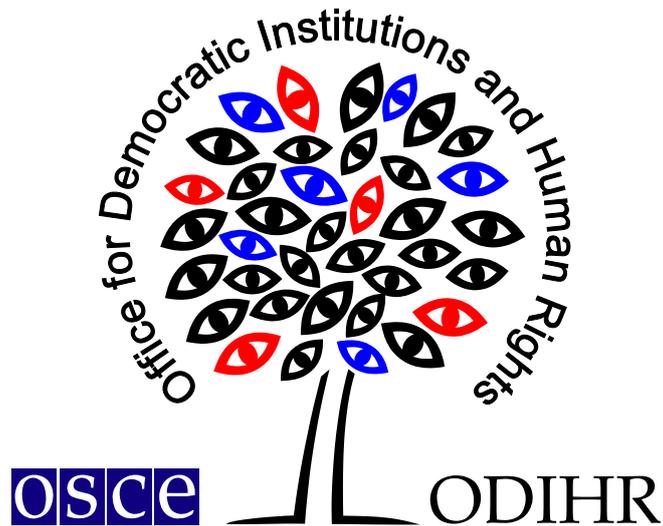


OSCE
Office for Democratic Institutions and Human Rights

Report
Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States
(April 2015 – July 2016)



Warsaw
16 December 2016

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LIST OF ABBREVIATIONS

CCTV	Closed-circuit television
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
GFCC	German Federal Constitutional Court
GODIAC	Good Practice for Dialogue and Communication
IAIACAP	Independent Authority for the Investigation of Allegations and Complaints against the Police (Republic of Cyprus)
ICCPR	International Covenant on Civil and Political Rights
IHREC	Irish Human Rights and Equality Commission
KOD	Committee for the Defence of Democracy (Polish political party)
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
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
PESEL	Powszechny Elektroniczny System Ewidencji Ludności (national identification number used in Poland)
SPMU	Strategic Police Matters Unit
SWAT	Special Weapons and Tactics (special law enforcement units)
UN	United Nations
ZAP	Zespół Antykonfliktowy Policji – Anti-Conflict Police in Poland

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 April 2015 and July 2016 in line with ODIHR's 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 freedom of peaceful assembly. The recommendations contained in this report are aimed at advancing the implementation of these commitments in all OSCE participating States, not just those where ODIHR monitored assemblies.
2. ODIHR is the main OSCE institution concerned with the human dimension of security, 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 arise out of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as the case law of the European Court of Human Rights (ECtHR). The report uses the *Guidelines on Freedom of Peaceful Assembly*,¹ 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 15 April 2015 and 9 July 2016 in the following participating States: Austria, Cyprus, Germany, Ireland, Latvia, Poland and Sweden. In some participating States, multiple events were observed that took place on the same day or over a period of four days. The observation of one assembly generally also involved the monitoring of any counterdemonstrations or parallel assemblies if they took place. A table including all events monitored as part of this exercise is included in Annex 4 to this report.

¹ OSCE/ODIHR and the Council of Europe's European Commission for Democracy through Law, *Guidelines on Freedom of Peaceful Assembly* (Warsaw/Strasbourg: ODIHR, 2010, 2nd ed.), hereinafter, "*The Guidelines*", <<http://www.osce.org/odihr/73405>>.

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5. A total of eight participating States received communications of ODIHR's intention to monitor assemblies. Of those, seven participating States welcomed and facilitated ODIHR's monitoring mission. In its choice of participating States and events to be monitored, ODIHR attempted to ensure geographical balance and the coverage of a variety of different contexts across the OSCE area. To preserve the integrity of the sample, only events selected by ODIHR on the basis of the criteria outlined below were observed.
 6. ODIHR monitored 24 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 are related, *inter alia*, to the expression of views or positions that challenge prevailing opinions, to the presence of counterdemonstrations and the potential of a resulting conflict between opposing groups, as well as to the need to ensure a 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 first-hand information by observers who were able to witness the conduct of, and interaction among, participants at the assemblies, law-enforcement agents and other relevant state and non-state actors (e.g., representatives of local municipal authorities, journalists, etc.). The observation findings were, whenever possible, complemented by information gathered at meetings with representatives of the relevant authorities; organizers of, and participants in, assemblies; 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. ODIHR observed that the majority of the participating States under consideration require organisers to provide notification of assemblies beforehand, but do not require public authorities to authorize them. In some participating States, although no notification is required by law, organizers voluntarily resort to notification in order to help the facilitation of their assemblies by the authorities. 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 the organizer to 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 and only insofar as it 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 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.

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 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 individual responsibility for one's own intentional conduct and of proportionality. 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 fulfil 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 considered 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 facilitate 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.
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.
18. In a large 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, participants at the assemblies

observed by ODIHR did not seem to be informed about the purpose and specific details of the recording, namely whether only general images were transmitted from the assembly or whether 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 on other human rights, such as the right to privacy, and it can have a significant chilling effect on assembly participants.

19. In some participating States where ODIHR observed assemblies separate police oversight mechanism exists that oversee the actions of the police in the context of policing assemblies. In most participating States ombudsperson institutions function as independent oversight mechanisms over the police and therefore contribute to fostering and monitoring 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.

CONSOLIDATED RECOMMENDATIONS FOR OSCE PARTICIPATING STATES

On the main definitions and scope of legal protection regarding the freedom of assembly

1. To establish in law a presumption in favour of holding peaceful assemblies in clear and explicit terms;
2. To ensure that the freedom of peaceful assembly for everyone under the jurisdiction of participating States, including non-citizens, is protected by law;
3. To ensure the broadest possible protection in law of all expressive activities within the scope of the right to freedom of peaceful assembly, including peaceful assemblies that do not have an identifiable organizer;
4. To ensure that clear and foreseeable procedures are promulgated to enable the organization and holding of peaceful assemblies, and that indicate clearly, among other things, the body with authority and responsibility for receiving and responding to notifications, and the criteria for imposing conditions and restrictions;
5. To ensure easy, prompt, effective and practical access to all laws, regulations, government policies and other information relevant to the exercise of freedom of peaceful assembly.

On notification/authorization requirements for assemblies

6. To ensure that everyone's right to freedom of peaceful assembly is protected regardless of their age, nationality, legal capacity or previous conduct in the context of assemblies unless the latter provides clear evidence of the intent to hold a violent or otherwise disruptive assembly;
7. To ensure that authorization/notification requirements are only imposed when necessary to facilitate freedom of assembly or necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others and only to the minimum extent necessary;
8. 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 do not result in automatic prohibition or dispersal of an otherwise peaceful assembly;
9. 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);
10. 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;

11. To ensure that the requirements for prior notification are not applied in a way that amounts to a *de facto* requirement for prior authorization;
12. 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 organs involved in the regulatory process, including the relevant law-enforcement agencies.
13. To ensure that the absence of an official response to a notification may not prevent an assembly from being held.

On restrictions imposed before assemblies

14. 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;
15. To ensure that any prior restrictions are put in writing, 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 the assembly;
16. 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 operate as 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;
17. To remove or amend restrictions in the law that are vague or broad and can therefore result in overly restrictive and/or arbitrary application of the law;
18. To refrain from imposing content-based restrictions on assemblies unless they can be compellingly justified on the basis of intentional incitement to violence resulting in an imminent threat of violence or of a message advocating national, racial or religious hatred that constitutes incitement to discrimination or violence;
19. 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;

20. 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 facilitating simultaneous assemblies

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

On decision-making and review

25. To ensure that the regulation of assemblies is conducted in a transparent manner, giving the organizers timely notice of prompt regulatory decisions with justified reasons and recourse to a prompt and effective remedy through administrative and judicial review;
26. To ensure that any restriction placed on an assembly is communicated in a timely manner in writing to the organizers of the assembly, including a detailed explanation of the reasons behind each restriction;
27. To ensure that assembly organizers are not compelled to accept, and are able to challenge in court, the substance of any restriction before the date of the assembly regardless of the form in which these restrictions are communicated.

On the role of organizers

28. 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;
29. 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;
30. 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;
31. 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;
32. 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;
33. 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;
34. 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.

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

35. 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 and to create mutual understanding, avoid unnecessary confrontation, reduce tension, prevent violence or stop any disruptive or unlawful incidents quickly, should they occur;
36. 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;

37. 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;
38. 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;
39. To ensure that law-enforcement officials cooperate with assembly stewards, where organizers choose to use them for an assembly;
40. 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;
41. To promote diversity in law enforcement, including better representation of women and minority groups, in particular 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

42. 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;
43. 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;
44. To explore ways to share experiences and good practices among the various agencies and authorities involved in the facilitation of peaceful assemblies, both nationally and internationally, and to consider enlisting ODIHR’s expertise and monitoring experience in this regard;
45. 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

46. 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;

47. 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 policing simultaneous assemblies

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

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

53. To ensure that rules on the use of force by law-enforcement officials policing assemblies are established, in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and made public;
54. 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;
55. To ensure that policing tactics and training emphasize prevention and de-escalation based on communication, negotiation and dialogue;

56. 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) and (3) who may issue a dispersal order, and to prioritize voluntary dispersal before resorting to any use of force;
57. To ensure that participants in assemblies are only detained when there are reasonable grounds for the deprivation of liberty and without resorting to excessive use of force during arrests;
58. To provide training for law-enforcement officials on facilitating assemblies 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 support in this regard;
59. To ensure that law-enforcement officials are adequately trained, resourced and equipped (including with non-lethal technologies) so as to best enable restrained and proportionate policing of people exercising their freedom of assembly.

On photography and video recording of assemblies by law-enforcement personnel

60. 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;
61. To develop and publish a detailed policy relating to the use of overt filming/photography at public assemblies, including a description of the purposes for 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;
62. 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;
63. To put in place mechanisms whereby individuals can ascertain whether, and if so what, information has been stored, and 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 accountability of law enforcement for violations in the context of policing assemblies

64. To establish accessible and effective accountability mechanisms—if they 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;

65. 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;
66. 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);
67. To respect and 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;
68. 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 journalists and assembly monitors

69. To expressly recognize and actively facilitate independent monitoring, recording and reporting on assemblies by international and local observers or NHRIs, including by:
 - routinely notifying NHRIs or other relevant independent oversight or monitoring bodies (such as NGOs working in the area of freedom of assembly) of anticipated assemblies;
 - providing information and access to the media and observers that enables them to monitor all aspects of an assembly and by communicating consistently with them before, during and after the assembly;
 - not imposing undue limitations on monitoring activities, but ensuring that monitors can operate effectively in the context of assemblies;
 - engaging with monitors in light of their findings and recommendations, and following their assessment of the facilitation of assemblies by the state authorities in order to feed into the institutional lessons-learned process;
70. 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, except under rare circumstances where resources, such as time and space, are limited; in particular, to ensure that access is provided to the greatest extent possible to assembly monitors and journalists to all locations where they may carry out their activities;
71. To ensure that assembly participants, observers, media representatives or bystanders 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 recordings can be accepted as evidence in relevant disciplinary, administrative or criminal proceedings.

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 has been recognized as one of the foundations of a functioning democracy. The ability to assemble and act collectively is vital to democratic, economic and social development and to fostering an engaged citizenry.² Facilitating participation in peaceful assemblies helps ensure that all people in a society have the opportunity to express opinions that they hold in common with others. Peaceful assemblies are a barometer to identifying the level of a state's commitment to an open and transparent society, and they underscore the social importance of public debate. When duly protected and facilitated, freedom of peaceful assembly offers a viable opportunity for minority and marginalized groups, including those with unpopular ideas, to express their views publicly. This, in turn, serves an important purpose by allowing a greater degree of political participation for groups 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. Freedom of peaceful assembly enshrines a direct form of engagement for the expression, promotion or protection of values or opinions, thereby fostering dialogue among different stakeholders or groups. Assemblies play an important role by allowing the population to express their will or grievances, influence public policy or hold governments accountable. Assemblies present ways to engage not only with the state, but also with others who wield power in society, including corporations, religious institutions or public opinion in general.³
23. The exercise of this fundamental freedom is closely linked with other important rights and liberties. It can contribute to 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 implicated 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, privacy and an effective remedy for all human rights violations.⁴ Therefore, the proper facilitation of assemblies requires the protection and facilitation of the entire broad range of rights involved.

² “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 5.

³ *Ibid.*, para. 6.

⁴ *Ibid.*, para. 8.

24. 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.⁵ States are required to “respect and fully protect” the rights of all individuals to assemble peacefully,⁶ and within the OSCE framework, the participating States have also committed themselves to guaranteeing this to every individual without discrimination (Copenhagen 1990, Paris 1990).⁷
25. Like any other human right, the freedom of peaceful assembly is a legitimate subject for international law and international scrutiny.⁸ 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*,⁹ which are aimed at clarifying the obligations that states have in relation to the freedom of peaceful assembly and to providing examples of good practice in meeting such obligations.
26. In addition, ODIHR, often jointly with OSCE field operations, has provided assistance to civil society actors in a number of participating States to build their capacity to systematically monitor public assemblies. The reports that have been produced by NGOs as part of these 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.¹⁰ Building on these country-monitoring projects, ODIHR produced a *Handbook on Monitoring Freedom of Peaceful Assembly*,¹¹ which sets out a methodology for the observation of public assemblies with a view to assessing compliance with human rights principles.
27. 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 two monitoring cycles were published in thematic reports on 9 November 2012¹² and on 17 December 2014.¹³ The third monitoring

⁵ For a full list, please see the compilation of relevant international and regional standards in Annex 3. The report relies heavily on the jurisprudence of the ECtHR, given its applicability to all participating States under consideration.

⁶ “The rights to freedom of peaceful assembly and of association”, 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”, A/HRC/RES/24/5, 8 October 2013, <<http://www.refworld.org/docid/53bcf29f4.html>>.

⁷ 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>>.

⁸ Charter of the United Nations, Preamble, Article 1 and Article 55(c).

⁹ *The Guidelines*, *op. cit.*, note 1.

¹⁰ Such activities were carried out in Armenia, Georgia, Kazakhstan, Moldova and Serbia.

¹¹ OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2011), <<http://www.osce.org/odihr/82979>>.

¹² “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>>.

¹³ “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>>.

cycle, between 15 April 2015 and 9 July 2016, covered seven 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 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 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 26 participating States that have so far facilitated and hosted ODIHR observations, capitalizing also on country-specific findings (good practices and gaps) that go beyond the scope of these thematic reports. Overall, ODIHR is ready to work with all participating States in addressing the identified shortcomings and to provide a forum for the exchange of experiences and good practices in facilitating peaceful assemblies across the OSCE space.

ODIHR's mandate

28. ODIHR is the principal OSCE institution dealing with the human dimension, one of the three dimensions of the OSCE's comprehensive approach to security. ODIHR is mandated, among other 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.¹⁴ 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".
29. 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).
30. 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.¹⁵

¹⁴ For a compilation of these commitments, please see Annex 1 to this report.

¹⁵ An overview of the tools developed by ODIHR to aid the work of governments and civil society in the area of freedom of peaceful assembly can be found in Annex 7.

Methodology

31. A total of eight participating States received communication of ODIHR's intention to carry out assembly-monitoring exercises. These included Austria, Cyprus, Germany, Ireland, Latvia, Lithuania, Poland and Sweden. ODIHR regrets that Lithuania was not ready to facilitate the monitoring of the assemblies that ODIHR had selected. In the remaining seven participating States, public assemblies were monitored between 15 April 2015 and 9 July 2016. In addition to those particular assemblies chosen for monitoring, any related counterdemonstrations and parallel assemblies were, as a general rule, also observed.
32. Monitoring focused on assemblies that could present specific challenges for the authorities and/or the organizers due to their nature, size and/or complexity. In its choice of participating States and events to be monitored, ODIHR also attempted to ensure geographical balance and the coverage of a variety of different contexts across the OSCE area.
33. These challenges included, *inter alia*, assemblies convened by minority groups espousing views or positions that are unpopular with, or are seen as controversial by, mainstream society. They also included the presence of counterdemonstrations and the potential of ensuing conflicts between opposing groups, as well as the need to ensure a proper balance between safety and security considerations and the rights of others, on the one hand, and respect for freedom of peaceful assembly, on the other.
34. Given that monitoring focused 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 only select illustrative examples based on events in some of the participating States included in the monitoring. This selection should not be interpreted as an exhaustive overview of issues that arose in relation to each particular topic and in all 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.
35. 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 etc.).¹⁶ Monitoring teams always included ODIHR staff trained in assembly-monitoring techniques and/or members of the OSCE/ODIHR Panel of Experts on the Freedom of Peaceful Assembly.¹⁷ Eleven women and eight men participated in the monitoring exercise as monitors from eight OSCE participating States. As part of the monitoring missions, consultants and security experts were employed to conduct background research in preparation for the monitoring exercise.

36. 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 monitoring exercise, and no attempt was made to gather systematic information about them. However, information is provided regarding the small number of cases in which ODIHR monitors observed arrests at an assembly.
37. Although assembly monitoring places particular emphasis on the gathering of first-hand information, the monitors' observations were, whenever possible, complemented by information gathered at meetings with representatives of the relevant authorities, assembly organizers, civil society organizations, NHRIs, lawyers and others who could provide background information on freedom of peaceful assembly and specific information on the monitored events. In the context of the monitoring exercise in this assembly-monitoring cycle, 50 such meetings were held.
38. Where relevant, and where an English-language version of documents was made accessible, 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 standards and OSCE commitments. For such a comprehensive analysis, OSCE participating States are encouraged to request a legal review from ODIHR.¹⁸
39. 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.

¹⁶ For a full description of the assembly-monitoring methodology employed by ODIHR, see OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly*, *op. cit.*, note 11.

¹⁷ The OSCE/ODIHR Panel of Experts on the Freedom of Assembly was established in 2006 and consists of 12 independent experts from OSCE participating States selected on the basis of their expertise, experience, integrity and objectivity. The ODIHR Panel advises and consults with ODIHR on the promotion of freedom of peaceful assembly in the OSCE area.

¹⁸ For more information on ODIHR's legislative assistance activities, please visit <<http://www.osce.org/odihhr/108503>>.

40. ODIHR wishes to thank the authorities of the participating States where monitoring took place for their openness and cooperation and for their assistance in organizing, and their willingness to take part in, meetings for the purpose of gathering information. The ODIHR team's information gathering was facilitated to a great extent by providing relevant documents and information in response to a long list of questions. ODIHR is grateful to the many organizations and individuals who shared information about their experiences as organizers of, or participants in, assemblies or, more broadly, about freedom of peaceful assembly in their respective countries. The monitoring exercise could not have been carried out successfully without the capable support of research consultants, security experts and interpreters hired in some of the participating States where monitoring took place.

