of a hostile audience.<sup>200</sup> Prior restrictions imposed on the basis of the mere possibility of minor incidents of violence are likely to be disproportionate. Any isolated outbreak of violence during an event should be dealt with by way of subsequent arrest and prosecution rather than prior restraint.<sup>201</sup> Evidence of disorder at an organizer's previous assembly should not, in and of itself, be grounds to automatically prevent an organizer from organizing a subsequent assembly.<sup>202</sup>

105. There can be a significant overlap between public-order and public-safety considerations (which may arise, for instance, in relation to the use of vehicles at assemblies).<sup>203</sup> In rare cases, restrictions on assemblies may also be justified on public-health grounds.<sup>204</sup> The protection of morals should not ordinarily be regarded as an appropriate basis for imposing restrictions on freedom of assembly. Reliance on such grounds for restrictions can too easily lead to the regulation of content (see below) and discriminatory treatment.<sup>205</sup>
106. While security risks may be a reason for refusing to permit an individual or association to exercise their right to freedom of assembly, such a restriction must be justified by reference to objective evidence to the specific risks posed by the individual or association. It is not enough for the state to refer merely to the security situation in a specific area.<sup>206</sup> The state must prove the precise nature of the threat and the specific risks posed.<sup>207</sup> The Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR limit reliance on national-security grounds to justify restrictions of freedom of expression and assembly.<sup>208</sup>
107. The regulatory authority has a duty to strike a proper balance between the freedom of peaceful assembly and the competing rights of others in the location affected by an assembly.<sup>209</sup> Given the need to respect diversity in a democratic society, a high threshold will need to be

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<sup>200</sup> *Ibid.*, para. 71.

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

<sup>202</sup> See Supreme Court of the United States, *Kunz v. New York*, 340 U.S. 290, 294, 15 January 1951: "The court below has mistakenly derived support for its conclusion from the evidence produced at the trial that appellant's religious meetings had, in the past, caused some disorder. There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence."

<sup>203</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 74.

<sup>204</sup> In such cases, similar restrictions should also apply to attendance at schools, concerts, sporting events, etc.

Restrictions may also be justified where the health of participants in an assembly becomes seriously compromised (e.g., during a hunger strike). See *Guidelines, op. cit.*, note 1, Explanatory Notes, paras. 76–77.

<sup>205</sup> *Ibid.*, para. 79.

<sup>206</sup> *Yesilgoz v. Turkey* (2005), para. 30 (French only).

<sup>207</sup> Human Rights Committee, communication No. 1119/2002, *Lee v. the Republic of Korea*, views adopted on 20 July 2005, para. 7.3.

<sup>208</sup> Based on the Siracusa Principles, national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation, its territorial integrity or political independence and cannot be invoked to prevent merely local or relatively isolated threats to law and order. Moreover, they must be adequate safeguards and effective remedies against abuse. United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985), <<http://www1.umn.edu/humanrts/instree/siracusapinciples.html>>.

<sup>209</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 80.

overcome before it can be established that a public assembly will unreasonably infringe upon the rights and freedoms of others.<sup>210</sup>

108. Assemblies are just as legitimate a use of public space as are commercial activities or the movement of vehicles and pedestrian traffic.<sup>211</sup> The temporary disruption of vehicular or pedestrian traffic and opposition to an assembly are not, of themselves, sufficient to justify restrictions on assemblies.<sup>212</sup> The ECtHR has stated that “any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by article 11 of the [ECHR] is not to be deprived of all substance”.<sup>213</sup>
109. The right to freedom of peaceful assembly also includes the right to plan, organize, promote and advertise an assembly in a lawful manner. Any restrictions on such activities should be considered a prior restriction on the exercise of this right.<sup>214</sup>

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

110. In some of the participating States where ODIHR monitored assemblies, the authorities imposed restrictions on assemblies. The first section below discusses bans and content-based restrictions, while the subsequent section includes some examples of time, place and manner restrictions and blanket bans.<sup>215</sup>

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

111. Legislation in the participating States where ODIHR monitored assemblies outline when authorities may place restrictions on assemblies. The Belgian Constitution allows for restrictions on freedom of peaceful assembly for the purpose of maintaining public safety, policy and health.<sup>216</sup> Freedom of assembly in Canada may only be restricted in accordance with “such reasonable limits prescribed by law as can be demonstrably justified in a free and

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<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*, para. 20; “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 41.

<sup>212</sup> *Ibid.*

<sup>213</sup> *Sergey Kuznetsov v. Russia* (2009), para. 44.

<sup>214</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 19.

<sup>215</sup> Provisions on restrictions on assemblies in the participating States covered in this report are complex and would merit a separate, exhaustive discussion. In the interest of being concise, this and the following sections will provide only some references to them, focusing mainly on restrictions reported in the participating States during the monitoring period (or that were directly relevant to the observed events).

<sup>216</sup> Article 26, Belgian Constitution; Decision of the Belgian Conseil d’Etat, administration section, nr. 87.974, 15 June 2000. Also see “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 47.

democratic society”.<sup>217</sup> The Belgian Penal Code specifically prohibits the interpretation of the provision on terrorist offences to reduce or hinder the right to freedom of assembly.<sup>218</sup> In Norway, the police may prohibit assemblies if legitimate grounds exist to fear that a serious disturbance to public order or traffic is present or if the purpose of the assembly or the manner in which it is carried out is contrary to the law. The Lithuanian Constitution specifies that the right to freedom of peaceful assembly may only be limited when necessary to protect state security, public order, public health or morals or the rights or freedoms of another person.<sup>219</sup> The Lithuanian Law on Meetings specifies that the right to peaceful assembly may be temporarily restricted upon the imposition of martial law or the declaration of a state of emergency.<sup>220</sup> Otherwise, the Law on Meetings does not contain any provisions authorizing the authorities to ban an assembly; rather, the law indicates only when an assembly may be terminated.

112. The Italian Constitution authorizes the prohibition of assemblies only for proven reasons of security or public safety.<sup>221</sup> The prefect where the assembly is to be held is authorized to adopt necessary measures for the protection of public order and public security in cases of emergency or for serious public need.<sup>222</sup> If notice is not given or circumstances exist that raise concerns about public order, morality or public health, the *questore* may prohibit the assembly or may specify the time and place of the assembly.<sup>223</sup>
113. The German Federal Assembly Act stipulates that assemblies in closed spaces may only be prohibited where they relate to restrictions on who may participate in an assembly as outlined in Section 1 of the Act, namely assemblies that relate to those who abuse freedom of expression and those affiliated with parties and associations deemed to be unconstitutional.<sup>224</sup> Assemblies may also be banned where the organizer allows access to people carrying weapons or other objects that by their nature are meant to harm people or damage property, where facts lead to the assumption that the organizer or followers (“*der Veranstalter oder sein Anhang*”) plan for the assembly to turn violent or riotous, or where facts lead to the assumption that the organizer or followers share views or will tolerate statements that constitute a prosecutable crime or offence.<sup>225</sup>
114. With regard to assemblies in open spaces, the German Federal Assembly Act authorizes the competent authority to prohibit assemblies when: 1) there are grounds to suspect significant

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<sup>217</sup> Article 1, Canadian Charter of Rights and Freedoms.

<sup>218</sup> Criminal Code of the Kingdom of Belgium (1867, as of 2016), Article 141ter.

<sup>219</sup> Article 36, Lithuanian Constitution.

<sup>220</sup> Article 1, Lithuanian Law on Meetings.

<sup>221</sup> Article 17, Italian Constitution.

<sup>222</sup> Article 2, TULPS.

<sup>223</sup> *Ibid.*, Article 18.

<sup>224</sup> The exclusions include: 1) those who abuse freedom of expression; 2) anyone who organizes or attends an assembly with the objective of promoting a political party, part or substitute organization declared unconstitutional; 3) any party declared unconstitutional based on Article 21(2) (seeks to undermine or abolish basic democratic order or the Federal Republic of Germany); or 4) any association banned based on Article 9(2) of the constitution (such as those whose aims contravene the criminal code or against the constitutional order). Section 1(1), German Federal Assembly Act.

<sup>225</sup> Section 5, German Federal Assembly Act.

risks to public security or order; 2) the assembly is intended to take place at a memorial of significant and historical importance that is a reminder of inhuman treatment by the National Socialist regime and, at the time of the injunction, actual grounds exist to suspect that the dignity of the victims will be negatively affected.<sup>226</sup>

115. In terms of content-based restrictions, the Lithuanian legislation contains several provisions prohibiting references to Nazi Germany and the Soviet Union. The Lithuanian Law on Meetings prohibits instigating the violation or actually violating the constitution or other laws through speeches, posters, slogans, audiovisual measures and other actions; violating ethical and moral principles; or displaying the flags, insignia, uniforms, leaders' images or symbols or performing the anthems of Nazi Germany, the Soviet Union or the Lithuanian Soviet Socialist Republic.<sup>227</sup> The swastika, however, is allowed due to its historical roots in Baltic culture rather than its association with Nazi Germany.<sup>228</sup> Similarly, Italian law prohibits anyone from displaying behaviours, emblems or symbols typical of organizations, associations, movements or groups with the purpose of inciting discrimination or violence on racial, ethnic, national or religious grounds.<sup>229</sup>
116. In some of the countries where ODIHR monitored assemblies, certain assemblies were banned by the regulatory authority or the police. In Brussels, a rally in support of Turkish President Recep Tayyip Erdoğan was planned to take place near the hotel where he was staying while attending the NATO summit in May 2017. Following pre-event negotiations between the municipal authorities and the organizer, the assembly was banned by the mayor the day before the planned rally due to security reasons.
117. During the G20 Summit in Germany, organizers of anti-G20 Summit protests planned to establish two protest camps to accommodate assembly participants. The camps were to be set up in Hamburg-Altona and in the Elbpark Entenwerder. The assembly authority banned the establishment of these camps. In its decision of 28 June 2017, the Federal Constitutional Court stated that the legality of the protest camps should be assessed through the assembly law. The assembly authority then allowed the establishment of the camps but without the possibility of using the tents as overnight accommodation. On appeal, the administrative court ruled on 2 July 2017 that the camps could be used for sleeping and cooking.

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

118. Several participating States prohibit assemblies from taking place near certain buildings or sites. In Germany, assemblies may not take place within the vicinity of legislative bodies<sup>230</sup>

<sup>226</sup> For example, such a memorial includes the Memorial to the Murdered Jews of Europe in Berlin.

<sup>227</sup> Article 5, Lithuanian Law on Meetings.

<sup>228</sup> Reference

<sup>229</sup> Article 2, Urgent Measures in Matters of Racial, Ethnic and Religious Discrimination 122/1993.

<sup>230</sup> Section 16, German Federal Assembly Act.

but relevant state and federal laws provide for exceptions in certain circumstances.<sup>231</sup> Belgium prohibits assemblies on roads near the royal palace, the Chamber of Representatives, offices of the Prime Minister and important ministries. Assemblies may also not be held near the European Parliament. Furthermore, in Brussels, assemblies are generally not permitted on Saturdays in the area that forms the “Pentagon, including the smaller city ring”, and all assemblies are prohibited in Grand Place/Grote Markt and on any streets connected to it at all times except in exceptional cases. Government-organized events, funerals and assemblies authorized by a mayoral decree are exempt from these requirements.<sup>232</sup>

119. Similarly, Lithuania prohibits assemblies by state government and administrative establishments and at a large number of other government and non-government institutions. Lithuania prohibits meetings at municipal institutions, police facilities, detention facilities, remand prisons, penitentiary institutions, healthcare facilities, national defence system and state security department facilities, prosecutors’ offices and courts, banks, nuclear energy companies, enterprises of strategic importance to national security and other enterprises classified as important for ensuring national security.<sup>233</sup> Assemblies may not be held within 75 metres of parliament, the president’s office, buildings belonging to the Government of Lithuania and courts. For other government establishments, foreign diplomatic missions, the police, prosecutors and other institutions that are important for ensuring national security, assemblies may be held at least 25 metres away.<sup>234</sup>
120. The Royal Canadian Mounted Police (RCMP) has broad discretion to prevent assemblies during events involving foreign dignitaries. The Canadian Foreign Missions and International Organizations Act authorizes the RCMP to “take appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances”.<sup>235</sup>
121. The disruption of traffic can be a reason for restricting assemblies in some participating States. In Brussels, a prohibition exists for participating in gatherings in public spaces that

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<sup>231</sup> A specific law („Gesetz über befriedete Bezirke und Verfassungsorgane des Bundes“) has entered into force in 2008 on the federal level according to which assemblies/processions in the vicinity of both chambers of parliament and the Federal Constitutional Court are generally prohibited, however exceptions may apply to the prohibition. § 3 of the Law states that exceptions must be granted on application if there is no sufficient reason to believe that their functions and activities will be impaired by the assembly and that free access will be maintained.

<sup>232</sup> Article 43, General Police Regulation of the City of Brussels and the Municipality of Ixelles (hereinafter, “Bruxelles-Ville Municipal Law”),

<sup>233</sup> Article 4(2), Lithuanian Law on Meetings.

<sup>234</sup> “Meetings or individual actions near the buildings of the Seimas of the Republic of Lithuania, the Office of the President of the Republic, the Government of the Republic of Lithuania and courts may be organized not closer than 75 metres [away] and [not closer than 25 metres from] other state government and administration establishments, foreign diplomatic missions, municipal institutions, establishments of the system of the State Security Department of the Republic of Lithuania, the police, the prosecutor’s office, the Ministry of the Interior of the Republic of Lithuania, the Ministry of National Defence of the Republic of Lithuania as well as near other facilities of the national defence system, enterprises of strategic importance to national security and other enterprises classified as important for ensuring national security [...] . In all cases free access to the aforementioned buildings and facilities shall be guaranteed.” Article 4(3), Lithuanian Law on Meetings.

<sup>235</sup> Article 10.1(2), S.C. 1991, c. 41, as of 3 October 2018, <<https://laws-lois.justice.gc.ca/PDF/F-29.4.pdf>>.

may disturb traffic or inconvenience pedestrians without prior authorization.<sup>236</sup> The Canadian Criminal Code and the Quebec Highway Safety Code prohibit assemblies from blocking highways. The Quebec Highway Safety Code also poses restrictions on assemblies. It stipulates that no person may, during a concerted action to obstruct traffic on a public highway, occupy the highway, except where the gathering has been previously authorized by those responsible for highway maintenance and the road is closed or under police control.<sup>237</sup>

122. Another common restriction relates to the prohibition of assemblies at certain times. In Quebec City, individuals are forbidden from being in a park or from participating or being present in a crowd in public between 11:00 p.m. and 5:00 a.m. The municipality of Quebec City, however, may authorize such presence.<sup>238</sup> Lithuania also limits the time and place of assemblies: assemblies may be held in public places, streets, squares, parks in residential areas and public buildings between the hours of 8:00 a.m. and 10:00 p.m. With co-ordination, however, assemblies may be organized at any time of the day, but only when local residents will not be disturbed and fixed lighting is available.<sup>239</sup> As the Law on Meetings does not explicitly allow municipalities to ban assemblies, authorities only exercise control over the time and place, particularly when another assembly is similarly planned or when government institutions receive priority during public holidays.<sup>240</sup>
123. Restrictions may also relate to the manner in which an assembly is to be carried out. An assembly in Italy may be dispersed where subversive activities occur that are detrimental to the authority's reputation, that may endanger public order or the safety of citizens or that involve the commission of crimes.<sup>241</sup> Displaying flags or emblems that are symbols of social uprising or upheaval, defamation of the government or the exhibition of badges of sectarian associations is always considered subversive.<sup>242</sup>
124. Many of the participating States prohibit face coverings in the context of assemblies. In Brussels, individuals in public spaces may not hide their face by painting it, wearing make-up or by any other means except when explicitly permitted to do so.<sup>243</sup> The Canadian Criminal Code prohibits anyone from having their face masked, coloured or otherwise disguised when they have the intent to commit an indictable offence.<sup>244</sup> In addition, wearing a mask or disguise while participating in an unlawful assembly or a riot is a punishable offence.<sup>245</sup> Italian law prevents the use "without a justified reason" of protective helmets or any other means that render the identification of a person difficult in a public place or in a place that is open to the public. Offenders may be punished with 6–12 months' imprisonment and a fine.<sup>246</sup>

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<sup>236</sup> Article 42, Bruxelles-Ville Municipal Law").

<sup>237</sup> Article 500.1, Quebec Highway Safety Code.

<sup>238</sup> Articles 19.3, 19.4, 19.6, Quebec City Regulation on Peace and the Right Order.

<sup>239</sup> Article 4(1), Lithuanian Law on Meetings.

<sup>240</sup> *Ibid.*, Article 7.

<sup>241</sup> Article 20, TULPS.

<sup>242</sup> *Ibid.*, Article 21.

<sup>243</sup> Article 41, Bruxelles-Ville Municipal Law.

<sup>244</sup> Articles 63–66 of the Criminal Code of Canada.

<sup>245</sup> *Ibid.*

<sup>246</sup> Article 2, Italian Provisions on Public Order Matters 533/1977.

In Norway, assembly participants may not be masked except for participants in plays, masquerades or similar events.<sup>247</sup>

125. According to the German Federal Assembly Act, participants of open-air assemblies are prohibited from concealing their identity. Thus, participants may not wear clothing or carry objects intended to conceal their identity. The competent authority may decide to authorize exceptions to this rule if doing so does not jeopardize national security or public order, and said authority may also exclude from assemblies persons who violate prohibitions.<sup>248</sup> In addition to clothing that conceals their identity, participants may not wear a uniform, or parts thereof, to express a shared political conviction at any type of assembly. Youth associations who commit themselves primarily to youth welfare may obtain authorization from the competent authority to wear such uniforms.<sup>249</sup> Anyone who intentionally violates the prohibition to conceal one's identity will face a fine or imprisonment of up to six months; however, minor infringements will not be penalized.<sup>250</sup> The ban does not apply to anyone covering their face for religious reasons.<sup>251</sup>
126. In Taormina, Italy, where the G7 was held in May 2017, special measures were implemented to implement, on an exceptional and temporary basis, monitoring activities and bans on pedestrian and vehicle access to affected areas, which effectively prevented assemblies from being held in the town. The prefect explained that these measures were necessary due to the extraordinary emergency nature of the event. The measures prohibited pedestrian and vehicle access, except vehicles previously authorized and vehicles parking on certain roads, from 12:01 a.m. on 22 May 2017 until midnight on 27 May 2017 in the reserved-access area. They also prohibited driving on certain routes. Thus, pedestrians could only access the area with advance authorization. During the same time period and in the maximum-security area, pedestrian and vehicle access and transit, as well as vehicle and equipment parking, were prohibited except for those previously authorized.<sup>252</sup> No public assemblies were announced to take place in Taormina.
127. On 8–9 June 2018, Canada hosted the G7 Summit at the Le Manoir Richelieu in La Malbaie. A red zone was created in the vicinity of the Manoir, which was restricted to dignitaries and Summit participants during Summit events. A wider green zone was created for accredited residents and workers. A designated “free expression zone” was established in the parking lot of the Charlevoix Museum, about 1.5 km from the Manoir and separated from the protected zone by a tall fence. The Canadian authorities confirmed that the area was equipped with a video camera and microphone to transfer live video and audio to the First Ministers' Conference Room and the executive lounge at Manoir Richelieu and to the World Business Canada Operations Centre at Petit Manoir. ODIHR observed only one event taking place at

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<sup>247</sup> Section 11, Norwegian Police Act.

<sup>248</sup> Section 17a (2), German Federal Assembly Act.

<sup>249</sup> *Ibid.*, Section 3.

<sup>250</sup> *Ibid.*

<sup>251</sup> *Ibid.*

<sup>252</sup> Prefetto di Messina, Measures implemented for G7 in Taormina, 20 March 2017.



this location, an assembly of 13 far-right supporters of Quebec Libre en Action and a counterdemonstration attended by four participants on 9 June 2018.

128. German law-enforcement authorities also established security zones at and around the meeting venues of the G20 Summit participants in July 2017. Only authorized persons could enter security zone 1, and only residents, employees and representatives of delivery, postal and care services could enter security zone 2. In addition, transfer corridors corresponding with the main central areas of the city were established, where no assemblies were allowed from 6 a.m. on 7 July until 5 p.m. on 8 July.

### *Conclusions and recommendations on prior restrictions on assemblies*

129. Avoiding traffic disturbances is not among the legitimate aims found in OSCE commitments and human rights standards that would justify restrictions on freedom of peaceful assembly. No assembly should be restricted or prohibited based solely on traffic restrictions. Situations such as those restricting assemblies that “disturb traffic or [that] may hinder other users of the space” in Brussels suggest that undisturbed traffic may be more important than the facilitation of people’s freedom of peaceful assembly. Therefore, in order to meet relevant OSCE commitments and international human rights standards, an assembly should not be restricted, let alone prohibited, based solely on traffic considerations even if there is a risk of a serious disturbance of traffic.
130. The ban on assemblies near government buildings in several participating States and those at certain times raise concerns over blanket prohibitions. The prohibitions in place in Belgium, Canada and Lithuania are likely to be disproportionate in that they fail to take into account the individual circumstances of the assemblies involved. Other less intrusive measures should be used instead. Furthermore, according to the UN Special Rapporteur, restricting access to a public place by not allowing assemblies to be held in the close vicinity of iconic buildings, such as presidential palaces, parliaments or memorials, should also meet the strict test of necessity and proportionality.<sup>253</sup> The free choice of venue is understood to form an important part of the freedom of the organizer to autonomously decide on the nature of an event, especially when the location itself is in some form the object of the protest.
131. The concealment of an individual’s identity by wearing a mask or by another method should not be prohibited where no demonstrable evidence of imminent violence is present.<sup>254</sup> An individual should not be required to remove a mask unless their mask is worn for the purpose of evading identification so as to avoid liability for violent conduct and/or for unduly interfering with the enjoyment of the freedom of peaceful of other participants. Face coverings may be worn for a range of legitimate purposes, including for expressive or religious purposes or to conceal one’s identity for fear of retaliation. Prohibiting the wearing of face coverings in the context of assemblies without any evidence of illegal activity or

<sup>253</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 40, para. 66.

<sup>254</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 98.

imminent threat to violence, as is the case in Brussels, Italy and Norway, is not in line with internationally accepted good practice. Such bans can be used to target particular groups and improperly curtail the right to freedom of peaceful assembly.<sup>255</sup> Such groups could include women wearing a niqab, individuals wearing face masks for medical purposes or people belonging to vulnerable communities.

132. In Taormina, Hamburg and La Malbaie, legitimate security considerations may have justified the regulation of assemblies during summits. However, such security considerations should not be used to justify disproportionate interference with freedom of peaceful assembly and, specifically, with the ability of assembly participants to convey a message to their intended audience. The blanket bans applied to certain areas or security zones in the cases of the G7 Summits in La Malbaie and Taormina and the G20 Summit in Hamburg failed to account for the individual circumstances of the assemblies and therefore raise concerns regarding the proportionality of the restrictions imposed. As a result, none of the assemblies held in the three countries were facilitated within sight and sound of their intended audience. Designating a “free expression zone” 1.5 km from the G7 Summit venue and providing direct transmission of speeches to the hotel where the summit was held in La Malbaie does not allow the assemblies to be adequately seen and heard by the G7 Summit participants, their primary intended audience. In fact, regardless of the broadcasting, which was an effort on the part of the authorities to facilitate the assemblies, most of the G7-related assemblies were held in Quebec City rather than utilizing the “free expression zone” so as to ensure that their messages were properly heard and seen by the wider public.
133. As confirmed by the UN Special Rapporteur, the right to freedom of peaceful assembly also includes the right to plan, organize, promote and advertise an assembly in a lawful manner.<sup>256</sup> In this respect, the German Federal Constitutional Court ruled that not only the realization but also the preparation and organization of an assembly are among the activities that are protected under the freedom of peaceful assembly.<sup>257</sup> The Court interprets the freedom of peaceful assembly as covering not only participation in an assembly but also activities related to the planning and preparation of an assembly, such as the public announcement of an event; the distribution of leaflets; the right to freely determine the purpose, place, time and manner of an assembly; as well as the right to have access to the place where an assembly is to take place.<sup>258</sup> As part of the positive obligation to facilitate peaceful assemblies, it has to be ensured that efforts to disseminate information to publicize forthcoming assemblies are not impeded.<sup>259</sup>

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<sup>255</sup> “Report of the Special Rapporteur on the rights to freedom of assembly and of association, Maina Kiai”, A/HRC/26/29, *op. cit.*, note 108, para. 32.

<sup>256</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 19.

<sup>257</sup> “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 57.

<sup>258</sup> *Ibid.*

<sup>259</sup> *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 13, p. 18.