Report structure

41. The report is organized thematically based on standards relevant for freedom of peaceful assembly. The *Guidelines* constitute the main benchmark for the assessment of compliance with international human rights standards and examples of good practice.¹⁹ 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 Special Rapporteurs on the rights to freedom of peaceful assembly and of association and on extrajudicial, summary or arbitrary executions.²⁰
42. The various sections and subsections of this report begin with a preliminary discussion of international standards and generally accepted good practices and are followed by a description of findings from the monitoring exercise that illustrate some of the key issues involved. Each subsection ends with conclusions and recommendations that could be relevant to all OSCE participating States. This structure is meant to facilitate an assessment of domestic law and practice, as documented and observed by ODIHR, against relevant international human rights standards and OSCE commitments and the identification of practices that may contribute to the effective facilitation of assemblies while maintaining peace and order and protecting human rights.

¹⁹ The UN Special Rapporteur has stated that he considers these guidelines to be the most advanced set of good practices available. "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, footnote 7.

²⁰ "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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>.

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

43. The freedom of peaceful assembly is enshrined in key international and regional human rights treaties and is expressly recognized in OSCE human dimension commitments. This right is guaranteed to everyone without discrimination.²¹ 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.²² It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is enjoyed in practice and is not subject to unduly restrictive or bureaucratic regulation or unduly restrictive policing.²³ This includes enacting and implementing laws regulating the exercise of this right that are fully in line with international human rights standards. Moreover, ensuring the 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.²⁴
44. A range of different activities are protected by the right to freedom of peaceful assembly, including static assemblies (such as public meetings, mass actions, flash mobs, demonstrations, sit-ins and pickets) and moving assemblies (such as parades, processions, funerals and certain forms of pilgrimages and convoys). Domestic legislation should frame the types of assembly to be protected as broadly as possible.²⁵
45. The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and

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

²² “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, 4 February 2016,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 13.

²³ *The Guidelines*, *op. cit.*, note 1, para. 2.2.

²⁴ “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, p. 10, para. 33.

²⁵ *The Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 17.

tourists); to children, women and men; to law-enforcement personnel; and to people without full legal capacity, including people with mental illnesses.²⁶

46. An assembly, by definition, requires the intentional and temporary presence of at least two people for a common expressive purpose.²⁷ Nonetheless, individual protesters exercising their right to freedom of expression, where their physical presence is an integral part of that expression, should also be afforded the same protections as those who gather as part of an assembly.²⁸
47. Only peaceful assemblies are protected by the right to freedom of assembly. In determining whether a demonstration is peaceful, the ECtHR has focused on the intentions of the organizers as well as 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.”²⁹
48. Participants must refrain from using violence.³⁰ 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.³¹ 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.
49. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (hereinafter, “UN Special Rapporteur”) and the OSCE/ODIHR Panel of Experts on the Freedom of Peaceful Assembly (hereinafter, the “ODIHR Panel of Experts”) consider as a good practice, and thus call upon states to establish in their law (either in their constitution or laws governing peaceful assemblies), a clear and explicit presumption in favour of holding assemblies, according to which the peaceful intentions of individuals and groups wishing to assemble should be presumed.³² This presumption also means that unclear legal provisions

²⁶ *Ibid.*, Principle 2.5, p. 16.

²⁷ *Ibid.*, para. 1.2.

²⁸ *Ibid.*, Explanatory Notes, para. 16.

²⁹ *Christians against Racism and Fascism v. The United Kingdom* (1980).

³⁰ 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 to be violence. Para. 93.

³¹ ECtHR, decision on admissibility, *Ziliberberg v. Moldova*, 4 May 2004; also “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, p. 8, para. 25.

³² “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 26,

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf>; *The*

should be clarified, but in the absence of clarity, such provisions should be interpreted in favour of those wishing to exercise their right to freedom of peaceful assembly.³³

50. 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, legitimate grounds for restriction, and the overall content and time frame of such restrictions.³⁴ 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.³⁵
51. 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 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.³⁶

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

52. All participating States where ODIHR monitored assemblies recognize the right to assemble peacefully in the constitution, and some also set this out in specific domestic legislation. The

Guidelines, op. cit., note 1, Principle 2.1.

³³ "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>.

³⁴ Michael Hamilton, "Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests", A/HRC/19/40, 19 December 2011, § 28.

³⁵ See, for example, *The Sunday Times v. United Kingdom* (No. 1), 26 April 1979, para. 49; *Rekvényi v. Hungary*, No. 25390/94, para. 34.

³⁶ "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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 82.

constitutions of Austria,³⁷ Cyprus,³⁸ Germany,³⁹ Ireland,⁴⁰ Latvia,⁴¹ Poland⁴² and Sweden⁴³ guarantee the freedom of peaceful assembly. In the case of Austria,⁴⁴ Germany,⁴⁵ Latvia,⁴⁶ Poland,⁴⁷ and Sweden,⁴⁸ there is also specific domestic legislation that stipulates that individuals have the right to assemble peacefully.

53. In Cyprus, the right to freedom of assembly is guaranteed to everyone by the Constitution of the Republic of Cyprus. However, the detailed regulatory framework regarding the exercise of this freedom is difficult to access because of the absence of specific regulations governing the holding of public meetings or assemblies. The ODIHR team managed to identify only a handful of general regulations related to policing that are applicable.⁴⁹ Similarly, in Ireland there are no comprehensive statutes regulating the exercise of freedom of assembly.
54. The Constitution of Sweden guarantees freedom of assembly to everyone. It includes the freedom to organize or attend meetings for the purposes of gathering and disseminating information, expressing an opinion or other similar purpose or for the purpose of presenting artistic work, as well as the freedom to demonstrate, which is the freedom to organize or take part in demonstrations in a public place.⁵⁰
55. The Polish Constitution explicitly guarantees freedom of peaceful assembly to everyone.⁵¹ However, the Polish Assembly Act is somewhat restrictive in terms of organizers, as the right to organize assemblies is not granted to individuals who do not have full capacity to conduct legal actions.⁵²
56. Similarly, although Latvia's Law on Meetings, Street Processions and Pickets guarantees the right to everyone to organize and participate in peaceful assemblies,⁵³ it, in fact, excludes certain people from being organizers, managers, assistants to managers or stewards. In particular, people who have not reached 18 years of age, those who are not Latvian citizens, those who are attempting to utilize an assembly for the purposes of organizing prohibited activities, those who have been given an administrative penalty in the last year for violations of the procedures for the organization

³⁷ Article 12, Austrian Constitution.

³⁸ Article 21(1) of the Constitution of Cyprus.

³⁹ Article 8 of the Basic Law of the Federal Republic of Germany.

⁴⁰ Article 40, Section 6.1 of the Irish Constitution.

⁴¹ Article 103 of the Latvian Constitution.

⁴² Article 57 of the Polish Constitution.

⁴³ Chapter 2, Article 1 of the Polish Constitution.

⁴⁴ Austrian Assembly Act 1953.

⁴⁵ German Federal Assembly Act.

⁴⁶ Latvian Law on Meetings, Street Processions and Pickets.

⁴⁷ Polish Act on Assemblies.

⁴⁸ Swedish Public Order Act.

⁴⁹ General Police Regulation No. 73 (I/2004) and Articles 7, 29, 30 related to maintaining law and order.

⁵⁰ Constitution of Sweden (Instrument of Government), Chapter 2, Article 1.

⁵¹ Article 57 of the Polish Constitution.

⁵² Article 4(1) of the Act on Assemblies.

⁵³ Section 3(1) of the Law on Meetings, Street Processions and Pickets.

of assemblies or the conduct thereof and those who lack full legal capacity to act, etc. cannot organize assemblies.⁵⁴

57. In several countries, such as Ireland,⁵⁵ Austria and Germany, the constitution guarantees freedom of assembly only to citizens.

58. In Germany, the Basic Law appears to limit the granting of freedom of assembly to citizens of the Federal Republic of Germany.⁵⁶ According to some legal commentators, however, this does not hinder the recognition of freedom of assembly as a fundamental or basic right for all and enjoys the highest rank among the possible rights and entitlements in the German legal order.⁵⁷ Article 2(1) of the Basic Law protects general freedom of action as a human right. Moreover, the constitutional guarantee of freedom of assembly is implemented by the Federal Act on Assemblies and Processions.⁵⁸ This act grants freedom of assembly to everyone.⁵⁹ The constitutional reform of 28 August 2006⁶⁰ transferred the power to regulate the exercise of the freedom of assembly from the federal government to the states (*Länder*). Each state can decide whether to adopt a partially or completely new assembly law or to retain partially or in full the Federal Assembly Act. However, even when states adopt a separate assembly act, they must still stay within the normative framework established by the Basic Law, as interpreted by the Federal Constitutional Court of Germany.⁶¹ Bavaria, where ODIHR monitored assemblies, is one of the federal states that made use of the new competencies under the 2006 reform and enacted an Assembly Act in 2008.⁶² The Bavarian Assembly Act grants everybody the right to organize public assemblies and to take part in such demonstrations.⁶³ It excludes from this right those promoting the objectives of a political party that has been declared unconstitutional in accordance with Article 21(2) of the Basic Law (due to the fact that their goal is to undermine or abolish the free, democratic basic order or to endanger the existence of the Federal Republic of Germany). It also excludes any sub-organization or substitute organization of such party from holding or participating in an assembly, or associations that are declared as unconstitutional in accordance with Article 9(2) of the Basic Law (whose aims or activities contravene criminal laws or that are directed against the constitutional order or the concept of international understanding) or the Law on Associations.⁶⁴

⁵⁴ Section 4 of the Law on Meetings, Street Processions and Pickets.

⁵⁵ Article 40 of the Irish Constitution.

⁵⁶ “All Germans shall have the right to assemble peacefully and unarmed.” Article 8(1) of the Basic Law.

⁵⁷ Orsolya Salát, *The Right to Freedom of Assembly, A Comparative Study* (Oxford: Hart Publishing, 2015), p. 42.

⁵⁸ Federal Act on Assemblies and Processions of Germany, 24 July 1953, hereinafter “Federal Assembly Act”.

⁵⁹ Article 1(1) of the Federal Assembly Act.

⁶⁰ Federal Assembly Act (BGBl I S 2034).

⁶¹ “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, <[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)024-e)>, p. 54.

⁶² Bavarian Assembly Act of 22 July 2008, as amended on 22 April 2010.

⁶³ Article 1(1) of the Bavarian Assembly Act.

⁶⁴ Article 1(2) of the Bavarian Assembly Act.

59. Freedom of assembly is likewise guaranteed in Article 12 of the Austrian Constitution,⁶⁵ which states that “Austrian nationals have the right of assembly and to constitute associations”. The constitution also states that the “exercise of these rights will be prescribed in special laws”. The Austrian Assembly Act forbids foreigners from acting as organizers, stewards or leaders of assemblies.⁶⁶ However, the police informed ODIHR that these restrictions are not applied in practice,⁶⁷ and the assembly notification form obtained by ODIHR also does not appear to ask for the nationality or residence of the organizers.
60. Some of the participating States where assemblies were monitored define what constitutes an assembly in their legislation. The Latvian Assembly Act specifies three protected forms of assemblies—meetings, street processions and pickets⁶⁸—and provides a list of events that are excluded from the protection of freedom of assembly.⁶⁹
61. The Polish Act on Assemblies defines an assembly as “a grouping of people in an open space accessible to persons unspecified by name, held in a specific location for the purpose of joint debates or a joint expression of a position regarding a public matter”.⁷⁰ The German Federal Assembly Act does not provide a definition, but the Federal Constitutional Court defines assemblies with regard to their function for the shaping of public opinion and the formation of political will in a democratic society. As a consequence, cultural gatherings such as large open-air music events are not considered to be assemblies. In the Bavarian Assembly Act, an assembly is a “gathering of at least two people for a joint discussion or demonstration that is primarily intended to contribute to the formation of public opinion”.⁷¹

⁶⁵ Austrian Constitution, the Basic State Law on the General Rights of Citizens 1867.

⁶⁶ Article 8 of the Austrian Assembly Act.

⁶⁷ Meeting with the police in Innsbruck, 15 June 2016.

⁶⁸ Section 1(2): meetings are organized assemblies for the purpose of meeting with people and to express certain ideas and points of view (for example, on a variety of socially significant political, economic and social issues). Within the meaning of this law, a gathering, rally or other similar form of assembly shall be the equivalent of a meeting.

(3) A street procession is organized movement along roads, streets, squares, footpaths or other territories built for traffic in order to express some ideas and points of view (for example, on a variety of socially significant political, economic and social issues). Within the meaning of this law, a demonstration, procession or other similar form of movement shall be the equivalent of a street procession.

(4) A picket is an event during which one or more people with placards, slogans or streamers express certain ideas or opinions (for example, on a variety of socially significant political, economic and social issues) in a public place, but during the course of which no speeches are made.

⁶⁹ Such as:

1) Public celebrations, memorials, entertainment, sports or leisure activities, which are regulated by the Public Entertainment and Festive Events Security Law;

2) Events organized by legally registered religious organizations in churches, prayer houses, cemeteries, on church-owned parcels of land or in other areas designated for that purpose;

3) Marriage or funeral ceremonies;

4) Advertising events.

⁷⁰ Article 3(1) of the Polish Act on Assemblies.

⁷¹ Article 2(1) of the Bavarian Assembly Act.

62. Austria's Assembly Act excludes events for public amusement, wedding processions, traditional festivals or parades, funerals and pilgrimages from the application of the provisions of the law,⁷² but it does not define assemblies. What constitutes an assembly is defined by the Constitutional Court's case law interpreting the Assembly Act. According to the consistent jurisprudence of the Austrian Constitutional Court, an assembly in terms of Article 12 of the Austrian Basic Law can be defined as a gathering of diverse people in order to bring the attendees to a joint action (debate, discussion, demonstration, etc.) in such a way as to create a certain association and/or common agreement among the attendees.⁷³ However, it does not constitute an assembly if a group of people solely proclaim their opinion without engaging attendees in a discussion or collective activities. Events simply for the purpose of sharing information or showing posters are also not covered.⁷⁴
63. The Public Order Act of Sweden also defines public assemblies:⁷⁵ 1) assemblies in the form of a demonstration or that are held for the purpose of consultation, stating an opinion or disseminating information in public or sharing individual concerns; 2) lectures and talks that are held for educational purposes or to address public or civic education; 3) assemblies that are held for religious activities; 4) theatrical performances, film screenings, concerts and other assemblies to perform artistic work; and 5) other assemblies where freedom of assembly is exercised.
64. None of the participating States where ODIHR monitored assemblies acknowledge in their legislation that assemblies can take place without an identifiable organizer. In addition, legislation on assemblies in the countries where observations took place does not explicitly establish a presumption in favour of holding peaceful assemblies.
65. Some of the participating States visited regulate prompt or spontaneous assemblies. The Polish Assembly Act defines a spontaneous assembly as "an assembly that takes place in reference to a sudden and previously unpredictable event related to the public sphere, and which, if held at a different time, would be purposeless or insignificant to the public debate".⁷⁶ However, it does not indicate specific procedures regarding spontaneous assemblies, such as the exemption from the notification requirement.
66. Under Austrian law, prompt or spontaneous protests or processions are not explicitly regulated. However, the case law of the Constitutional Court has established that spontaneous assemblies are also protected by the right to freedom of assembly.⁷⁷ Moreover, acts, such as impeding the movement of people and vehicular traffic or blocking roads that are generally

⁷² Article 5 of the Austrian Assembly Act.

⁷³ Constitutional Court Decision of 6 October 2011, Ref: B877/10, Collection number 19528.

⁷⁴ "Comparative study on national legislation on freedom of peaceful assembly", *op. cit.*, note 61, pp. 150-151.

⁷⁵ Public Order Act (1993:1617), Chapter 2 § 1.

⁷⁶ Article 3(2) of Poland's Act on Assemblies.

⁷⁷ VfSlg. 14.366/1995, quoted by Constitutional Court Decision of 6 October 2011, Ref: B877/10, Collection number 19528.

considered administrative offences may be justified if they occur in the course of an assembly and are essential for its realization.⁷⁸

67. 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 the notification occurs as soon as an opportunity to notify arises.⁷⁹ At the same time, the Bavarian Assembly Act incorporates specific provisions dealing with spontaneous and urgent assemblies. In case of a sudden reason for an unplanned assembly (urgent assembly), the competent authority or the police must be notified at the latest at the time when the announcement is made, either by phone, in writing, by e-mail or transcription.⁸⁰ The obligation to notify does not apply if the assembly occurs in an unplanned manner for an immediate reason without any organizer being involved (spontaneous assembly).⁸¹ Based on the interpretation of the German Federal Constitutional Court, when it comes to urgent assemblies, it is impossible to observe the notification deadline, and there is thus a need to shorten the deadline for the notice in a way that accounts for the special nature of the assembly. In the case of spontaneous assemblies, notification itself is impossible.⁸²
68. National legislation in most of the participating States where ODIHR monitored assemblies, with the exception of Cyprus and Ireland, contains detailed provisions regulating the exercise of the right to assemble peacefully.
69. Some of the organizers of the assemblies monitored by ODIHR in the context of the NATO Summit in Warsaw, Poland, expressed concern about the lack of easily accessible information on the applicable assembly rules and regulations in English (or other major European languages) on the website of the city, and also about the lack of advance information on the details of the imposed restrictions affecting the use of public space during the Summit, both of which were perceived as a hindrance to the organization of the monitored assemblies. Organizers interviewed by ODIHR eventually managed to overcome this information barrier thanks to the city's online chat support for the process, which included a live support agent to assist and answer questions about the assembly notification process and through a personal meeting with the city authorities (please see the section on restrictions on assemblies for more information).

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

70. It is positive that in all the participating States where ODIHR monitored assemblies the right to assemble peacefully is recognized in the constitution or in specific domestic legislation.

⁷⁸ VfSlg. 11.866/1988, quoted by Constitutional Court Decision of 6 October 2011, Ref: B877/10, Collection number 19528.

⁷⁹ BVerfGE Vol. 85, 69 (75/76), Urgent Assemblies Case.

⁸⁰ Article 13(3) of the Bavarian Assembly Act.

⁸¹ Article 13(4) of the Bavarian Assembly Act.

⁸² BVerfGE 85, 69, 75 (1991).