134. Recommendations for participating States:

- to ensure that any restrictions on assemblies have a basis in primary law and strictly adhere to the principle of proportionality, ensuring in particular that restrictions are narrowly tailored to meet the specific and legitimate aims pursued by the authorities and are necessary in a democratic society;
- to ensure that any prior restrictions on assemblies are put in writing and are justified and communicated to the organizers in a time frame prescribed by law, allowing sufficient time for an appeal or other application for urgent interim relief to be completed before the proposed time of an assembly;
- to refrain from imposing blanket restrictions on assemblies, which are likely to be disproportionate, and to ensure that each assembly is assessed individually; to this end, to remove provisions from the law or from temporary measures adopted on the occasion of large summits or similar events that can result in blanket provisions banning assemblies at specific times or in specific public places, or prohibiting outright certain forms of assembly or particular types of activity within assemblies;
- to ensure that assembly participants are able to convey their message within sight and sound of their intended audience and that limitations in that regard based on security or other considerations are only imposed on an exceptional basis and in a proportionate manner;
- to ensure that, where security or other considerations may result in time, place and manner restrictions on assemblies, these are necessary under the circumstances, and, whenever possible, previously discussed with the organizers of assemblies prior to an event so that suitable alternatives consistent with the sight-and-sound principle can be identified.

## DECISION-MAKING AND REVIEW

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

135. Transparent decision-making is central to the process of planning and facilitating assemblies and ensuring that any action taken by law enforcement is proportionate and necessary.<sup>260</sup> The public should be informed about which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in the law.<sup>261</sup> A clear procedure for interaction between event organizers and the regulatory authorities is also necessary. Such a procedure should set out appropriate time limits by working backwards

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<sup>260</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, para. 37.

<sup>261</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 61.

from the date of a proposed event, and it should allocate sufficient time for each stage in the regulatory process.<sup>262</sup>

136. In addition, the regulatory process should establish an opportunity to appeal or otherwise challenge the decision of the regulatory authority in an independent court. Appeals and other challenges ought to be decided in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights.<sup>263</sup> In this context, the ECtHR determined that the absence of an effective appeals procedure against a decision to forbid an assembly prior to the proposed date of said assembly is a violation of the ECHR.<sup>264</sup>
137. According to the UN Special Rapporteur, there should be an option for organizers to seek prompt, competent, independent and impartial judicial and, where relevant, administrative review of any restrictions imposed.<sup>265</sup>
138. To address situations where authorities fail to respond promptly to a notification, the law should stipulate that organizers of a public assembly may proceed with their planned activities according to the terms specified in their notification without restriction.<sup>266</sup> The regulatory authorities must comply with their legal obligations and should be accountable for any failure—procedural or substantive—to do so whether before, during or after an assembly.<sup>267</sup>

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

139. Decision-making power with respect to assemblies is either allocated to the police or to the municipal authority. The municipal authority decides on assembly-related issues in Belgium and Lithuania.
140. Municipal powers are very broad in Belgium. A municipality can engage in any area that is not covered by the federal state, communities, regions or provinces.<sup>268</sup> The organizer of an open-air assembly in Belgium has to contact the municipality where the gathering is supposed to take place and will be subject to police regulations and rules applicable in that municipality, which vary from one municipality to another. Every gathering, demonstration or procession in a public space is subject to prior authorization by the mayor, who is in charge of public order at the municipality.<sup>269</sup> The action (or inaction) of the mayor can be subject to

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<sup>262</sup> *Ibid.*, para. 65.

<sup>263</sup> *Ibid.*, para. 66.

<sup>264</sup> *Bączkowski and Others v. Poland* (2007).

<sup>265</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 35.

<sup>266</sup> *Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 120.

<sup>267</sup> *Ibid.*, para. 67.

<sup>268</sup> See “Les compétences des communes”, <[http://www.belgium.be/fr/la\\_belgique/pouvoirs\\_publics/communes/competences/](http://www.belgium.be/fr/la_belgique/pouvoirs_publics/communes/competences/)>.

<sup>269</sup> Meeting with the Brussels Police, 22 May 2017.

administrative or judicial review. Administrative review is carried out by a superior authority, which can annul or suspend a municipal act or regulation that violates the law or undermines the public interest. The Conseil d'Etat<sup>270</sup> also has the power to suspend or annul administrative acts and regulations on appeal by any stakeholder.<sup>271</sup> The law does not regulate the deadline within which the mayor needs to respond and decide on an assembly authorization request.

141. The municipal administration director or deputy is responsible for the smooth co-ordination of notified assemblies in Lithuania.<sup>272</sup> Following the notification of an assembly, the municipal administration director or deputy sets the date for a co-ordination meeting and notifies the organizer and the police, which must occur within three working days from receipt of the notice.<sup>273</sup> The current regulations contain no provisions for pre-event restrictions on the exercise of the freedom of peaceful assembly. This means that the authorities may only refuse to co-ordinate the time and place of an assembly but cannot impose a ban or otherwise restrict an assembly. Municipalities that violate the Law on Meetings are subject to administrative action.<sup>274</sup>
142. In Italy, the public safety authority (*questore*) chairs public-order services and avails itself of the support of other law-enforcement bodies, such as the Carabinieri, the Guardia di Finanza (finance police) and other forces. The *questore* receives notification of an assembly, and it has the power to ban an assembly or propose modifications on public-order and public-safety grounds through an ordinance.<sup>275</sup> The organizers can appeal a ban to the judicial authorities.
143. In Norway, the police receive assembly notifications. They can establish conditions for an assembly in order to prevent serious breaches of public peace and order or serious disturbances of traffic. In Germany, assembly-related issues are decided by a specific administrative authority (assembly authority). The assembly authority can ban or impose conditions on an assembly. In Canada, the police are responsible for receiving notifications and making relevant decisions.
144. ODIHR was not able to identify laws or regulations providing for specific time frames within which decisions on restrictions or bans on assemblies have to be made in any of these OSCE participating States.

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

145. It is unclear from the regulations in Belgium which assemblies are subject to authorization, as it is uncertain if assemblies taking place in indoor locations open to the public would also be

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<sup>270</sup> Council of the State, the highest administrative court in Belgium.

<sup>271</sup> "Comparative study on national legislation on freedom of peaceful assembly", *op. cit.*, note 59, p. 47.

<sup>272</sup> Article 12, Lithuanian Law on Meetings.

<sup>273</sup> *Ibid.*, Article 7.

<sup>274</sup> *Ibid.*, Article 12.

<sup>275</sup> Meeting with the *questore* of Messina, 25 May 2017.

subject to relevant police regulations and the authorization of the mayor. This might lead to legal uncertainty for assembly organizers and participants.<sup>276</sup>

146. As the *Guidelines* state, the right to an effective remedy entails the right to appeal the substance of any restrictions or prohibitions on an assembly. Appeals should take place in a prompt and timely manner so that any revisions of, and the final ruling on, the decision made by the authorities are given prior to the date for the assembly provided in the notification.<sup>277</sup>
147. The assembly in support of President Erdoğan was banned by the mayor of Brussels only a day before it was to take place. This made it impossible to conduct any judicial. Organizers have to be promptly notified of the reasons for such a decision and be provided with a possibility to challenge the decision of the respective state bodies before a court.
148. The lack of a time frame within which notified authorities have to respond to a notification so that, for instance, they would have time to articulate objections or, as an alternative, would choose to initiate negotiations about the route of an assembly with its organizers is problematic. The organizer of an assembly should not be compelled or coerced to accept restrictions, and should have an effective opportunity to challenge them. Therefore, regulations should provide for processes that enable prompt and effective review of any restrictions imposed on assemblies.
149. Recommendations for participating States:
- to ensure that the regulation of assemblies is conducted in a transparent manner, giving organizers timely notice of prompt regulatory decisions with justified reasons and recourse to a prompt and effective remedy through administrative and judicial review;
  - to ensure that any restriction placed on an assembly is communicated in a timely manner in writing to the assembly organizers, including a detailed explanation of the reasons behind each restriction;
  - to ensure that appropriate time limits are set for each stage in the regulatory process enabling organizers to respond to and/or challenge any proposed restrictions in an expedited appeal procedure so that assembly organizers are not compelled to accept, and are able to challenge in court, the substance of any restriction before the date of the assembly.

## THE ROLE OF THE ORGANIZERS

150. As previously noted, not all assemblies have an organizer. This is especially the case today, when digital tools are relied on for social mobilization and advocacy. The section below describes the organizer's responsibilities in cases of assemblies with an identifiable organizer

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<sup>276</sup> “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 50.

<sup>277</sup> *Guidelines*, *op. cit.*, note 1, para. 137.

but does not suggest that assemblies without an identifiable organizer or unorganized assemblies should not be facilitated.

*The role of the organizers: international standards and good practice*

151. At the stage of pre-event planning, especially in the case of large assemblies or assemblies related to controversial issues, it is a good practice for organizers, if they so wish, to discuss with law-enforcement officials the security and public-safety measures that are to be put in place prior to an event. Such discussions can cover, *inter alia*, the deployment of law-enforcement personnel, stewarding arrangements and particular concerns relating to policing operations<sup>278</sup> (see Section III for assembly policing). The participation of other agencies, such as fire and ambulance services, could also contribute to a discussion of the possible solutions to address any problems and risks presented by an assembly and planned measures should such problems or risks materialize. Any such discussion should be entirely voluntary and should never be used as a way to compel an organizer to agree to restrictive conditions.<sup>279</sup> Any legal requirement that organizers carry out mandatory risk assessments for all open-air public assemblies would, however, create an unnecessarily bureaucratic and complicated regulatory regime that would unjustifiably deter groups and individuals from exercising their freedom of peaceful assembly.<sup>280</sup>
152. The notification procedure should at all times be free of charge so as not to financially deter organizers from exercising their right to freedom of peaceful assembly.<sup>281</sup> The costs of providing additional services to facilitate and protect assemblies should be covered by the state. In particular, the costs of providing adequate security and safety (including traffic control, crowd management and medical services) should be fully covered by the public authorities, and no additional charge should be levied for providing adequate policing.<sup>282</sup> Similarly, the responsibility for routine clean-up after a public assembly should lie with the municipal authorities.<sup>283</sup>
153. The state's obligation to facilitate assemblies includes the responsibility to provide basic services, including traffic management, medical assistance<sup>284</sup> and clean-up services.<sup>285</sup> Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.

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<sup>278</sup> *Ibid.*, para. 5.1.

<sup>279</sup> *Ibid.*, para. 103.

<sup>280</sup> *Ibid.*, Explanatory Notes, para. 189.

<sup>281</sup> "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", A/HRC/23/39, *op. cit.*, note 40, para. 57.

<sup>282</sup> *Guidelines, op. cit.*, note 1, para. 5.2. Also see "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", A/HRC/23/39, *op. cit.*, note 40, para. 57.

<sup>283</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 32. Also see "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", A/HRC/23/39, *op. cit.*, note 40, para. 57.

<sup>284</sup> See Principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>285</sup> *Guidelines, op. cit.*, note 1, para. 32.

154. Organizers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event,<sup>286</sup> as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom of peaceful assembly.<sup>287</sup> Under some circumstances, it may be legitimate to recommend to the organizers of assemblies that they arrange a certain level of stewarding for their gathering. However, the use of stewards appointed by the organizers of an assembly should be encouraged but never required.<sup>288</sup> Such a recommendation should in no way detract from the positive obligation of the state to provide adequately resourced policing arrangements and from the overall responsibility of law-enforcement agencies for maintaining public order.<sup>289</sup>
155. Organizers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful, but they should not be held liable for failure to perform their responsibilities if they do not personally violate existing laws governing all participants in an assembly.<sup>290</sup> This principle also applies in those cases when an assembly degenerates into serious public disorder. In such circumstances, it is the responsibility of the state to limit the damage caused, and under no circumstances should the organizers of a lawful and peaceful assembly be held liable for a disruption caused by others where the organizers did not cause and did not specifically intend the damage or disruption.<sup>291</sup>
156. Assembly organizers should not be held responsible for the maintenance of public order, as also stressed by the UN Special Rapporteur.<sup>292</sup> The principle of the individual liability of participants should be upheld. Holding the organizers of an event liable for the conduct of others would be a manifestly disproportionate response since this would impose responsibility on organizers for acts by other individuals over whom they exercised no personal control (including possible *agents provocateurs*) or that could not have been reasonably foreseen.<sup>293</sup> Holding an organizer responsible for the unlawful behaviour of others would also weaken trust and co-operation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.<sup>294</sup> Similarly, individual

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<sup>286</sup> *Ibid.*, para. 5.2.

<sup>287</sup> *Ibid.*, Explanatory Notes, para. 198.

<sup>288</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, p. 9.

<sup>289</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 195.

<sup>290</sup> Organizers should not be liable for the actions of individual participants or stewards; instead, individual liability should arise for participants or stewards if they commit an offence or if they fail to carry out the lawful directions of law-enforcement officials. See *Guidelines, op. cit.*, note 2, Explanatory Notes, paras. 112 and 197.

<sup>291</sup> *Ibid.*, para. 198.

<sup>292</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 31.

<sup>293</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 112.

<sup>294</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 26.



participants who have not personally committed any unlawful act during an assembly should not be held liable even if others become violent.<sup>295</sup>

157. Any liability arising after an assembly, such as for deliberately not respecting legitimate restrictions, and any sanctions imposed on the organizers should be in line with the principle of proportionality.<sup>296</sup> Disproportionate sanctions and penalties imposed on organizers and participants after a demonstration, namely in the form of disproportionate fines or imprisonment, breaches the right to freedom of assembly and is likely to deter individuals and organizations from exercising this freedom in the future.<sup>297</sup> Moreover, anyone charged with an offence related to an assembly must enjoy fair-trial rights<sup>298</sup> regardless of the liability (administrative or criminal) at issue.

#### *The role of the organizers in selected participating States*

158. In the majority of the participating States where ODIHR monitored assemblies, specific legal provisions or rules (in a form of “circulaire” in case of Belgium which is not legally binding for citizens) exist describing the duties and responsibilities of organizers in relation to the holding of an assembly and ensuring public order.
159. Assembly organizers in Belgium are responsible for the proper organization of their assembly,<sup>299</sup> thereby ensuring that the assembly takes place in the safest and calmest manner possible. The organizer must act in accordance with the authorization and agreements reached during co-ordination meetings.<sup>300</sup> Organizers must undertake all reasonable steps to avoid disturbing residents in the area, acts of racism and xenophobia and the consumption of alcohol and drugs.<sup>301</sup> Assembly organizers are not liable for individual participants’ actions.<sup>302</sup> The administrative authority remains, at any time, responsible for public order, including for instance, when no agreement could be found between the concerned parties.<sup>303</sup>
160. Organizers of assemblies in Quebec City are responsible for informing the Quebec City police department of the time, place and route of their assembly, for respecting this time, place and route and for respecting the regulations in force.<sup>304</sup> Assembly organizers and participants in Canada may be liable for an array of offences. Anyone may be subject to summary conviction

<sup>295</sup> ECtHR, *Ezelin v. France* (1991), para. 53; *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 111.

<sup>296</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 109. Also see ECtHR, *Ezelin v. France* (1991).

<sup>297</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 40, para. 77.

<sup>298</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 110.

<sup>299</sup> Circular of 11 May 2011 concerning the negotiated management of public space for the two-level integrated police service, para. 4.

<sup>300</sup> *Ibid.*

<sup>301</sup> “Events”, Belgium.be, <[https://www.belgium.be/fr/justice/securite/evenements\\_publics/manifestations/](https://www.belgium.be/fr/justice/securite/evenements_publics/manifestations/)>.

<sup>302</sup> “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 49.

<sup>303</sup> Circular of 11 May 2011 concerning the negotiated management of public space for the two-level integrated police service, para. 3.

<sup>304</sup> “Tenir une marche ou une manifestation”, Ville de Quebec.

for causing a disturbance in or near a public place, including by “fighting, screaming, shouting, swearing, singing or using insulting or obscene language”.<sup>305</sup> The crime of mischief includes situations where individuals wilfully destroy or damage property or obstruct, interrupt or interfere with the lawful use, enjoyment or operation of property.<sup>306</sup>

161. The German Federal Assembly Law requires that every assembly must have a leader/organizer,<sup>307</sup> who is responsible for determining the assembly’s route, maintaining order and determining when an interrupted assembly may continue. The organizer may interrupt or end the assembly at any time.<sup>308</sup> Stewards may be utilized in assemblies held in both closed and open places, but police authorization is required at the time of registration if stewards are to be used in open assemblies.<sup>309</sup> Stewards must be of legal age and must be identifiable by wearing white armbands with the word “steward” written on them during closed assemblies. The police may reasonably reduce the number of stewards for closed assemblies.<sup>310</sup> Participants in a closed assembly are required to follow the organizer’s and stewards’ instructions, while participants in open assemblies must follow only the organizer’s and stewards’ instructions when the orders relate to maintaining order.<sup>311</sup> In closed assemblies, the organizer may decide to exclude participants who commit gross violations of the order of the assembly. In open assemblies, the police can exclude participants who commit gross violations of public order.<sup>312</sup> In both open and closed assemblies, participants who are excluded must leave immediately.<sup>313</sup> If organizers of open assemblies are unable to enforce their orders, they must end the assembly.<sup>314</sup> The Federal Supreme Court for civil matters decided that liability for damages caused to private or public property by a demonstration may not be extended to participants who did not cause the damage.<sup>315</sup> The organizer, however, is not exempt from cleaning costs.<sup>316</sup> In the *Brokdorf* decision, the German Constitutional Court held that the more an organizer shows a co-operative spirit at the time of advance notification, the higher the threshold of permissible state intervention for the protection of public security and order will be.<sup>317</sup> According to some commentators, this

<sup>305</sup> Article 175, Canadian Criminal Code.

<sup>306</sup> Individuals who are found guilty of mischief that endangers life may be imprisoned for life, whereas those who commit mischief in relation to property that is a testamentary instrument or that has a value of over CAD 5,000 may either be subject to imprisonment for up to ten years or found guilty of an offence punishable by summary conviction (Article 420, Canadian Criminal Code). Individual offenders are liable for holding an assembly between 11:00 p.m. and 5:00 a.m. with a fine ranging from CAD 150 to CAD 1,000 for a first offence or, in the case of repeat offences, from CAD 300 to CAD 2,000. Similarly, corporations are liable to a fine ranging from CAD 300 to CAD 2,000 for a first offence or, in the case of repeat offences, from CAD 600 to CAD 4,000 (Article 21, Quebec City Regulation on Peace and the Right Order).

<sup>307</sup> Section 7, German Federal Assembly Law.

<sup>308</sup> *Ibid.*, Sections 8 and 18.

<sup>309</sup> *Ibid.*, Section 18(2).

<sup>310</sup> *Ibid.*, Section 9.

<sup>311</sup> *Ibid.*, Sections 10 and 19.

<sup>312</sup> *Ibid.*, Sections 18 and 19.

<sup>313</sup> *Ibid.*, Sections 11 and 18.

<sup>314</sup> *Ibid.*, Section 19(3).

<sup>315</sup> “Comparative study on national legislation on freedom of peaceful assembly”, *op. cit.*, note 59, p. 60.

<sup>316</sup> *Ibid.*

<sup>317</sup> BverfGe 69, 315, 357 (1985).

suggests a “jurisprudentially imposed system of mutual cooperation, with gradually enhancing intervention powers in case of disregard”.<sup>318</sup>

162. In Lithuania, organizers or those authorized by the organizers are responsible for starting, leading or chairing and ending assemblies.<sup>319</sup> The Lithuanian Law on Meetings places restrictions on who may organize an assembly. Only Lithuanian and EU citizens who are at least 18 years old, foreign nationals with permanent residency in Lithuania and legal persons registered and operating in Lithuania may organize an assembly.<sup>320</sup> If the organizers fail to inform the authorities within an hour of the agreed start time that the assembly is late and thus has not begun, the meeting will be deemed to have not taken place.<sup>321</sup> Organizers and participants in Lithuania are to ensure compliance with Lithuanian laws and to comply with lawful police orders and demands and to ensure that the venue is left tidy. The municipality, however, may not oblige organizers or participants to implement measures that require financial resources, except for cleaning the venue afterwards.<sup>322</sup> Organizers have the right to call participants to order where they violate public order or do not comply with the Law on Meetings, to ask such participants to leave the meeting or to ask the police to remove them and to terminate the assembly and ask the participants to leave.<sup>323</sup> Organizers are responsible for terminating assemblies where they no longer comply with the content contained in the notification.<sup>324</sup> Organizers or participants who violate the law may be subject to administrative or criminal proceedings and may be held liable for damages and be required to reimburse any losses.<sup>325</sup> Violations of the Law on Meetings are punishable under the Lithuanian Code of Administrative Offences, and a fine from 140 to 600 EUR may be imposed. If the requirements for organizing an event in public places is breached, a fine of EUR 150 may result, in addition to a ban on attending public venues for up to 18 months.<sup>326</sup>
163. In Norway, the Civil Penal Code holds liable any person who causes a riot with the intent of using or threatening violence against persons or property, including those who aid and abet or act as a leader of such riots. The potential punishment is up to three years’ imprisonment. If a felony is intended against a person or property or a felony against a public authority is committed, the punishment ranges from two months to five years.<sup>327</sup> Those who disobey a public authority’s order to leave peacefully or who aid another to remain present at a riot are subject to punishment of up to three months in prison. However, potential imprisonment

<sup>318</sup> Salát, *op. cit.*, note 64, p. 78.

<sup>319</sup> Article 8, Lithuanian Law on Meetings.

<sup>320</sup> *Ibid.*, Article 3.

<sup>321</sup> *Ibid.*, Article 8.

<sup>322</sup> *Ibid.*, Article 12.

<sup>323</sup> *Ibid.*, Article 9.

<sup>324</sup> *Ibid.*, Article 9.

<sup>325</sup> *Ibid.*, Article 11.

<sup>326</sup> Article 494, Lithuanian Approval, Implementing and Implementing Administrative Certification Code (hereinafter, the “Lithuanian Code of Administrative Offences”), 2015 m. brown 25 d. Nr. XII-1869, <<https://www.e-tar.lt/portal/en/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b>>.

<sup>327</sup> Article 136, Norwegian General Civil Penal Code, 22 May 1902 (amended 21 June 2013), <[https://sherloc.unodc.org/res/cld/document/nor/2005/the\\_general\\_civil\\_penal\\_code\\_html/The\\_general\\_civil\\_penal\\_code\\_2013.pdf](https://sherloc.unodc.org/res/cld/document/nor/2005/the_general_civil_penal_code_html/The_general_civil_penal_code_2013.pdf)>.

increases to up to two years if a felony is committed against a public authority or is intended against persons or property.<sup>328</sup>

164. Several participating States specify penalties for those who fail to comply with the competent authority's prohibition of an assembly. In Italy, those who fail to follow the police chief's prohibition of an assembly may be punished with up to six months' imprisonment and a fine ranging from EUR 206 and EUR 413.<sup>329</sup> In Germany, leaders of public assemblies in open spaces may face up to six months in prison or a fine of up to 180 daily fine rates, as set by a court, if they hold an assembly that differs significantly from the one registered or if they fail to comply with bans.<sup>330</sup> Additionally, leaders and organizers may be imprisoned for up to one year or fined if an assembly takes place or continues despite an enforceable order or dissolution or disruption by the police or if the assembly takes place without prior registration.<sup>331</sup> An administrative offence could also result from failing to follow an enforceable ban with a fine of up to EUR 500.<sup>332</sup> Participating in an assembly, or calling on others to do so, in prohibited places in Germany, such as in the vicinity of legislative bodies, is an administrative offence punishable with a fine of up to EUR 15,000.<sup>333</sup> Holding an assembly in a prohibited place in Brussels may result in imprisonment from eight days to six months and/or a fine of EUR 26–200.<sup>334</sup> The Lithuanian Code of Administrative Offences imposes a fine of EUR 140–740 for organizing an assembly on the grounds of a nuclear facility and sanitary protection zone.<sup>335</sup>
165. Italy's legislation contains provisions that entail sanctions for association with certain organizations. Offenders may be imprisoned for up to three years and fined between ITL 400,000 and ITL 1,000,000 for displaying behaviours, emblems or symbols typical of certain organizations, movements or groups with the purpose of inciting discrimination or violence on racial, ethnic, national or religious grounds.<sup>336</sup> Similarly, those who engage in behaviours

<sup>328</sup> Article 137, Norwegian General Civil Penal Code.

<sup>329</sup> Article 18, TULPS; Article 3, Law No. 603; Article 113, Law No. 689.

<sup>330</sup> Section 25, German Federal Assembly Act.

<sup>331</sup> *Ibid.*, Section 26.

<sup>332</sup> *Ibid.*, Section 29(2).

<sup>333</sup> *Ibid.*, Section 29a.

<sup>334</sup> The Act specifically mentions the following streets: 1) in the part of the territory of the capital that includes the following public roads: Hertogstraat, Noordstraat (from the Leuvenseweg to the Surlet de Chokierplein), Ijzerenkruisstraat, Koningsstraat (from the intersection of the Ijzerenkruisstraat, the Onderrichtsstraat and the Treurenberg to the Koningsplein), Koloniënstraat (from the Koningsstraat to the Jonkersstraat), Paleizenplein and Brederodestraat, as well as within the area surrounded by these public roads; 2) in the part of the territory of the city of Namur that includes the following public roads: place Kegeljan to the rue Bord de l'Eau, rue Notre-Dame (from the place Kegeljan to the rue de la Sarrasse) and the left-hand side of avenue Baron Louis Huart (from the rue de la Sarrasse to the place Kegeljan), as well as within the area delimited by these public roads; 3) in the part of the territory of the city of Eupen within a perimeter of 200 metres around the seat of the Parliament of the German-speaking Community, located at the Platz des Parlements 1 in Eupen. Article 3, Law to Prevent and Limit Attacks on the Unrestricted Operation of the Sovereign Powers Established by the Constitution, 29 March 1954. Also see "Een betoging organiseren", website of the Belgian police, <<https://www.police.be/5339/nl/vragen/een-evenement-of-een-betoging-organiseren/een-betoging-organiseren>>.

<sup>335</sup> Article 495, Lithuanian Code of Administrative Offences.

<sup>336</sup> Article 2, Urgent Measures in Matters of Racial, Ethnic and Religious Discrimination 122/1993.

typical of fascist or Nazi organizations will be punished with up to three years' imprisonment and fined between ITL 400,000 and ITL 1,000,000.<sup>337</sup>

166. Additionally, sanctions may be imposed against assembly participants who conceal their faces. In Brussels, a fine of EUR 15–25 and/or one to seven days' imprisonment may be imposed on those who partially or completely conceal their face so as to be unrecognizable, except when work regulations require that they do so.<sup>338</sup> In Canada, offenders may be punished with up to ten years in prison.<sup>339</sup> Additionally, those who wear a mask or other disguise to conceal their identity without a lawful reason while participating in a riot are subject to imprisonment for up to ten years, while doing so during an unlawful assembly is subject to imprisonment for up to five years.<sup>340</sup> In Italy, those who wear protective helmets or any other means of preventing their identification during an assembly may be imprisoned for six to 12 months and may face a fine ranging from ITL 150,000 to ITL 400,000.<sup>341</sup>
167. Obstructing traffic may also result in sanctions. The Canadian Criminal Code and the Quebec Highway Safety Code prohibit assemblies from blocking highways. Under the Canadian Criminal Code, those who wrongfully and without lawful authority block a highway for the purpose of compelling another person to abstain from anything they have the lawful right to do or not do is considered intimidation and may result in a prison sentence of up to five years or summary conviction.<sup>342</sup> The Quebec Highway Safety Code also places restrictions on assemblies.<sup>343</sup>
168. Regarding the assembly monitored in Vilnius in May 2018, the municipality set out several obligations for organizers: to ensure that participants did not violate public order and that they complied with other laws and police orders; to tidy up the venue, including collecting and removing garbage within one hour after the assembly ended; to compensate third parties for all potential tangible and intangible losses, i.e., damages that could have been caused during the assembly or due to accidents; to organize the assembly so that it did not interrupt traffic; to ensure that the assembly was at least 75 metres away from parliament; and to ensure that discrimination was not incited and that public security, human health and human life were not threatened.<sup>344</sup>

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

169. The German Federal Assembly Act places the burden of maintaining order on assembly organizers. Furthermore, the law requires that organizers reimburse expenses related to

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<sup>337</sup> Article 5, Implementation of XII Provisions of Constitution 645/1952.

<sup>338</sup> Article 143 (563bis), Bruxelles-Ville Municipal Law.

<sup>339</sup> Article 351(2), Canadian Criminal Code, R.S.C., 1985, C-46, <<https://laws-lois.justice.gc.ca/PDF/C-46.pdf>>.

<sup>340</sup> Anyone who participates in a riot is subject to imprisonment for up to two years. Articles 65 and 66, Canadian Criminal Code.

<sup>341</sup> Article 2, Italian Provisions on Public Order Matters 533/1977.

<sup>342</sup> Article 432.1(g), Canadian Criminal Code.

<sup>343</sup> Article 500.1, Quebec Highway Safety Code.

<sup>344</sup> Vilnius City Municipality Director of Administration, Order Regarding Organized Protest.

assembly supervision. Belgian law, however, specifically says that organizers are not liable for individual participants' actions, which is a good practice. Organizers should not be held responsible for ensuring order at an assembly, as this is the role of the police. As highlighted by the UN Special Rapporteur, assembly organizers cannot be held responsible for ensuring the maintenance of public order and providing adequate safety and security. These issues are the responsibility of public authorities. The duty of the state to protect the safety and security of all groups and individuals in their exercise of freedom of peaceful assembly should be clearly defined in law and reinforced by the explicit commitment of the relevant institutions and authorities to fulfil this duty.

170. The *Guidelines* define an organizer or organizers as the person or persons “with primary responsibility for [an] assembly. It is possible to define the organizer as the person in whose name prior notification is submitted.”<sup>345</sup> However, not every assembly has an organizer. In the case of spontaneous assemblies, for example, it is also possible for an assembly not to have an identifiable organizer.<sup>346</sup> It is unclear how the provisions on duties and responsibilities of organizers would apply in these cases in the participating States monitored by ODIHR.
171. It is concerning that, in some of the participating States where ODIHR monitored assemblies, such as Italy and Lithuania, the organizers of unannounced assemblies can be subjected to harsh sanctions regardless of the peacefulness of the assembly or the lack of a disturbance of public order (see para. 79). This practice does not take into account the individual circumstances of each assembly or the presumption in favour of holding assemblies and can be used to unduly limit the exercise of the right to freedom of peaceful assembly. As confirmed by the UN Special Rapporteur, organizers should not automatically face fines or imprisonment for failing to notify authorities.<sup>347</sup> No person should be held criminally or administratively liable for the mere act of organizing or participating in a peaceful protest.<sup>348</sup> Subjecting organizers and participants to sanctions may have a considerable dissuasive effect on individuals who would like to exercise their fundamental freedoms.
172. Organizers of assemblies may be held liable for their failure to act in accordance with the law. However, any sanctions or fines imposed after an assembly should strictly adhere to the principle of proportionality. The risk of a heavy and disproportionate fine or other penalty may, in itself, inhibit the enjoyment of freedom of peaceful assembly. Canada's legislation creates a wide array of potential offences that participants may be held liable for, including fighting, screaming, shouting, swearing, singing or using insulting or obscene language. It also places heavy burdens on offenders, such as the provision on blocking highways, as an offender could end up with a five-year prison sentence. In the absence of genuine criminal activity punishable by other laws, a violation of the notification/authorization requirement

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<sup>345</sup> *Guidelines, op. cit.*, note 1, para. 185.

<sup>346</sup> *Ibid.*, para. 127.

<sup>347</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 40, para. 51.

<sup>348</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 26.

should be addressed by fines proportional to the offence committed.<sup>349</sup> Importantly, the amount of fines imposed on assembly organizers should also be in line with the proportionality principle.

173. In addition to notification, organizers of events that do not constitute demonstrations in Norway are responsible for security, any damages and/or compensation claims and following police instructions. The assembly that ODIHR monitored in Norway was notified under the laws on events rather than on assemblies. Under these laws, the organizers are also liable for other event-related costs such as signage for changes to traffic organization. The organizer must also clean up immediately after the event.<sup>350</sup> The Police Act also requires reimbursement for expenses related to police protection, such as for special police inspections and any costs resulting from the urgent termination of an event.<sup>351</sup> These requirements, along with the cost of renting space for an assembly, all place a considerable burden on the organizers. Although it is not clear why the organizer in Norway chose to use these laws for their assembly, it may be useful for the government to issue regulations that specifically outline the roles and responsibilities of assembly organizers and proactively inform the organizers when they notify their events.

174. Especially for large or complex assemblies, it is a good practice to ensure adequate stewarding of public events, as well as good communication between organizers, stewards, law-enforcement officials and other relevant state bodies. Assembly stewards can indeed play an important role in facilitating an assembly and ensuring compliance with any lawfully imposed restrictions.<sup>352</sup> However, while the voluntary use of stewards is widespread, the law should not require their use, nor should it specify the number of stewards to be deployed. It is also important to highlight that any requirement to provide stewarding during assemblies in no way detracts from the positive obligation of the state to protect the safety and security of assembly participants and other individuals present.<sup>353</sup> Therefore, the voluntary stewarding option in Germany and the lack of an obligation to deploy stewards in the other OSCE participating States where ODIHR monitored assemblies is a positive practice.

175. Recommendations for participating States:

- to ensure that the official duty to maintain public order during assemblies, including by protecting participants, is clearly defined in the law and is understood by law-enforcement officials and policymakers at all levels as a central responsibility of the state;
- to ensure that assembly organizers are not held responsible for the maintenance of public order, which would essentially ask them to replace law-enforcement bodies, and that

<sup>349</sup> “Joint Opinion on the Public Assembly Act of the Republic of Serbia”, OSCE/ODIHR and Venice Commission, 18 October 2010, para. 42.

<sup>350</sup> Norwegian Notice of Assembly Application.

<sup>351</sup> Section 25, Norwegian Police Act.

<sup>352</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 195.

<sup>353</sup> *Ibid.*

assembly organizers and participants are not held liable for the unlawful conduct of other people;

- to ensure that the role of assembly stewards, in law and in practice, is clearly defined as the role of facilitators who assist organizers in managing events on a voluntary basis and that they are not tasked with government functions that directly pertain to the maintenance of public order during assemblies;
- to ensure that the role of the organizers of assemblies is limited to making reasonable efforts to meet legal requirements for assemblies, which include making reasonable efforts to ensure that their assemblies are peaceful and that lawful instructions by law-enforcement officials are obeyed;
- to ensure that insurance requirements, fees to cover the costs of clean-up after assemblies or costs of other public services (such as policing and medical services) are not imposed on the organizers of assemblies;
- to ensure that any sanctions applied against organizers who fail to comply with legal requirements for assemblies are proportionate. Where there is no genuine criminal activity punishable by other laws, a violation of these requirements should be addressed by fines of a proportionate amount, allowing for the imposition of minor sanctions where the offence is of a minor nature;
- to ensure that laws related to public assemblies do not contain vague and broadly defined offences that confer excessive discretion upon law-enforcement officials or that enable the imposition of excessive and disproportionate sanctions on protesters.



## SECTION III: POLICING ASSEMBLIES

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

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

176. Generally, the overall policing approach to assemblies should be driven by communication, seeking to prevent conflicts from occurring through dialogue and mediation, as well as to de-escalate and peacefully settle any conflicts that do occur.<sup>354</sup> Engagement and communication by the police with assembly organizers and participants can help facilitate the enjoyment of the freedom of peaceful assembly and the work of the police, as well as reduce the risk of violence during assemblies.
177. Open dialogue between the authorities (including the authority responsible for receiving notifications and law-enforcement officials) and, where identifiable, assembly organizers before, during and after an assembly enables a protective and facilitative approach, while helping to defuse tension and prevent escalation.<sup>355</sup> Well-informed organizers can play an important role in relaying information to participants about potential risks, security measures and planned or ongoing police action.
178. In a similar vein, good practice in policing assemblies involves the adoption of a policy of “no surprises”, whereby law-enforcement officers allow time for people in a crowd to respond as individuals to the situation facing them, including any warnings or directions given to them.<sup>356</sup> Prior warnings are necessary before force is used, but the “no surprises” approach should extend to all aspects of policing of assemblies, including in particular the planning stage, with engagement between the police and assembly organizers recognized as good practice. Informing assembly organizers of planned police action and, to the extent possible, co-ordinating preparations with them during the pre-assembly phase can help ensure the effective policing of public assemblies. Assembly participants who are aware of expected police action may adapt and respond to it and thereby avoid confrontation or potential risks. To promote good communication, there should be a point of contact within the law-enforcement agency with whom protesters can communicate before or during an assembly.<sup>357</sup> It is also a good practice to have a similar point of contact among the organizers, especially

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<sup>354</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 38.

<sup>355</sup> Geneva Academy of International Humanitarian Law and Human Rights, “Facilitating Peaceful Protests”, January 2014, <[http://www.geneva-academy.ch/docs/publications/briefing5\\_web\\_singles8.pdf](http://www.geneva-academy.ch/docs/publications/briefing5_web_singles8.pdf)>, p. 16.

<sup>356</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 150.

<sup>357</sup> *Ibid.*, para. 149.

during an assembly. Direct contacts and dialogue should be the preferred way to address differences in views or disputes both before and during an assembly. Such dialogue might help to avoid the escalation of a conflict, the need to impose restrictions or recourse to the use of force.<sup>358</sup> Similarly, if a stand-off or dispute arises during the course of an assembly, negotiations or mediated dialogue should be the preferred means of trying to reach an acceptable resolution. Such interventions can play a significant role in averting the occurrence of violence.<sup>359</sup> To be consistent with the policy of “no surprises”, it is a good practice for law-enforcement agencies to communicate with the general public by providing information about assemblies that are going to take place, the rights of demonstrators and counterdemonstrators and the overall policing approach, also including traffic and safety issues, among others.<sup>360</sup>

179. The UN Special Rapporteur also considers pre-event planning, including risk assessment, by law-enforcement officials, together with organizers of peaceful assemblies and, if possible, local authorities, to be a good practice that may contribute to the success of an assembly. However, the participation of organizers in such planning should never be made compulsory.<sup>361</sup> Communication and dialogue with assembly organizers and participants must be entirely voluntary and must not formally or informally impose on organizers an obligation to negotiate the time, place or manner of an assembly with the authorities. Such requirements would be tantamount to restricting a planned assembly.<sup>362</sup> Fundamentally, law-enforcement authorities should always be forthcoming and should genuinely seek to co-operate with organizers, bearing in mind their duty to facilitate and protect peaceful assemblies.<sup>363</sup>
180. A post-event debriefing of law-enforcement officials (particularly after non-routine events) should become standard practice. Such a debriefing might usefully address a number of specific issues, including human rights issues, health and safety considerations, media safety, community impact considerations, operational planning and risk assessment, communications, command issues and decision-making, tactics, resources and equipment and future training needs.<sup>364</sup> It is good practice to invite assembly organizers to participate in these debriefing sessions held by law-enforcement officials after an assembly.
181. Authorities should maintain dialogue with organizers and others affected by public events where challenges occurred so as to prevent problems that arose in one event from having a negative impact on future assemblies and in order to prevent the loss of trust and confidence in the work of the law-enforcement authorities. A proper lessons-learned process with proposed improvement measures for the future, as well as dialogue with organizers and assembly participants affected by police measures, should be put in place. The prosecution of

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<sup>358</sup> *Ibid.*, para. 5.4.

<sup>359</sup> *Ibid.*, Explanatory Notes, para. 157.

<sup>360</sup> Amnesty International Dutch Section, “Policing Assemblies”, Short Paper Series No. 1, pp. 15–16.

<sup>361</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 40, para. 68.

<sup>362</sup> *Ibid.*, para. 56.

<sup>363</sup> *Ibid.*, para. 71.

<sup>364</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 170.

individuals responsible for unlawful acts (e.g., police officers having resorted to excessive use of force) is only one of the necessary responses to an event that goes wrong<sup>365</sup> (for more information, see the section on liability and accountability of law-enforcement personnel).

182. Effective communication depends on a relationship of trust. Law-enforcement agencies should continually work on strategies to build trust with the communities they serve. If people trust the police, they are more willing to co-operate with them, which will in turn improve the effectiveness of the police. The legitimacy of the police is crucial for building the public's trust and confidence in their work, and legitimacy can only be achieved by accountable policing. In addition, the demographic make-up of law-enforcement agencies should be representative of the whole community,<sup>366</sup> and states should promote diversity in law enforcement so that communities see themselves represented in the police force.<sup>367</sup>
183. Law-enforcement officials must be trained in soft skills such as effective communication, negotiation and mediation, allowing them to avoid the escalation of violence and minimize conflict.<sup>368</sup> It should also not be forgotten that communication is not limited to verbal communication. Therefore, law-enforcement officials must be aware of, and trained to realize the possible impact of, any indirect communication that may be perceived by organizers and participants as intimidation, including, for example, the presence or use of certain equipment and the body language of officials.<sup>369</sup>
184. Law-enforcement officials also communicate with their appearance. In line with the UN Basic Principles on the Use of Force and Firearms, police officers should be equipped with self-defence equipment in order to decrease the need to use weapons of any kind.<sup>370</sup> With better protection, individual law-enforcement officials should have less need to resort to any use of force as a means of self-defence, and this can help to avoid a vicious circle of escalation.<sup>371</sup> However, a careful balance has to be achieved between the possible risks of insufficient protection and an unnecessarily confrontational appearance, the latter of which can be threatening and intimidating and can therefore have a strong influence on the way an assembly develops.

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<sup>365</sup> Geneva Academy, "Facilitating Peaceful Protests", *op. cit.*, note 353.

<sup>366</sup> "Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies", A/HRC/31/66, *op. cit.*, note 2, para. 39.

<sup>367</sup> *Ibid.*, para. 49(a).

<sup>368</sup> See Principle 20 of the Basic Principles; *Guidelines*, *op. cit.*, note 1, para. 147.

<sup>369</sup> "Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies", A/HRC/31/66, *op. cit.*, note 2, para. 38.

<sup>370</sup> Principle 2 of the UN Basic Principles on the Use of Force and Firearms.

<sup>371</sup> Amnesty International Dutch Section, "Policing Assemblies", *op. cit.*, note 358, p. 17.

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

*i. Pre-event communication*

185. In Belgium, the organizer, the police, other authorities and services work together to create the conditions for the safe conduct of assemblies with a focus on event management and the protection of people, property and institutions. Consultations among the various actors begin as soon as possible and end once lessons have been drawn. The municipality maintains overall responsibility for public order.<sup>372</sup> The police and the organizer must maintain communication throughout the process.<sup>373</sup>
186. In Germany, the authority receiving notification of an assembly arranges co-operation talks with the assembly organizers. The Hamburg police consider these talks the “basis for the proper facilitation of assemblies” and a contributing factor to conflict prevention.<sup>374</sup>
187. ODIHR received information from the Canadian authorities that the Service de police de la Ville de Québec (SPVQ), the Quebec City municipal police, were in contact with the protest organizers in the context of the G7 Summit. Pamphlets were also distributed to demonstrators to inform them of their rights and obligations and to provide information about relevant laws and regulations. Police services from the so-called Integrated Security Unit (formed for the purposes of the facilitation of the G7 Summit) shared information on social media before the planned protests and formed partnerships with conventional media to ensure that relevant messages could be conveyed.<sup>375</sup>
188. The Lithuanian Law on Meetings requires the police to participate in co-ordination meetings organized by the municipality. They are required to provide organizational and statutory possibilities for the organization of an assembly; to protect the organizers’, participants’ and others’ rights and freedoms; and to protect public security, public order and human health. They may not impose measures that require the organizers to use financial resources.
189. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with assembly organizers prior to the events. In Brussels, ODIHR observed a protest march against US President Donald Trump, who participated in the NATO Summit in May 2017. The assembly organizer registered the protest about three months before the date of the assembly. The authorities contacted the organizer and arranged a series of meetings involving the mayor’s secretary, the chief of the police, the chief of the traffic police and various other police departments.<sup>376</sup> The police requested at least 150 stewards. The organizer explained to ODIHR that the role of the stewards would

<sup>372</sup> Circulaire CP4 concernant la gestion négociée de l’espace public pour la police intégrée, structurée à deux niveaux, 11 May 2011, <[http://www.etaamb.be/fr/circulaire-du-11-mai-2011\\_n2012203652.html](http://www.etaamb.be/fr/circulaire-du-11-mai-2011_n2012203652.html)>, para. 3.

<sup>373</sup> *Ibid.*, para. 4.

<sup>374</sup> Written response from the Hamburg authorities to ODIHR’s follow-up questions, 28 December 2018.

<sup>375</sup> Written response from the Canadian authorities to ODIHR’s follow-up questions, 27 February 2019.

<sup>376</sup> Meeting with one of the organizers of the “Trump Not Welcome Protest March”, 22 May 2017.

entail liaising between the police and assembly participants. The person responsible for the stewards had to attend a separate meeting with the police.<sup>377</sup>

190. The police communicated with the assembly organizers ODIHR met in Italy. For example, the rationale for the police's decision to move the starting venue of the march to a different location was explained to the organizers in person. The pre-event communication with the law-enforcement authorities was assessed as good by the assembly organizers.<sup>378</sup> Frustration was expressed, however, because of a press statement issued by the mayor of Giordiani Naxos about two weeks before the assemblies about the possible threat of protests and the potential negative impact on shop owners.<sup>379</sup>

*ii. Interactions during an assembly*

191. According to the German Federal Assembly Law, police officers delegated to an assembly must identify themselves to the leader of the assembly.<sup>380</sup> ODIHR was informed by the Hamburg authorities that police measures “follow a process of co-operation and de-escalation”. The responsible police officer contacts the assembly leader before the assembly in order to make the necessary final arrangements before the start of the assembly, remains constantly available during the further course of the assembly and informs the leader of any identified problems, possible measures to be taken by the leader and any necessary measures to be taken by the police. Whenever possible, arrangements are made by mutual agreement. If no agreement can be reached, the police may impose restrictions or conditions on the assembly in order to ensure that it can take place safely. If any actions that could affect the smooth conduct of an assembly are discovered, the police may request that those responsible refrain from such actions. These requests are explained to the leader if the situation permits. If these requests are not followed, a threat of coercive measures is made. If this also does not lead to a reaction or a change in behaviour, interventions will be taken against those individuals who are disturbing the proper course of the assembly. If this is not successful either, the last possibility remains the dissolution of the assembly, also through the use of coercive measures and follow-up measures, if necessary.<sup>381</sup>
192. The Hamburg authorities pointed out to ODIHR that the course of assemblies is decisively influenced by the willingness of the assembly leaders and participants to co-operate and to de-escalate any tense situations. An assembly leader must also be willing and able to reach and influence the assembly participants. The police must provide the best possible support during co-operation talks on an ongoing basis. If the police notice an aggressive mood or a latent or communicated readiness to use violence at the beginning of an assembly, the scope for de-escalation is considerably reduced.<sup>382</sup>

<sup>377</sup> *Ibid.*

<sup>378</sup> Meeting with the assembly organizers, 25 May 2017.

<sup>379</sup> *Ibid.*

<sup>380</sup> Section 2(12) and 3(18), German Federal Assembly Act.

<sup>381</sup> Written response from the Hamburg authorities to ODIHR's follow-up questions, 28 December 2018.

<sup>382</sup> Written response from the Hamburg authorities to ODIHR's follow-up questions, 28 December 2018.

193. Since March 2009, the Hamburg police have been establishing communication teams for assemblies. For the purpose of target-oriented public relations, they have the task of conflict management for violence prevention. They do not act as contact persons for the leadership of an assembly but aim to have a conversation with the participants of an assembly. Through the use of communication teams, the police commander receives information on the mood of the assembly participants and their willingness to communicate. In recent years, they have proven to be a tactical tool, since they can primarily deal with conflict situations on special occasions by means of communication.<sup>383</sup> In the context of the G20 Summit, the communication teams of the Hamburg police were supported by teams from other federal states.
194. Police authorities in Canada establish and maintain communication with assembly organizers. Furthermore, the duties of the commanders of the Sûreté du Québec (Quebec provincial police, or SQ) and the SPVQ public-order and platoon teams include liaising with rally organizers and protest leaders to achieve mutually acceptable results when rallies and demonstrations are scheduled. ODIHR received information from the Canadian authorities that the SPVQ was in contact with the protest organizers in the context of the G7 Summit. The relationship with assembly organizers varies according to the willingness of the various groups to work with the police. ODIHR was also informed that, in order to promote the freedom of peaceful assembly, the police exercised their discretion concerning violations of municipal and provincial regulations and intervened only in case of criminal activities.<sup>384</sup>
195. During assemblies, communication between participants and police authorities could be observed in a number of locations. ODIHR monitors observed law-enforcement agents engaging directly with organizers during assemblies in order to facilitate the events.
196. On 24 May 2017, monitors observed the authorized “Trump Not Welcome” march in Brussels. The protest was attended by approximately 9,000 participants and supported by approximately 70 NGOs. The march was marked by the widespread use of plain-clothes police. Communication between the police and the organizer throughout the march was assessed positively by ODIHR monitors.
197. In some of the participating States where ODIHR observed assemblies, specialized police units exist to facilitate communication between organizers, assembly participants and the police. In some states, such as Norway and Germany, communication teams (or anti-conflict or dialogue police), identifiable through special clothing, support the facilitation of assemblies.