International human rights law requires that non-nationals “receive the benefit of the right of peaceful assembly”.⁸³ It is therefore important that the law not limit the exercise of freedom of peaceful assembly to citizens only, but that it also affords this right to stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists.⁸⁴ As stated by the UN Special Rapporteur, “peaceful assemblies are an important tool for allowing the voices of otherwise excluded groups to be heard”.⁸⁵ The inclusiveness of the Swedish law in this regard is an example of good practice. At the same time, fully restricting the assembly rights of children, people without citizenship or full legal capacity to act is not in line with international norms. As stated by the Special Rapporteur, specific measures should be taken to protect groups who are particularly at risk of discrimination or of other violations of their rights, 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.⁸⁶

71. Moreover, limiting assembly rights based on previous administrative violations of procedures for the organization of assemblies or the course thereof, as is the case in Latvia, is an overly restrictive practice, as a fundamental freedom cannot be forfeited based on a previous administrative violation.
72. 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 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.
73. 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.
74. The ability to respond peacefully and immediately to some occurrence, incident, other assembly or speech is an essential element of freedom of assembly. Efforts to regulate spontaneous assemblies both in Poland and in Bavaria are a positive step. However, the essence of spontaneous assemblies is that advance notification is not possible or practicable since spontaneous assemblies generally arise in response to some event that could not have been reasonably anticipated. Therefore, the regulatory legislation should expressly provide an

⁸³ “General Comment No. 15: The Position of Aliens under the Covenant”, United Nations Human Rights Committee, 11 April 1986.

⁸⁴ *The Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 55.

⁸⁵ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/26/29, 14 April 2014, para. 25.

⁸⁶ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council A/HRC/23/39, 24 April 2013, para. 43.

exemption from the notification requirements, as in the case of spontaneous assemblies in Bavaria. Under the Bavarian Act, difficulties may still arise from the definition, however, as spontaneous assemblies may actually be a product of some advance planning, however limited in scope because of the compressed time frame. As stated in *The Guidelines*, a spontaneous assembly provides an exception to the requirement for prior notification because it occurs under circumstances where the legally established deadline cannot be met. The key defining criterion is that timely notification is not possible or is impracticable.⁸⁷

75. Although the organizers of the assemblies monitored by ODIHR in both Dublin and Nicosia were satisfied with the overall facilitation of their assemblies by the police, the lack of detailed regulation regarding the exercise of the right to freedom of assembly in Cyprus and Ireland 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 could indirectly hinder the full enjoyment of the freedom of peaceful assembly.
76. In Nicosia, for example, the onus to co-ordinate and co-operate with both the Nicosia police authorities and the relevant UN structures rested entirely on the organizers of the assembly monitored by ODIHR, as it involved a march to the Green Zone, which is under the jurisdiction of the UN authorities. Moreover, the organizer of the May Day demonstrations monitored by ODIHR voluntarily undertook a range of other tasks, such as providing stewards and organizing a clean-up service to facilitate the assembly based merely on the organizer's past experience. (Please see the section on the rights and duties of organizers for more information.)
77. Recommendations for participating States:
- to establish in law a presumption in favour of holding peaceful assemblies in clear and explicit terms;
 - to ensure that the freedom of peaceful assembly for everyone under the jurisdiction of participating States, including non-citizens, is protected by law;
 - to ensure the broadest possible protection in law of all expressive activities within the scope of the right to freedom of peaceful assembly, including peaceful assemblies that do not have an identifiable organizer;
 - to ensure that clear and foreseeable procedures are promulgated to enable the organization and holding of peaceful assemblies, and that indicate clearly, among other things, the body with authority and responsibility for receiving and responding to notifications, and the criteria for imposing conditions and restrictions;

⁸⁷ ODIHR opinion on the draft Assembly Act in Poland, <<http://www.osce.org/odihr/90855?download=true>>

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- to ensure easy, prompt, effective and practical access to all laws, regulations, government policies and other information relevant to the exercise of freedom of peaceful assembly.

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

NOTIFICATION AND AUTHORIZATION REQUIREMENTS

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

78. The right to freedom of peaceful assembly 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.⁸⁸
79. Although not necessary under international human rights law,⁸⁹ a properly framed requirement to give prior notice of an assembly can be compatible with permitted limitations under the ICCPR.⁹⁰ 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.⁹¹ It is 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.⁹² 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.⁹³ In the opinion of the UN Special Rapporteur, another good practice is to pass legislation allowing spontaneous assemblies to be held, which should be exempt from prior notification.⁹⁴
80. The UN Special Rapporteur also considers that a notification requirement should be subject to a proportionality assessment.⁹⁵ Any provisions concerning advance notification should require the organizers to submit a notice of intent to hold an assembly but not a request for

⁸⁸ *Plattform "Ärzte für das Leben" v. Austria* (1988) 13 E.H.R.R. 204, para. 32.

⁸⁹ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 113.

⁹⁰ UN Human Rights Committee, *Kivenmaa v. Finland* (1994).

⁹¹ *The 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.

⁹² *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 115.

⁹³ "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, 4 February 2016,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 21.

⁹⁴ "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 29. The Special Representative of the Secretary-General on human rights defenders, Hina Jilani, also encouraged states "to consider in exceptional circumstances that defenders, with the aim of protesting human rights violations, should have the possibility of responding immediately to an event by holding public, peaceful assemblies". "Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani", United Nations General Assembly, A/61/312, 5 September 2006, para. 97.

⁹⁵ *Ibid.*, para. 28.

permission.⁹⁶ A permit requirement is generally more prone to abuse than a notification requirement, and it could devalue the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful.⁹⁷ 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.⁹⁸

81. 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 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.⁹⁹ 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.¹⁰⁰ When a certain time limit is established by law, it should only be indicative¹⁰¹ and should not result in the automatic prohibition of an assembly when not met.
82. 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.¹⁰² 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.¹⁰³
83. Furthermore, notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated.¹⁰⁴ The organizers should send a single

⁹⁶ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 118.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, para. 119.

⁹⁹ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 28(e).

¹⁰⁰ *Ibid.*, para. 116.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*, para. 117.

¹⁰³ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 58.

¹⁰⁴ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 115.

notification to a designated primary authority, and should not be required to notify multiple authorities (e.g., law-enforcement agencies and/or one or several municipal authorities, as is sometimes done in the case of Pride parades).¹⁰⁵

84. 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.¹⁰⁶
85. 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.¹⁰⁷
86. According to the 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.¹⁰⁸ Spontaneous assemblies with no identifiable organizer or where prior notice is otherwise impracticable should be exempt from notification requirements.¹⁰⁹

Notification requirements for assemblies in selected participating States

87. The countries where ODIHR observed assemblies employ notification (including voluntary notification) and authorization systems for assemblies. In Ireland, there is no advance notification requirement. However, the police were notified about the assembly that ODIHR observed in Dublin. The main reason behind the organizer's decision to provide notification of the assembly was to facilitate the necessary efforts on the part of the police, as public roads

¹⁰⁵ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 52.

¹⁰⁶ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 22. Also, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 57.

¹⁰⁷ A/HRC/23/3, *ibid.*, para. 56.

¹⁰⁸ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 23; A/HRC/20/27, p. 9, para. 29.

¹⁰⁹ ECtHR, *Bukta v. Hungary*, Application No. 25691/04, 17 July 2007.

had to be blocked for the safe passage of assembly participants.¹¹⁰ In practice, notification is not provided for all assemblies. ODIHR was informed that the police actively look for information suggesting that an assembly is planned and then initiate contact with the organizers.¹¹¹

88. Similarly, in the Republic of Cyprus, there is no legal obligation to provide notification about planned assemblies. The organizer of the assembly monitored by ODIHR in Nicosia also decided voluntarily to notify the police authorities about the event. The ODIHR team was informed that, in practice, when the police learn about an assembly being planned, they approach the organizers and ask them to send information about their assembly to the police chief, including information about the date, venue, message of the assembly, the expected number of participants and expectations on the part of the police.¹¹²
89. Sweden has a dual system of authorization and notification. Based on the Public Order Act, public assemblies and public events may not be organized in public places without a permit. However, no permit is necessary if, on the basis of the expected number of participants, the chosen place and time of an assembly and the equipment that is intended to be used, the assembly can be expected to take place without endangering public order or traffic safety.¹¹³ A notification obligation is applicable to public assemblies that are organized indoors within an area that is declared in the local plan and to public events organized outdoors outside an area stated in the local plan if, based on the expected number of participants, an assembly or event may risk disturbing the peace, posing a danger in the area of the event or, as a direct consequence of the event, disturbing traffic in its immediate vicinity.¹¹⁴
90. Latvia, Germany, Austria and Poland have notification requirements. Some of these participating States specify in their legislation that authorization is not required. In Latvia, the Law on Meetings, Street Processions and Pickets specifies that, for assemblies, the “permission of State and local government institutions is not necessary”.¹¹⁵
91. The length of advance notification varies from 24 hours to ten days. In Sweden, an application for a permit to organize an assembly should reach the police in written form “if possible” at least one week ahead of the event, and written or verbal notification “if possible” five days in advance.¹¹⁶
92. In Latvia, the municipal authority has to receive notification at least ten working days before an assembly.¹¹⁷ The law however also makes an exception for assemblies happening in

¹¹⁰ Meeting with the assembly organizer, 14 April 2015.

¹¹¹ Meeting with the police in Dublin, 14 April 2015.

¹¹² Meeting with a police representative in Nicosia, 30 April 2015.

¹¹³ Article 4 of the Public Order Act.

¹¹⁴ Article 5 of the Public Order Act.

¹¹⁵ Section 12(1) of the Law on Meetings, Street Processions and Pickets.

¹¹⁶ Public Order Act (1993:1617) § 6.

¹¹⁷ Section 13(2) of the Law on Meetings, Street Processions and Pickets.

reaction to an incident which was reasonably impossible to know ten days in advance. In these cases the notification should be submitted as soon as possible, but not later than 24 hours before the event.¹¹⁸ The local government employee who receives the application must note the time of receipt on a copy of the application, which remains with the submitter.¹¹⁹

93. In Austria, notification needs to reach the competent authority at least 24 hours in advance. Upon receipt, the competent authority has to immediately issue an official certificate.¹²⁰
94. In Poland, the organizer notifies the relevant municipal body (or municipalities) about the intention to organize an assembly no later than six days before the date of the assembly.¹²¹ That body then publishes information on the location and the date of the assembly in the Public Information Bulletin¹²² and informs the commander of the county (city) police or the regional commander of the police in the case of Warsaw.¹²³
95. Interestingly, in the German federal state of Bavaria the notification period is determined by the announcement of an assembly—meaning when the organizer passes out information regarding the place, time and topic of the assembly—and not the planned date of the event. The notification has to be submitted to the competent authority at least two working days before the announcement of the assembly.¹²⁴
96. Some participating States allow for a reduced notification period and simplified procedures under certain circumstances. In Poland, if the organizer thinks that an assembly will not cause disturbances to road traffic, and in particular will not cause changes to traffic organization, a simplified procedure applies. In such a case, the organizer can submit notification by telephone or e-mail to the municipal crisis management centre (or voivodship regional authority crisis management centre if there is no such municipal centre) no later than two days before the date of the assembly. The notification also requires less information than would otherwise be necessary.¹²⁵ If a planned assembly in Latvia is happening in reaction to an incident which was reasonably impossible to know ten days in advance, the notification can be submitted up to 24 hours before the event.¹²⁶
97. Among the participating States where ODIHR monitored assemblies, some specify a maximum notification period prior to the date of a planned assembly. This period is one month in Poland, four months in Latvia and two years in the German federal state of Bavaria.

¹¹⁸ Section 13 (2) of the Law on Meetings, Street Processions and Pickets.

¹¹⁹ Section 13(3) of the Law on Meetings, Street Processions and Pickets.

¹²⁰ Article 2(1) and (2) of the Austrian Assembly Act.

¹²¹ Article 7(1) of the Polish Act on Assemblies.

¹²² Article 7(3) of the Act on Assemblies.

¹²³ Article 8(1) of the Act on Assemblies.

¹²⁴ Article 13(1) of the Bavarian Assembly Act.

¹²⁵ Article 22(1) of the Act on Assemblies.

¹²⁶ Section 13 (2) of the Law on Meetings, Street Processions and Pickets.

98. The information that must be provided along with the notification for an assembly varies from country to country. In Poland, notification should contain the name and surname of the organizer, as well as their PESEL¹²⁷ (or other personal identification number if the organizer has no PESEL); e-mail address; postal address; telephone number (the name and address of the seat if a legal entity is organizing an assembly, as well as information on the person filing the notification); the objective of the assembly; the date, hour and place of the start of the assembly; its planned duration; the estimated number of participants; the planned march route; and information about the planned means to ensure the peaceful conduct of the assembly, provided the organizer has made such plans.¹²⁸ Photographs of the organizer or the leader of the assembly in case a leader has been designated should be attached to the notification,¹²⁹ as well as the leader's consent to accept this duty. The relevant municipal body should inform the organizer in case any necessary information is missing from the notification.¹³⁰
99. In Latvia, notification should include the type and purpose of the event; the date of the event; the beginning and ending time; the venue and/or, if applicable, the route of the assembly; the anticipated number of participants; a description of the support requested from local government and the police in order for the event to take place without interruptions; the name, ID number and address of the organizer and/or the manager/leader of the event and assistants to the manager/leader of the event, as well as stewards.¹³¹ The organizer of the EuroPride event monitored by ODIHR in Latvia noted that the requirement to specify the stewards by name, address and ID number already at the time of notification was especially burdensome, as he provided notification of the assembly at the earliest possible time to allow adequate preparation time for the event.¹³²
100. In the German federal state of Bavaria, notification should include the place, route, and planned beginning and ending time, the topic of the assembly, as well as the names and personal information of the organizer and the leader. In addition, the organizer must immediately inform the competent authority about any major changes in the above information.¹³³
101. In Sweden, the application for a permit to organize an assembly and the notification of a public assembly or public event need to include information about the organizer, the time of the assembly or event and the arrangements that the organizer intends to make regarding order

¹²⁷ Powszechny Elektroniczny System Ewidencji Ludności (PESEL), a national identification number used in Poland.

¹²⁸ Article 10(1) of the Act on Assemblies.

¹²⁹ Article 10(2) of the Act on Assemblies.

¹³⁰ Article 11 of the Act on Assemblies.

¹³¹ Section 14 of the Law on Meetings, Street Processions and Pickets.

¹³² Meeting with the organizer of the EuroPride event, 19 June 2015.

¹³³ Article 13(2) of the Bavarian Assembly Act.

and safety.¹³⁴ In addition, the police can order the organizer of a public assembly or public event to provide information other than that included in the application or notification.¹³⁵

102. In Austria, notification needs to indicate the purpose, place and time of the assembly.¹³⁶ The actual notification form used in Tyrol, however, requires additional information from the organizer, including about stewarding arrangements, equipment (banners, loudspeakers, costumes, music, power generation, vehicles, etc.) and whether a stage is to be used. Moreover, the organizer needs to describe the recommended police measures to be used to secure the event, list the public roads affected by the assembly and describe how traffic should be redirected, if needed. In addition, should the assembly affect the use of bus stops, the organizer has to secure the agreement of the relevant enterprises.
103. In most participating States, notification is provided on a specific form, such as in Germany, Austria, Latvia, Sweden and Poland. With the exception of Latvia, notification can be submitted in person, by mail or electronically. The Latvian Law on Meetings, Street Processions and Pickets requires that the (natural) person submitting notification present his or her passport,¹³⁷ which suggests that only in-person notification is possible. This in-person notification requirement was also confirmed by the state authorities.¹³⁸ In Poland, notification can also be submitted verbally in addition to through electronic communication, in writing or by fax.¹³⁹ In the federal state of Bavaria, verbal notification is facilitated even outside of the relevant municipality's office hours by providing the option of notifying the police in such cases.¹⁴⁰
104. Notification is free of charge in all the monitored countries. The Austrian Assembly Act specifically provides for free notification.¹⁴¹ A permit request in Sweden, however, is subject to a stamp fee.¹⁴² The European Commission, in a case against Sweden, opined that the obligation to pay a stamp duty can possibly appear as a specific restriction on freedom of assembly. However, the fee, which is not considerably higher or lower than other comparable stamp duties, is only a consequence of the fact that a permit is required and the permit requirement itself does not go any further than what is permitted under the Constitution. Consequently, there is no question of an impermissible restriction.¹⁴³

¹³⁴ Article 7 of the Public Order Act.

¹³⁵ Article 9 of the Public Order Act.

¹³⁶ Article 2(1) and (2) of the Austrian Assembly Act.

¹³⁷ Section 14(2) of the Latvian Law on Meetings, Street Processions and Pickets.

¹³⁸ Meeting with representatives of the police and the municipality in Riga, 19 June 2015.

¹³⁹ Article 9(1) of the Act on Assemblies.

¹⁴⁰ Meeting with representatives of the police and municipality in Munich, 3 June 2015.

¹⁴¹ "The notification shall not be subject to any stamp fee." Article 2(2) of the Austrian Assembly Act.

¹⁴² In the Ordinance on Stamp Duties, it is provided that the applicant is obliged to pay a stamp duty of 60 SEK for a permit.

¹⁴³ *Andersson v. Sweden*, Application No. 12781/87.

Conclusions and recommendations on notification and authorization requirements for assemblies

105. The fact that notification, rather than authorization, systems are used in the overwhelming majority of the participating States where ODIHR monitored assemblies is positive, 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,¹⁴⁴ they should not “represent a hidden obstacle to the freedom of peaceful assembly protected by the Convention”.¹⁴⁵
106. 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.¹⁴⁶
107. The expeditious provision of a receipt acknowledging that timely notification has been submitted, such as in Austria, is a good practice.
108. In cases where two or more notifications are submitted regarding the organization of an assembly in the same place and at the same time, several participating States use the first-come-first-served principle. In such cases, the practice of limiting the maximum advance notification time, such as in Poland or Latvia, could contribute to limiting the risk of reserving places in advance in order to prevent others from demonstrating. At the same time, a time span that is too narrow, such as in Poland, could limit advance planning and the dissemination of information about an assembly, which can be burdensome, especially when organizing more complex or bigger events. At the same time, if assemblies are planned well in advance, the authorities may also be notified in advance in order to make the necessary preparations.
109. 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, establishing the minimum time frame for submitting notification at six working days in Poland, seems to be exceedingly lengthy. Such a lengthy period of notification 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

¹⁴⁴ See *Sergey Kuznetsov v. Russia* (2009), para. 42; *Bukta and Others v. Hungary* (2007), para. 35; *Oya Ataman v. Turkey* (2007), para. 39; *Rassemblement Jurassien Unité v. Switzerland*, N.8191/78, Commission decision of 10 October 1979, DR 17, p. 119; and also *Platform “Ärzte für das Leben” v. Austria*, 21 June 1988, paras. 32 and 34.

¹⁴⁵ *Éva Molnár v. Hungary* (2009), para. 37.

¹⁴⁶ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 119.

importance where public advocacy is concerned. The possibility of simplified procedures and a shorter notification period in Poland and Latvia in this respect is a positive practice.