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<sup>383</sup> The communication teams must, within the framework of the tasks and objectives of their mission, prevent or reduce conflicts, avoid or facilitate coercive measures, clarify necessary police measures, describe and explain the role and duties of the police, arbitrate between conflicting parties and present the police in a positive light through their active work. Written response from the Hamburg authorities to ODIHR’s follow-up questions, 28 December 2018.

<sup>384</sup> Written response from the Canadian authorities to ODIHR’s follow-up questions, 27 February 2019.

198. In Hamburg, at the peak of the G20 events, 23,000 police officers were involved in their facilitation. Under the leadership of a Hamburg representative of the federal police, 15 operational units were created, one of which was for communication.<sup>385</sup> ODIHR observed 11 assemblies held in the context of the G20 Summit that ranged from 25 to 75,000 participants..
199. On 1 May 2018, ODIHR observed the Labour Day parade organized by the Oslo chapter of the trade union confederation LO (Landsorganisasjonen i Norge) in Oslo. The assembly was attended by approximately 7,000 participants. The event was facilitated by 25 (uniformed and plain-clothes) police officers, including two dialogue police officers (one woman and one man), who maintained effective communication with the organizers on the day of the parade, as well as in the preparation phase. The running of the event relied mainly on self-policing and the use of assembly stewards, and it greatly benefitted from the “no surprises” policing approach built on regular communication between the police and the organizers.
200. In Canada, there are community relations officers. Their work is not aimed at facilitating assemblies, but they serve as the main focal point for the community, informing them about plans and measures put in place by the local government to facilitate the exercise of the freedom of peaceful assembly.<sup>386</sup>
201. All of the monitored assemblies in Quebec City were distinguished by the heavy presence of local and provincial police and little or no use of de-escalation techniques. Most police officers deployed at these public assemblies were equipped with full riot gear, including many officers wearing gas masks throughout the observed events. Most officers in direct contact with peaceful assembly participants held their equipment in ready position. ODIHR monitors saw little interaction with the police on the part of participants and organizers; instead, they mostly witnessed stern one-way communication from the police aimed at participants, journalists and observers.
202. Similarly, ODIHR monitors in Italy observed almost a complete lack of communication between protesters and law-enforcement agents, including any orders to disperse and any prior warning on the use of force (see more below in the section on the use of force).
203. ODIHR was informed that post-operational debriefings are the normal course of action for law-enforcement teams, command groups and police services in Canada and Germany. In Germany, the relevant police service regulation<sup>387</sup> provides clear guidelines for this process. Follow-up serves to analyse operational experiences, to make management decisions transparent, to determine the degree to which objectives have been achieved and to develop possible solutions for identified weak points. The knowledge gained is to be implemented and considered, for example, in future mission planning and, if necessary, in basic and advanced

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<sup>385</sup> Meeting with the Hamburg authorities, 21 August 2017.

<sup>386</sup> Written response from the Canadian authorities to ODIHR’s follow-up questions, 27 February 2019.

<sup>387</sup> Police regulations (PDV) are official regulations of the German police forces. A large number of them are classified, as they describe, among other things, the police’s tactical approach to police matters.

training.<sup>388</sup> Assembly organizers and independent assembly monitors were, however, not involved in the follow-up discussions on the policing of the G20 and G7 Summit–related assemblies in Hamburg and Canada.

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

204. Law-enforcement agencies and officials should take all reasonable steps to communicate with assembly organizers and/or participants regarding policing operations and any safety or security measures.<sup>389</sup> For most assemblies observed by ODIHR, communication between participants, organizers and the police took place both before and during assemblies. It is positive that, in many cases, communication was considered to be adequate by both the police and assembly organizers. Both the organizers and the police authorities described their co-operation and communication as effective in Italy and Belgium, for example.
205. Good communication facilitated the work of the police and the enjoyment of the freedom of peaceful assembly by participants in public events. Communication before and during assemblies can be particularly significant where an assembly involves specific risks for participants or, more generally, for public order. In this context, it is important to acknowledge that real security risks are involved in the policing of some assemblies and that there may be a need to retain a certain degree of confidentiality in relation to planned police tactics. Nevertheless, in general, openness and communication between the police and protesters, including communication at the planning stage, could reduce the risk of incidents and could facilitate the work of the police.
206. It should also be acknowledged that, whereas liaison, co-ordination or negotiations between assembly organizers and the relevant authorities may facilitate a proportionate response by the state in ways that best accommodate competing interests, the potential for compulsory or intimidating prior negotiation processes to exert a negative effect on the enjoyment of freedom of assembly also needs to be noted. Pre-event communication with organizers should not be used as a pretext to exert pressure on the organizers to accept limitations that they may disagree with.
207. Holding routine post-event reporting sessions and debriefings, such as is the case in Canada and Hamburg, is a positive practice. However, ODIHR was informed about the lack of inclusion of the organizers or independent assembly-monitoring organizations in such debriefings, which should be reconsidered.
208. In order to adapt and improve future policing of assemblies, post-event evaluation of the facilitation of assemblies is crucial, especially if problems have occurred. It is a good practice

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<sup>388</sup> Written response from the Hamburg authorities to ODIHR's follow-up questions, 28 December 2018.

<sup>389</sup> See European Court of Human Rights, *Frumkin v. Russia*, application No. 74568/12, 5 January 2016, paras. 127–128.



to maintain dialogue with the organizers after an assembly to nurture a relationship of trust and confidence.<sup>390</sup> Good policing is policing by consent, and people are more likely to cooperate when they trust the police.

209. Whereas calling for peaceful conduct at public events is a legitimate law-enforcement tactic, authorities should also aim to dispel rumours and avoid the negative portrayal of demonstrations and any communication that can instil unnecessary fear in the general public and thus increase the likelihood of unnecessary police interventions. The presumption in favour of holding assemblies entails that the peacefulness of an assembly should be presumed.

210. Recommendations for participating States:

- to create conditions for effective communication between assembly organizers, participants and law-enforcement bodies before and during assemblies in order to better protect and facilitate the exercise of rights, create mutual trust and understanding, avoid unnecessary confrontation, reduce tension, prevent violence or stop any disruptive or unlawful incidents quickly, should such incidents occur;
- to ensure that the law-enforcement authorities appoint easily accessible liaison officers or other appropriate intermediaries whom organizers can contact before, during and after an assembly, and that such appointments do not absolve other law-enforcement officials directly engaged in the facilitation of assemblies from the need to communicate effectively, as appropriate;
- to ensure that law-enforcement authorities proactively seek a dialogue with assembly organizers while those exercising their right to assemble are not compelled to negotiate with the authorities, and that, generally, their participation in any such process is entirely optional and voluntary;
- to adopt a “no surprises” approach in policing assemblies by disclosing as much planning information as possible to the organizers and by withholding information only if there is a clear and justifiable need to do so. This approach may also extend to dialogue and communication with all involved groups, including potentially violent groups at the pre-assembly stage;
- to ensure that law-enforcement officials co-operate with assembly stewards, where organizers choose to use them for an assembly;
- to hold post-event debriefings for law-enforcement officials and, where relevant, other state authorities (particularly after non-routine events), with the involvement of willing assembly organizers as a standard practice;

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<sup>390</sup> Amnesty International Dutch Section, “Policing Assemblies”, *op. cit.*, note 358, p. 25.

- to promote diversity in law enforcement, including better representation of women and minority groups, including for positions entailing operational work, such as policing assemblies, and for command positions.

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

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

211. In addition to different police services (federal police, gendarmerie, traffic police, etc.), there are a number of authorities and agencies involved in facilitating the exercise of the right to freedom of peaceful assembly, such as regulatory authorities (e.g., municipalities), authorities in charge of national security and counter-terrorism, fire and ambulance services, transport authorities, etc. Therefore, it is important that effective communication continue among them before and during assemblies.<sup>391</sup> It is also vital that assembly organizers do everything within their power to assist these agencies in their responses to emergencies or criminal conduct.<sup>392</sup>
212. In cases where different law-enforcement structures (such as national and municipal police) or different police units (such as criminal police, riot police, traffic police, anti-conflict teams) are responsible for the facilitation of an assembly, clearly identifiable command structures and well-defined operational responsibilities enable proper co-ordination between law-enforcement personnel, law-enforcement agencies and assembly organizers. They also help ensure accountability for operational decisions.<sup>393</sup> The use of clear command protocols among the various agencies should be encouraged as a good practice.<sup>394</sup>

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

213. In several participating States where ODIHR monitored assemblies, such as Belgium and Lithuania, the municipality is responsible for receiving assembly notifications and is authorized to ban an assembly or impose prior restrictions, as well as to order the dispersal of an assembly. The police, however, are responsible for enforcing any restrictions imposed by the regulatory authority.
214. The municipal administration director or their deputy is responsible for the smooth co-ordination of notified assemblies in Lithuania.<sup>395</sup> Following the notification of an assembly,

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<sup>391</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 152.

<sup>392</sup> *Ibid.*

<sup>393</sup> *Ibid.*, para. 151.

<sup>394</sup> *Human Rights Handbook on Policing Assemblies, op. cit.*, note 13.

<sup>395</sup> Article 12, Lithuanian Law on Meetings.

the municipal administration director or deputy sets the date for a co-ordination meeting and notifies the organizer and the police.<sup>396</sup>

215. In Italy, the police are generally responsible for the overall facilitation of assemblies. The *questore* (provincial public safety authority) receives the notification of assemblies and is in charge of public order. In addition to commanding the provincial police, however, it can also avail itself of the support of other law-enforcement bodies, such as the Carabinieri and the Guardia di Finanza (financial police). The planning of the police operation for the G7 Summit in May 2017 was conducted in close and constant co-ordination with the mayor of Giardini Naxos and with the police forces involved. The *questore's* plan received political clearance by the prefect, who is the local representative of the national government.<sup>397</sup> The *questore* requested that the mayor arrange for the removal of any objects from the assembly venues that could constitute a danger (e.g., flower holders, pots, etc.). The police deployment involved state police, Carabinieri and finance police. In addition, forensic police (undercover) and agents from the General Investigations and Special Operations Division (plain-clothes investigators with visible badges) were also present.<sup>398</sup>
216. ODIHR was informed by the Hamburg authorities that, in order to be able to cope with their mission on the occasion of the G20 Summit in Hamburg, it was necessary to request and deploy special police forces and equipment from other European countries. These included, in particular, special units (from Austria) and traffic forces (from Denmark and the Netherlands). For the deployment of police forces from other European countries, reference was made to the provisions of the Prüm Treaty of 27 May 2005 and the supplementary EU Council Decision 2008/615/JHA of 23 June 2008. The competencies of foreign police forces are governed by Section 30a of the Hamburg Act on the Protection of Public Security and Order. Foreign police forces (including foreign forces from neighboring EU countries) have the same competencies, rights and authorities as officers from the Hamburg Police within the framework of the mission for which they were requested.<sup>399</sup>
217. The SPVQ in Canada collaborates with municipal authorities and organizations to work on public safety, which may involve closing streets when operational circumstances so require. Such co-operation is not specific to maintaining public order but is used for addressing various public-safety issues or other operational concerns. This kind of co-operation is reportedly common in towns during major events.<sup>400</sup>
218. Law-enforcement authorities in Hamburg also had to co-operate with the District Court of Hamburg, which was created for 10 days and was made up of judges who volunteered and who were trained for the assignment. The court was housed next to a temporary detention facility (*Gefangenensammelstelle*) specifically established for the period of the G20 Summit. The proximity of the court was meant to accommodate the quick processing of cases;

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<sup>396</sup> *Ibid.*, Article 7.

<sup>397</sup> Meeting with the *questore* of Messina, 25 May 2017.

<sup>398</sup> *Ibid.*

<sup>399</sup> Written response from the Hamburg authorities to ODIHR's follow-up questions, 28 December 2018.

<sup>400</sup> Written response from the Canadian authorities to ODIHR's follow-up questions, 27 February 2019.

according to the law, those arrested had to appear before the court “without delay”. ODIHR was informed that 176 people appeared before the court, and 138 of the cases were heard. The court released 30 people immediately, as the police assessment was not confirmed. Ninety-one people were charged with criminal offences. ODIHR was informed that co-operation between the court and the police was good but that certain procedures should be improved so that anyone arrested can appear in court more promptly, as some individuals did not appear in court within the legally required time period and had to be released.<sup>401</sup>

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

219. Effective communication and co-operation between the authorities and agencies involved in the facilitation of the enjoyment of freedom of peaceful assembly is paramount to the success of such operations. Their roles and responsibilities, as well as operational methods and supervisory structures, should be clear and transparent. This facilitates the work of the organizers and enhances accountability and access to review procedures. Where various police structures from different federal states and countries are involved in an operation, clearly identifiable command structures and well-defined operational responsibilities should be created, and relevant information should be made accessible for the assembly organizers and the public.
220. Some municipalities and local police structures have more experience in facilitating assemblies than others, owing to their different levels of exposure to such events. It is advisable to share experiences across the country between more and less experienced municipalities and police units and that a depository of such practices be created at the national level to provide guidance when needed.
221. Similarly, while facilitating the prompt and able judicial review of the legality of arrests through the establishment of a court next to the temporary detention facility in Hamburg and the extensive training and preparation of the judges and staff who volunteered for the assignment are positive steps, the creation of a depository of identified challenges and good practices would help the institutional lessons-learned process and the preparation of similar measures in the future.

222. Recommendations for participating States:

- to ensure effective co-ordination and co-operation among the various authorities and agencies involved in the facilitation of the exercise of freedom of peaceful assembly;
- to ensure effective co-ordination among the various law-enforcement units and uniform application of the relevant codes governing police behaviour in the context of facilitating

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<sup>401</sup> Meeting with the Hamburg authorities, 21 August 2017.

assemblies;

- to explore ways to share experiences and good practices among the various agencies and authorities on the human rights–compliant facilitation of peaceful assemblies, both nationally and internationally, and to consider enlisting ODIHR’s expertise in this regard;
- to regularly collect and publish statistical data on public assemblies that provides disaggregated information on the number and type of assemblies, as well as restrictions or bans imposed.

## POLICING ASSEMBLIES THAT DO NOT COMPLY WITH LEGAL REQUIREMENTS

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

223. According to the European Court of Human Rights, “an unlawful situation does not justify an infringement of freedom of assembly”.<sup>402</sup> Where an assembly occurs in violation of applicable laws but is otherwise peaceful, non-intervention or active facilitation by the police is generally the best way to ensure a peaceful outcome.<sup>403</sup> In general, as long as assemblies remain peaceful, they should not be dispersed by law-enforcement officials.<sup>404</sup> Facilitating such assemblies does not insulate participants against sanctions for violating applicable laws after such an assembly has dispersed. The lack of compliance with legal requirements may give rise to liability for organizers and the imposition of proportionate sanctions after an assembly. However, the fact that participants in unauthorized protests are subject, in some countries, to administrative sanctions, fines or even imprisonment should not curtail the right to participate peacefully in protests or imply that protesters are no longer entitled to protection.<sup>405</sup>

224. The UN Special Rapporteur reiterates that “should the organizers fail to notify the authorities, the assembly should not be dissolved automatically”.<sup>406</sup> This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite

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<sup>402</sup> *Oya Ataman v. Turkey*, Judgment, 5 December 2006, para. 39.

<sup>403</sup> *Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 155.

<sup>404</sup> *Ibid.*, para. 165. See the UN’s Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. According to Principle 13: “In the dispersal of assemblies that are unlawful but nonviolent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.” Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 1990 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>>.

<sup>405</sup> Geneva Academy, “Facilitating Peaceful Protests”, *op. cit.*, note 353, p. 17.

<sup>406</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 29. The Special Rapporteur is also of the opinion that the organizers of such assemblies should not be subject to criminal or administrative sanctions resulting in fines or imprisonment. See “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 40, para. 51.

notification requirements or where there is no existing or identifiable organizer.<sup>407</sup> In this regard, the ECtHR has emphasized that “in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without [...] illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.<sup>408</sup>

225. As confirmed by the European Court of Human Rights, public authorities must show a certain degree of tolerance towards peaceful gatherings, even unlawful ones, if the freedom of assembly is not to be deprived of all substance.<sup>409</sup>

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

226. The Canadian Criminal Code and Quebec City municipal by-laws prohibit participation in unlawful assemblies. Under the Canadian Criminal Code, an unlawful assembly occurs when three or more people, with the intent of carrying out a common purpose, assemble in a manner or conduct themselves in such a way that people in the neighbourhood have reasonable grounds to fear that they will disturb the peace or that the assembly may needlessly and without reasonable cause provoke others to disturb the peace.<sup>410</sup> A lawful assembly may become unlawful where people with a common purpose conduct themselves in a manner that would have made the assembly unlawful if it had assembled for that reason except where people assembled to protect a dwelling.<sup>411</sup> Individuals who participate in unlawful assemblies are subject to summary conviction. Those who conceal their identity by wearing a mask or other disguise during an unlawful assembly without a lawful excuse are liable to a summary conviction and up to five years’ imprisonment.<sup>412</sup> In Quebec City, individuals are forbidden from participating in an illegal demonstration on public property. An illegal demonstration is one where the route, time and place have not been notified to the police department, where the notified time, place or itinerary is not respected or where acts of violence or vandalism are committed.<sup>413</sup> Individual offenders are liable to a fine ranging from CAD 150 to CAD 1,000 for a first offence or, in the case of repeat offences, CAD 300 to CAD 2,000. Similarly, corporations are liable to a fine ranging from CAD 300 to CAD 2,000 for a first offence or, in the case of repeat offences, CAD 600 to CAD 4,000.<sup>414</sup>

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<sup>407</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 29.

<sup>408</sup> *Bukta and Others v. Hungary* (2007), para. 36.

<sup>409</sup> *Frumkin v. Russia* (2016), para. 97.

<sup>410</sup> Article 63(1) Canadian Criminal Code.

<sup>411</sup> *Ibid.*, Article 63.

<sup>412</sup> *Ibid.*, Article 66(2).

<sup>413</sup> Article 19.2, Quebec City Regulation on Peace and the Right Order.

<sup>414</sup> *Ibid.*, Article 21.

227. Similarly, as discussed in the section on notification, in Italy, organizers who take part in an assembly where the notification period has not been complied with may be punished with up to six months' imprisonment and a fine ranging from EUR 103 to EUR 413.<sup>415</sup>
228. The Norwegian police may not prohibit assemblies in public places unless grounds exist to indicate that an assembly may give rise to violence or similar disturbances or when the intended purpose of the assembly violates the law.<sup>416</sup>
229. ODIHR monitored assemblies or parts of assemblies that did not comply with legal requirements for notification or authorization in Belgium, Germany and Norway.
230. ODIHR observed an assembly of approximately 100 members of the Turkish community in support of President Recep Tayyip Erdoğan near the hotel where he was to stay while participating in the NATO Summit in Brussels. Although, following pre-event negotiations between the municipal authorities and the organizer, the assembly was prohibited by the mayor the day before the planned date, police did not intervene in the gathering of people who showed up despite the ban.
231. On 25 May 2017, ODIHR monitors observed a small authorized peace rally organized by Agir pour la paix and supported by like-minded organizations in Brussels. This assembly took place near the new NATO headquarters and gathered no more than three dozen peaceful participants. Before the assembly was over, another anti-NATO protest that was not authorized by the authorities took place in the vicinity in the form of a direct action encouraged by Agir pour la paix, which attracted considerable media attention. Between 60 and 70 assembly participants, some wearing clown paint or hazmat suits, were quickly contained by heavily armed police forces while a water cannon was parked next to a group of protesters who had lain down in a human chain. Despite the peaceful nature of the assembly, the gathering ended after two and a half hours with the mass arrest of all the contained participants without any dispersal order preceding the police measure.
232. On 2 July 2017, ODIHR observed a so-called *Protestwelle* (protest wave) march that gathered around 10,000 participants. After the march was officially over, a small group of participants staged an unannounced peaceful assembly at the central Rathausmarkt to protest the police decision to not allow protest camps in Hamburg. The assembly ended with the mass arrest of approximately 25 participants.
233. On 1 May 2018, ODIHR observed a static, peaceful gathering in Oslo of 13 extreme left-wing activists from Tjen Folket, a political organization. Although the police were not officially

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<sup>415</sup> Article 18 had specified that participants would also be held liable, but the Constitutional Court declared this illegitimate "in so far as it provides for the prosecution of those who take the floor in a public meeting being aware of the omission of notice provided in the first paragraph". Article 18, TULPS; Article 3, Law 603; Article 3, Law 689.

<sup>416</sup> General Service Instructions for the Police (Police Instructions), No. 3963, 22 June 1990, <[https://lovdata.no/dokument/INS/forskrift/1990-06-22-3963/KAPITTEL\\_4-6#%C2%A712-4](https://lovdata.no/dokument/INS/forskrift/1990-06-22-3963/KAPITTEL_4-6#%C2%A712-4)>, Section 8-5.

notified about the assembly, it was conducted without any police intervention and presented no public-order concerns.

234. On 8 June 2018, ODIHR observed two assemblies and saw a couple of other gatherings in the context of the Day of Disruption announced by left-wing activists in Quebec City, Canada. The first assembly was organized by a coalition of left-wing movements in a remote area of the city where around 80 activists gathered in the parking lot of a restaurant. Soon after the participants started marching along the adjacent street, which the police had closed for traffic, the police announced that the march was illegal. After a while, the participants moved out of the street and traffic resumed. Most participants peacefully dispersed afterwards.
235. On 6 July 2017, monitors observed a large left-wing protest known as “Welcome to Hell” (attended by some 12,000 participants) in Hamburg. The most radical participants (the Black Block), who concealed their identity, engaged in a stand-off with riot police that quickly escalated into violence. Bottles and other objects were thrown at the police, who responded with water cannons. The march was allowed to continue along a shortened route after the police separated the masked participants from the gathering.

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

236. Quebec City’s by-laws penalize assembly participants for taking part in demonstrations where the authorities were not notified. Accordingly, anyone participating in a spontaneous assembly could be liable to a fine. Germany and Italy also have laws that prevent or punish unauthorized assemblies. On the contrary, Norwegian law specifies that assemblies in public places may not be prohibited except in situations where violence is expected and where the purpose of the assembly violates the law. Specifically stipulating that assemblies may not be prohibited unless violence is expected helps to guarantee the realization of the right to peaceful assembly, whereas Quebec City’s by-laws place an undue burden on potential assembly participants.
237. The fact that the lack of compliance with formal legal requirements can constitute sufficient grounds for the dispersal of an assembly in some of the participating States where ODIHR monitored assemblies, such as Germany, is contrary to international standards.
238. However, a number of assemblies observed by ODIHR that did not fully comply with relevant legal requirements, such as in Oslo and Brussels, were facilitated by the police, which is in line with international standards and good practices. This approach, which does not rule out the imposition of sanctions after an event, enables the enjoyment of freedom of peaceful assembly even when the formal and legal requirements for assemblies are not met. This is in line with the principle that any intervention by the state in restricting freedom of assembly should be limited to the minimum extent necessary on grounds that are legitimate under OSCE commitments and international human rights law.



239. Recommendations for participating States:

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

USE OF FORCE, FIREARMS, DETENTION, CONTAINMENT AND DISPERSAL

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

240. The use of force by law-enforcement officials should always be an exception,<sup>417</sup> and assemblies should ordinarily be facilitated with no resort to force, which requires a policing approach that actively seeks from the outset to avoid situations in which police might have to resort to the use of force.<sup>418</sup> In fulfilling their duties, police officers may only use force in line with the principles of necessity and proportionality.<sup>419</sup> Even if the use of force in a particular situation complies with the requirements of necessity and proportionality, but the need to use force could reasonably have been avoided in the first place through proper planning, a state may be held accountable for a failure to take due precautionary measures in particular if this then leads to the loss of life.<sup>420</sup>
241. Moreover, OSCE commitments enshrine the fundamental right to life (Helsinki 2008) and require participating States to prohibit torture and other cruel, inhuman or degrading treatment or punishment and to take effective legislative, administrative, judicial and other measures to prevent and punish such practices (Vienna 1989, Copenhagen 1990). The prohibition of torture and other forms of ill treatment is also enshrined in a number of international human

<sup>417</sup> See the commentary to Article 3 of the Code of Conduct for Law Enforcement Officials.