110. In most places where ODIHR monitored assemblies, except for Poland and the German federal state of Bavaria, legislation does not provide for spontaneous assemblies, which leaves open the question as to how such assemblies are dealt with under the law and in practice.
111. Spontaneous assemblies in response to pressing events are a critically important means of expression. They may take place as an immediate response to some triggering event, where the organizer (if there is one) is unable to meet the deadline for prior notification, and where the ability to hold such assemblies is important because a delay would make the message obsolete.¹⁴⁷ Spontaneous assemblies also occur when one or more groups of people gather, with no prior advertising or invitation, often as a result of commonly held knowledge about a particular event, including when disseminated via the Internet or other forms of instantaneous communication.¹⁴⁸ Spontaneous assemblies should be lawful and should be regarded as an expected, rather than exceptional, feature of a healthy democracy.¹⁴⁹ The authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.¹⁵⁰
112. As mentioned in the previous section, legislation should expressly provide an exemption for spontaneous assemblies from the notification requirements, in line with internationally accepted good practice.
113. Requesting a long list of detailed information at the time of notification puts an undue burden on organizers. ODIHR's opinion regarding the draft Law Amending the Law on Assemblies of Poland in 2012 recommended removing the requirement that a photo of the leader of an assembly be added to the notification, as it is onerous, unjustified and possibly encourages the keeping of intelligence files with photographs of activists. It would appear to be sufficient to require that the organizer carry a photo ID and wear a distinctive piece of clothing like a special hat or armband, where necessary. This should be sufficient for the police to be able to identify the organizer during an assembly.
114. Sweden's notification requirement to submit information on the security measures put in place by the organizer, the need to describe the recommended police measures to be used to secure an event in Austria or the requirement to include the name, ID number and address of the organizer, leader, assistants to the leader and all assembly stewards in Latvia may place a disproportionate burden on the exercise of the freedom of peaceful assembly (please see further details in the chapter describing the duties and responsibilities of the organizer). In this respect, the Special Rapporteur considers "unduly bureaucratic" the requirement to provide formal identity documents, such as passports or identity cards, or to request identification

¹⁴⁷ *Bukta and Others v. Hungary* (2007), para. 32; *Éva Molnár v. Hungary* (2008), para. 38. Also see *The Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 126.

¹⁴⁸ *The Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 127.

¹⁴⁹ *Ibid.*, para. 128.

¹⁵⁰ *Ibid.*, Principle 4.2.

details from people involved in an assembly besides the organizer, such as stewards.¹⁵¹ The obligation in the Latvian law to submit a notification in person and to all municipal authorities if an assembly takes place on the territory of more authorities, or the general obligation to send a copy of the notification to the office of the local state police¹⁵² is unnecessarily burdensome and not in line with internationally accepted good practice, which would require that notification be made to one primary regulatory body, which then communicates with all state authorities involved in the regulatory process, including the relevant law-enforcement agencies.

115. In order to avoid deterring individuals from exercising their freedom of peaceful assembly and to conform with good practice, notification/authorization procedures should be free of charge and the protection and facilitation of assemblies (providing security, medical services and sanitary facilities) should not be borne by the organizers.¹⁵³ Therefore, requiring a fee for the examination of the request for a permit in Sweden does not conform with good practice.

116. Recommendations for participating States:

- to ensure that everyone's right to freedom of peaceful assembly is protected regardless of their age, nationality, legal capacity or their previous conduct in the context of assemblies unless the latter provides clear evidence of the intent to hold a violent or otherwise disruptive assembly;
- to ensure that authorization/notification requirements are only imposed when necessary to facilitate freedom of assembly or necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others and only to 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 do not result in automatic prohibition or dispersal of an otherwise peaceful assembly;
- 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);

¹⁵¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, United Nations Human Rights Council A/HRC/23/39, para. 54.

¹⁵² Section 13 of the Law on Meetings, Street Processions and Pickets.

¹⁵³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, United Nations Human Rights Council A/HRC/23/39, para. 57.

- 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 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 organs 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

117. 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 taken following an assembly, such as sanctions, are discussed in the chapter on the duties and responsibilities of the organizers.¹⁵⁴

Prior restrictions on assemblies: international standards and good practice

118. 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.¹⁵⁵

119. 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

¹⁵⁴ 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.

¹⁵⁵ 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).¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸

120. 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.¹⁵⁹ 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”.¹⁶⁰ 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.¹⁶¹ 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”.¹⁶²
121. 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.¹⁶³ 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.¹⁶⁴
122. 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 violence¹⁶⁵ or acts aimed at

¹⁵⁶ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 35.

¹⁵⁷ *Ibid.*, para. 39.

¹⁵⁸ *Ezelin v. France* (1991), para. 45.

¹⁵⁹ *The Guidelines, op. cit.*, note 1, Explanatory Notes, paras. 109-112; ECtHR, *Ezelin v. France* (1991), para. 53.

¹⁶⁰ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 16.

¹⁶¹ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 63.

¹⁶² “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 39.

¹⁶³ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 69.

¹⁶⁴ *Ibid.*, para. 70.

¹⁶⁵ Article 20, ICCPR.

the destruction of the rights and freedoms enshrined in international human rights law¹⁶⁶ 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.¹⁶⁷ 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).¹⁶⁸

123. 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.¹⁶⁹ 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.¹⁷⁰
124. 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.¹⁷¹
125. 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.¹⁷² 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.¹⁷³
126. Restrictions 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 unsubstantiated risk of public disorder or the mere presence of a hostile audience.¹⁷⁴ 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

¹⁶⁶ Article 5, ICCPR.

¹⁶⁷ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 33.

¹⁶⁸ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 96.

¹⁶⁹ *Ibid.*, para. 99.

¹⁷⁰ *Ibid.*

¹⁷¹ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 34.

¹⁷² *Ibid.*, para. 45.

¹⁷³ *Ibid.*, para. 103.

¹⁷⁴ *Ibid.*, para. 71.

way of subsequent arrest and prosecution rather than prior restraint.¹⁷⁵ 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.¹⁷⁶

127. 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).¹⁷⁷ In rare cases, restrictions on assemblies may also be justified on public-health grounds.¹⁷⁸ 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.¹⁷⁹
128. 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.¹⁸⁰ The state must prove the precise nature of the threat and the specific risks posed.¹⁸¹ 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.¹⁸²
129. The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of others in the location affected by an assembly.¹⁸³ Given the need to respect diversity in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe upon the rights and freedoms of others.¹⁸⁴

¹⁷⁵ *Ibid.*

¹⁷⁶ 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."

¹⁷⁷ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 74.

¹⁷⁸ In such cases, similar restrictions should also apply to attendance at schools, concerts, sporting events, etc.

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

¹⁷⁹ *Ibid.*, para. 79.

¹⁸⁰ *Yesilgoz v. Turkey* (2005), para. 30 (French only).

¹⁸¹ Human Rights Committee, communication No. 1119/2002, *Lee v. the Republic of Korea*, views adopted on 20 July 2005, para. 7.3.

¹⁸² 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/siracusaprinciples.html>>.

¹⁸³ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 80.

¹⁸⁴ *Ibid.*

130. Assemblies are just as legitimate a use of public space as are commercial activities or the movement of vehicles and pedestrian traffic.¹⁸⁵ The temporary disruption of vehicular or pedestrian traffic and opposition to an assembly are not, of themselves, sufficient to justify restrictions on assemblies.¹⁸⁶ 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 Convention is not to be deprived of all substance”.¹⁸⁷
131. 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.¹⁸⁸

Prior restrictions on assemblies in selected participating States

132. 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.¹⁸⁹

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

133. In Austria, an assembly can be banned by the competent authority if its purpose violates criminal laws or if it poses a threat to public security or the public good.¹⁹⁰
134. In Cyprus, based on the Constitution, the legitimate grounds for restrictions on the right to peaceful assembly are limited to national security, constitutional order, public safety, public order, public health or morals and the protection of the rights and freedoms of others.¹⁹¹

¹⁸⁵ *Ibid.*, para. 20; “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf>, para. 41.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Sergey Kuznetsov v. Russia* (2009), para. 44.

¹⁸⁸ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 19.

¹⁸⁹ 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).

¹⁹⁰ Article 6 of the Austrian Assembly Act.

¹⁹¹ Article 21(3) of the Constitution of Cyprus.

135. In Latvia, the legitimate grounds for restriction are national and public security, prevention of disorder or crime, the protection of health or morals of society, as well as protection of the rights and freedoms of others.¹⁹² Municipalities may prohibit an event if it is found that the organization of the event will endanger the rights of other people, the democratic polity, public safety or the well-being or virtue/morals of the society and if the above-mentioned dangers are impossible to prevent by simply placing restrictions on the event.¹⁹³
136. In Poland, a municipality can ban an assembly if its aim infringes the freedom of peaceful assembly, if holding the assembly will violate the term for the organization of assemblies or if its aims or the actual conduct of the assembly will infringe criminal laws, or if it presents a risk to human life or health or to property to a substantial degree, including when such a risk cannot be prevented by less invasive restrictions alone.¹⁹⁴
137. In Ireland, research revealed that various laws provide for restrictions on assemblies. A blanket prohibition exists on assemblies by so-called unlawful organizations.¹⁹⁵ The Road Traffic Act of 1961 prohibits any act that might obstruct traffic. Article 4(1)(a) of the Offences against the State (Amendment) Act of 1972 makes any meeting or procession that interferes with, directly or indirectly, the course of justice an unlawful assembly.
138. In Sweden, permits for a public assembly can be denied only if this is necessary to preserve public order or public safety, if it is related to the movement of traffic or to prevent an epidemic.¹⁹⁶ In addition, the police may ban the organization of a public assembly if, at a previous assembly of the same kind, severe disorder arose at the assembly itself, as a direct consequence of it, in its immediate surroundings, if the assembly considerably endangered those present or if traffic was greatly disturbed. In such cases, an assembly may only be banned if there is a risk of unlawful activities, disorder, danger for those present or traffic disturbance and if minor interventions for the prevention of the above-mentioned risks are not sufficient.¹⁹⁷
139. In the German federal state of Bavaria, the competent authority may limit or prohibit an assembly if the organizer does not meet the requirements regarding the exclusionary rules as set out in Section 1(2) of the Assembly Act; when there are facts that demonstrate that the organizer or leader allows people to enter an assembly who are carrying weapons or similar objects, when the organizer or his or her followers intend to engage in or incite violence at an assembly, when the organizer or his followers share certain views or tolerate certain

¹⁹² Section 3(2) of the Law on Meetings, Street Processions and Pickets.

¹⁹³ Section 15(1)(2) of the Law on Meetings, Street Processions and Pickets.

¹⁹⁴ Article 14 of the Act on Assemblies.

¹⁹⁵ Section 27 of the Offences Against the State Act 1939.

¹⁹⁶ Article 10 of the Public Order Act. Meeting with representatives of the Swedish Ministry of Justice in Stockholm, 28 April 2016,

¹⁹⁷ Article 25 of the Public Order Act.

statements that refer to a crime or an offence that requires prosecution or if an assembly poses a significant risk to national security.¹⁹⁸

140. Content-based restrictions are prescribed in some participating States. In Latvia, for example, assembly participants may not inveigh against the independence of the Republic of Latvia, suggest overthrowing Latvia's state structure by means of violence; call for the non-fulfilment of laws; advocate violence; advocate ethnic or racial hatred; openly support the ideology of Nazism, fascism or communism; conduct war propaganda or call for the commission of criminal offences or other violations of the law.¹⁹⁹ At the same time, Section 19 of the Assembly Law states that there must be freedom of speech at meetings, street processions and pickets.
141. The Bavarian Assembly Act also contains legal bases for the adoption of restrictive measures for the protection of the dignity of the victims of National Socialist rule.²⁰⁰
142. In Sweden, when the police review requests for permits and notifications, they can order the organizer of a public assembly or public event to provide information other than what the application, notification or request includes. The organizer is not obliged, however, to provide information on the content of talks, speeches or dramatic or other presentations that will occur at an assembly or event, which suggests that prior, content-based restrictions are not allowed.²⁰¹
143. In some of countries where ODIHR monitored assemblies, certain assemblies were banned by the regulatory authority or the police.
144. In preparations for the NATO Summit, Poland passed a specific NATO Summit law.²⁰² Shortly before the Summit, on 30 June 2016, the law was amended, banning all spontaneous assemblies on the territory of Warsaw.²⁰³
145. During the G7 Summit in Germany, organizers of the anti-G7 Summit protests planned to establish a tent camp to accommodate the assembly participants in the vicinity of Schloss Elmau, the venue of the Summit on 7 and 8 June 2015. Representatives of the alliance organizing the protests had been trying in vain, over an extended period of time, to find possible areas for the camp. A number of press releases exist that suggest that the relevant authorities attempted to influence the municipalities in the area, and through them also private property owners, with the objective of not providing any possible camping areas for the

¹⁹⁸ Article 12(1) of the Bavarian Assembly Act.

¹⁹⁹ Section 10 of the Law on Meetings, Street Processions and Pickets.

²⁰⁰ Article 15(2) of the Bavarian Assembly Act.

²⁰¹ Article 9 of the Public Order Act.

²⁰² Act on Special Arrangements Connected with the Summit of the North Atlantic Treaty Organization in Warsaw.

²⁰³ "During the Summit of the North Atlantic Treaty Organization in the Polish Republic in Warsaw in 2016, from 7 July 2016 at 00:00 until 10 July 2016 at 24:00, in the city of Warsaw it is forbidden to participate in spontaneous assemblies, referred to in art. 3 paragraph 2 of the Act of 24 July 2015 – Act on Assemblies."

alliance. It appears that it was even recommended that private property owners who were inclined to rent their property be “outlawed”.²⁰⁴ If this did not work, municipalities were encouraged to set requirements that the organizers could not possibly fulfil.²⁰⁵ After unsuccessful attempts to find municipal land for the site, the organizers managed to rent a plot from a local resident in Garmisch-Partenkirchen. Two weeks before the Summit, however, the municipality banned the use of the land, arguing that there was a flood risk in the area. On appeal, the Bavarian administrative court annulled the ban, saying that the planned camp had to be seen in the infrastructural and organizational context of the registered demonstration, which was an expression of the constitutionally guaranteed rights of freedom of expression and freedom of assembly. The concerns suggested by the municipality and the water authority were considered rather vague and abstract by the court and did not refer to an actual danger of high waters in the relevant area during the period in question. Moreover, the court criticized the disproportionality of the measure, as less restrictive means could have been found to mitigate any risk of flooding in the area.²⁰⁶

146. One person was reportedly detained in connection with the assembly organized by the World Hazara Council in Warsaw as he was distributing flyers about the assembly the day before it was to take place. He was not informed about the reason for his arrest. (Please see the section on detention and arrest in para. 351 for more information.)

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

147. Several participating States prohibit assemblies from taking place near certain buildings or sites. In Latvia, during meetings, street processions and pickets, free access for pedestrians and vehicles shall be provided to State and local government authorities in whose neighbourhood the events are held and operations of these authorities may not be restricted.²⁰⁷
148. In Austria, during sessions of the National Council, the Federal Council, the Federal Assembly or one of the state parliaments, outdoor assemblies are not permitted within a radius of 300 metres of the venues.²⁰⁸
149. In Ireland, any senior police officer may ban any assembly within half a mile (about 800 metres) of a building in which either house of the Oireachtas (parliament) is sitting.²⁰⁹ Reportedly, this restriction is generally used in relation to terrorism on the basis of the Public

²⁰⁴ Reasoning of the Administrative Court of Munich in the case of the Anti-G7-camp (tent camp) at the market town of Garmisch-Partenkirchen, 2 June 2015, on file at ODIHR.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ Section 9 (1) of the Law on Meetings, Street Processions and Pickets.

²⁰⁸ Article 7 of the Austrian Assembly Act.

²⁰⁹ Section 28 of the Offences Against the State Act 1939.

Order Act,²¹⁰ which allows any senior police officer to authorize the mounting of barriers up to a mile (about 1.6 kilometres) around an assembly to restrict access by people or vehicles thereto in the interest of public order or safety.²¹¹

150. In the German federal state of Bavaria, the area around the state parliament is generally restricted for outdoor assemblies (even prompting others to hold an assembly)²¹² unless specially permitted by the competent authority.²¹³
151. In some of the participating States where ODIHR monitored assemblies, there are legislative restrictions in place on the manner of conducting assemblies. In Latvia, assembly participants are prohibited from, among other things, wearing passive means of protection (helmets, casques, body armour and similar equipment); concealing their faces beneath masks,; using former Soviet, Latvian SSR and Nazi Germany flags, coats of arms, national anthems and symbols (also in a stylized form); performing acts that are contradictory to public morals; acting in such a way as to create a threat to the participants of meetings, street processions or pickets or the safety and health of other people.²¹⁴ A speech may be made at an assembly only with the permission of the relevant assembly manager or his or her assistants.²¹⁵
152. In Sweden, assembly participants can fully or partially cover their faces only if they have a specific permit to do so, which has to be requested in writing at the time of the request for authorization or submission of a notification.²¹⁶ This provision is further specified in an act (2005:95)²¹⁷ that prohibits the wearing of masks in certain cases, which limits the prohibition to assemblies or events where there is a disturbance of public order or an imminent risk of such a disturbance. 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.²¹⁸ The ban does not apply to anyone covering their face for religious reasons.²¹⁹
153. Similarly, in Austria, participants of an assembly cannot cover their faces in order to avoid being recognized.²²⁰ Authorities may refrain from the enforcement of prohibitions if there is no reason to suspect any danger to public order, peace or security.
154. In the German federal state of Bavaria, participants are not allowed to wear a uniform, parts of a uniform or similar articles of clothing as an expression of a common political conviction, or to participate in a public or closed assembly in a manner that contributes to characterizing

²¹⁰ Meeting with the Gardai Ombudsman, 16 April 2015.

²¹¹ Criminal Justice (Public Order) Act, 1994, Article 21(1).

²¹² Article 18 of the Bavarian Assembly Act.

²¹³ Article 19 of the Bavarian Assembly Act.

²¹⁴ Section 11 of the Law on Meetings, Street Processions and Pickets.

²¹⁵ Section 20(3) of the Law on Meetings, Street Processions and Pickets.

²¹⁶ Article 7a of the Public Order Act.

²¹⁷ Act (2005:95) on prohibiting masking in certain cases.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ Article 9 of the Assembly Act.

an assembly or parts of it as paramilitary, based on its outward appearance, provided that this has an intimidating effect.²²¹ They cannot carry weapons or similar objects or defensive arms, nor may they use their clothing or carry objects to disguise their identity.²²² The competent authority may allow exceptions if there are no grounds to suspect any threat to national security or public order.²²³ Open-air church services, religious processions, funerals and pilgrimages are exempt from the ban on disguising one's identity and on carrying weapons.²²⁴

155. The Latvian Law on Meetings, Street Processions and Pickets obliges the organizer to select the location or route of an assembly in such a way that the movement of vehicular and pedestrian traffic is interrupted as little as possible.²²⁵ During the examination of the notification, the responsible local government official has to verify, among other things, that an assembly will not cause significant interruptions to the movement of traffic.²²⁶
156. In order not to endanger the participants of another previously announced assembly or to avoid significant interruptions of traffic or threats to the rights of others, the democratic system of the State, public safety, welfare or morality, the municipality is entitled to take a decision to impose restrictions regarding an event's place, time and manner, but without hindering the aim of the event and only if the municipality cannot come to an agreement with the organizer on necessary changes to the progress of the event.²²⁷
157. Reportedly, there were changes made to the route of the planned EuroPride event in Riga, as the "organizer's route was too close to official buildings as well as to a church".²²⁸ Before the event, a notification was submitted by a group called Antiglobalists for an assembly that was to take place over a period of nine consecutive days and that would overlap with the EuroPride event and in the location where the Pride event was planned to march. Another notification was submitted two days later from the same organizer for a different location where Pride events had been held in the past. The authorities concluded that the organizer was trying to prevent the Pride event from taking place and therefore restricted the assembly to a location adjacent to the gathering and finishing venue of the EuroPride event. The organizer appealed the decision, but the court confirmed the restriction.
158. During the NATO Summit in Warsaw, vast areas in the old city centre and the Saska Kępa district were closed to road and pedestrian traffic. A wide area around the venue of the Summit, the National Stadium, was fenced off, where only authorized individuals with special

²²¹ Article 7 of the Bavarian Assembly Act.

²²² Article 16(1)(2) of the Bavarian Assembly Act.

²²³ Article 16(3) of the Bavarian Assembly Act. The mentioned restrictions do not apply to open-air church services, religious processions, silent processions of supplication, pilgrimages, common funerals, wedding processions or traditional public festivals.

²²⁴ Article 16(4) of the Bavarian Assembly Act.

²²⁵ Section 8 of the Law on Meetings, Street Processions and Pickets.

²²⁶ Section 15(2) of the Law on Meetings, Street Processions and Pickets.

²²⁷ Section 15(1)(1) of the Law on Meetings, Street Processions and Pickets.

²²⁸ Meeting with the representatives of the municipal authorities and police, 19 June 2015.

IDs could enter. At the ODIHR monitors' meeting with the Director of the Crisis Management and Safety Department (BBZK) of the City of Warsaw, ODIHR was informed that organizers who wanted to hold assemblies inside the fenced-off area during the NATO Summit were invited to a meeting with the City Council and the police, where they were told that the BBZK would have to issue a ban if they did not change the location, as assemblies had to be organized in an open space, and that area was closed. ODIHR was informed that the organizers were convinced, and no ban was issued.

159. However, some of the organizers found the restrictions burdensome. The organizer of a protest against the presence of US troops in Poland informed ODIHR that the venue for his static assembly at Washington Square in Warsaw was selected after lengthy negotiations with the authorities as the closest possible location to the Summit. Based on ODIHR's assessment, even this assembly was not within sight and sound of the Summit participants. An assembly organized by the World Hazara Council involved participants from 22 countries. At the beginning of the assembly, police did not allow participants to move closer to the perimeter of the Summit despite the fact that the road up to the perimeter was open and accessible to everyone. Two police officers blocked the sidewalk about 100 metres from the NATO perimeter barrier, although other pedestrians continued to use the open path.
160. Similarly, the organizer of an anti-NATO march informed ODIHR that he found it burdensome that not all areas closed off from traffic were known to the public well in advance. He provided notification of his assembly at the earliest possible time, namely a month in advance, only to find out two weeks later that the planned route was “impossible”, without being given further details as to why this was the case. He requested a meeting with the authorities, which took place two weeks before the scheduled date of the assembly. Only then did he find out that more public spaces and roads were in fact cut off from vehicular and pedestrian traffic than had been officially announced. However, this information was revealed at such a late stage of the organization of the assembly that the original venue and route had been pre-announced, so the organizer could only make minor changes to adhere to the official restrictions. Since this assembly also involved several participants and speakers coming from abroad, the lack of accessible and prompt information was a general hindrance to holding the march.
161. Shortly before the NATO Summit, Poland passed a comprehensive antiterrorism act that also had implications for the exercise of the freedom of peaceful assembly during the Summit. A group of people from the Warsaw Anarchist Federation en route to join an assembly organized by the Stop the War Initiative Poland were stopped and held up by the police for approximately 20 minutes. Reportedly, the group was held for identification purposes under the provisions of the Antiterrorism Law implemented during the NATO Summit.²²⁹ The police also informed ODIHR that the NATO Summit and the terrorism threat necessitated keeping the main routes for delegations and evacuation routes to hospitals open in case of a

²²⁹ Meeting with representatives of the police in Warsaw, 11 July 2016 .

terrorist attack. This, in turn, resulted in traffic restrictions, as well as an increased police presence, also in the context of facilitating public assemblies.²³⁰

162. In Germany, in order to protect the participants of the G7 Summit from possible terrorist attacks and disturbances, as well as to secure emergency routes, an approximately 7,7 kilometre-long fence was erected around Schloss Elmau, the castle where the summit was held. Three security zones were set up, one just around the castle where entry was possible by permission only and another covering about 4.23 square meter area around the castle. Assemblies were not allowed in these two zones. The third security zone was in the town of Garmisch-Partenkirchen, where regular police checks were carried out.²³¹ On 7 June 2015, during the G7 Summit, there were six notified moving assemblies attempting to reach Schloss Elmau via different routes to challenge the establishment of the security zones. Pre-event restrictions imposed by the municipality of Oberbayern prohibited protesters from moving into the security area. Following an appeal from the organizers, the Bavarian administrative court allowed 50 protesters with a police escort and vehicles to enter the area; however, the decision was appealed again, this time by both parties. The evening before the announced assembly, the second-instance court ruled in favour of the municipality and upheld the restrictions. The ODIHR team was able to monitor only two of the announced assemblies, one with 100 participants and the other with 150 participants. The smaller assembly was heavily policed after a non-violent incident where demonstrators pushed through a police blockade. The assemblies united when they reached the fence bordering the security zone, at which point it became a static gathering. There was no attempt by the assembly participants to cross the fence, and after approximately two hours they voluntarily dispersed in groups.
163. The organizer of the assembly observed by ODIHR in Munich on 4 June 2015 informed ODIHR that the authorities required the presence of 200 stewards at the assembly, which they perceived as a restriction on the exercise of freedom of peaceful assembly.²³²
164. Taking place just afterwards and within 10 kilometres of the venue of the G7 Summit in Germany, the security strategy for the Bilderberg Meeting in Telfs-Buchen, Austria, was intrinsically linked to the security operations in Germany. A no-entry zone was established around the venue of the Bilderberg meeting with a radius of 500 metres, and police checkpoints were set up on the roads leading directly to the meeting venue for security and safety reasons (securing emergency roads).²³³ A 1,200-metre-long perimeter fence was set up around the Inter Alpen Hotel, the venue of the Bilderberg meeting, which was safeguarded by police officers and alpine police.
165. On 12 June 2015, ODIHR monitored a static assembly with approximately 50 participants that took place in the direct vicinity of the no-entry zone next to the private road leading to the

²³⁰ Meeting with representatives of the National Police Headquarters and Capital Police Command, 20 July 2015.

²³¹ Meeting with the representatives of the police and municipality in Munich, 3 June 2015.

²³² Meeting with the organizer of the assembly in Munich, 4 June 2015.

²³³ ODIHR was informed that Article 36(1) of the Security Police Law authorized the establishment of security zones in Austria. Meeting with the police in Innsbruck, 15 June 2015.

venue of the Bilderberg meeting in Telfs-Buchen. Access to the assembly venue posed a challenge for protesters and media representatives, as the road was only open to vehicles belonging to people living there or to guests of a restaurant located at the entrance of a private road leading to the Interlpen Hotel. In addition, the organizers were only allowed to transport people in six designated cars and had to go through a police checkpoint. Based on the above, the assembly's message could be communicated only to a small number of media representatives present. The organizers initially inquired about the possibility of setting up a tent camp outside the security zone by Lotensee to accommodate the demonstrators. Reportedly, they had reached an agreement with the owner of some private land in the area. After arrangements were made, however, the offer was rescinded by the host, allegedly following contact by the police.²³⁴ The organizer also informed ODIHR that there were conflicting messages communicated by the police regarding the status of the road leading to the demonstration venue and the entrance to the Interlpen Hotel, regarding whether the road would be closed to traffic or whether there would merely be a police checkpoint.

166. On 13 June 2015, ODIHR monitored a moving assembly in Telfs with approximately 500 participants. In advance of the assembly, the route had been modified by the authorities to ensure minimum disturbance of traffic. The modified route led the protesters past an industrial area, open fields and a cemetery, among other places, which limited the size of the potential audience compared to the original route. The organizers had initially requested a different route; however, after discussions with the police, they agreed to a less visible route to have less of an impact on traffic.

Conclusions and recommendations on restrictions imposed before assemblies

167. Avoiding a possible traffic disturbance is not listed among the legitimate aims found in OSCE commitments and international human rights standards that would justify restrictions on the 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. Moreover, obliging the organizer to select the location or route for an assembly in such a way that the movement of transport is interrupted as little as possible, as is the case in Latvia, suggests that public assemblies are a less legitimate use of public space than vehicular traffic. Therefore, giving priority to such considerations in the examination of a notification does not ensure the full enjoyment and exercise of the freedom of peaceful assembly. A request on the part of the authorities to modify an assembly route to ensure minimum disturbance of traffic is an undue limitation on assembly rights if, as a result, the assembly's ability to communicate its message to its target audience is significantly restricted, as was the case in Telfs, Austria.
168. Prohibiting assemblies at certain public locations, such as is the case in Austria, Germany or Ireland gives rise to blanket prohibitions.²³⁵ Since blanket bans on assemblies are likely to be

²³⁴ Meeting with assembly organizers, 11 June 2015.

²³⁵ "Draft Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria", Venice Commission, 5 June

disproportionate in that they fail to take into account the individual circumstances of the assemblies involved, they should be avoided, and other, less intrusive restrictions should be used 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.²³⁶ The possibility of receiving a permit from the competent authority to hold an assembly in a restricted area in the German federal state of Bavaria is a positive step towards a more individualized approach. At the same time, regulations calling for a preventive ban that is subject to the possibility of authorization reverses the general human rights principles in this field, which creates a presumption in favour of holding peaceful assemblies.²³⁷

169. Similarly, prohibiting certain types of assemblies during a certain time period, such as banning spontaneous assemblies on the territory of Warsaw during the NATO Summit, also constitutes a blanket ban, which fails to take into account the individual circumstances and specific risks of the possible assemblies involved.
170. The wearing of masks or other face coverings at a peaceful assembly should not be prohibited where there is no demonstrable evidence of imminent violence. An individual should not be required to remove a mask unless his/her mask is worn for a non-expressive purpose such as evading identification so as to avoid arrest for unlawful conduct.²³⁸ The wearing of face coverings during assemblies may, for example, happen for expressive or religious purposes or to conceal one's identity for fear of retaliation.
171. Therefore, not having such a ban, as is the case in Poland, or limiting the prohibition to those assemblies where there is a disturbance of the public order or an imminent risk of such disturbance, while exempting face coverings for religious reasons, such as in Sweden, are positive practices. Bavaria's exemption, for religious reasons, from its ban on covering one's face or carrying a protective weapon is also positive.
172. The free choice of venue is understood to form an important part of the freedom of the organizer to autonomously decide on the character of an event, especially when the location itself is in some form the object of the protest.

2009, paras. 23 and 42, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)087-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)087-e)>.

²³⁶ "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 66.

²³⁷ Salát, *op. cit.*, note 58, p. 272.

²³⁸ See, for example, Polish Constitutional Court judgment of 10 July 2004 (Kp 1/04); *Ku Klux Klan v. Kerik*, 356 F.3d 197 (2d Cir. 2004) (upholds an anti-mask statute where the use of masks had no expressive value); *Ryan v. Cnty. of DuPage*, 45 F.3d 1090 (7th Cir. 1995) (upholds the prohibition of the use of masks where the mask implied intimidation). However, see *City of Dayton v. Esrati*, 125 Ohio App. 3d 60, 707 N.E.2d 1140 (1997) (overturning a conviction for wearing a "ninja" mask at a government commission meeting because the prosecution was based on the purely expressive nature of the conduct).

173. Although, when it comes to summits and similar events, there can be legitimate security considerations that have to be taken into account when regulating and facilitating assemblies, these should not be used to justify disproportionate interference with the freedom of peaceful assembly and, specifically, the ability of assembly participants to convey a message to their intended target audience. The blanket bans applied to certain areas or security zones in the cases of the G7 Summit, NATO Summit and Bilderberg meeting failed to take into account the individual circumstances of each assembly, and therefore give rise to concerns about the proportionality of restrictions imposed. As a result, none of the assemblies held in the three countries were facilitated within sight and sound of their intended audience. In this respect, the ruling of the Bavarian administrative court to allow at least a small group of protesters to enter the security zone is a positive example of sound human rights policy.
174. 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.²³⁹ In this respect, the reported unjustified arrest of a person associated with the World Hazara Council in the context of promoting a planned assembly is a restriction, with the onus resting on Polish law-enforcement authorities to provide objective and reasonable justification for his arrest and to establish that it was necessary and proportional.
175. In this respect, the ruling of the Bavarian administrative court saying that the planned protest camp had to be seen in the infrastructural and organizational context of the registered demonstration, and was therefore protected by the rights of freedom of expression and freedom of assembly, successfully confirmed the right to freedom of peaceful assembly and also protects certain preparatory acts that are relevant for the planning, preparation and promotion of an assembly.
176. 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 are put in writing, 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 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

²³⁹ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 19.

remove provisions from the law or from temporary measures adopted on the occasion of large summits or similar events that can operate as 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 remove or amend restrictions in the law that are vague or broad and can therefore result in overly restrictive and/or arbitrary application of the law;
- to refrain from imposing content-based restrictions on assemblies unless they can be compellingly justified on the basis of intentional incitement to violence resulting in an imminent threat of violence or of a message advocating national, racial or religious hatred that constitutes incitement to discrimination or violence;
- 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.

FACILITATING SIMULTANEOUS ASSEMBLIES, INCLUDING COUNTER-DEMONSTRATIONS

Facilitating simultaneous assemblies: international standards and good practice

177. Where notification or an authorization request is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as best as possible.²⁴⁰ Authorities should conduct a thorough assessment of any risks of disorder and develop strategies for their mitigation.²⁴¹ A prohibition against conducting public events in the same place and at the same time as another public event where they can both be reasonably accommodated is likely to be a disproportionate response.²⁴²

²⁴⁰ *The Guidelines, op. cit.*, note 1, para. 4.3.

²⁴¹ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 28(f).

²⁴² *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 122.

178. Where it becomes necessary to impose restrictions on one or more simultaneous assemblies, those restrictions should be determined through mutual agreement or, where this is not possible, through a process that does not discriminate between the proposed assemblies.²⁴³ In the case of peaceful counterdemonstrations, emphasis should be placed on the state's duty to protect and facilitate each event where counterdemonstrations are organized or occur and on the state's duty to provide adequate policing resources to accommodate and facilitate such related simultaneous assemblies, to the extent possible, within sight and sound of one another.²⁴⁴ Importantly, the right to counterdemonstrate does not extend to inhibiting the right of others to demonstrate.²⁴⁵ When the intention of the organizers of a counterdemonstration is specifically to prevent another assembly from taking place or to interfere with it, Article 5 of the ICCPR or Article 17 of the ECHR may be engaged, and the counterdemonstration will not enjoy the protection normally afforded by the right to freedom of peaceful assembly.²⁴⁶
179. In the case of simultaneous assemblies in the same location, the UN Special Rapporteur: "considers it good practice to allow, protect and facilitate all events, whenever possible. In the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial."²⁴⁷
180. If the events cannot be accommodated simultaneously (due, for example, to a lack of space), the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities may try to resolve the issue by adopting a fair method of allocating the events to particular locations, so long as this does not discriminate between different groups. This may be done, for example, on a first-come-first-served basis, although abuse of this rule (where notification for an assembly is deliberately submitted early to pre-empt or block access to other events) should not be allowed. Where, for some reason, this approach leads to an unfair result, the authorities may even draw a name from a hat or flip a coin to determine which assembly should be facilitated in the location indicated in the notification.²⁴⁸

Facilitating simultaneous assemblies: procedural issues in selected participating States

²⁴³ "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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 28(f).

²⁴⁴ *The Guidelines*, *op. cit.*, note 1., para. 4.4.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*, para. 124.

²⁴⁷ "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 30.

²⁴⁸ *The Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 122.

181. Most participating States generally apply a first-come-first-served principle in dealing with notifications of simultaneous assemblies.
182. In Latvia, when the relevant local government official examines an assembly notification, he or she has to assess, among other things, whether the event will interfere with previously notified assemblies. The organizer has to be notified of the time when an assessment the notification will take place. If necessary, representatives of the police and other interested organizations will also be invited to the assessment.²⁴⁹ This regulation has been interpreted by the Riga City Executive Director to mean that notifications are to be reviewed in the order in which they have been filed.²⁵⁰ Whether an announced assembly will endanger other people's rights, such as the right to assemble, is also assessed.²⁵¹ In this context, the municipality is entitled to recommend that the organizer change the time, place or manner of the assembly, and if no agreement is reached, it can make a decision to impose time, place and manner restrictions on the event without hindering the realization of the aim of the event.²⁵² Therefore, if an assembly would disrupt another previously notified assembly, restrictions can be imposed. This authority is also underscored by the positive obligation of the state, enshrined in Latvian law, to guarantee the opportunity to assemble, also ensuring that an assembly is not disrupted.²⁵³
183. The Polish assembly law prescribes that the registration of a notification must include the date, hour and minute when the notification is filed, thus determining the order of notifications.²⁵⁴ Article 12 specifies that “if a notification has been filed about one or more assemblies that are to be organized at least partly in the same place and time, and it is impossible to hold them in a manner that would ensure that their course would not present a hazard to the life or health of people or to property to a substantial degree, the primary choice as to the place and time of the assembly is determined by the order in which the notifications have been filed”. If such a situation arises, the relevant body calls the organizer of the assembly that does not enjoy primary treatment and requests that they change the place or the time of their assembly²⁵⁵ or organizes an administrative hearing with the organizers to settle the situation.²⁵⁶ However, the administrative hearing is required to take place no later than 120 hours before the planned date of the assemblies, and the body may offer a change in time and place at this administrative hearing. If the organizers do not reach an agreement, they get to choose the time and place in the order in which they submitted their notifications.²⁵⁷ In

²⁴⁹ Section 15(2) of the Law on Meetings, Street Processions and Pickets.

²⁵⁰ Decision of the Riga City Executive Director regarding the notification of the Association of Antiglobalists on 10 June 2015, on file with ODIHR.

²⁵¹ Inferred from Section 15(1)(2) of the Law on Meetings, Street Processions and Pickets.