<sup>418</sup> Amnesty International, Dutch Section, “Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials” (hereinafter “Amnesty International Use of Force Guidelines”), Guideline 7a and Section 7.1.

<sup>419</sup> See, for example, Article 3 of the UN Code of Conduct for Law Enforcement Officials, General Assembly Resolution 34/169, 17 December 1979,

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>>. Also see *Ivan Vasilev v. Bulgaria* (2007).

<sup>420</sup> European Court of Human Rights, *McCann and Others v. United Kingdom*, application No. 18984/91, 27 September 1995.

rights treaties, including the ICCPR (Article 7), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 2 and 16)<sup>421</sup> and the ECHR (Article 3).

242. States should, as far as possible, apply non-violent means before resorting to the use of force or firearms,<sup>422</sup> which may be employed only if other means remain ineffective or without any promise of achieving the intended result.<sup>423</sup> Firearms are not a tactical tool for the policing of assemblies; in particular, they should never be used for the purpose of dispersing an assembly.<sup>424</sup> According to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or life-threatening injury.<sup>425</sup> Deadly force should only be used when strictly unavoidable and when less extreme measures are insufficient to achieve the intended objective of protecting life.<sup>426</sup>
243. Human rights principles on the prohibition of torture and other ill-treatment and on the use of force by law-enforcement officers have specific implications with respect to the policing of assemblies. It is worth noting that, in addition to being in violation of human rights obligations, the unnecessary, inappropriate, excessive or unlawful use of force by law-enforcement authorities can be counterproductive, notably in undermining police–community relationships and causing widespread tension and unrest.<sup>427</sup> Police should resort to the use of force only in line with the principles of exceptionality, proportionality and necessity.<sup>428</sup> In particular, they should differentiate as much and for as long as possible between those individuals who are engaged in violence and those who wish to assemble peacefully and not use force against them.
244. In the context of assemblies, the use of force should be preceded by adequate prior warnings that permit individual participants to leave peacefully.<sup>429</sup> A variety of responses should enable a differentiated and proportional use of force<sup>430</sup> that is adequate to the threat, and under no circumstances should force be used against peaceful demonstrators who are unable to leave

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<sup>421</sup> All participating States covered in this report are parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>422</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4.

<sup>423</sup> *Ibid.* On the use of force by the police, also see *Guidebook on Democratic Policing* (Vienna: OSCE, 2008), paras. 54 and *ff.* According to the ECtHR, recourse to physical force that has not been made strictly necessary by a person's own conduct is in principle an infringement of the right set forth in Article 3 of the Convention. *Izci v. Turkey* (2013), para. 55.

<sup>424</sup> “Amnesty International Use of Force Guidelines”, *op. cit.*, note 417, Guideline 7(k), Sections 7(i) and 7.4.3.

<sup>425</sup> “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns”, A/HRC/17/28, 23 May 2011, <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-28.pdf>>, para. 60.

<sup>426</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Articles 12–14.

<sup>427</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 171.

<sup>428</sup> See UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>429</sup> *Guidelines, op. cit.*, note 1, para. 5.5.

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

the scene.<sup>431</sup> The ECtHR has stressed that Article 3 of the ECHR does not allow for a balancing exercise to be performed between the physical integrity of an individual and the aim of maintaining public order.<sup>432</sup>

245. These principles also apply to so-called less-lethal weapons, including plastic and rubber bullets, attenuated energy projectiles, water cannons and other forceful methods of crowd control, which must be strictly regulated<sup>433</sup> to ensure that they are used only when necessary and only by police officers who are trained in their use. More generally, such types of equipment should be seen as being close to the far end of a continuum, which begins with equipment designed to minimize the need for the use of force (e.g., protective gear, shields, helmets, etc.) and moves to different types of weapons, disabling chemicals, etc., depending on the threat faced by police officers or others.
246. Weapons that by their nature have an indiscriminate effect, such as water cannons or tear gas, should only be used when violence is so widespread that it is no longer possible to deal with violent individuals only.<sup>434</sup> With regard to the use of tear gas, the ECtHR has also ruled that its unwarranted use by law-enforcement officers is not compatible with the prohibition of ill treatment within the meaning of Article 3 of the ECHR.<sup>435</sup> The UN Special Rapporteur has warned that gas does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions. He has also warned against any modification of the chemical composition of the gas for the sole purpose of inflicting severe pain on protesters and, indirectly, on bystanders.<sup>436</sup>
247. Strategies of crowd control that rely on containment (kettling or corralling) must only be used on an exceptional basis. Such strategies tend to be indiscriminate in that they do not distinguish between participants and non-participants or between peaceful and non-peaceful participants.<sup>437</sup> The kettling of protesters may also result in a violation of their rights to liberty and freedom of movement.<sup>438</sup> The UN Special Rapporteur has noted that kettling is

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<sup>431</sup> *Ibid.*, Explanatory Notes, para. 176.

<sup>432</sup> *Izci v. Turkey* (2013), para. 56.

<sup>433</sup> *Ibid.*

<sup>434</sup> “Amnesty International Use of Force Guidelines”, *op. cit.*, note 417, Guideline 7(h), Sections 7.4.2(a) and (b).

<sup>435</sup> *Ali Günes v. Turkey* (2012), para. 168.

<sup>436</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 35. On the use of tear gas, also see *Izci v. Turkey* (2013); *Abdullah Yasa v. Turkey* (2013); and *Ataykaya v. Turkey* (2014).

<sup>437</sup> *Guidelines*, *op. cit.*, note 1, para. 160.

<sup>438</sup> In *Austin and Others v. The United Kingdom* (2012), the ECtHR held that police kettling of a crowd (and a number of bystanders) did not constitute a deprivation of liberty under Article 5 of the ECHR. Nonetheless, it noted that kettling was only permissible where violence was taking place or was reasonably thought to be imminent, and where other less intrusive means had been reasonably assessed as being ineffective. In a subsequent UK case, *Mengesha v. Commissioner of the Police of the Metropolis* (2013), the UK High Court held that kettling is not permitted as a means of obtaining the identification of those contained. Similar practices have also been reported in France, for example. See *Austin and Others v. The United Kingdom* (App. Nos. 39692/09, 40713/09 and 41008/09, judgment of 15 March 2012), EWHC 1695 (Admin) at para. 12.; “Does France respect the right of freedom of peaceful assembly for all citizens in Paris in 2011?”, ECtHR News, 6 October 2001, <<https://echrnews.wordpress.com/tag/discrimination/>>.

“intrinsically detrimental to the exercise of the right to freedom of peaceful assembly, due to its indiscriminate and disproportionate nature”<sup>439</sup> and has opposed this practice.<sup>440</sup>

248. The authority to arrest can play an important protective function in assemblies by allowing law-enforcement officials to remove from an assembly individuals who are acting violently. “The term ‘arrest’ refers to any deprivation of liberty, and is not limited to formal arrest under domestic law. It is critical that arrest powers are exercised consistently with international human rights standards, including those relating to the rights to privacy, liberty, and due-process rights.”<sup>441</sup> OSCE commitments provide that no one may be deprived of their liberty except on such grounds and in accordance with procedures that are established by law (Moscow 1991).<sup>442</sup> In the context of assemblies, it is important to establish clear protocols for the lawful arrest of participants in assemblies, providing guidance as to when detention is justified.<sup>443</sup> While mass arrests have a high likelihood of being arbitrary and should therefore be avoided, there may be occasions involving public assemblies when numerous arrests are deemed necessary in response to the unlawful conduct of those arrested. However, large numbers of participants should not be deprived of their liberty simply because law-enforcement agencies do not have sufficient resources at their disposal to individualize arrest decisions based on particularized facts.<sup>444</sup> Similarly, intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence actually exists.<sup>445</sup> Where an arrest takes place, detention conditions must meet minimum standards. This applies to any location or situation in which an individual has been deprived of his or her liberty, including jails, holding cells, public spaces and vehicles used to transfer detainees, and any other location where detainees are held.<sup>446</sup>
249. Dispersing an assembly may risk violating the rights to freedom of expression and to peaceful assembly, as well as the right to bodily integrity. Dispersing an assembly may also escalate tensions between participants and law enforcement. For these reasons, it must be resorted to only when strictly unavoidable.<sup>447</sup> Stemming from the presumption in favour of holding assemblies, non-violent unlawful assemblies should not be terminated for the mere reason of being unlawful. Rather, the principle of proportionality requires that unlawful assemblies—so

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<sup>439</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 40, , para. 37.

<sup>440</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 37.

<sup>441</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 44.

<sup>442</sup> A similar principle is enshrined in Article 9 of the ICCPR.

<sup>443</sup> *Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 161.

<sup>444</sup> *Ibid.*

<sup>445</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 45.

<sup>446</sup> *Ibid.*, para. 46.

<sup>447</sup> *Ibid.*, para. 61.

long as they remain peaceful—should not be dispersed unless this is required due to additional factors linked to public order and security.<sup>448</sup> Even then, the authorities should follow a graduated response and should aim to exhaust non-forceful means of intervention before adopting more forceful methods.

250. As noted above, the enforced dispersal of assemblies should be a measure of last resort when law-enforcement officials have taken all reasonable measures to facilitate and protect an assembly from harm and only if there is an imminent threat of violence.<sup>449</sup> The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that in the dispersal of assemblies that are unlawful but non-violent, law-enforcement officials should avoid the use of force or, where that is not practicable, must restrict such force to the minimum extent necessary.<sup>450</sup>
251. If dispersal is deemed necessary, the assembly organizer and participants should be clearly and audibly informed prior to any intervention by law-enforcement personnel. Participants must be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law-enforcement officials intervene further. Third parties (such as monitors, journalists and photographers) may also be asked to disperse, but they should not be prevented from observing and recording the policing operation.<sup>451</sup>
252. Police organizations have obligations towards their own staff and have to exercise an adequate duty of care to protect the safety and security of officers in the conduct of their duties and minimize the risk of injuries. Injured officers need to be provided with medical care. Whenever law-enforcement tactics involve the use of force in the context of policing assemblies, the state needs to be prepared to provide medical care for people whose health has been affected by, or who have been injured as a result of, the force used by the police.

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

253. In several participating States where ODIHR observed assemblies, legislation lays down the general principles of police intervention. Generally, the participating States where ODIHR monitored assemblies specify that the use of force has to be necessary and proportionate.
254. In Belgium, the police may use “reasonable and proportionate force” to pursue a legitimate aim. It has to be preceded by a warning.<sup>452</sup> Officers are only to use “as much force as is reasonably necessary” under the circumstances.<sup>453</sup> Canadian police officers in Quebec must

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<sup>448</sup> “Amnesty International Use of Force Guidelines”, *op. cit.*, note 417, Guideline 7(b) and Section 7.2.

<sup>449</sup> *Ibid.*, para. 165.

<sup>450</sup> Principle 13, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>451</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 168.

<sup>452</sup> Article 37, Belgian Law on the Police, 5 August 1992.

<sup>453</sup> *Ibid.*

also not use greater force than necessary.<sup>454</sup> Italian prefects are entitled to undertake necessary measures for the protection of public order and public security in accordance with the legal system's principles.<sup>455</sup> Police must ensure that the use of weapons is adequate and proportionate to the threat to public order and safety, the prevention and punishment of a crime and other duties.<sup>456</sup> The Lithuanian Police Act authorizes police to use force only to the extent necessary for performing their official duties. It must be used in an appropriate and proportionate manner in relation to the presented danger, taking into account the nature of the violation of the law, the offence's intensity and the offender's characteristics. In Lithuania, physical force is only to be used where other measures are ineffective or where a delay jeopardizes the officer's or another person's life or health. Physical force may be used in several situations, including to protect against imminent danger to life or health, where the offender avoids the officer's instructions or to prevent administrative or criminal offences.<sup>457</sup> Firearms and explosives may only be used in exceptional cases in Lithuania where it is strictly necessary and where other measures have been ineffective or where an unavoidable danger to life or health exists.

255. The Norwegian Constitution stipulates that the government may not use military force against citizens except where the assembly disturbs the public peace and does not immediately disperse after they have been warned three times.<sup>458</sup> Firearms may only be used by the police in Norway where absolutely necessary and where other means have been tried to no avail or where the officer or others are threatened or subjected to severe acts of violence or violations of personal integrity, and a firearm is necessary to prevent loss of life or severe injury. Firearms may also be used when doing so is necessary to apprehend or detain a person convicted or, with a large degree of certainty, suspected of murder or severe violence or who is otherwise extremely dangerous.<sup>459</sup> Gas weapons may be used when necessary to maintain or restore peace, order or security and in especially dangerous situations. The operational leader decides when to use gas weapons.<sup>460</sup>
256. In Belgium, the police must be present in the area of every major public assembly and undertake appropriate measures to ensure that the event is carried out peacefully.<sup>461</sup> To ensure that people are unarmed, police may conduct a body search where, on the basis of a person's behaviour, reasonable grounds exist that the person is carrying a weapon or dangerous object or that an assembly poses a real threat to public order or when individuals have access to places where public order is threatened. Searches must be conducted by an officer of the same sex as the person being searched.<sup>462</sup> Firearms may be used in cases of absolute necessity.<sup>463</sup>

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<sup>454</sup> Article 6(1), Code of Ethics for Quebec Police Officers, updated 1 March 2018.

<sup>455</sup> Article 2, TULPS.

<sup>456</sup> "Police Weapons: Italy", The Law Library of Congress, <[https://www.loc.gov/law/help/police-weapons/italy.php#\\_ftn24](https://www.loc.gov/law/help/police-weapons/italy.php#_ftn24)>.

<sup>457</sup> Article 27, Lithuanian Police Act.

<sup>458</sup> Article 101, Norwegian Constitution.

<sup>459</sup> Section 4-3, Norwegian Weapons Instructions for Police, 2 July 2015 motion by the Ministry of Justice and Public Security.

<sup>460</sup> *Ibid.*, Section 4-4.

<sup>461</sup> Article 22, Belgian Law on the Police.

<sup>462</sup> *Ibid.*, Article 28.

An officer may make an administrative arrest when individuals disturb the public peace, when reasonable grounds exist to believe they are preparing to commit a crime or they actually commit a crime that seriously threatens public order or safety (preventive arrest). The police may also make an administrative arrest of those who disrupt the public order and remove them from an assembly.<sup>464</sup>

257. Canadian police may make arrests to end breaches of the peace or make arrests without a warrant. The police may arrest an individual who is found breaching the peace or who, upon reasonable grounds, is believed to be about to join in or renew a breach of the peace.<sup>465</sup> An arrest for breach of peace does not result in charges, as the purpose is to simply end the breach and restore order. An arrest without a warrant may be executed in relation to a person who has committed an indictable offence or when an officer has reasonable grounds to believe that the person has committed or is about to commit such an offence. Arrests without a warrant may also be performed if an officer finds a person committing a criminal offence or if the officer has reasonable grounds to believe that a warrant for arrest is in force in the jurisdiction.<sup>466</sup>
258. In Canada, early in the planning of the G7-related operations, a working group comprising the RCMP, the SQ, the Service de la sécurité publique du Saguenay and the SPVQ was formed to ensure a consistent approach to the use of force in an effort to maintain public order. It was understood that the three main agencies involved in this operation might have conflicting interpretations of risk and appropriate responses, as well as different approaches to the authorizations required for the use of force. With a view to the G7 Summit, the working group developed a uniform interpretation of the rules of engagement, the scope for the use of force in law enforcement operations, and the levels of decision-making based on the scaling-up of interventions and the severity of the situation in question. Although law-enforcement teams made decisions on the ground, many cases required the guidance of an intervention commander with a broader overview of the situation that allowed them to make better decisions. Public relations and liaison staff were assigned to strategic functions, and crowd observation resources were put in place to provide information and intelligence on the ground in order to enable law-enforcement departments to be proactive and respond effectively.<sup>467</sup>
259. Most states regulate the grounds for dispersal in their legislation on assemblies, and the legislation in several states also specifies the methods of dispersal.
260. Where a Canadian public authority (justice, mayor, sheriff, warden) receives notice that 12 or more people are unlawfully and riotously assembled together, the officer will go to the location and, if a riot is in progress, will order silence and peaceful dispersal.<sup>468</sup> Based on good faith and reasonable grounds, a police officer may use as much force as is necessary to

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<sup>463</sup> *Ibid.*, Article 38.

<sup>464</sup> *Ibid.*, Article 31.

<sup>465</sup> Article 31(1), Canadian Criminal Code.

<sup>466</sup> *Ibid.*, Article 495.

<sup>467</sup> Written response from the Canadian authorities to ODIHR's follow-up questions to ODIHR's assembly-monitoring exercise, 27 February 2019.

<sup>468</sup> Article 67, Canadian Criminal Code.

suppress a riot but not force that is excessive.<sup>469</sup> Anyone who hinders or assaults wilfully and with force a person about to order dispersal, who does not peacefully disperse and depart within 30 minutes of a dispersal order or who does not depart within 30 minutes when they had reasonable grounds to believe an order to disperse would have been made is liable to life imprisonment.<sup>470</sup> As mentioned in the previous section, assemblies are deemed to be illegal when proper notification has not been given.

261. Belgium has a specific legal provision relating to dispersing assemblies. On the decision of the Belgian administrative police authority or on the decision of the lead police officer, the police may disperse all armed assemblies; assemblies accompanied by crimes and offences against persons and goods that violate the law related to private militias; assemblies that have been formed or are in the process of forming to commit devastation, murder or plunder or to commit an attack on the physical integrity or life of persons; and assemblies that hinder the execution of the law, a police ordinance, a police order or a court decision or a court order. The police must inform the mayor of the municipality in advance or, if this is not possible, as soon as possible after the dispersal decision is determined, and they must remain in close contact with the mayor throughout the intervention.<sup>471</sup>
262. An assembly in Italy may be dispersed where subversive activities occur that are detrimental to the authority's reputation, that may endanger public order or the safety of citizens or that involve the commission of crimes.<sup>472</sup> Displaying flags or emblems that are symbols of social uprising or upheaval, defaming the government or displaying badges of sectarian associations are always considered subversive.<sup>473</sup> Those participants who do not comply with the dissolution may be punished with one month to one year of imprisonment and a fine ranging from EUR 30 to EUR 413.<sup>474</sup>
263. The German Federal Assembly Act also outlines when and how an assembly may be dispersed. Assemblies may be dissolved where it is evident that the assembly presents significant risks to public security or order.<sup>475</sup> The dissolution of a closed assembly may be justified only where the organizer is prohibited from assembling as outlined in Section 1 of the Act, which relates to those who abuse freedom of expression and those affiliated with parties and associations deemed to be unconstitutional.<sup>476</sup> Closed assemblies may also be dissolved if individuals with weapons or similar objects are not excluded and expelled by the

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<sup>469</sup> *Ibid.*, Article 32.

<sup>470</sup> *Ibid.*, Article 68.

<sup>471</sup> Article 22, Belgian Law on the Police.

<sup>472</sup> Article 20, TULPS.

<sup>473</sup> *Ibid.*, Article 21.

<sup>474</sup> *Ibid.*, Article 24.

<sup>475</sup> Section 15(1) and (3), German Federal Assembly Act. See "Comparative study on national legislation on freedom of peaceful assembly", *op. cit.*, note 59, p. 59.

<sup>476</sup> The exclusions include: 1) those who abuse freedom of expression; 2) anyone who organizes or attends an assembly with the objective of promoting a political party, part or substitute organization declared unconstitutional; 3) any party declared unconstitutional based on Article 21(2) (seeks to undermine or abolish the basic democratic order or the Federal Republic of Germany); or 4) any association banned based on Article 9(2) of the Constitution (such as those whose aims contravene the Criminal Code or against the constitutional order). Section 1(1), German Federal Assembly Act.



assembly leader, if prosecutable criminal offences occur during an assembly or if participants are called on to commit crimes and the leader does not take immediate measures to prevent this. Both closed and open assemblies may be dissolved if they become violent or riotous or if a serious risk to participants' life or health exists. Dissolution of closed assemblies is only justified when other police measures, particularly interruption, would be insufficient.<sup>477</sup> Assemblies may also be dissolved if 1) the assembly is not registered; 2) the assembly diverges from the registration specifications; or 3) the assembly violates the conditions for holding the assembly.<sup>478</sup> If an assembly is dissolved, all participants must immediately disperse.<sup>479</sup> An administrative offence may result from failing to immediately disperse following an order by the competent authority, from continuing to disrupt the proper realization of a public assembly despite repeated warnings or from failing to immediately leave an assembly after being expelled. These administrative offences may result in a fine of up to EUR 500. Administrative offences that may be punished with a fine of up to EUR 2500 include failing to inform the police about the number of appointed stewards or providing an incorrect number when requested; appointing as a leader or organizer a larger number of stewards than authorized by the police; using stewards who are not properly identified with the required white armband marked "steward" during a closed assembly; or, as a leader, refusing to accept the delegated police presence or failing to provide them with an appropriate position.<sup>480</sup>

264. According to the Lithuanian Law on Meetings, an assembly may be terminated when participants are armed, including with items adapted to cause bodily harm, set fire or cause material damage; are carrying flammable, incapacitating or radioactive substances; are in possession of alcoholic beverages; are wearing military uniforms or body armour; are hiding their faces with masks or other items used to hide their identity in violation of the law; appear naked in public or are in possession of items that violate the principles of morality enshrined in legal rules; or grossly and intentionally infringe the procedure for assemblies. An assembly may also be terminated where it is used to violate public order and peace, to attempt to commit or to actually commit crimes against independence, territorial integrity or the constitutional order or to commit other premeditated criminal acts.<sup>481</sup> Furthermore, police officers have the right to prohibit individuals from entering mass events if they have been given a valid administrative penalty for violations of the procedures for meetings and other mass events or if there is evidence that they may cause mass disturbances or riots.<sup>482</sup> In addition to these reasons, the police may undertake preventative measures and notify the organizers where they have information that the organizers or the participants may have weapons or items that pose a danger to human health or life.<sup>483</sup> Preventative measures are

<sup>477</sup> Sections 13 and 18, German Federal Assembly Act.

<sup>478</sup> *Ibid.*, Section 15.

<sup>479</sup> *Ibid.*, Sections 13 and 18.

<sup>480</sup> *Ibid.*, Section 29.

<sup>481</sup> Regarding premeditated criminal acts, the Law specifies acts directed "against human life, health, liberty, principles of morality enshrined in legal rules, property, individual dignity and honour, public security, government and public order". Article 9, Lithuanian Law on Meetings.

<sup>482</sup> Article 22, Lithuanian Law on Police Activities (Police Act), No. VIII-2048, 17 October 2000, <<https://www.e-tar.lt/portal/lt/legalAct/TAR.CA89372D00AA/umIdEiRaXG>>.

<sup>483</sup> Article 13, Lithuanian Law on Meetings.

defined as means of searching and checking meeting organizers and participants and the items they are carrying, in accordance with procedures laid down by the Republic of Lithuania.<sup>484</sup>

265. The Norwegian police may not prohibit assemblies in public places unless there are grounds to believe that the assembly may give rise to violence or similar disturbances or when the intended purpose of the assembly violates the law.<sup>485</sup> An assembly may be dissolved by the police if it contravenes the established conditions or if legitimate grounds exist to believe that a serious disturbance of public order or traffic exists or if the purpose of the assembly or the manner in which it is carried out is contrary to law.<sup>486</sup> The police may only use force to the degree that it is necessary and justifiable, and it must be in proportion to the seriousness of the situation and the circumstances in general.<sup>487</sup>
266. The Norwegian police are also authorized to intervene to stop disruptions of public order or situations that lead to fear of disruptions of public order, to ensure individual and public security or to hinder or stop the commission of offences. In such situations, the police are authorized to regulate passage; prohibit entrance to certain areas; search individuals or vehicles; render harmless or seize dangerous objects; reject, remove or apprehend individuals; require that an assembly be stopped or altered; enter private property or require the evacuation of a location. If police orders are ignored, the police may undertake necessary measures to prevent harm to the public or damage to property. The police may intervene immediately in cases of severe interruptions of order or where potential danger exists. In the event of such an intervention, they are required to issue a warning as soon as possible.<sup>488</sup>
267. Several participating States also require warnings before using force. In Belgium, warnings must be given before force is used unless doing so would render the use of force ineffective.<sup>489</sup> When an assembly is dispersed in Italy, participants must be asked to leave by public security officers.<sup>490</sup> If this has no effect, three distinct orders preceded by a trumpet sound will be used to disband the assembly.<sup>491</sup> If these orders have no effect or cannot be completed due to a revolt, the officers will order that the assembly be dispersed by force.<sup>492</sup> Force may not be used until the public security officer in charge has ordered it.<sup>493</sup> Before using a firearm in Lithuania, an officer must provide a warning except where a delay would pose an imminent danger to life or health or is impossible.<sup>494</sup> Before using a firearm in Norway, the police must announce that they are acting in their police capacity, issue a warning that their weapon will be used if their orders are not followed, warn bystanders and

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<sup>484</sup> *Ibid.*, Article 2.