²⁵² Section 15(1)(1) of the Law on Meetings, Street Processions and Pickets.

²⁵³ Section 3(3) of the Law on Meetings, Street Processions and Pickets.

²⁵⁴ Article 9(2) of the Polish Act on Assemblies.

²⁵⁵ Article 12(2) of the Polish Act on Assemblies.

²⁵⁶ Article 13(1) of the Polish Act on Assemblies.

²⁵⁷ Article 12(4) of the Polish Act on Assemblies.

addition, Poland's Constitutional Court has specifically held that the risk of counterdemonstrations should not be used as grounds to prohibit an assembly.²⁵⁸

184. ODIHR monitored simultaneous assemblies in several participating States. In Riga, Latvia, an association called the Antiglobalists provided notification of an assembly to promote family values at the venue that was the gathering point for the previously announced EuroPride event. Owing to the intended use of sound equipment at the same location as the other previously notified assembly, the municipality requested that they either change the time or location of the event in order not to disrupt the EuroPride march, co-ordinate the course of the assembly with the Pride event or refrain from organizing an assembly at the same place and time. The organizer agreed not to use a sound amplifier but wanted to maintain the location of the assembly and to concentrate on the stage and fountain area of the park. The municipality carried out an assessment, during which it also received assessments from the public-order police and the security police. The police concluded that the assembly could disrupt the previously announced Pride event and that since the organizer did not agree to change the location or to not hold the event altogether, the municipality had to impose restrictions while not disturbing the implementation of the event in order to avoid the disruption of the Pride march and to avoid endangering the participants. The security police concluded that the event (and other events announced by the same organization for the period around the Pride event) could be viewed as a protest against the Pride march and that there was therefore a risk to public safety and order. In order to avoid such an eventuality, the assemblies had to be physically separated. As a result of the assessment, the municipality concluded that the Antiglobalists assembly had to be viewed as a counterdemonstration to the EuroPride event. This was also evidenced by the association's previous activities (it organized an assembly at the Town Hall earlier that year to call on the Riga City Council not to allow the Pride event) and the fact the organizer could not substantiate why the assembly's goal could not be achieved at another location. Therefore, an alternative assembly venue had to be assigned that was within a visible and audible distance of the Pride event but that would not disrupt its course and so as to avoid direct mutual provocation or a conflict. A part of the pavement on Merkela Street adjacent to the park was found to be appropriate. The same day, the organizer appealed the decision at the District Administrative Court, which rejected the appeal a week later. Although a further appeal to the Supreme Court was possible, the justification of the District Court's judgement was to be communicated three weeks later, and thus after the date of the planned assembly.
185. In Gothenburg, Sweden, ODIHR observed six parallel assemblies. The May Day march held by the ruling Social Democratic Party met with a small counterdemonstration involving anti-government messages, for which the organizer received a permit in advance from the Swedish Police Authority.

²⁵⁸ Judgment of the Constitutional Court of 18 January 2006, K 21/05 (OTK-A 2006, No. 1, item 4), p. 104.

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

186. In light of OSCE commitments and international human rights standards, it is generally good practice to facilitate, as much as possible, the holding of simultaneous assemblies. This should be reflected in procedures followed during the pre-assembly notification/authorization phase. Where laws or regulations deal explicitly with the issue of simultaneous assemblies, they should not include an automatic prohibition on holding events at the same place and time.
187. The relevant provisions in the Polish law facilitate dialogue for organizers to agree on adjusting their assembly times and, if no agreement is reached, employ a first-come-first-served rule. In the Latvian law, on the other hand, preference is enjoyed by the assembly for which notification is first provided. In case the regulating authority determines that there is a danger of interference with the first assembly, no such dialogue is necessarily provided for between the organizers, but negotiations start with the organizer of the second assembly to change the time, place or manner of the assembly.
188. Specifically in relation to LGBTI Pride marches and similar events, counterdemonstrations may give rise to public safety and security considerations. However, the authorities should generally aim to facilitate the holding of a peaceful assembly and related, peaceful counterdemonstrations within sight and sound of one another. People have a right to assemble as counterdemonstrators to express their disagreement with the views expressed at another public assembly.²⁵⁹ On such occasions, the coincidence in the time and venue of the two assemblies is essential for the message to be conveyed by the second assembly.²⁶⁰ The Antiglobalists' assembly was not held within sight and sound of the EuroPride march as a result of the restrictions imposed. However, individual protesters with messages against the Pride event were able to express their opinion right at the entrance to the gathering and at the end point of the Pride march and could therefore be seen and heard by the participants.
189. In other contexts and in situations where simultaneous assemblies are not specifically regulated, the police and other local authorities can play an important role in facilitating or regulating simultaneous assemblies.
190. Recommendations for participating States:
- to ensure that provisions regulating assemblies and other public events taking place simultaneously and in the same or adjacent locations are based on the presumption that, whenever possible, all peaceful assemblies should be accommodated; in particular, to ensure that there are no provisions prohibiting public events from taking place at the same time and at the same place when they can be reasonably accommodated;

²⁵⁹ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 123.

²⁶⁰ *Ibid.*

- in relation to assemblies and corresponding counterdemonstrations, to ensure that no automatic restrictions are in place preventing them from taking place within sight and sound of each other; any restrictions imposed on assemblies should be narrowly tailored and should only be based on legitimate grounds based on objective evidence under international human rights law;
- to ensure that, when two public events cannot be accommodated in the same location, the organizers are encouraged to engage in a dialogue with each other to find a mutually satisfactory solution;
- to ensure that, in the pre-assembly phase, organizers of assemblies are not compelled, coerced or otherwise subjected to pressure either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly.

DECISION-MAKING AND REVIEW

Decision-making and review: international standards and good practice

191. 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.²⁶¹ 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.²⁶² A clear procedure for interaction between event organizers and the regulatory authorities is also necessary. Such a procedure should set out appropriate time limits by working backwards from the date of a proposed event, and it should allocate sufficient time for each stage in the regulatory process.²⁶³
192. 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.²⁶⁴ 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.²⁶⁵

²⁶¹ "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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 37.

²⁶² *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 61.

²⁶³ *Ibid.*, para. 65.

²⁶⁴ *Ibid.*, para. 66.

²⁶⁵ *Bączkowski and Others v. Poland* (2007).

193. According to the 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.²⁶⁶
194. 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.²⁶⁷
195. 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.²⁶⁸

Decision-making and review in selected participating States

196. Decision-making power with respect to assemblies is either allocated to the police or to the municipal authority. The regulatory authority decides on assembly-related issues in Poland, Germany and Latvia. In Germany, assembly issues are decided by a specific police department at the municipal level. In Latvia, the competent authority is the municipality on whose administrative territory an assembly is to take place. In Sweden, the police determine matters related to assemblies. Existing practice suggests the same regarding Ireland and Cyprus. In Austria, the competent authority is, depending on the location of the assembly, either the state police department or the municipal authority.²⁶⁹
197. In some participating States, there is a requirement that the responsible authority notify organizers about the lack of objections, a ban or other restrictions promptly after they submit their notification or request for a permit. Moreover, a prompt review of decisions before an independent court is also guaranteed.
198. In Poland, the relevant municipal council regulates assembly affairs. A decision to ban an assembly has to be issued no later than 96 hours before the planned date of the assembly. An appeal against a ban can be submitted within two hours from the publication of the decision in the Public Information Bulletin, but lodging an appeal does not halt the execution of the decision.²⁷⁰ The relevant regional court considers, without delay, appeals against decisions banning an assembly in non-litigious proceedings no later than within 24 hours of the lodging of an appeal.²⁷¹ An appeal against the decision of the regional court may be lodged with the

²⁶⁶ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 35.

²⁶⁷ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 120.

²⁶⁸ *Ibid.*, para. 67.

²⁶⁹ Article 16 of the Austrian Assembly Act.

²⁷⁰ Article 16(1) of the Act on Assemblies.

²⁷¹ Article 16(3) of the Act on Assemblies.

appellate court, and the appellate court must consider it within 24 hours, and its decision is final.²⁷² Besides pre-event decisions, the municipality is responsible for certain decisions affecting the course of an assembly. In line with Article 17(1) of the Act on Assemblies: “the organ of the municipality may designate its representative to participate in an assembly. The designation of a representative is mandatory in case there is a danger of public order being violated in the course of the assembly.” (Please see the Section on the use of force, firearms, detention, containment and dispersals for more information.)

199. In Latvia, a notification has to be examined by the competent authority within a period of three days but not later than 48 hours before the beginning of a planned assembly. When examining the notification, the responsible official needs to verify whether the organizer has complied with all the requirements of the law, that the event will not interfere with assemblies for which notification was provided earlier, that the organization of the event at the intended time and place will not cause significant disruptions to the movement of traffic and will not threaten public safety or public order.²⁷³
200. In order not to endanger the participants of an event for which notification was provided earlier and to prevent significant disruptions to the movement of traffic, threats to public safety or public order, the municipality is entitled to impose restrictions regarding the event’s place, time and manner without interfering with the realization of the aim of the event if it cannot come to an agreement with the organizer on necessary changes to the conduct of the event.²⁷⁴ Such a decision has to be made no later than five working days before the announced event.²⁷⁵ Within the same time period, the municipality is entitled to take a decision to ban an event if it is found that the organization of the event will endanger the rights of other people, the democratic polity, public safety or the well-being or virtue/morals of society and if the above-mentioned dangers are impossible to prevent by placing restrictions on the event.²⁷⁶
201. The organizer may appeal the decision to a court within one month.²⁷⁷ A judicial review is also available regarding the limitations and prohibitions imposed. The Administrative District Court has to decide within a period of three days.²⁷⁸
202. The authorities informed ODIHR that the notification to hold a EuroPride event was submitted four months before the date of the planned assembly, on 20 February, and that it was reviewed on 8 June 2015. The Antiglobalists submitted notification about a simultaneous event on 17 February (there was a dispute between the authorities and the organizer as to

²⁷² Article 16(7) of the Act on Assemblies.

²⁷³ Section 15(2) of the Law on Meetings, Street Processions and Pickets.

²⁷⁴ Section 15(1)(1) of the Law on Meetings, Street Processions and Pickets.

²⁷⁵ Section 16(1) of the Law on Meetings, Street Processions and Pickets. If the notification was made following the shorter procedure based on Section 13 (2) of the Law on Meetings, Street Processions and Pickets, the decision has to be made no later than six hours before the announced event.

²⁷⁶ Section 15(1)(2) of the Law on Meetings, Street Processions and Pickets.

²⁷⁷ Meeting with representatives of the municipality and police in Riga, 19 June 2015.

²⁷⁸ Section 17 of the Law on Meetings, Street Processions and Pickets.

whether or not the assembly was a counterdemonstration to the Pride event—for more details, please see the section on restrictions). In March, the organizer met with the city authorities, after which the municipality issued a decision restricting the assembly to a different location. Upon the organizer's appeal, on 17 June the District Administrative Court upheld the decision of the municipality; however, the full judgment and reasoning were to be communicated only after the planned date of the assembly, on 7 July. An appeal to the Supreme Court was possible within one month following the receipt of the full judgment, which was hindered by the fact that the reasoned judgment of the District Administrative Court arrived only after the planned date of the assembly.

203. In Latvia, in addition, if an assembly endangers the participants of a previously notified event or causes significant disruptions to the movement of traffic or threatens public safety or public order, the police are entitled to ensure public order and to put necessary security restrictions in place for the event regardless of the decision of the municipality. It is possible to ask for written justification for such actions on the part of the police, which can later be disputed and appealed in accordance with the Law on Administrative Procedure.²⁷⁹
204. The Assembly Act in Bavaria only prescribes that measures regarding the limitation or prohibition of an assembly have to be taken “in good time” before the start of the assembly.²⁸⁰ Actions brought against decisions based on the Assembly Act do not have suspensory effect.²⁸¹
205. In this respect, the organizers of the G7-related protests requested the “public and legal permission of the municipality of Garmisch-Partenkirchen” for a tent camp for participants on 1 May 2015. The municipality rejected the request by decision of 22 May 2015, which was sent to the organizers on 27 May 2015. On 29 May 2015, the organizers submitted an application for the cancellation of the provisional order to the Administrative Court of Munich through their authorized representatives. On 2 June, the Administrative Court made its ruling.
206. The organizer of the assemblies in Garmisch-Partenkirchen and Elmau informed ODIHR that although they provided notification of the planned protests against the G7 Summit in March 2015, the restrictions were made only on 28 May 2015, a couple of days before the planned date of the assemblies. The organizer considered this delay to be an intentional hindrance to the organization of the assemblies.²⁸²

Conclusions and recommendations on decision-making and review

207. The requirement that the responsible authority review and notify organizers about a ban shortly after they submit their notification, such as the one in place in Latvia, and the

²⁷⁹ Section 16(3) of the Law on Meetings, Street Processions and Pickets.

²⁸⁰ Article 15(3) of the Bavarian Assembly Act.

²⁸¹ Article 25 of the Bavarian Assembly Act.

²⁸² Meeting with the assembly organizer of the Stop G7 Elmau protest group in Garmisch-Partenkirchen, 5 June 2015.

establishment of a time limit by which a ban has to be communicated to the organizer, such as is the case in Poland, is a positive practice. By informing organizers about bans shortly after a notification is received and well before the start of an assembly, organizers are more likely to be able to seek remedies for undue bans or make alternative plans for their assemblies, thereby facilitating the realization of the right to freedom of peaceful assembly.

208. Providing for prompt independent judicial review in legislation, as is the case in Latvia, Poland and Sweden, is a positive practice; however, the lack of an appeal's suspensive effect on the relevant decision, such as is the case in Poland or the German federal state of Bavaria, might render this ineffective as a remedy. Moreover, the two-hour time frame available to appeal a ban in Poland is overly restrictive, as such a short time period does not seem to be justified by any legal need.
209. 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.²⁸³
210. The lack of legal avenues to challenge prior restrictions or conditions imposed on assemblies in some participating states, such as in Poland, is not in line with international human rights standards. In Poland, the Assembly Act does not provide a time frame within which the notified authorities have to respond to the 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. Organizers have to be notified of the reasons for such a decision and be provided with the possibility to challenge the decision of the respective state bodies before a court. The organizer of an assembly should not be compelled or coerced to accept restrictions, and they should have an opportunity to challenge them. The Bavarian Assembly Act also does not prescribe a specific time frame within which decisions on restrictions or bans have to be made. On the other hand, the legal requirement for a prompt review of the notification in Latvia is a positive practice.
211. Expressly providing for an avenue to challenge bans and prior restrictions or conditions imposed on an assembly, such as in Latvia, is a positive practice. However, the fact that the District Administrative Court did not provide a reasoned judgement following the appeal of the restrictions by the Antiglobalist assembly organizer rendered the first-instance remedy ineffective and the possibility of effective access to a timely second-instance review illusory.
212. Organizers' access to an effective remedy should also not be hampered by delayed decision-making or communication of such decisions by the responsible authorities, as was reportedly the case in Latvia and Poland, and as described earlier.
213. Recommendations for participating States:

²⁸³ *The Guidelines, op. cit.*, note 1, para. 137.

- to ensure that the regulation of assemblies is conducted in a transparent manner, giving the organizers timely notice of prompt regulatory decisions with justified reasons and recourse to a prompt and effective remedy through administrative and judicial review;
- to ensure that any restriction placed on an assembly is communicated in a timely manner in writing to the organizers of the assembly, including a detailed explanation of the reasons behind each restriction;
- to ensure that assembly organizers are not compelled to accept, and are able to challenge in court, the substance of any restriction before the date of the assembly regardless of the form in which these restrictions are communicated.

THE ROLE OF THE ORGANIZERS

214. As mentioned before, 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 responsibilities of the organizer in cases of assemblies with an identifiable organizer 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

215. At the stage of pre-event planning, especially in the case of large assemblies or assemblies related to controversial issues, it is a good practice for organizers to discuss with law-enforcement officials the security and public-safety measures that are to be put in place prior to an event. Such discussions can cover, *inter alia*, the deployment of law-enforcement personnel, stewarding arrangements and particular concerns relating to policing operations²⁸⁴ (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. The 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.²⁸⁵ Any such discussion should be entirely voluntary and should never be used as a way to compel an organizer to agree to restrictive conditions.²⁸⁶

²⁸⁴ *Ibid.*, para. 5.1.

²⁸⁵ *Ibid.*, Explanatory Notes, para. 189.

²⁸⁶ *Ibid.*, para. 103.

216. 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.²⁸⁷ 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.²⁸⁸ Similarly, the responsibility for routine clean-up after a public assembly should lie with the municipal authorities.²⁸⁹
217. The state's obligation to facilitate assemblies includes the responsibility to provide basic services, including traffic management, medical assistance²⁹⁰ and clean-up services.²⁹¹ 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.
218. Organizers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event,²⁹² as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom of assembly.²⁹³ 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.²⁹⁴ Such a recommendation should in no way detract from the positive obligation of the state to provide adequately resourced policing arrangements and the overall responsibility of law-enforcement agencies for maintaining public order.²⁹⁵
219. 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.²⁹⁶ This principle also applies in those cases

²⁸⁷ "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 57.

²⁸⁸ *The 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", United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 57.

²⁸⁹ *The 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", United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para.57.

²⁹⁰ See Principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

²⁹¹ *The Guidelines, op. cit.*, note 1, para. 32.

²⁹² *Ibid.*, para. 5.2.

²⁹³ *Ibid.*, Explanatory Notes, para. 198.

²⁹⁴ "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, p. 9.

²⁹⁵ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 195.

²⁹⁶ Organizers should not be liable for the actions of individual participants or stewards; instead, individual liability should arise for participants or stewards if they commit an offence or if they fail to carry out the lawful directions of law-enforcement officials. See the *Guidelines, op. cit.*, note 2, Explanatory Notes, paras. 112 and 197.

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.²⁹⁷

220. Assembly organizers should not be held responsible for the maintenance of public order, as also stressed by the UN Special Rapporteur,²⁹⁸ and in any case they should not be accountable for the unlawful acts of participants or third parties. The principle of individual liability of participants should be upheld, notably due to the presumption of the peacefulness of the assembly. Holding the organizers of an event liable for the conduct of others would be a manifestly disproportionate response since this would impose responsibility on organizers for acts by other individuals over whom they exercised no personal control (including possible *agents provocateurs*), which could not have been reasonably foreseen.²⁹⁹ Holding the 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.³⁰⁰ Similarly, individual participants who have not personally committed any unlawful act during an assembly should not be held liable even if others become violent.³⁰¹
221. 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.³⁰² Disproportionate sanctions and penalties imposed on organizers and participants after a demonstration, namely in the form of 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.³⁰³ Moreover, anyone charged with an offence related to an assembly must enjoy fair-trial rights³⁰⁴ regardless of the liability (administrative or criminal) at issue.