<sup>485</sup> Section 8-5, Norwegian Police Instructions.

<sup>486</sup> Section 11, Norwegian Police Act.

<sup>487</sup> *Ibid.*, Section 6; Section 3, Norwegian Police Instructions.

<sup>488</sup> Section 7, Norwegian Police Act. Also see Section 8-5, Norwegian Police Instructions.

<sup>489</sup> Article 37, Belgian Law on the Police.

<sup>490</sup> Article 22, TULPS.

<sup>491</sup> If no trumpet is available, three loud warnings are sufficient. Article 23, TULPS; Article 25, Royal Decree 635/1940.

<sup>492</sup> Article 24, TULPS.

<sup>493</sup> Article 26, Royal Decree 635/1940.

<sup>494</sup> Article 28, Lithuanian Police Act.

assess the impact that using their weapon might have on others. The officer must, time and circumstances permitting, fire a warning shot.<sup>495</sup>

268. Various penalties and fines are in place for violent behaviour during assemblies. The German Federal Assembly Act outlines penalties and fines that assembly participants may face. Anyone who commits or threatens to commit “acts of violence or causes a significant disruption with intent to prevent or otherwise break up” an assembly may be punished by up to three years’ imprisonment or a fine.<sup>496</sup> Individuals may face up to one year of imprisonment or a fine if they resist through violence or threaten with acts of violence or physically attack the assembly leader or a steward acting in accordance with their legitimate disciplinary powers.<sup>497</sup> One may also be punished by up to a year of imprisonment or a fine if they invite others, including through texts, sounds or images, to attend a prohibited or banned assembly.<sup>498</sup> Those who carry weapons or other objects that could serve to harm others or damage property may be imprisoned for up to one year or fined.<sup>499</sup>
269. Section 27 of the German Federal Assembly Act prescribes punishment for those who bring weapons to an assembly. Those who bring, without the competent authority’s permission, weapons or objects that “by [their] nature serve to and are meant to harm people or damage [property]” may be imprisoned for up to one year or fined. Those carrying such weapons or objects on the way to an assembly in open spaces, bringing them or making them available to be used or distributing them at an assembly may face similar punishment. Individuals may also be imprisoned for up to one year or fined if they carry arms or objects meant to be used against enforcement measures at or on the way to an assembly in open spaces; wear clothing to hide their identity during or on the way to an open-air assembly; or “flock together” and carry weapons or any other object meant to harm people or property, carry defensive weapons or objects or wear clothing meant to hide their identity.<sup>500</sup> Individuals violating the prohibition on bringing weapons and objects meant to harm to an open-air assembly or wearing clothing meant to hide their identity at or on the way to an open-air assembly may be punished for committing an administrative offence.
270. According to the Lithuanian Criminal Code, an individual may be punished by up to five years’ imprisonment for organizing or provoking people to engage in public violence, destruction of property or other grave violations of the public order or for engaging in violence or destroying property. If a firearm or explosives are used or an individual resists a police officer, the individual may be punished by up to six years in prison.<sup>501</sup> An individual who, through defiant conduct, threats, taunts or acts of vandalism, demonstrates disrespect,

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<sup>495</sup> Section 4-2, Norwegian Weapons Instructions for Police.

<sup>496</sup> Section 21, German Federal Assembly Act.

<sup>497</sup> *Ibid.*, Section 22.

<sup>498</sup> *Ibid.*, Section 23.

<sup>499</sup> *Ibid.*, Section 24.

<sup>500</sup> *Ibid.*, Section 27.

<sup>501</sup> Article 283, Lithuanian Law on the Approval and Entry into Force of the Criminal Code (hereinafter, “Lithuanian Criminal Code”), 26 September 2000 No VIII-1968, <<https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=q8i88110w&documentId=a84fa232877611e5bca4ce385a9b7048&category=TAD>>.

thereby disrupting public order, may be punished with community service, a fine, restriction of liberty or up to two years in prison. If public order is disrupted through the use of taboo words or indecent conduct in a public place, the perpetrator may be charged with a misdemeanour punishable by community service, a fine, restriction of liberty or arrest.<sup>502</sup>

271. During public assemblies, the Norwegian police may arrest and place in custody persons who due to intoxication or other behaviour disturb public order or annoy others, when this is according to the law or customary practice, or if it is otherwise necessary in view of the nature of the disturbance or annoyance, the age of the person concerned, the possibility of guiding/taking the person to another location and the general circumstances of the situation. Arrests should only be made after individuals fail to comply with a police order to remain calm or to disperse unless immediate arrest is warranted.<sup>503</sup>
272. The use of force, arrests, containment and dispersal by law-enforcement officials were observed by ODIHR monitors in Belgium, Canada, Germany and Italy.
273. On 26 and 27 May 2017, the ODIHR team carried out observations of three smaller assemblies (on 26 May) and one larger event (on 27 May) in Italy. Notably, all events could only be organized in Giardini Naxos, a few kilometres away from Taormina and therefore not within sight and sound of the intended target audience. Most events were also characterized by a very heavy presence of law-enforcement officers, many of them in riot gear and openly displaying handcuffs and batons. The larger event on 27 May attracted a crowd of about 1,000 protesters, who were able to reach the location of the assembly only after strict identification and stop-and-search procedures, which were also applied to some of the members of the monitoring team. These procedures raised concern about their necessity and proportionality and about the storage and use of the information gathered. The assembly unfolded peacefully until its conclusion, when a group of protesters attempted to push through a police cordon in the direction of Taormina. Police officers who were present used tear gas to disperse the crowd without any audible warning. This tactic raised proportionality concerns, given the limited threat the small crowd appeared to pose, which could have been controlled through other means. In addition, the team observed the apparent almost total lack of communication between protesters and law-enforcement agents, including any orders to disperse and any prior warning on the use of force.
274. On 25 May, ODIHR monitors observed a small authorized peace rally organized by Agir pour la paix and supported by like-minded organizations. The rally took place near the new NATO headquarters in Brussels and gathered no more than three dozen peaceful participants. Before the assembly ended, another anti-NATO protest that was not authorized by the authorities took place in the vicinity in the form of a direct action that was encouraged by Agir pour la paix. Between 60 and 70 assembly participants, some wearing clown paint or hazmat suits, were quickly contained by heavily armed police forces while a water cannon was parked next to a group of protesters who had lain down in a human chain. Despite the peaceful nature of the assembly, the gathering ended after two and a half hours with the mass arrest of all the contained participants

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<sup>502</sup> *Ibid.*, Article 284.

<sup>503</sup> Section 9-1, Norwegian Police Instructions.

without any dispersal order preceding the police measures. ODIHR was informed that the decision to arrest the contained participants of the unauthorized assembly was taken by the police, as intelligence suggested that protesters would have later attempted to block the road leading from the NATO Summit to the airport.<sup>504</sup>

275. According to the information provided by the Hamburg authorities, in the period from 22 June 2017 to 9 July 2017, a total of 138 demonstrations and 11 other events related to the G20 Summit took place. According to ODIHR observations, the vast majority of these were carried out peacefully. Only in some isolated cases did controversies arise in the run-up to the assembly and, ultimately, disputes in the course of the assembly. ODIHR was informed that 797 police officers were injured while carrying out their duties, with 671 injuries attributed to acts of violence against the police.<sup>505</sup> In response to an official inquiry on the part of the Left Party (Die Linke), the police provided information stating that 435 officers were injured—182 of them by tear gas—between 6 and 8 July 2017. Nearly all of the above-mentioned police officers suffered minor injuries, and only seven of them received in-patient treatment at local hospitals.<sup>506</sup> In the same inquiry, it was revealed that the number of injured assembly participants was not officially determined by the police or the city of Hamburg.<sup>507</sup> ODIHR received information stating that emergency medical services for assembly participants and bystanders were provided by the fire brigade. An estimated 308 people associated with the assemblies were treated in emergency rooms at local hospitals.<sup>508</sup>
276. On 6 July, ODIHR observed a protest known as “Welcome to Hell”, which was attended by approximately 12,000 participants in Hamburg, Germany. During the protest, some of the participants (the Black Block) concealed their identity and engaged in a stand-off with riot police that quickly escalated into violence. The police required the Black Block protesters to uncover their faces before allowing the march to continue. Bottles and other objects were subsequently thrown at the police, who responded with water cannons and pepper spray. Police warnings preceded the use of force. However, not all ODIHR monitoring teams heard the police warning immediately prior to the use of water cannons, including those teams that were located in the direct vicinity of the impact area. Among the participants of the protest were children and at least three people who were in wheelchairs. While the water cannons and pepper spray were used as a result of non-compliance with police orders on the part of some violent participants, the tactic deployed by the police raises proportionality concerns, as the number of the violent protesters was limited, and other means could have been used to effectively control the crowd. It is noteworthy that the use of water cannons and pepper spray, due to their indiscriminate nature, could potentially negatively and disproportionately affect

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<sup>504</sup> Meeting with the police in Brussels, 29 June 2017.

<sup>505</sup> Written response from the Hamburg authorities to ODIHR’s follow-up questions to ODIHR’s assembly-monitoring exercise, 28 December 2018.

<sup>506</sup> Marcus Engert, “Verletzte Polizisten bei G20: Hier sind die neuen, offiziellen Zahlen der Polizei Hamburg”, BuzzFeed.News, 26 July 2017, <<https://www.buzzfeed.com/de/marcusengert/verletze-polizisten-bei-g20-offizielle-zahlen>>.

<sup>507</sup> *Ibid.*

<sup>508</sup> Written response from the Hamburg authorities to ODIHR’s follow-up questions to ODIHR’s assembly-monitoring exercise, 28 December 2018.

children and persons with disabilities who were among the participants. On a more positive note, the march was allowed to continue along a shortened route after the police separated the masked participants from the gathering.

277. As previously noted, participants of open-air assemblies are, according to the German Federal Assembly Act, prohibited from concealing their identity. While the police action during the “Welcome to Hell” protest that required all participants to uncover their faces was lawful, the blanket prohibition prescribed by the German Federal Assembly Act should be reconsidered in line with internationally accepted good practice. The concealment of an individual’s identity by wearing a mask or by another method should not be prohibited where no demonstrable evidence of imminent violence is present.<sup>509</sup> An individual should not be required to remove a mask unless their mask is worn for the purpose of evading identification so as to avoid liability for violent conduct and or for unduly interfering with the enjoyment of the freedom of peaceful assembly of other participants (for more information, see section on bans on assemblies, content-based and other restrictions). In addition, as evident from the protest in Hamburg, the application of such legal provisions can have unintended consequences of escalating violence between the participants and the police rather than facilitating the exercise of the right to peaceful assembly.
278. ODIHR was informed by the Hamburg authorities that the Hamburg police do not typically use rubber bullets or irritant gas as crowd control tactics but consider the use of water cannons more appropriate against a violent crowd. In the context of the G20 Summit, however, the police forces from other federal states were able to carry with them all legally approved equipment and use it within the framework of the relevant legal regulations. Only the use of multipurpose pistols (MZP) was excluded by the police commander. Nevertheless, even this equipment was used by some emergency forces. The media reported on the use of the MZP 1 multipurpose pistol to shoot rubber bullets on 15 occasions and tear gas on a further 67 occasions during rioting in the port city between 6 July and 8 July.<sup>510</sup>
279. At a number of assemblies in Canada, Germany and Italy, ODIHR observed a show-of-force approach by law-enforcement officers who were dressed in full gear and visibly displayed plastic handcuffs, tear gas launchers, sonic grenades, batons, balaclavas or gas masks, helmets with visors down, shields and tasers. In Canada, for example, law-enforcement officers in the context of the G7 Summit were equipped with full riot gear, batons, tear gas rifles, impact rounds and C-8 assault rifles (the latter were strategically deployed to make them accessible for potential active fire situations).
280. In Brussels, police use a razor wire on X-shaped barriers known as “Spanish horses” as fencing in order to create space between assembly participants and police officers on the opposite sides of the barrier. These barriers were deployed at the venues of all the assemblies observed by

<sup>509</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 98

<sup>510</sup> “Police alleged to have used banned combat weapon during G20 riots”, *thelocal.de*, 7 November 2017, <<https://www.thelocal.de/20171107/police-alleged-to-have-used-banned-combat-weapon-during-g20-riots>>.

ODIHR in Brussels, many of which involved children as participants, and they were set up and left unattended at these locations the day before the events.

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

281. Legislation in the selected participating States provides that warnings must be issued before force is used. Additionally, the participating States require that force be used only where it is necessary and proportionate, which is in line with international norms.
282. In some participating States, assemblies may be dispersed in a broad range of situations, and these are not limited to the most serious circumstances. Generally, the termination of assemblies should be facilitated by the authorities. In principle, the reasons for dispersal must be limited to a threat to public safety or danger of imminent violence and must not take place unless law-enforcement officials have taken all reasonable and less invasive measures possible to facilitate and protect an assembly from harm. For example, the Canadian law stipulating that an assembly without proper notification is illegal is not sufficiently limited to cases of threats to public safety or imminent violence. Participating States should consider, however, that unannounced assemblies, in line with internationally accepted good practice, should be allowed to continue without dispersal if they remain peaceful.
283. Any response should be proportionate to the anticipated threat. Legislation should provide for a clear demarcation between violent and non-violent demonstrators and those individuals who commit unlawful acts. An entire assembly should not be terminated based on the acts of one person or a group of people. The authorities should take appropriate action to remove such people rather than terminating or dispersing an assembly or declaring it to be unlawful. Based on the *Guidelines*, a decision on dispersal should therefore not be taken when a small group of assembly participants act in a violent manner. In such instances, action should be taken against those individuals.
284. In several of the participating States where ODIHR monitored assemblies, legislation does not specify the methods for dispersal. The lack of legislation/guidance is likely to be problematic for police officers reacting to small- or large-scale disruptions/violence during assemblies.
285. Law-enforcement officials must take all reasonable and less invasive measures possible to facilitate and protect an assembly from harm, i.e., unless there is an imminent threat of violence.<sup>511</sup>
286. Ensuring that police practice in detaining and using force against participants or others present at assemblies meets human rights standards is of central importance. In this regard, it is positive that in most assemblies monitored by ODIHR, limited or no interventions were observed involving detentions or the use of force. This was generally also the case during

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<sup>511</sup> “Note on the Draft Law Amending the Law on Assemblies of Poland”, *op. cit.*, note 118, para. 34.

assemblies that presented specific challenges in relation to the maintenance of public order and the protection of participants.

287. However, the circumstances related to the use of force and dispersals, including beating some protesters with batons and using tear gas without warning during a tense but peaceful assembly in Giardini Naxos, Italy, the mass arrest of protesters in Brussels, Belgium, and indiscriminate use of water cannons and pepper spray during the assembly in Hamburg, Germany, raise concerns as to the necessity and proportionality of these actions. Additionally, the lack of communication between the police and protesters prior to the use of force, especially during the assembly in Giardini Naxos, Italy, is striking, as it did not allow the participants sufficient time to disperse voluntarily.
288. All the above considerations are broadly related to the issue of over-policing of assemblies and the employment of police tactics that carry a risk of escalating, rather than de-escalating, tension. In a number of assemblies that remained peaceful, ODIHR observed the deployment of a very significant number of police officers in riot gear and the open display of handcuffs and batons. This was particularly noticeable during assemblies surrounding the G7 and G20 Summits, which may have had an intimidating effect on peaceful protesters.
289. ODIHR recognizes the importance of adequate police preparedness for dealing with potential unrest during assemblies. However, given the potential effect on public perceptions and community confidence, and as a way of de-escalating tension, a good practice in some situations may be to deploy police officers (in riot gear, if necessary) who are ready to intervene in locations that are very close to an assembly, but who are not immediately visible to assembly participants. Similarly, the assemblies in Hamburg and Quebec City were facilitated with a significant police presence in riot gear compared to the number of peaceful protesters in those locations (for more information, see the section on engagement and communication by the police with assembly organizers and participants).
290. The use of so-called Spanish horses by the law enforcement in Brussels in the context of facilitating assemblies raises concerns as to their necessity and potential impact. Barbed wire, razor wire or any other spiked barrier, while deployed, creates an ongoing indiscriminate and uncontrollable risk of unintentional or unwarranted injury. This equipment poses particular risk of serious harm or injury to children and the elderly. The use of barriers that have an additional offensive function that go beyond the primary purpose of restricting access or movement, such as barbed wire, razor wire or any other spiked barrier, is disproportionate and unnecessary in a crowd control setting and should be prohibited. Their use in such a setting does not meet a legitimate law-enforcement objective that cannot be effectively accomplished with safer alternatives. The presence of children and persons with disabilities at assemblies, which was the case at several assemblies observed by ODIHR in Brussels and Hamburg, results in additional law-enforcement responsibilities regarding the particular needs and vulnerabilities of such participants, which should be considered in the relevant planning and decision-making on the part of the law-enforcement authorities, including in the threat and risk assessment and the law-enforcement tactics used.



291. Recommendations for participating States:

- to ensure that rules on the use of force, including the circumstances in which force can be used, by law-enforcement officials policing assemblies are established in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and made publicly accessible;
- to ensure that the use of force by law-enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality and is consistent with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- to ensure that assembly policing tactics and training emphasize prevention of the use of force and de-escalation based on communication, negotiation and dialogue;
- to develop and make public comprehensive guidelines on the dispersal of assemblies in accordance with international human rights law and principles detailing 1) the circumstances that warrant dispersal; 2) all steps required to be taken before a decision to disperse (including de-escalation measures); 3) the individual or individuals who may issue a dispersal order; and 4) the preference for voluntary dispersal before resorting to any use of force;
- to ensure that participants in assemblies are only detained when there are legitimate grounds for the deprivation of liberty and without resorting to excessive use of force during arrests;
- to provide training for law-enforcement officials on facilitating the enjoyment of the right to freedom of peaceful assembly with a strong emphasis on human rights-compliant planning and preparation, crowd management measures consistent with OSCE commitments and human rights standards, and to consider enlisting ODIHR's support in this regard;
- to ensure that law-enforcement officials are adequately trained, resourced and equipped (including with less-lethal technologies) so as to best enable differentiated and proportionate use of force in the context of policing assemblies;
- to ensure that the planning and decision-making concerning the facilitation of assemblies takes into consideration the particular needs and vulnerabilities of children participating in assemblies.

## PHOTOGRAPHY AND VIDEO RECORDING BY LAW-ENFORCEMENT PERSONNEL

### *Photographing and video recording of assemblies by law-enforcement personnel: international standards and good practice*

292. The right to privacy is guaranteed by international human rights law.<sup>512</sup> The OSCE participating States have reconfirmed the right to protection of private and family life, domicile, correspondence and electronic communications (Moscow 1999). There is growing international recognition that the exercise of the right to privacy is important for the realization of other human rights, including the right to freedom of expression and to hold opinions without interference, as well as the rights to freedom of peaceful assembly and association.<sup>513</sup> The unlawful or arbitrary surveillance or collection of personal data violates the right to privacy and can interfere with other human rights, including the right to freedom of peaceful assembly.<sup>514</sup> Therefore, violations of the right to privacy might affect the enjoyment of the freedom of peaceful assembly. States must ensure that any interference with the right to privacy is consistent with the principles of legality, necessity and proportionality.
293. Photography or video/audio recording of participants by law-enforcement personnel is generally permissible, as the use of cameras to monitor public space allows law-enforcement agencies to identify and respond to imminent threats to public safety and actual or imminent occurrences of criminal activity and to facilitate peaceful assemblies. However, the sustained and focused photographing, filming or recording of an individual or individuals may be perceived to be unduly intrusive and is likely to have a chilling effect on assembly organizers and participants, and should therefore not be carried out routinely.<sup>515</sup> Such a chilling effect may be caused by the deployment of police officers with hand-held or body-worn cameras or the use of closed-circuit television (CCTV) cameras during a peaceful event. Recording peaceful assembly participants in a context and manner that intimidates or harasses is an impermissible form of interference with the right to freedom of peaceful assembly.<sup>516</sup>
294. Generally, the visible use of photographic equipment at public assemblies should not take place routinely. The collection and processing of personal information, such as through recording devices or CCTV, must comply with protections against arbitrary or unlawful interference with privacy.<sup>517</sup> Proportionality issues may arise if the photography/filming are perceived as coercive or intrusive, or where there is no obvious justification for it. Furthermore, while monitoring individuals in a public place for identification purposes does

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<sup>512</sup> Article 12 of the Universal Declaration of Human Rights; Article 17 of the International Covenant on Civil and Political Rights.

<sup>513</sup> Human Rights Council Resolution 34/7 on the right to privacy in the digital age, 23 March 2017.

<sup>514</sup> *Ibid.*

<sup>515</sup> *Guidelines, op. cit.*, note 1, para. 169.

<sup>516</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 76.

<sup>517</sup> *Ibid.*, para. 73.

not necessarily give rise to interference with their right to privacy, the recording of such data and the systematic processing or permanent nature of the recording may involve violations of their privacy.<sup>518</sup>

295. Legislation and policies regulating the collection and processing of information relating to assemblies or their organizers and participants must meet legality, necessity and proportionality tests.<sup>519</sup> Law-enforcement agencies should develop and publish a policy relating to their use of overt filming and/or photography at public assemblies.<sup>520</sup> The use of camera equipment to record images for the purpose of identification should be confined to those circumstances where criminal offences are occurring or where there is a reasonable suspicion of imminent criminal behaviour.<sup>521</sup>

*Photography and video recording of assemblies by law-enforcement personnel in selected participating States*

296. The Belgian Ministerial Circular on the installation and use of surveillance authorizes the use of surveillance cameras in cases of extreme urgency in closed but public spaces to determine if large-scale assemblies require immediate police intervention.<sup>522</sup>
297. In Canada, law-enforcement teams have integrated video-recording capabilities. Recordings are made in response to escalating situations and are used to gather evidence in the event of criminal acts. If no criminal offence is committed, the accumulated videos are not preserved, as the demonstrations themselves do not constitute unlawful activities.<sup>523</sup>
298. Under the German Federal Assembly Act, police are restricted from producing image or sound recordings of assembly participants where actual grounds do not exist to justifiably suspect that they pose a significant risk to order or national security, as well as if third parties will inevitably be affected. Thus, a prerequisite for image and sound recordings at assemblies and processions in open spaces is that there are “actual indications to justify the assumption that that there is considerable risk to public safety and order”.<sup>524</sup> Files must be deleted immediately after an assembly or related events, provided they are no longer needed for the investigation of participants in relation to a criminal offence or for an emergency response where a person is suspected of preparing or committing a criminal offence in connection with an assembly and if significant danger could result for future assemblies. When files are not

<sup>518</sup> *Guidelines, op. cit.*, note 1, para. 169.

<sup>519</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 74.

<sup>520</sup> *Guidelines, op. cit.*, note 1, para. 169.

<sup>521</sup> *Ibid.*, para. 169.

<sup>522</sup> Circular of 10 December 2009 on the Law of 21 March 2007 governing the installation and use of surveillance cameras, <<https://www.legislationline.org/topics/country/41/topic/15>>, para. 3.2.

<sup>523</sup> Written response from the Canadian authorities to ODIHR’s follow-up questions, 27 February 2019.

<sup>524</sup> Written response from the Hamburg authorities to ODIHR’s follow-up questions, 28 December 2018.

deleted for these reasons, the files must be deleted no later than three years after the assembly where they were recorded unless they are still needed for a criminal investigation.<sup>525</sup>

299. The Norwegian Police Act authorizes the police to use camera surveillance if necessary to carry out their duties, including maintaining public order. Considerations in favour of surveillance must outweigh privacy concerns. Surveillance includes continuous or regular repeated personal monitoring by remote or automatically activated surveillance cameras. Signs must denote that the area is being monitored.<sup>526</sup>
300. In the context of the G20 Summit, law-enforcement agencies introduced and used a system for face recognition (Videmo 360) and for identifying people responsible for riots, violent behaviour, looting, trespassing, and breaching the peace. The Hamburg police also confirmed that geodata was used to create movement profiles of suspects (FaceVAC).<sup>527</sup> The Hamburg Data Protection Officer has expressed concern over the use of the facial recognition system, noting that the collection of a large amount of data with the help of the system raises issues with respect to the right to privacy. According to the Data Protection Officer, the use of the noted system should be regulated by law, bearing in mind its possible implications on the right to privacy and due to the potential misuse of the technology in the future.<sup>528</sup>

*Conclusions and recommendations on photographing and video recording of assemblies by law-enforcement personnel*

301. In a considerable portion of the assemblies observed by ODIHR, law-enforcement personnel photographed and captured video recordings of assemblies and/or participants during the entire duration of the assembly or in a variety of contexts. Whereas transmitting video images and recordings of assemblies seems to be a widespread practice in the majority of the participating States where ODIHR observed assemblies, the legitimate purpose and specific conditions of use, including privacy and data protection guarantees, are not codified in many domestic laws regulating the exercise of freedom of peaceful assembly, such as in Canada or Lithuania. In this respect, the German Federal Assembly Law is a positive practice.
302. Participants at the assemblies observed by ODIHR did not appear to be informed about the details of any recording that may have taken place, namely whether only general images were transmitted from the assembly or recordings were being made where participants were identifiable, about the purpose of those recordings or about the procedures and policies for the

<sup>525</sup> Sections 12a and 19a, German Federal Assembly Act.