The role of the organizers in selected participating States

222. Although there is no specific regulation on the exercise of freedom of peaceful assembly in the Republic of Cyprus, a meeting with the organizer of the assembly monitored by ODIHR

²⁹⁷ *Ibid.*, para. 198.

²⁹⁸ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 31.

²⁹⁹ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 112.

³⁰⁰ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 26.

³⁰¹ ECtHR, *Ezelin v. France* (1991), para. 53; *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 111.

³⁰² *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 109. Also see ECtHR, *Ezelin v. France* (1991).

³⁰³ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 77.

³⁰⁴ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 110.

in Nicosia revealed that the organizer had a list of duties and responsibilities, which also entailed some financial costs. ODIHR monitored a May Day assembly in Nicosia organized by the Pancypriot Federation of Labour and various left-wing political groups. After initial speeches at the gathering point, about 2,500 assembly participants marched to the Ledra Palace checkpoint in an area designated as a buffer zone, which demarcates Nicosia as a divided city and is under the authority of the UN. Here, the march united with another assembly of approximately 300 Turkish Cypriots who came from the north, an area not controlled by the Republic of Cyprus. The organizer, as mentioned earlier, notified the police of the Republic of Cyprus, whose formal jurisdiction extends across the island as a whole but who cannot perform their duties in the buffer zone and areas north of it. Therefore, the organizer also informed and collaborated with the civil affairs and police departments of the UN. In addition, the organizer provided assembly stewards, made an emergency evacuation plan, arranged and paid for an ambulance and for cleaning of the area following the assembly.³⁰⁵

223. Similarly, whereas no specific responsibilities are specified for assembly organizers in Ireland, the organizer of the assembly monitored by ODIHR in Dublin arranged for assembly stewards and notified police representatives. The police also informed ODIHR that the graduated response tactics of the police involve asking stewards to rectify a situation as the first step before involving law-enforcement personnel.³⁰⁶
224. In the majority of the participating States where ODIHR monitored assemblies, specific legal provisions exist describing the duties and responsibilities of organizers in relation to the holding of an assembly and ensuring public order.
225. The Austrian Assembly Act specifically states that leaders and stewards are responsible for maintaining law and order at an assembly. They must confront illegal comments or actions immediately and must dissolve the assembly if their orders are not followed.³⁰⁷ In addition, the competent authority is free to send a number of representatives to any assembly, and they must be provided with an appropriate position in the assembly, and have a right to information concerning the identity of the petitioners and speakers.³⁰⁸ Moreover, as stated before, the notification form requires that the organizer describe the recommended police measures to be used to secure the event and how traffic should be redirected if needed (see para. 102).
226. The Bavarian Assembly Act includes a detailed list of the duties of the people in charge of an assembly,³⁰⁹ as well as the specific responsibilities of the organizer concerning co-operation

³⁰⁵ Meeting with a representative of the Pancypriot Federation of Labour on 30 April 2015.

³⁰⁶ Meeting with the police in Dublin, 14 April 2015.

³⁰⁷ Article 11 of the Austrian Assembly Act.

³⁰⁸ Article 12 of the Austrian Assembly Act.

³⁰⁹ Article 4 of the Bavarian Assembly Act.

with the competent public authorities in the preparation of an assembly.³¹⁰ In addition to the obligation to provide notification of planned public assemblies, as mentioned before, organizers have a duty to co-operate with the authorities in preparation of an event. This co-operation entails sharing further information than required by law regarding assemblies. Relevant questions already appear in the assembly notification form. Although this information is only shared on a voluntary basis, as stipulated in the Act, the extent to which an organizer is willing to co-operate might influence an official decision to impose a restriction or a ban.³¹¹ 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.³¹² According to some commentators, this suggests a “jurisprudentially imposed system of mutual cooperation, with gradually enhancing intervention powers in case of disregard”.³¹³

227. The leader of an assembly is the organizer or a natural person entrusted by the organizer.³¹⁴ The leader has to be present at the assembly. He or she is responsible for determining the course of the assembly, including granting the right to speak and directing speakers to discontinue their interventions, and may close the assembly at any time. The leader is also responsible for maintaining order during the assembly. He or she can request the assistance of assembly stewards to perform these tasks.³¹⁵ The competent authority may reject a leader or a steward if there are grounds to suspect that he or she may pose a risk to the peacefulness of an assembly.³¹⁶ The competent authority may request that the organizer increase the number of stewards if there are grounds to suspect a risk to national security without such an increase.³¹⁷
228. In Sweden, the organizers of a public assembly or public event are responsible for ensuring that order is maintained at their assembly or event.³¹⁸ The police must inform the organizers about the conditions that must be met in order to maintain order and safety at their assembly or event. These conditions may include an obligation for the organizer to hire personnel. The obligation to hire security guards according to the act (1980:578) regarding security guards can only be imposed at concerts and public events. The conditions may not burden the organizer with unnecessary costs or unnecessarily obstruct the event in any way. The organizer of one of the assemblies observed by ODIHR in Gothenburg informed ODIHR that they used stewards in order to ensure the lawful conduct of the assembly participants, and also drew up and handed out guidelines for the assembly participants. People or groups could join the march provided they obeyed these guidelines.³¹⁹

³¹⁰ Article 14 of the Bavarian Assembly Act.

³¹¹ Article 14 of the Bavarian Assembly Act.

³¹² BverfGE 69, 315, 357 (1985).

³¹³ Salát, *op. cit.*, note 58, p. 78.

³¹⁴ Article 3(1) of the Bavarian Assembly Act.

³¹⁵ Article 4(1)(2) of the Bavarian Assembly Act.

³¹⁶ Article 13(5)(6) of the Bavarian Assembly Act.

³¹⁷ Article 13(7) of the Bavarian Assembly Act.

³¹⁸ Article 16 of the Public Order Act.

³¹⁹ Meeting with a representative of the SAC, 30 April 2016.

229. Latvian law prescribes having at least two stewards for every hundred participants, for which the organizer can also invite a licensed security company.³²⁰ The law specifically states that the organizer is liable for complying with the law³²¹ and that the manager of the event and his or her assistants have to submit a statement together with the assembly notification that they assume liability for complying with the law during the event.³²² The manager and his or her assistants are also personally liable for maintaining order during the event, as are the stewards.³²³ Compliance with the law is determined by representatives of the local government and the police.³²⁴ It is also noteworthy that there is a general call for the police not to allow assemblies that are organized in violation of the requirements of the Assembly Law, without specifying the actual measures the police are authorized to take in this regard.³²⁵
230. The authorities in Riga informed ODIHR that they planned to enforce the requirement to have two stewards per 100 people assisting the EuroPride march.³²⁶ The organizer arranged for 40 stewards (based on the estimated 5,000 participants, there were not enough stewards to comply with the requirement), 12 of whom worked at the checkpoints at the entrance to the park, where the organizers were responsible for screening people (including their bags) wishing to enter. The organizer considered this a burden because of the lack of human resources at his disposal to perform this function, and also because of the possibility of confrontations and threats directed at the people manning the checkpoints.
231. In addition, the manager of an assembly in Latvia has duties in connection with the dispersal of the assembly. If, during an assembly, participants violate the provisions of the Assembly Law and do not obey the instructions of the manager, his or her assistants or stewards, the manager must either announce the closing of the event or request that the police or the responsible representative of the local government instruct the participants to disperse.³²⁷
232. In Poland, the organizer and the leader of an assembly are obliged to ensure that the assembly complies with legal provisions, and to conduct the assembly in a manner that prevents any damage that could be caused by the assembly participants. For this purpose, an assembly's organizer and leader must undertake the measures provided for in the law.³²⁸ In the course of an assembly, its leader is obliged to remain in contact with the representative of the municipal body referred to in Article 17(1) or with police officers, should the latter be present at the location of the assembly.³²⁹ During the assembly, the leader has to carry a distinctive

³²⁰ Section 14(5)(6)(7) of the Law on Meetings, Street Processions and Pickets.

³²¹ Section 6 of the Law on Meetings, Street Processions and Pickets.

³²² Section 14(8) of the Law on Meetings, Street Processions and Pickets.

³²³ Section 20(1) of the Law on Meetings, Street Processions and Pickets.

³²⁴ Section 21 of the Law on Meetings, Street Processions and Pickets.

³²⁵ Section 24 of the Law on Meetings, Street Processions and Pickets.

³²⁶ Meeting with representatives of the municipal authorities and the police, 19 June 2015.

³²⁷ Section 32 of the Law on Meetings, Street Processions and Pickets.

³²⁸ Article 19(1) of the Act on Assemblies.

³²⁹ Article 19(2) of the Act on Assemblies,

identification document issued by the municipality.³³⁰ Furthermore, the leader of the assembly has to request that anyone whose behaviour violates the provisions of the Act or tries to prevent the assembly from taking place leave the assembly. In case said person fails to comply with the leader's request, the leader may ask the police or municipal guards for help. The leader of the assembly must dissolve the assembly in case the participants fail to comply with his/her orders or in case the assembly infringes the provisions of the law or the provisions of criminal law.³³¹

233. ODIHR monitors identified assembly stewards at several of the observed assemblies, such as the march for the homeless in Dublin, the May Day demonstration in Nicosia, most of the assemblies during the NATO Summit in Warsaw and the May Day assemblies in Gothenburg, the EuroPride march in Riga, a demonstration in Munich and an assembly against the Bilderberg Group in Telfs.
234. The role of stewards differed considerably among the observed assemblies. In Riga, stewards at the EuroPride event checked bags at the entry points to the park where the assembly participants gathered. In Gothenburg, the marches by the Syndicalists, the Left Party and the Social Democratic Party were almost entirely self-managed and facilitated only by stewards. In Warsaw, at the assembly organized by KOD (Committee for the Defence of Democracy), 30-40 stewards facilitated an assembly of 400 participants. They informed participants and passers-by about which streets were open to traffic, and they extended a red cord to prevent participants and passers-by from recklessly going out into the street. At the end of the assembly, they warned cyclists passing by as the crowd was leaving the assembly venue. In Telfs, some of the stewards held flags and banners while others were equipped with handheld radios and communicated with other stewards.
235. A failure to comply with the relevant legal requirements on the procedures for an assembly, and for the conduct thereof, could result in civil, administrative or criminal liability for the organizers and participants, depending on the jurisdiction.
236. In Latvia, the Administrative Violations Code provides for administrative liability for violations of procedures for the organisation and holding of meetings, street processions and pickets.³³² Based on the provisions of criminal law, violations of the procedural requirements regarding the organization or conduct of assemblies, if as a result of an event "substantial harm has been caused to State authority or local government order or the interests of persons protected by law", the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service or a fine.³³³ In the case of "serious consequences", the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service or a fine.³³⁴

³³⁰ Article 19(3) of the Act on Assemblies.

³³¹ Article 19(6) of the Act on Assemblies.

³³² Section 174 of the Administrative Violations Code of Latvia. .

³³³ Criminal Law, Section 226(1) Violation of Organizational and Procedural Requirements for Public Events.

³³⁴ Criminal Law, Section 226(2) Violation of Organizational and Procedural Requirements for Public Events.

237. In Austria, according to Section 19 of the Assembly Act 1953, any infringement of the provisions of the Assembly Act are to be punished with arrest for up to six weeks or a monetary fine of up to EUR 720 by the competent administrative authority, as long as the violation does not constitute an offence under criminal law. This includes violations of the organizer's duty to notify the authority about an assembly. However, a participant who has disguised his or her face and is armed or bears items that under the circumstances are to be used violently against people or property can be imprisoned for up to six months or face a monetary fine of up to 360 daily rates, and in case of a repetitive act up to one year in prison or 360 daily rates by the competent criminal court.³³⁵
238. In Austria, ODIHR was informed that, although the organizer is responsible for law and order during an assembly and can be held accountable for violent incidents or damage to property caused by other people, in practice the attribution of such acts to certain persons is often not possible.³³⁶ The organizer is also not responsible for cleaning up after an assembly or for providing toilet facilities.
239. In the German federal state of Bavaria, whoever calls for participation in an assembly that has been prohibited by an enforceable order or that has been ordered to be dissolved or who uses clothing to disguise his or her identity while participating in or moving towards an assembly or carries defensive arms or similar objects may face punishment of imprisonment for up to one year or a fine. This is similarly the case if a leader or organizer violates an enforceable limitation or ban or a judicial restriction.³³⁷ An organizer who violates the notification requirement is subjected to a fine of up to 3,000 EUR.³³⁸
240. In Sweden, a violation of the permit or notification requirements (either intentionally or through negligence) may result in the organizer having to bear the costs of the police to maintain order at the assembly to the extent that the expenses are the result of negligence on the part of the organizer.³³⁹ A fine or a maximum of six months in prison can be imposed on anyone who, as an organizer, intentionally or negligently violates the permit or notification requirement or an imposed ban, submits false information regarding any circumstances he or she is required to provide in an application or notification or in response to a request from the police, or organizes or continues a public assembly or public event after the assembly or event has been cancelled or dispersed.³⁴⁰
241. In Poland, with the new Act on Assemblies, the Law on Petty Offences was amended to include a provision whereby anyone who commits the following offences may be subject to deprivation of liberty or a fine: “[whoever] 2) organizes an assembly without the required

³³⁵ Article 19 of the Austrian Assembly Act

³³⁶ Information received from the Austrian authorities on 12 December 2016.

³³⁷ Article 20(2) of the Bavarian Assembly Act.

³³⁸ Article 21(2) of the Bavarian Assembly Act.

³³⁹ Article 27 of the Public Order Act.

³⁴⁰ Article 29 of the Public Order Act.

notification or leads such an assembly or a banned assembly, 3) leads an assembly after its dissolution, 4) lawlessly occupies or refuses to leave a place that is under the legal management of a different person or organization as the organizer or the leader of an assembly”. The same applies to “whoever, 1) being the leader or organizer of an assembly, intentionally refrains from undertaking necessary measures so as to ensure that an assembly complies with the law and to prevent damage being caused by the participants of the assembly”.³⁴¹

Conclusions and recommendations on the duties and responsibilities of organizers

242. The Polish Act on Assemblies holds the organizer and leader of an assembly responsible for “the lawful conduct of the assembly” and provides that they are “obliged to carry it out in such a way so as to prevent damage intentionally caused by the participants” and that they must take measures prescribed by the law to achieve this aim. As already stated by ODIHR when reviewing the draft act, this provision is problematic, as the organizers or leaders should not be held liable for the failure to perform their responsibilities unless they intentionally violate applicable laws and should not be responsible for law enforcement (the maintenance of public order), as this is the role of the police. Nor should they be liable for the actions of individual participants (or for the actions of non-participants). They should not be prosecuted for offences committed by others without strong evidence that they themselves were intentionally engaged in such violations.³⁴² This type of liability is excessive and is not in compliance with the internationally guaranteed right to freedom of assembly.
243. Similarly, Latvian criminal law provisions seem to involve liability for the actions of others when sanctioning violations of the procedural requirements regarding the organization or conduct of assemblies if harm is caused as a result of an assembly.
244. The requirement in Poland that the leader of an assembly carry a distinctive identification document issued by a municipal body is also problematic, as the legislation explicitly provides for a notification system, which means that applicants do not need to seek authorization from the authorities to conduct an assembly. However, inclusion of this requirement may be considered as equating notification with permission or approval of the authorities to conduct an assembly, which is inadmissible under international standards.³⁴³
245. *The Guidelines* define an organizer as the person or persons “with primary responsibility for the assembly. It is possible to define the organizer as the person in whose name prior notification is submitted.”³⁴⁴ However, not every assembly has an organizer. For example, in the case of spontaneous assemblies, it is also possible for an assembly not to have an identifiable organizer.³⁴⁵ It is unclear how the provisions on duties and responsibilities of

³⁴¹ Article 52.

³⁴² *Ezelin v. France*, para. 53.

³⁴³ ODIHR opinion on the draft Act on Assemblies of Poland.

³⁴⁴ *The Guidelines*, *op. cit.*, note 1, para. 185.

³⁴⁵ *Ibid.*, para. 127.

organizers would apply in these cases, including in Poland, where spontaneous assemblies are provided for in the Act on Assemblies.

246. It is particularly worrisome that, in many of the participating States where ODIHR monitored assemblies, the organizers of unannounced or unauthorized assemblies can be subjected to particularly harsh sanctions regardless of the peacefulness of the assembly or the lack of a disturbance to public order. 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.³⁴⁶ The ECtHR has also stated that “freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction even at the lower end of the scale of disciplinary penalties for participation in a demonstration which has not been prohibited, as long as this person does not himself commit any reprehensible act on such an occasion”.³⁴⁷ Subjecting organizers and participants to sanctions may have a considerable dissuasive effect on individuals who would like to exercise their fundamental freedoms.
247. It is noteworthy that under the Bavarian Assembly Act, which only exempts spontaneous assemblies from the notification requirement and which defines spontaneous assemblies as always being unplanned and without an organizer, the organizer or leader of any unnotified assembly can be subject to a fine even if said assembly was an immediate response to an event that could not have been anticipated and where prior notice was otherwise impracticable. As explained before, this is not in line with *The Guidelines*, which states that a spontaneous assembly forms an exception from the requirement of prior notification because it occurs under circumstances where the legally established deadline cannot be met. The key defining criterion is that timely notification is not possible or is impracticable and not the unplanned nature of the assembly, since even spontaneous assemblies can be organized.
248. As highlighted by the UN Special Rapporteur, assembly organizers cannot be held responsible for ensuring the maintenance of public order and providing adequate safety and security. These issues must be primarily the responsibility of public authorities. The duty of the state to protect the safety and security of all groups and individuals in their exercise of freedom of peaceful assembly should be clearly defined in law and reinforced by the explicit commitment of the relevant institutions and authorities to fulfil this duty. Therefore, legislation placing the duty on the organizer to ensure peace and order at an assembly, such as in Austria, Poland, Latvia, Sweden or the German federal state of Bavaria, creates an undue burden on organizers and may have unintended legal consequences by placing the responsibility for the wrongdoing of participants on organizers even if the latter have no control over such actions.

³⁴⁶ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 51.

³⁴⁷ *Galstyan v. Armenia* (2007), para. 115.

249. Especially for large or controversial 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.³⁴⁸ Also, by ensuring adequate stewarding, an assembly organizer can counter any claims that public safety might be compromised by his or her event.³⁴⁹ 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. Therefore the legal requirements in Latvia to have at least two assembly stewards for every 100 assembly participants are unduly restrictive. Furthermore, neither organizers nor stewards are law-enforcement officials and should not be treated as such by laws applicable to public assemblies.