<sup>526</sup> Section 6, Norwegian Police Act.

<sup>527</sup> "G20-Gipfel: Polizei durchsucht zehntausende Dateien mit Gesichtserkennungssoftware", netzpolitik.org, 28 September 2017, <<https://netzpolitik.org/2017/g20-gipfel-polizei-durchsucht-zehntausende-dateien-mit-software-zur-gesichtserkennung/>>.

<sup>528</sup> "Einführung der automatisierten Gesichtserkennung beanstandet", website of the Hamburg Office for Data Protection and Freedom of Information, 31 August 2018, <<https://datenschutz-hamburg.de/pressemitteilungen/2018/08/2018-09-31-polhh-g20-videmo360>>

retention and processing of the data captured. In addition to the possible implications of these policies and practices on other human rights, such as the right to privacy, overly intrusive filming and photography at public assemblies by law-enforcement personnel, especially if coupled with the above-mentioned information gap and the already-described strict provisions banning the use of masks or other clothing or equipment that can prevent the identification of individuals at assemblies, can have a chilling effect on assembly participants.

303. The use of facial recognition technologies may involve the widespread and bulk monitoring, collection, storage, analysis or other use of material. In Hamburg, the massive use of the facial recognition system in the context of the G20 Summit has been criticized by the Data Protection Officer as being disproportionate interference with the right to privacy and informational self-determination, in addition to lacking a legal basis. According to ODIHR, the use of such technologies has to be based on law and governed by the principles of necessity and proportionality in order not to constitute indiscriminate mass surveillance, which is never a proportionate interference with the rights to privacy, freedom of expression, freedom of association and freedom of peaceful assembly. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has underscored that “[u]nder certain exceptional situations where states may limit the right to privacy for the purposes of administration of criminal justice or prevention of crime, [...] such measures must be in compliance with the international human rights framework, with adequate safeguards against abuse. This includes ensuring that any measure to limit the right to privacy is taken on the basis of a specific decision by a state authority expressly empowered by law to do so, and must respect the principles of necessity and proportionality.”<sup>529</sup>

#### 304. Recommendations for participating States

- to legally regulate the permissible purpose and basic conditions for overt filming and photography at public assemblies, as well as the related human rights guarantees;
- to develop and publish a detailed policy relating to the use of overt filming/photography at public assemblies, including a description of the purposes of such activities and the circumstances in which they may take place, as well as procedures and policies for the retention and processing of the resulting data, and to limit retention to the purpose of the recording and to ensure the deletion of data once it is no longer relevant for the purpose for which it was originally captured;
- to ensure that law-enforcement authorities always inform the public when they are, or may be, recording photographic and video materials during an assembly and about the collection, use and retention of data;
- to ensure that regulations on the use of facial recognition technologies (the purpose and

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<sup>529</sup> “Report to the Human Rights Council, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, UN Doc. A/HRC/17/27, para. 84; also see “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, paras. 76 and 78.

conditions of the use and retention of related data) are developed and made publicly available;

- to put in place mechanisms whereby individuals can ascertain whether, and if so what, information has been stored, and to provide individuals with access to an effective process for making complaints or seeking redress relating to the collection, retention and use of their personal information.

## ACCOUNTABILITY OF LAW-ENFORCEMENT PERSONNEL

### *Accountability for violations in the context of policing assemblies: international standards and good practice*

305. One of the main principles of democratic policing highlights the need for the police to be accountable to citizens. States have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly and thoroughly investigate allegations of human rights violations, including those related to assembly rights.<sup>530</sup> Effective investigation includes the following factors: an official investigation initiated by the state; independence from those allegedly implicated; capability of determining whether an act was justified in the circumstances; a level of promptness and reasonable expedition; and a level of public scrutiny.<sup>531</sup> States also have an obligation to provide those whose rights have been violated in the context of an assembly with an adequate, effective and prompt remedy determined by a competent authority with the power to enforce remedies.<sup>532</sup> The right to a remedy includes the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.<sup>533</sup>
306. The UN Special Rapporteur has emphasized that there is a need to ensure clear accountability mechanisms for any violations of human rights that may occur in relation to peaceful protests.<sup>534</sup> 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.<sup>535</sup> Law-enforcement officials should also be responsible for undue restrictions on the exercise of the

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<sup>530</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 77.

<sup>531</sup> European Court of Human Rights, *Isayeva v. Russia*, application No. 57950/00, 24 February 2005. Also see “Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns”, 1 April 2014, A/HRC/26/36, para. 80.

<sup>532</sup> See Human Rights Committee, general comment No. 31, para. 15. Also see the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<sup>533</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 89.

<sup>534</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 24, paras. 7, 54.

<sup>535</sup> *Guidelines, op. cit.* note 1, Explanatory Notes, para. 179.

freedom of peaceful assembly, and they should be accountable to an independent body.<sup>536</sup> The law should also provide for criminal and disciplinary sanctions against those who unduly interfere with or violently disperse public assemblies.<sup>537</sup>

307. Where a complaint is received regarding the conduct of law-enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the actions of law-enforcement officers, an effective official investigation must be conducted.<sup>538</sup> If the force used is not authorized by law, or if more force is used than is necessary under the circumstances, law-enforcement officers should face civil and/or criminal liability, as well as disciplinary action. The relevant law-enforcement personnel should also be held liable for failing to intervene where such intervention might have prevented other officers from using excessive force.<sup>539</sup> Liability should extend to commanding officers where they fail to exercise effective command and control. Where superior officers knew, or should have known, that law-enforcement officials under their command resorted to the unlawful use of force or firearms, and they did not take all measures in their power to prevent, suppress or report such use, they should also be held responsible.<sup>540</sup> Moreover, the planning of police operations has to be carried out in a way that minimizes the likelihood of the use of force. In this respect, the commanding officer is liable for the actions of officers on the front line if violations are the result of inadequate planning.<sup>541</sup>
308. In addition to guaranteeing accountability through judicial processes, states should implement additional levels of non-judicial oversight, including an effective internal investigations process and an independent oversight body.<sup>542</sup> These systems should operate in addition to, and not as an alternative to, criminal, public and private legal remedies for police misconduct.<sup>543</sup> The role of a dedicated civilian oversight body may be complemented by the work of a national human rights institution or ombudsman. It is a good practice for an independent oversight mechanism to review and report on any large-scale or contentious policing operation related to public assemblies. A police complaints mechanism should be established where none exists, with a range of potential resolutions at its disposal.<sup>544</sup>

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<sup>536</sup> *Ibid.*, para. 108.

<sup>537</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 78.

<sup>538</sup> See *McCann and Others v. The United Kingdom* (1995), para. 161; *Kaya v. Turkey* (1998), para. 105; *Kelly and Others v. The United Kingdom* (2001), para. 94, *Shanaghan v. The United Kingdom* (2001), para. 88; *Jordan v. The United Kingdom* (2001), para. 105; *McKerr v. The United Kingdom* (2001), para. 111; *McShane v. The United Kingdom* (2002), para. 94.

<sup>539</sup> *Guidelines*, *op. cit.* note 1, Explanatory Notes, para. 182.

<sup>540</sup> Principle 24 of the Basic Principles.

<sup>541</sup> *McCann and Others v. The United Kingdom*.

<sup>542</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 94.

<sup>543</sup> Council of Europe, Commissioner for Human Rights, “Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police”, 12 March 2009, para. 25.

<sup>544</sup> *Ibid.*, para. 180.

309. Another way in which the police may be held accountable in the policing of public assemblies is through the work of the media and through their ability to report, record, analyse and question police actions and motivations.<sup>545</sup> Independent monitoring of assemblies by civil society or NHRIs is an effective way to ensure full accountability of law enforcement agencies and therefore improve their legitimacy (for more information on the media, see Section IV).
310. To ensure accountability at all levels, law-enforcement personnel should be clearly and individually identifiable at all times while policing assemblies. They must display either their name or identification number on their uniform and/or headgear and must not remove or cover it or prevent people from reading it during an assembly.<sup>546</sup>
311. A clear and transparent police command structure must be established to minimize the risk of violence or the use of force and to ensure responsibility for unlawful acts or omissions by officers.<sup>547</sup> Proper record-keeping related to decisions made by commanding officers at all levels is also required. In addition, there should be a clear system of record-keeping or registration related to the equipment provided to individual officers in an operation, including vehicles, less-lethal weapons, firearms and ammunition.<sup>548</sup>

*Accountability for violations in the context of policing assemblies in selected participating States*

312. In Belgium, all police officers must be identifiable in all circumstances, including by name, and they must show identification when asked.<sup>549</sup> Norwegian police officers must carry a police ID during the execution of police duties.<sup>550</sup> The Code of Ethics for Quebec Police Officers requires that officers produce official identification when any person asks them to do so and that they carry prescribed identification in their direct relations with the public.<sup>551</sup> In Lithuania, police officers must identify themselves while performing official duties. In the event that a police officer does not have a police insignia, the officer must, upon request, present his or her official identification card.<sup>552</sup> In addition, the law prescribes that, while on duty, police officers must wear a uniform that bears their name and the insignia of their respective police force.<sup>553</sup> Law-enforcement officers are not individually identifiable in Italy. There is no matriculation number on their helmets or riot gear, and no names or position are

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<sup>545</sup> *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 13, p. 32.

<sup>546</sup> *Ibid.*, para. 153. Also see *Izci v. Turkey* (2013) and *Ataykaya v. Turkey* (2014) on the lack of identification of police officers involved in use of force.

<sup>547</sup> Principles 24–26 of the Basic Principles.

<sup>548</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 65.

<sup>549</sup> Article 41, Belgian Police Law.

<sup>550</sup> Section 5-4, Norwegian Police Instructions.

<sup>551</sup> Division II, Section 5, Code of Ethics for Quebec Police Officers.

<sup>552</sup> Article 35 (1), Lithuanian Law on Police.

<sup>553</sup> *Ibid.*, Article 28.



visible on their uniforms. Similarly, there are no legal provisions requiring individual identification of police officers in Hamburg.

313. ODIHR observed no individual identification numbers on police at the assemblies monitored in Belgium, Italy and Lithuania. In Hamburg, not all police officers had personal identification numbers displayed on their uniform, and the majority of law-enforcement personnel had only their unit number on the back of their riot police uniform. In Norway, all police officers had identification numbers visible on the front of their uniform. However, the dialogue police wore civilian clothes and were not identifiable as dialogue police. The monitoring teams could observe identification numbers on police officers' uniforms and/or helmets in Canada.
314. A number of visited countries have prescribed in their national legislation individual liability on the part of police officers for excessive use of force or any other misconduct. In Lithuania, police officers are personally liable for their own actions and decisions, and for the related consequences. Police officers who violate the requirements of law in the execution of their duties are, in accordance with the procedure established by law, subject to disciplinary, administrative, material or criminal liability depending on the nature of the violation. In addition, a police officer who knowingly executes an order or directive that is criminal or unlawful is not relieved of responsibility.<sup>554</sup> In Belgium, the state is liable for damages caused by the police in the performance of their duties, but individual police officers are liable for intentional or serious misconduct.<sup>555</sup> In addition, Individual police officers can also be held liable for misconduct that present a repetitive character. Violations of the conditions of legality, proportionality and necessity in the use of force may lead to legal and/or disciplinary proceedings.<sup>556</sup> The Canadian Criminal Code stipulates that everyone who is authorized by law to use force is criminally responsible for any excessive use of force.<sup>557</sup>
315. To enforce these provisions, several independent oversight mechanisms have been established, including in Belgium, Canada and Hamburg. Regrettably, Italy has not established any external independent police oversight body. The UN Human Rights Committee, in its recent concluding observations, noted the excessive use of force by the police and invited Italy to revise its national legislation to ensure that allegations of ill treatment and excessive use of force are thoroughly investigated even if the victim has not filed a complaint.<sup>558</sup>
316. The Standing Police Monitoring Committee (Committee P) in Belgium was set up in 1991 to monitor all police services (everyone entrusted with police powers) and intelligence services in Belgium. It is independent from the police and the executive and is directly answerable to

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<sup>554</sup> *Ibid.*, Article 28.

<sup>555</sup> "Comparative study on national legislation on freedom of peaceful assembly", *op. cit.*, note 59, p. 49.

<sup>556</sup> *Ibid.*

<sup>557</sup> Article 26, Canadian Criminal Code.

<sup>558</sup> "Concluding observations on the sixth periodic report of Italy", UN Human Rights Committee, 1 May 2017, para. 21.

the parliament. A special parliamentary commission is charged with follow-up to Committee P's activities. The commission can receive and examine complaints, investigate concerns, issue opinions and recommendations and monitor their implementation.<sup>559</sup> Committee P also engages in observing assemblies and other public events.

317. ODIHR was informed that each police organization in Canada has established external and independent processes to receive, investigate and record public complaints against its own members. In addition, these organizations adhere to strict codes of ethics that are imposed by the laws that regulate them. In Quebec, police officers' behaviour is governed by the Code of Ethics for Quebec Police Officers. Anyone may file a complaint to the commissioner or any police force in Quebec against police officers for violating the police code of ethics in the performance of their duties.<sup>560</sup> ODIHR was informed by the Canadian authorities that no complaints were received from the public or any other entity regarding police behaviour and actions during the G7 Summit.
318. In Hamburg, complaints against the police are received by the Internal Investigations Department (DIE), which is an institution independent of the police and is under the authority of the Department of the Interior and Sport (State Council). The DIE is responsible for, among other things, all offences and general misconduct that police officers are accused of in the course of the exercise of their duties. On the occasion of the G20 Summit, the DIE established a special commission with extra personnel called the DIE G20. At the time of the preparation of this report, the special commission had not yet completed its work.
319. In Norway, police misconduct and criminal offences are investigated by the Norwegian Bureau for the Investigation of Police Affairs. The Bureau was founded in 2005 for the purpose of investigating cases where employees of the police or prosecuting authority are suspected of committing criminal offences in the course of their duties. The Bureau is not part of the police; it is an independent body administratively subordinate to the Ministry of Justice and Public Security and professionally subordinate to the Director of Public Prosecutions.<sup>561</sup>
320. In several OSCE participating States where ODIHR monitored assemblies, national human rights institutions are active in the area of freedom of peaceful assembly and constitute an independent oversight mechanism. They can respond to individual complaints and can also act ex officio in this area. ODIHR met with the ombudspersons or their representatives in Lithuania and Norway.
321. The Norwegian NHRI is mandated to promote and protect human rights. Norway also has an ombudsman to safeguard the rights of individuals in their dealings with the public administration. Quebec's Commissaire à la déontologie policière accepts complaints against police officers. Complaints may be lodged against a Quebec police officer or any police officer acting in Quebec. The Canadian Human Rights Commission works to "foster

<sup>559</sup> Meeting with Committee P, 23 May 2017.

<sup>560</sup> Article 143, Quebec Police Act, updated 1 April 2018.

<sup>561</sup> *2018 Annual Report* (Hamar, Norway: Norwegian Bureau for the Investigation of Police Affairs, 2018), p. 32.

understanding and commitment to achieving a society where human rights are respected in everyday practices”.<sup>562</sup>

322. Germany has established the German Institute for Human Rights, while Lithuania has the Seimas Ombudsman, which has also been accredited as an NHRI. Regrettably, there is no NHRI in Italy, which creates fewer opportunities for independent police oversight. On a positive note, Italy established, in 2016, the Guarantor for the Rights of Persons Deprived of Liberty (*Garante nazionale dei diritti delle persone detenute o private della libertà personale*), which works to protect the rights of individuals deprived of their liberty. Among other duties, this institution accepts and investigates individual complaints against law-enforcement authorities submitted from places of detention.<sup>563</sup>
323. In order to ensure accountability, the organizers of some assemblies engaged with legal observers to facilitate any potential complaints regarding police abuse by assembly participants and to provide legal advice in case of need. Legal observers accompanied the march on 27 May 2017 in Giardini Naxos. Parliamentary observers associated with the Die Linke party observed assemblies in the context of the G20 Summit in Hamburg.

*Conclusions and recommendations on accountability for violations in the context of policing assemblies*

324. The work of the various ombudsperson institutions as independent oversight mechanisms is commendable, as NHRIs that comply with the principles related to the status of national institutions for the promotion and protection of human rights (Paris Principles) can play a vital role in fostering and monitoring the implementation of the right to freedom of peaceful assembly. In this context, having an independent oversight body with full investigative powers to respond to complaints, such as in Norway, is a positive practice.
325. The practice whereby police officers facilitating assemblies were not clearly and individually identifiable at the outset, such as was observed by ODIHR in Belgium, Germany, Italy and Lithuania, is not in compliance with internationally accepted good practice.
326. The presence of independent media and assembly monitors might also contribute to better oversight. Therefore, their work should be proactively facilitated to enable them to freely document, record and share information on the policing of assemblies (see Section IV for more details).
327. Recommendations for participating States:
- to establish accessible and effective accountability mechanisms—if they do not already exist—that are able to independently, promptly and thoroughly investigate allegations of

<sup>562</sup> Canadian Human Rights Commission, <<http://cfnhri.org/members/americas/canada>>.

<sup>563</sup> For more information, see the website of the Garante nazionale dei diritti delle persone detenute o private della libertà personale, <<http://www.garantenazionaleprivatiliberta.it/gnpl/>>.

human rights violations or abuses by law-enforcement officials in the context of policing assemblies;

- to promptly, impartially and effectively investigate any allegations of abuse or violation of protesters' rights by law-enforcement officials, and, in the absence of an express complaint, whenever there are reasonable grounds to believe that such an abuse or rights violation has taken place, the investigation must be capable of identifying and bringing to justice those responsible, with penalties commensurate with the gravity of the violation;
- to ensure that those who violate and/or abuse the rights of individuals to freedom of peaceful assembly are held fully accountable; to this end, to ensure that law-enforcement officers are easily and clearly identifiable at all times while policing assemblies (including when wearing protective or other special gear);
- to facilitate the work of independent NHRIs to receive and investigate allegations of human rights violations and abuses in the context of assemblies and to monitor the implementation of the right to freedom of peaceful assembly;
- to enhance monitoring and peer review of the policing of assemblies by law-enforcement personnel and to explore possibilities for international co-operation and the exchange of good practices in this regard.

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

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

328. OSCE participating States have committed to ensuring that everyone can enjoy the freedom of expression and to respecting the right of everyone, individually or in association with others, to freely seek, receive and impart views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information (Copenhagen 1990). The freedom of expression, including the right to information, is protected in numerous international human rights instruments, such as the ICCPR (Article 19) and the ECHR (Article 10).
329. Human rights defenders and journalists have an important role to play in providing independent, impartial and objective coverage of demonstrations and protests, including a factual record of the conduct of participants and law-enforcement officials alike.<sup>564</sup> The monitoring of public assemblies provides a vital source of independent information on the activities of both participants and law-enforcement officials that may be used to inform public debate and serve as the basis for dialogue between state and local authorities, law-enforcement officials and civil society.<sup>565</sup> In this regard, the European Court of Human Rights has affirmed that the public has a right to be informed about public assemblies taking place and how they unfold.<sup>566</sup>
330. The right to monitor public assemblies is part of the more general right to seek and receive information, which is a corollary to the right to freedom of expression and therefore protected by international human rights norms.<sup>567</sup> The freedom to monitor public assemblies should be guaranteed not only to all media representatives, including so-called citizen journalists,<sup>568</sup> but also to other members of civil society, such as human rights activists.<sup>569</sup>
331. Independent monitoring is often carried out by intergovernmental organizations, NHRIs or NGOs. Such individuals and groups should, therefore, be permitted to operate freely in the context of monitoring freedom of assembly.<sup>570</sup> ODIHR's *Guidelines on the Protection of Human Rights Defenders* affirm that "human rights defenders and their organizations play a

<sup>564</sup> *Guidelines, op. cit.*, note 1, Principles 5.9 and 5.10; "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", A/HRC/20/27, *op. cit.*, note 24, para. 48.

<sup>565</sup> *Guidelines, op. cit.*, note 1, para. 5.9.

<sup>566</sup> *Najafli v. Azerbaijan* (2594/07), European Court of Human Rights First Section (2012), para. 66.

<sup>567</sup> "Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies", A/HRC/31/66, *op. cit.*, note 2, para. 68.

<sup>568</sup> Citizen journalism is intended here as the activity of citizens who do not work for the mainstream media but who collect, report, analyse and disseminate news and information.

<sup>569</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 199.

<sup>570</sup> *Ibid.*, para. 201.

crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies”.<sup>571</sup>

332. As the UN Special Rapporteur has emphasized, the right to peaceful assembly not only covers the right to hold or participate in an assembly, but it also protects the rights of those monitoring peaceful assemblies.<sup>572</sup> He has, therefore, called on states to ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies<sup>573</sup> and to respect and facilitate the right to observe and monitor all aspects of an assembly.<sup>574</sup> The Special Representative of the UN Secretary-General on the situation of human rights defenders has called on states to allow human rights defenders to operate freely in the context of assemblies in order to enable them to perform their monitoring role.<sup>575</sup> The UN Human Rights Council also recently recognized the importance of documenting human rights violations and abuses committed in the context of peaceful protests, as well as the role that can be played by NHRIs, civil society, journalists and other media workers, Internet users and human rights defenders in this regard.<sup>576</sup>
333. In addition, OSCE commitments require participating States to seek ways to further strengthen modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions; to facilitate visits to their countries by NGOs from any of the participating States in order to observe human dimension conditions; to welcome NGO activities; and to observe compliance with commitments in the field of the human dimension and to allow NGOs, in view of their important function within the human dimension, to convey their views to their own governments and the governments of all the other participating States during the future work of the OSCE on the human dimension (Moscow 1991).
334. The role of the media is to impart information and ideas on matters of public interest, information that the public also has a right to receive.<sup>577</sup> The media also have a very important role to play in providing independent coverage of public assemblies.<sup>578</sup> Media reports and

<sup>571</sup> *Guidelines on the Protection of Human Rights Defenders* (Warsaw: OSCE/ODIHR, 2014),

<[www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders](http://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders)>, para. 62.

<sup>572</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, Summary.

<sup>573</sup> *Ibid.*, para. 94.

<sup>574</sup> Subject to the narrow permissible restrictions outlined in Article 19(3) of the ICCPR. See “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 70. Moreover, the African Commission on Human and Peoples’ Rights has stated that the right to monitor the observance of human rights in a given society includes the right to engage in active observation of an assembly and to collect, verify and use information related to the assembly.

<sup>575</sup> “Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani”, United Nations General Assembly, A/62/225, 13 August 2007, paras. 91, 101(f)(i).

<sup>576</sup> “The promotion and protection of human rights in the context of peaceful protests”, resolution adopted by the United Nations Human Rights Council, A/HRC/RES/38/11, 6 July 2018.

<sup>577</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 206.

<sup>578</sup> *Ibid.*, para. 207.

footage provide a key element of public accountability for both event organizers and law-enforcement officials. As such, representatives of the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.<sup>579</sup> As the OSCE Representative on Freedom of the Media has pointed out, “uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech”.<sup>580</sup>

335. The right of journalists to have access to public assemblies and to cover them without hindrance is closely connected with both the freedom of peaceful assembly and the freedom of speech. The UN Human Rights Committee has acknowledged that journalists’ participation in a public event organized by a third party is protected by the freedom of expression.<sup>581</sup> Media have the right to collect information of public significance, but they also broadcast the messages of assembly participants for the benefit of the public at large.
336. Engaging with the media is also an important means for the police to communicate with the wider public and can serve as a means of sharing information about the ways police intend to ensure that an assembly takes place peacefully.<sup>582</sup>
337. The UN Special Rapporteur has also highlighted that everyone—whether a participant, monitor or observer—enjoys the right to record an assembly, which also includes the right to record a law-enforcement operation. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.<sup>583</sup>

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

338. In most of the participating States included in this monitoring exercise, there is no long-established practice of independent assembly monitoring. Committee P in Belgium is often present at and observes assemblies and other public events based on its established methodology. It reports its findings, such as on the use of force, to the parliament.<sup>584</sup> In Germany, court decisions have established the rights of observers, including the right to document police abuses. The police are not authorized to take action against observers as long as the observers do not interfere in the work of the police. A 2009 decision by the Federal Constitutional Court granted observers the right to compensation when they have been

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<sup>579</sup> *Ibid.*, para. 208.

<sup>580</sup> “Special Report: Handling of the media during political demonstrations: Observations and Recommendations”, OSCE Representative on the Freedom of the Media, 21 June 2007, <<http://www.osce.org/fom/25744>>.

<sup>581</sup> *Pranevich v. Belarus*, 2251/07, para. 6.3,

<sup>582</sup> *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 13, p. 33.

<sup>583</sup> “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, *op. cit.*, note 2, para. 71.

<sup>584</sup> Meeting with Committee P on 23 May 2017, Brussels.

unlawfully detained.<sup>585</sup>

339. During their monitoring deployments, ODIHR observers generally did not experience restrictions on their ability to observe assemblies or to gather information. ODIHR acknowledges that Italy and Germany have facilitated its assembly-monitoring work twice in the past six years, and ODIHR received an invitation from the Hamburg authorities to conduct an assembly-monitoring exercise in the context of the G20 Summit in July 2017.
340. In the vast majority of cases, ODIHR was able, both before and after assemblies, to secure the meetings it had requested with state officials in the participating States where monitoring was conducted. Co-operation and the exchange of information were usually good or very good. An exceptionally high degree of openness and co-operation was noted in meetings with the authorities in Hamburg, Germany, and in Brussels, Belgium.
341. In Hamburg, the monitoring preparations were greatly facilitated by a preparatory meeting and by the advance delivery of materials by the OSCE/G20 Co-ordination Unit of the Senate of the Free and Hanseatic City of Hamburg – Senate Chancellery (OSZE/G20-Stab, Senat der Freien und Hansestadt Hamburg – Senatskanzlei). Moreover, the ODIHR monitoring team was able, at very short notice, to visit a detention facility temporarily established in Hamburg for the period of the G20 Summit. In Belgium, the police issued special cards to allow ODIHR monitors to access restricted areas.
342. Forty-three observers from the Committee for Fundamental Rights and Democracy (Komitee für Grundrechte und Demokratie) monitored the assemblies that took place in the context of the G20 Summit in Hamburg. The main findings of the monitoring were released and presented in August 2017.<sup>586</sup>
343. The G7 Summit-related assemblies in Quebec City and La Malbaie, Canada, were also independently monitored by three observers appointed by Canada's Minister of Public Security and by a joint observation mission from the Ligue des droits et libertés (LDL) and Amnesty International (AI). The mandate of the independent observers appointed by the Minister of Public Security involved an examination of the work of law-enforcement officers in maintaining and restoring public order, police interventions and the treatment of individuals arrested in the context of the assemblies. Their work was facilitated by the issuance of special ID cards and by providing access to the media room of the civil protection office at the Ministry of Public Security in order to follow media coverage of the events. The observers reported on 14 observation activities they carried out under a mandate that facilitated their work in general, but they were hindered by the fact that they could not cross security perimeters erected by riot police deployed during demonstrations and therefore could

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<sup>585</sup> Free Development of One's Personality (1 BvR 2853/08 - Rn. (1-27), Bundesverfassungsgericht, 11 November 2009.

<sup>586</sup> "Geschichte der Eskalation eines einwöchigen Protestgeschehens", Komitee für Grundrechte und Demokratie, August 2017, <[http://www.grundrechtekomitee.de/sites/default/files/G20\\_Protest.pdf](http://www.grundrechtekomitee.de/sites/default/files/G20_Protest.pdf)>.



not observe certain police interventions.<sup>587</sup> In addition, their mandate excluded interaction with detainees at temporary detention facilities in Quebec City and La Malbaie, which limited information-gathering opportunities that were necessary in order to assess the treatment of detainees.<sup>588</sup> The observers' report (written in French) was published on the website of the Minister of Public Security and was also translated into English.

344. The stated objectives of the monitoring mission conducted by the LDL and AI were to observe, record and assess how the freedom of peaceful assembly was facilitated by the authorities and to prevent—by means of the visible presence of monitors—possible human rights abuses in the context of G7 Summit-related protests. The monitors were deployed in Quebec City and La Malbaie and also carried out observation activities at operational centres for the treatment of offenders (temporary detention facilities) and at a detention facility in Quebec City. Their monitoring work was facilitated by the appointment of a liaison officer at the Ministry of Public Security of Quebec to help communication between the observer team and the law-enforcement authorities. In addition, the observer team met with law-enforcement officials and conducted a number of telephone and email exchanges in advance of the G7 Summit. The monitoring was hindered, however, by the fact that the observers were not allowed to interview detainees at the above-mentioned operational centres regarding the treatment of offenders and the conditions of their detention.<sup>589</sup> The observers also complained about the refusal on the part of the police authorities to provide information about the rules of engagement regarding the use of force by the police, and they reported on instances of the use of force and threats thereof against some members of the observer team.<sup>590</sup> The assessment report was published in September 2018.

345. Most of the assemblies ODIHR observed, such as those in Belgium, Canada, Germany and Italy, were extensively covered by the media and citizen journalists. During most of its assembly-monitoring exercises, ODIHR did not directly observe any restrictions imposed by state agents on the professional activities of journalists. However, AI and LDL observers reported on instances of intimidation of journalists by police officers in the context of the G7 Summit in Canada.<sup>591</sup> In the context of the G20 Summit in Hamburg, nine journalists reportedly filed lawsuits against the Federal Press Office over the withdrawal of accreditation to the G20 summit.<sup>592</sup>

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<sup>587</sup> “Observation Report on the Security Measures Deployed in Québec During Citizens’ Activities at the G7 Summit in La Malbaie”, 24 July 2018, <[https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/police/publications/rapport\\_dobservation\\_g7\\_angl\\_ais.pdf](https://www.securitepublique.gouv.qc.ca/fileadmin/Documents/police/publications/rapport_dobservation_g7_angl_ais.pdf)>.

<sup>588</sup> *Ibid.*

<sup>589</sup> “Manifester sous intimidation : Rapport de mission d’observation du G7”, Ligue des droits et libertés and Amnesty International, September 2018, <<https://amnistie.ca/sites/default/files/upload/documents/publications/rapport-g7-web-format-page.pdf>>.

<sup>590</sup> *Ibid.*

<sup>591</sup> *Ibid.*

<sup>592</sup> “G20: Warum wurden Journalist\*innen Akkreditierenden entzogen?”, Grundrechte Verteidigen website, <<http://grundrechte-verteidigen.hamburg/2017/08/19/g20-warum-wurden-journalistinnen-akkreditierenden-entzogen/>>.

346. The Integrated Security Unit in Canada supported the work of journalists by holding information and technical briefings, establishing special telephone lines and social media accounts to facilitate media inquiries and granting accreditation to provide access to designated Summit sites.<sup>593</sup> In Hamburg, a special Press Office was created to handle information queries during the G20 Summit, which included mobile teams at Summit venues or within close proximity thereof. In addition, a special deployment manual prepared for all police officers involved in the G20 Summit contained guidelines on how to treat representatives of the press.<sup>594</sup>

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

347. In line with their OSCE commitments, Belgium, Canada, Germany, Italy, Lithuania and Norway facilitated ODIHR's assembly-monitoring exercises by providing access to official interlocutors, as well as by supplying additional information when requested. ODIHR considers the invitation from the Hamburg authorities to carry out an assembly-monitoring exercise in Hamburg in the context of the G20 Summit an important acknowledgement of its monitoring work and an assistance tool that can help states achieve better compliance with international standards and OSCE commitments in the area of freedom of peaceful assembly.

348. The creation by Canada's Minister of Public Security of an ad hoc monitoring mandate for independent monitoring of the enjoyment of the freedom of peaceful assembly in the context of the G7 Summit is a positive practice. However, the monitors deployed by the committee faced obstacles in fully carrying out their mandate. The facilitation of the independent observation of assemblies by participating States and the promotion of the role of independent monitoring of public gatherings as an accountability mechanism is a good practice in line with OSCE commitments that should be promoted. However, authorities have to ensure that independent observers do not face impediments while carrying out their activities.

349. Allowing unhindered access to journalists and monitors during assemblies and enabling them to document and report on the interaction between assembly participants, police forces and others is an important corollary of OSCE commitments and other human rights standards on freedom of peaceful assembly, freedom of expression and freedom of the media. It is positive that ODIHR did not, in the course of its monitoring, directly observe any significant impediments to the work of journalists in the vast majority of participating States where monitoring took place. However, the work of the media could have been better facilitated in Hamburg in the context of the G20 Summit and in Quebec City in the context of the G7 Summit. States should ensure that journalists and assembly monitors have access to assemblies, so that they can operate effectively and so that their work is facilitated rather than obstructed. As highlighted by the UN Special Rapporteur, human rights defenders, journalists and monitors should be allowed—and indeed encouraged—to operate freely in the context of freedom of assembly, so as to provide an impartial and objective account, including a factual

<sup>593</sup> Written response from the Canadian authorities to ODIHR's follow-up questions, 27 February 2019.

<sup>594</sup> Written response from the German authorities to ODIHR's follow-up questions, 28 December 2019.

record, of the conduct of demonstrators and law enforcement.<sup>595</sup> Monitoring of assemblies by journalists or members of civil society, such as human rights defenders, should be respected, facilitated and protected.

350. ODIHR received no confirmation from either the Canadian or the German authorities of whether due consideration was given to the findings and recommendations resulting from the monitors' assessment of the facilitation of assemblies. ODIHR recommends that such consideration be given in order to inform institutional learning and to make the facilitation of assemblies more human rights-compliant.

351. Recommendations for participating States:

- to recognize and raise awareness about the important contribution of independent monitoring to the full enjoyment of the freedom of peaceful assembly;
- to actively facilitate the independent monitoring of, and reporting on, the facilitation of assemblies and protection of the freedom of peaceful assembly by international and local observers, including by:
  - refraining from imposing unnecessary or disproportionate restrictions on assembly-monitoring activities and ensuring that any restrictions that may be imposed on monitored assemblies do not limit the ability of international or local monitors to carry out their activities without impediments and to observe all aspects of an assembly, such as during curfews, dispersals or arrests;
  - ensuring that assembly monitors are able to photograph or otherwise record actions and activities at public assemblies, including law-enforcement operations or individual law-enforcement officials; that such video or audio recordings cannot be confiscated, seized and/or destroyed without due process; and that they can be used as evidence in relevant disciplinary, administrative or criminal proceedings;
  - demonstrating willingness on the part of state authorities to engage with monitors before, during and after an assembly, where such engagement is sought, and to give due consideration to the findings and recommendations resulting from their assessment of the facilitation of assemblies so as to inform institutional learning and, more broadly, in the drafting of legislation and policies affecting the enjoyment of freedom of peaceful assembly;
  - facilitating information gathering by NHRIs or other relevant independent oversight or monitoring bodies or civil society organizations working in the area of freedom of assembly about any anticipated assembly;

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<sup>595</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 24, para. 48.

- to ensure that both traditional and citizen journalists are able to provide coverage of public assemblies, including the actions of law-enforcement personnel, without official hindrance;
  
- to facilitate ODIHR's independent assembly monitoring, including by:
  - issuing a standing invitation to ODIHR to carry out independent assembly monitoring in participating States and to observe assemblies on the basis of ODIHR's established methodology, without prejudice to ODIHR's responsibility to select the events to be monitored;
  
  - engaging with ODIHR with a view to giving due consideration to its assembly-monitoring findings and to implementing its recommendations, including by taking advantage of ODIHR tools and assistance in the area of freedom of peaceful assembly;
  
  - supporting ODIHR in building the capacity of civil society organizations, NHRIs and OSCE field operations regarding the independent monitoring of public assemblies based on ODIHR's established observation methodology and in raising awareness among state bodies and authorities about how to effectively facilitate the work of independent assembly monitors.

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

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

6. The Ministers agreed that monitoring and promoting progress in the human dimension remains a key function of the CSCE.

[...]

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

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

[...]

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

[...]

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

### **Helsinki 1992**

#### **VI The Human Dimension**

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

[...]

ODIHR will, as the main institution of the Human Dimension:

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

by:

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

[...]

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

[...]

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

## **Stockholm 1992**

### *Decisions*

(2) The Ministers welcomed the strengthened role of the Office for Democratic Institutions and Human Rights and the appointment of the High Commissioner on National Minorities as especially useful steps towards integrating the human dimension more fully into the political consultations and concerted action of the participating States [...]

Compliance with CSCE commitments is of fundamental importance. Monitoring of compliance provides governments of participating States with crucial information on which they can formulate policy [...].”

## **Rome 1993**

### 4. Office for Democratic Institutions and Human Rights

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

[...]

- receiving information provided by NGOs having relevant experience in the human

dimension field;

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

### **Budapest 1994**

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

[...]

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

#### *Role of the ODIHR*

8. The ODIHR, as the main institution of the human dimension, in consultation with the Chairman-in-Office, will, acting in an advisory capacity, participate in discussions of the Senior Council and the Permanent Council, by reporting at regular intervals on its activities and providing information on implementation issues. It will provide supporting material for the annual review of implementation and, where necessary, clarify or supplement information received. Acting in close consultation with the Chairman-in-Office, the Director of the ODIHR may propose further action.

### **Oslo 1998**

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

### **Istanbul 1999**

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

### **Bucharest 2001**

22. ODIHR: Will provide continued advice to participating States, at their request, on strengthening domestic legal frameworks and institutions that uphold the rule of law, such as law enforcement agencies, the judiciary and the prosecuting authorities, bar associations and defence attorneys.

### **Maastricht 2003**

#### **I. OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century**

[...]

41. Full use will be made of ODIHR's monitoring capacity, and operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis will be promoted in order to have the fullest picture of developments. This will enable the OSCE to efficiently target work towards areas of highest priority.

#### *VI. Follow-up and co-ordinating mechanisms*

Besides monitoring the implementation of the OSCE commitments by participating States through existing OSCE mechanisms, including the annual Human Dimension Implementation Meeting, Review Conferences and relevant human dimension events, The Permanent Council [...]

9. Tasks the ODIHR with the further development of its clearing-house function for the exchange of information, contacts, materials and good practices and with the enhancement of its project activities.

### **Helsinki 2008**

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



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

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

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

[...]

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

- establish and maintain freely accessible places of worship or assembly

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

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

### **OSCE Copenhagen Document 1990**

The participating States reaffirm that:

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

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

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

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

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

### **Helsinki 2008**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

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

#### **Article 2**

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

#### **Article 3**

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

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

#### **Principle 4**

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

#### **Principle 5**

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

affected person are notified at the earliest possible moment.

### **Principle 9**

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

### **Principle 12**

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

### **Principle 13**

In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

### **Principle 14**

In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

## **MAIN REGIONAL TREATIES AND DECLARATIONS**

### **European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

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

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

**Framework Convention for the Protection of National Minorities, Article 7**

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly....

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

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

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

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

**ANNEX 4: ASSEMBLIES MONITORED BY ODIHR BETWEEN 24 MAY 2017 AND  
9 JUNE 2018**

| <b>No.</b> | <b>Date</b> | <b>Participating State</b> | <b>City</b>    | <b>Type of event</b>  | <b>Short description</b>   |
|------------|-------------|----------------------------|----------------|---|--|
| 1          | 24/5/2017   | Belgium                    | Brussels       | Protest against the US president's visit                      | A march with about 9,000 participants  |
| 2          | 24/5/2017   | Belgium                    | Brussels       | Rally in support of the president of Turkey                   | A prohibited static assembly with about 100 participants, facilitated by the police          |
| 3          | 25/5/2017   | Belgium                    | Brussels       | Protest against the NATO summit                               | A static assembly with about 35 participants   |
| 4          | 25/5/2017   | Belgium                    | Brussels       | Protest against the NATO Summit                               | An unauthorized direct action protest with about 70 participants that ended in a mass arrest |
| 5          | 26/5/2017   | Italy                      | Giardini Naxos | Migrant solidarity rally                                      | A static assembly with about 40 participants   |
| 6          | 26/5/2017   | Italy                      | Giardini Naxos | Protest against the G7 Summit and in solidarity with migrants | A static assembly with about 70 participants   |
| 7          | 27/5/2017   | Italy                      | Giardini Naxos | Protest against the G7 Summit                                 | A static assembly with about 15 participants   |
| 8          | 27/5/2017   | Italy                      | Giardini Naxos | Protest against the G7 Summit                                 | A march with about 1,000 participants  |
| 9          | 2/7/2017    | Germany                    | Hamburg        | Protest against the G20 Summit                                | A march with about 80 participants   |
| 10         | 2/7/2017    | Germany                    | Hamburg        | Protest against the G20 Summit                                | A march with about 10,000 participants ending in a static assembly                           |
| 11         | 2/7/2017    | Germany                    | Hamburg        | Protest against the G20 Summit                                | An unannounced static assembly with about 25 participants that ended in a mass arrest        |

| <b>No.</b> | <b>Date</b> | <b>Participating State</b> | <b>City</b> | <b>Type of event</b>  | <b>Short description</b>  |
|------------|-------------|----------------------------|-------------|---|---|
| 12         | 5/7/2017    | Germany                    | Hamburg     | Protest against the US president  | A march with about 300 participants   |
| 13         | 5/7/2017    | Germany                    | Hamburg     | Protest against the G20 Summit  | A march with about 20,000 participants  |
| 14         | 6/7/2017    | Germany                    | Hamburg     | Protest against the G20 Summit  | A march with about 12,000 people that was interrupted by clashes between the police and some participants and that continued afterwards along a changed route |
| 15         | 7/7/2017    | Germany                    | Hamburg     | Protest about the current state of the educational system   | A march with about 3,000 participants   |
| 16         | 7/7/2017    | Germany                    | Hamburg     | Protest against the G20 Summit  | A static assembly with about 80 participants  |
| 17         | 8/7/2017    | Germany                    | Hamburg     | Protest against the G20 Summit  | A march with about 300 participants   |
| 18         | 8/7/2017    | Germany                    | Hamburg     | Protest against the G20 Summit  | A march with about 10,000 participants  |
| 19         | 8/7/2017    | Germany                    | Hamburg     | Protest against the G20 Summit  | A march with about 75,000 participants  |
| 20         | 1/5/2018    | Norway                     | Oslo        | May Day demonstration   | A static assembly and a march with about 7,000 participants   |
| 21         | 1/5/2018    | Norway                     | Oslo        | May Day demonstration   | A static assembly with 14 participants (no notification submitted to the authorities)   |
| 22         | 16/5/2018   | Lithuania                  | Vilnius     | Assembly organized in the course of a festival in celebration of International Day against Homophobia, Biphobia and Transphobia | A static assembly with about 100 participants   |
| 23         | 19/5/2018   | Lithuania                  | Vilnius     | Assembly organized in the course of   | A moving assembly organized on a bus with about 50 participants, some   |

| <b>No.</b> | <b>Date</b> | <b>Participating State</b> | <b>City</b> | <b>Type of event</b>  | <b>Short description</b>   |
|------------|-------------|----------------------------|-------------|---|--|
|            |             |                            |             | a festival in celebration of International Day against Homophobia, Biphobia and Transphobia | of whom got off at symbolic bus stops in the city  |
| 24         | 7/6/2018    | Canada                     | Quebec City | Protest against the G7 Summit   | A march with about 550 participants  |
| 25         | 8/6/2018    | Canada                     | Quebec City | Protest against the G7 Summit   | An unnotified static assembly and a short march with about 80 participants that was declared illegal |
| 26         | 8/6/2018    | Canada                     | Quebec City | Protest against the G7 Summit   | A static assembly with about 110 participants  |
| 27         | 9/6/2018    | Canada                     | La Malbaie  | Protest in relation to the G7 Summit  | A static assembly with 13 participants   |
| 28         | 9/6/2018    | Canada                     | La Malbaie  | Counterdemonstration against a right-wing protest   | A static assembly with four participants   |
| 29         | 9/6/2018    | Canada                     | Quebec City | Protest against the G7 Summit   | A march with about 500 participants  |



**ANNEX 5: TABLE OF THE PARTICIPATING STATES WHERE ODIHR  
MONITORED ASSEMBLIES IN THE THIRD MONITORING CYCLE**

| <b>State</b> | <b>Place(s)</b>         | <b>Month and Year</b>       | <b>Number of Monitored Assemblies</b> |
|--------------|-------------------------|-----------------------------|---------------------------------------|
| Belgium      | Brussels                | May 2017                    | 4                                     |
| Italy        | Giardini Naxos          | May 2017                    | 4                                     |
| Germany      | Hamburg                 | July 2017                   | 11                                    |
| Norway       | Oslo                    | May 2018                    | 2                                     |
| Lithuania    | Vilnius                 | May 2018                    | 2                                     |
| Canada       | Quebec City, La Malbaie | June 2018                   | 6                                     |
|              |                         | <b>May 2017 – June 2018</b> | <b>29</b>                             |

## ANNEX 6: ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY

ODIHR has developed a range of tools and expert networks to support participating States in implementing their commitments related to the freedom of peaceful assembly. The following is an overview of the ODIHR toolbox to aid the work of state authorities, legislators and civil society in OSCE participating States.

| <b>ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY</b> |  |
|--|--|
| <b>TOOL</b>  | <b>DESCRIPTION</b>   |
| <b>Legislative review</b>  | Upon request, ODIHR provides legal reviews of respective draft and existing legislation in OSCE participating States. Reviews are usually published in co-operation with the Council of Europe's Venice Commission and supported by input from the ODIHR Panel of Experts on Freedom of Peaceful Assembly, which was officially established in 2006. These legal reviews often entail follow-up discussions with relevant national stakeholders. All opinions are available at <a href="http://www.legislationline.org/topics/topic/15">http://www.legislationline.org/topics/topic/15</a> .   |
| <b><i>Guidelines on Freedom of Peaceful Assembly</i></b>         | <i>Guidelines on Freedom of Peaceful Assembly</i> (Warsaw and Strasbourg: ODIHR and Venice Commission, 2010, 2nd edition), < <a href="http://www.osce.org/odihr/73405">http://www.osce.org/odihr/73405</a> >. <i>The Guidelines</i> are informed by the relevant jurisprudence, particularly the case law of the European Court of Human Rights and of national constitutional courts. <i>The Guidelines</i> also provide examples of good practice where states have demonstrated viable solutions while regulating freedom-of-assembly issues: they are also a useful tool for legislatures to review existing or draft legislation pertaining to freedom of assembly; they provide tools for national and local authorities, as well as law-enforcement agencies that are tasked with regulating this freedom. They have been referred to by the courts and also used as an advocacy tool by non-governmental organizations and a resource tool for monitoring and training activities. |
| <b>Assembly monitoring</b>                                       | In line with its mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been  |

|   |   |
|---|---|
|   | <p>monitoring public assemblies across the OSCE space since 2011. The reports of the previous three monitoring cycles covering assembly-monitoring exercises in 27 OSCE participating States were published in November 2012 (<a href="http://www.osce.org/odihr/97055">http://www.osce.org/odihr/97055</a>), December 2014 (<a href="http://www.osce.org/odihr/132281?download=true">http://www.osce.org/odihr/132281?download=true</a>) and December 2016 (<a href="https://www.osce.org/odihr/289721?download=true">https://www.osce.org/odihr/289721?download=true</a>).</p>  |
| <p><b>Capacity-building in independent monitoring of assemblies</b></p>                                     | <p>Recognizing the need to build the capacity of non-governmental organizations and human rights defenders to independently monitor and report on the policing of assemblies, ODIHR published a <i>Handbook on Monitoring Freedom of Peaceful Assembly</i> in 2011 (<a href="http://www.osce.org/odihr/82979?download=true">http://www.osce.org/odihr/82979?download=true</a>) and has conducted several training courses on independent assembly-monitoring techniques for OSCE staff and civil society.</p>   |
| <p><b>Capacity-building for law-enforcement actors on human rights-compliant policing of assemblies</b></p> | <p>ODIHR, in collaboration with the OSCE’s Strategic Police Matters Unit, has published a <i>Human Rights Handbook on Policing Assemblies</i>. The handbook is a tool for law-enforcement officials and commanders with key information on upholding human rights standards in the context of assemblies and public-order management. It can be accessed at <a href="http://www.osce.org/odihr/226981?download=true">http://www.osce.org/odihr/226981?download=true</a>. ODIHR has also developed a training curriculum on the basis of the handbook for police commanders on how to facilitate assemblies in a human rights-compliant way.</p> |