250. 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.³⁵⁰ Moreover, organizers should not be obliged to pay for stewarding arrangements (for example, by employing professional stewards or private security firms).³⁵¹

Organizers of assemblies may be held liable for their failure to act within the law. However, any sanctions or fines imposed after an assembly should strictly adhere to the principle of proportionality. The risk of a heavy and disproportionate fine or other penalty may, in itself, inhibit the enjoyment of freedom of peaceful assembly. For example, the possible fines or detention imposed in Sweden on organizers who fail to comply with their assigned duties appear to be excessive and could deter individuals from organizing an assembly. . In the absence of genuine criminal activity punishable by other laws, a violation of the notification/authorization requirement should be addressed by fines proportional to the offence committed.³⁵² Importantly, the amount of fines imposed on organizers of assemblies should also be in line with the proportionality principle. The possible levels of punishment in Sweden, which include six months' imprisonment or a fine for organizers who violate the permit or notification requirement, submit false information regarding any circumstances in the application for a permit or notification or in response to a request from the police or continue a public assembly after it has been cancelled or dispersed, would appear to fall short of these standards.

251. Recommendations for participating States:

- to ensure that the official duty to maintain public order during assemblies, including by

³⁴⁸ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 195.

³⁴⁹ *Ibid.*, para. 75.

³⁵⁰ *Ibid.*

³⁵¹ *Ibid.*, para. 196.

³⁵² "Joint Opinion on the Public Assembly Act of the Republic of Serbia", OSCE/ODIHR and Venice Commission, 18 October 2010, para. 42.

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 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

252. 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. Open dialogue between 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.³⁵³ Well-informed organizers can play an important role in relaying information to participants about potential risks, security measures and planned or ongoing police action.
253. 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.³⁵⁴ 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 in ensuring 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.³⁵⁵ It is also a good practice to have a similar point of contact among the organizers, especially 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.³⁵⁶ 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 significantly help avert the occurrence of violence.³⁵⁷

³⁵³ 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>, p. 16.

³⁵⁴ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 150.

³⁵⁵ *Ibid.*, para. 149.

³⁵⁶ *Ibid.*, para. 5.4.

³⁵⁷ *Ibid.*, Explanatory Notes, para. 157.

254. 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.³⁵⁸ Communication and dialogue by 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.³⁵⁹ 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.³⁶⁰
255. 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.³⁶¹ It is good practice to invite assembly organizers to participate in these debriefing sessions held by law-enforcement officials after an assembly.
256. 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 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.³⁶² (See the section on liability and accountability of law-enforcement personnel for further information.)
257. Effective communication depends on a relationship of trust. Law-enforcement agencies should continually work on strategies to build trust with the communities they serve. The demographic make-up of law-enforcement agencies should be representative of the whole community,³⁶³ and states should promote diversity in law enforcement so that communities see themselves represented in the police force.³⁶⁴

³⁵⁸ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 68.

³⁵⁹ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council A/HRC/23/39, 24 April 2013, para. 56.

³⁶⁰ *Ibid.*, para. 71.

³⁶¹ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 170.

³⁶² Geneva Academy of International Humanitarian Law and Human Rights, “Facilitating Peaceful Protests”, *op. cit.*, note 363.

³⁶³ “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the

258. Law-enforcement officials must be trained in “soft skills” such as effective communication, negotiation and mediation, allowing them to avoid escalation of violence and minimize conflict.³⁶⁵ 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.³⁶⁶
259. 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.³⁶⁷ 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.³⁶⁸ However, a careful balance has to be achieved between the possible risks of insufficient protection or 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.
260. 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.³⁶⁹

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

i. Pre-event communication

Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, 4 February 2016,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 39.

³⁶⁴ “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, 4 February 2016,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 49 (a).

³⁶⁵ See Principle 20 of the Basic Principles; *The Guidelines, op. cit.*, note 1, para. 147.

³⁶⁶ “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, 4 February 2016,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 38.

³⁶⁷ Principle 2 of the UN Basic Principles on the Use of Force and Firearms.

³⁶⁸ Amnesty International Dutch Section, “Policing Assemblies”, Short Paper Series No. 1, p. 17.

³⁶⁹ *Ibid.*, pp. 15-16.

261. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with organizers of assemblies prior to the events. The organizer of the assembly monitored by ODIHR in Dublin informed ODIHR monitors about a long waiting period for police contact following his assembly notification, but noted that the personal meeting was fruitful and did not result in requests for major modifications to the organizer's plan. During the meeting, the organizer was informed about the overall policing plan.³⁷⁰ The police representatives informed ODIHR that the work of the police in Ireland follows the community policing model, whereby there is significant interaction between the police and the public on all issues.³⁷¹ Although there is no requirement for an organizer to have a pre-event meeting with the police, they reportedly participate in such meetings voluntarily in the vast majority of cases.³⁷²
262. The Crisis Management and Safety Department of Warsaw City Hall held meetings with the majority of assembly organizers in advance of the NATO Summit. In Austria, the police's overall approach when policing assemblies is the so-called 3D model, namely dialogue, de-escalation and enforcement (*Durchsetzung* in German), which places dialogue at the forefront of policing of all public assemblies.³⁷³ There were two pre-event meetings between the police and the assembly organizer in Telfs, Austria.
263. Police interventions in the German federal state of Bavaria also involve a three-tier approach involving discussion, threatening an intervention and the use of force. In the context of the G7 Summit-related protests in Munich on 4 June 2015, pre-event meetings were held involving the assembly organizers, local authorities, the police and the fire department. The communication was assessed as good by the authorities, which also involved conducting a joint location survey with the organizers.³⁷⁴ The organizer of the Stop G7 Elmau protest group informed ODIHR that 18 people from the authorities participated in the pre-event meeting with two organizers, involving the municipality, police and the secret service.³⁷⁵
264. Law-enforcement agencies communicated with the public through dedicated websites in the context of the G7 Summit in Germany and the NATO Summit in Poland. In Germany, social media were also extensively relied on by the law-enforcement authorities before and during the assemblies. Organizers of some of the protests against the G7 Summit in Munich and Garmisch-Partenkirchen expressed disappointment with certain public announcements released by the law-enforcement authorities in the run-up to the assemblies suggesting that violence was expected on the part of the assembly participants.³⁷⁶ ODIHR monitors in Garmisch-Partenkirchen observed shops being closed specifically for the period of the

³⁷⁰ Meeting with the police in Dublin, 14 April 2015.

³⁷¹ *Ibid.*

³⁷² *Ibid.*

³⁷³ Amnesty International Dutch Section, "Policing Assemblies", *op. cit.*, note 378, p. 11; meeting with the police in Innsbruck, 10 June 2015.

³⁷⁴ Meeting with the police and municipality in Munich, 3 June 2015.

³⁷⁵ Meeting with the assembly organizer in Garmisch-Partenkirchen, 5 June 2015.

³⁷⁶ Meeting with assembly organizers in Munich, 4 June 2015, and in Garmisch-Partenkirchen, 5 June 2015.

Summit, and some shop windows were even covered with wooden planks as a means of protection against possible vandalism. The assembly organizers suggested that this was due to misinformation from the authorities about the violent intentions of the assembly participants.

ii. Interactions during an assembly

265. During assemblies, communication between participants and police authorities could be observed in a number of locations. ODIHR monitors observed law-enforcement agents engaging directly with organizers during assemblies in order to facilitate events or accommodate a march.
266. In Dublin, two police liaison officers were assigned to the assembly monitored by ODIHR, one of whom was on the ground. The police maintained communication with the organizer throughout the event and facilitated the sleep-out held that night outside Leinster House.
267. In Warsaw, ODIHR monitors observed seven public assemblies on 9 July 2016, including one march and six static gatherings. The march was organized by the Stop the War Initiative, while the static assemblies were held by the Warsaw Anarchist Federation, KOD, the Zmiana (Change) political party, the Resistance Movement (Ruch oporu), the World Hazara Council and by a private individual. The monitored assemblies ranged in size from only several individuals to more than 400 participants and were characterized by a significant police presence. At the assemblies organized by the Polish Resistance Movement and Zmiana, for example, there were as many police officers as participants. All the events were peaceful, and no major incidents were observed. As observed by ODIHR, there was constant communication between the commanding officer and the organizer, as well as among members of the assembly organized by the Polish Resistance Movement in Warsaw. The communication seemed to work well, and at the end of the assembly, the organizer thanked the police. The steward leader of the assembly organized by KOD confirmed good co-operation with the police, although very little communication was observed by the monitors at the assembly. At the beginning of the assemblies organized by Zmiana and a private individual, a police officer explained to the organizers their rights and responsibilities, and informed them that, in case of disturbances, they should try to remove any misbehaving participants from the group and inform the police if they could not. At the assembly organized by the World Hazara Council, there was regular contact during the event between the assembly stewards and the police. Both the organizer and the police reported excellent communication and co-operation throughout the assembly. The march held by the Stop the War Initiative Poland was facilitated by approximately 100 police officers. There were two police cars and 12 police officers at the front of the assembly and three police cars and about 20 police officers at the end. On both sides, about 80 police officers walked in a line close to the march, creating a tight cordon that prevented participants and media representatives from moving freely in or out of the crowd. The police informed ODIHR that this tactic was used to ensure that the composition of the assembly remained unchanged and therefore more easily

controllable.³⁷⁷ The organizer of the assembly was in constant contact with the police throughout the assembly. The police made it possible for the march to stop in front of the US Embassy for 10 minutes and also stopped traffic in a graduated fashion.

268. In Gothenburg, ODIHR monitored six parallel assemblies ranging in size from approximately 80 to more than 5,000 participants that were organized by various groups, such as a local branch of the anarcho-syndicalist trade union SAC, the Feminist Initiative, the Vänsterpartiet (The Left), the ruling Social Democratic Party and various anarchist and radical feminist groups. Regardless of the size or the organizers of these assemblies, the police presence in the streets was very light. Sixty-eight police officers facilitated the entire operation that day.³⁷⁸
269. Police considered the EuroPride march in Riga to be a high-risk event and prepared to have 500 officers present to facilitate both the EuroPride event and an assembly of Antiglobalists, with 90 officers on standby. ODIHR monitors observed an overwhelming presence of riot police in heavy gear, including masked riot police blocking off streets.
270. The assembly in Telfs involved a massive presence of riot police compared to the size and peaceful nature of the assembly. Although the expected number of participants was 2,000-3,000, only 500 people participated in the assembly. ODIHR was informed that the police planned to use 200 crowd-control and 25 traffic police officers complemented by a few undercover police officers. This number was then reduced to 170 owing to the lower turnout of participants.³⁷⁹ In advance of the assembly, the organizers noted to ODIHR that the inhabitants of Telfs were concerned by the large police presence in the town and that the organizer had requested that the police presence at the assembly be limited because of the intimidating effect that such an overwhelming police presence could have on the participants.
271. The assembly observed by ODIHR in Munich, which had about 34,000 participants, was facilitated by 3,000 police officers.³⁸⁰ The event was very peaceful and was conducted in a positive atmosphere. However, there was a dominant presence of police in riot gear, especially during the initial phase of the demonstration. Owing to the very high temperature, the assembly organizers asked the police to distribute water, which was provided. Based on information received from the police, 15,000 cups of water were distributed to the assembly participants, and providing water was used as a de-escalation tactic by the police.³⁸¹ Female police officers made up about 30 per cent of the police presence.

³⁷⁷ Meeting with the police in Warsaw, 11 July 2016.

³⁷⁸ Meeting with the police in Gothenburg, 3 May 2016.

³⁷⁹ Meeting with the police in Innsbruck, 15 June 2015. ODIHR was informed that based on the peaceful conduct of the assembly, out of the remaining 170 forces even more police personnel were moved out of sight from the assembly area. Information received by ODIHR from the Austrian authorities on 12 December 2016.

³⁸⁰ Meeting with the police in Munich, 9 June 2015.

³⁸¹ *Ibid.*; presentation by Robert Kopp, Chief of Police in Oberbayern Süd, at the OSCE Human Dimension Committee Meeting, 6 September 2016.

272. In Germany, 10,000 police officers from the German federal state of Bavaria and 7,000 from other parts of the country were deployed in the vicinity of the G7 Summit to carry out police operations, including the protection of government leaders and the facilitation of assemblies. In addition, 2,500 officers from the Bundespolizei (federal police) and 1,800 from the Federal Crime Department were deployed.³⁸² Most of the police operations and public assemblies concentrated on the small town of Garmisch-Partenkirchen, which has a population of 17,000 inhabitants.
273. In some of the participating States where ODIHR observed assemblies, specialized police units exist to facilitate communication between organizers, assembly participants and the police. Police have an Anti-Conflict Team (Zespół Antykonfliktowy Policji, or ZAP) in Poland. ZAP officers are trained in principles and rules of organizing police measures and operations, including provisions related to actions to be taken in emergency situations, crowd behaviour and crowd psychology, interpersonal communication, basic principles in negotiations, basic principles of the work of so-called spotters³⁸³ and co-operation with the media. These officers have usually completed studies in pedagogy, rehabilitation and psychology. They monitor events and are present in places “susceptible to crises in connection with police activities”, they assist in conflict situations, provide information, co-operate with the preventive services and assist in identifying people who pose a threat, and they co-operate with operations commanders in developing tactical solutions to threatening situations.³⁸⁴ The team leaders usually take part in the first talks with organizers, if necessary.
274. After the violent demonstrations in Gothenburg in 2001, the Swedish police realized that they needed a new tactical approach to the facilitation of protests that would focus more on communication instead of confrontation. Since early 2002, the Swedish police have been deploying specially trained dialogue police officers who deal with demonstrations. Dialogue police play an important part in de-escalation. Their task is to establish contact with demonstrators before, during and after a demonstration and to act as a link between the organizers of events and police commanders.³⁸⁵ They wear specially designed fluorescent vests with “dialogue police” written on the back, which enhances their visibility. They are unarmed and wear a name tag. By negotiating, dialogue police officers facilitate compromises and agreements between police and demonstrators. The dialogue system was created as a means of establishing longer-term relations with assembly organizers. Officers usually communicate with organizers weeks in advance of an assembly. When the police receive a request for a permit, they forward it to the dialogue police, who then contact the organizer. Sometimes police only hear rumours about a planned assembly; in such cases, they try to reach out to the organizers in a non-intimidating way. In Sweden, dialogue police officers operate in three regions, including in 12 such officers in the Västra Götaland region, where Gothenburg is located.³⁸⁶

³⁸² Meeting with the authorities in Munich, 9 June 2015.

³⁸³ Law enforcement official trained to look for something.

³⁸⁴ Meeting with representatives of the police in Warsaw, 6 July 2016.

³⁸⁵ Amnesty International Dutch Section, “Policing Assemblies”, *op. cit.*, note 378, p. 11.

³⁸⁶ Meeting with representatives of the Gothenburg police, 2 May 2016.

275. In some states in Germany, anti-conflict teams (or communication police), identifiable through special clothing, support the facilitation of assemblies. In Munich, a liaison police officer served as a designated contact point for the leader during the assembly observed by ODIHR. A meeting between the leader and this liaison police officer was held just before the assembly took place. In Garmisch-Partenkirchen, police officers from the anti-conflict teams were patrolling the public street leading to the protest camp. The assembly organizer assessed the communication and co-operation with these police officers as good.³⁸⁷ ODIHR observed members of the anti-conflict and communication police teams with identifiable vests at the assemblies monitored in Garmisch-Partenkirchen on 6 June 2015.
276. No police officer from the special anti-conflict unit was observed by the monitors at the assemblies monitored by ODIHR in Warsaw. In Gothenburg, dialogue police officers were in communication with the organizers before and during the assemblies, with the aim of facilitating the orderly conduct of the assemblies and informing the organizers of any challenges or delays without major disturbances.
277. ODIHR observed that there were very few women among the law-enforcement officials facilitating the assemblies. The highest percentage of women was facilitating assemblies in Germany and Sweden. ODIHR was informed that the percentage of women in the police force is about 12-15 per cent in Austria, 15-17 per cent in Poland and 15-20 per cent in Ireland.

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

278. 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.³⁸⁸ For most assemblies observed by ODIHR, communication between participants, organizers and police took place both before and during assemblies. It is positive that, in many cases, communication was considered to be adequate by both police and assembly organizers. Both the organizers and the police authorities described their co-operation and communication as very effective in Sweden, for example.
279. 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. It is worth noting that, in the context of some of the higher-risk events monitored by ODIHR, such as in Riga, only limited information was shared between organizers and police forces concerning security preparations. In this context, it is important to acknowledge that real security risks are involved in the policing of some

³⁸⁷ Meeting with the organizer of the Stop G7 Elmau protest group in Garmisch-Partenkirchen, 5 June 2015.

³⁸⁸ See European Court of Human Rights, *Frumkin v. Russia*, application No. 74568/12, 5 January 2016, paras. 127-128.

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.

280. It also has to 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.
281. 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.
282. Holding routine post-event reporting sessions and debriefings, such as is the case in Ireland, Poland and Germany, is a positive practice. However, ODIHR was informed about the lack of inclusion of the organizers in such debriefings, which should be reconsidered.
283. 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 to maintain dialogue with the organizers after an assembly to nurture a relationship of trust and confidence.³⁸⁹ Good policing is policing by consent, and people are more likely to cooperate when they trust the police.
284. 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.
285. 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 understanding, avoid unnecessary confrontation, reduce tension, prevent violence or stop any disruptive or unlawful incidents quickly, should they 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;

³⁸⁹ Amnesty International Dutch Section, "Policing Assemblies", *op. cit.*, note 378, p. 25.

- 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, in particular 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

286. 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.³⁹⁰ It is also vital that assembly organizers do everything within their power to assist these agencies in their responses to emergencies or criminal conduct.³⁹¹
287. In cases where different law-enforcement structures are responsible for the facilitation of an assembly (such as national and municipal police), or different police units (such as criminal police, riot police, traffic police, anti-conflict teams), clearly identifiable command structures

³⁹⁰ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 152.

³⁹¹ *Ibid.*

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.³⁹² The use of clear command protocols between the various agencies should be encouraged as a good practice.³⁹³

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

288. In several participating States where ODIHR monitored assemblies, such as Latvia, Poland and Austria³⁹⁴, 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.
289. Generally, the police are responsible for the overall facilitation of assemblies. In Latvia and Poland, the municipal police and the national police co-operate and share responsibilities in this regard. The state police co-ordinated its work with the municipal police in connection with the facilitation of the EuroPride march and the associated counterdemonstration in Riga, Latvia. In Warsaw, municipal guards supported the facilitation of assemblies in connection with the NATO Summit and the maintenance of public order.
290. In Warsaw, notification of an assembly is sent to the relevant city hall, which has the right to ban or impose conditions on an assembly. ODIHR was informed that it is an established practice that city officials meet with the organizers of larger assemblies, and they also invite a representative of the police to these meetings. During these meetings, the municipality explains the leader's responsibilities and duties. In most cases, city officials appoint an employee to be present at each assembly and to follow the situation, including the work of the police.
291. In preparation for the NATO Summit, a steering committee was established that included ministers, the head of the region (voivodship) and the mayor of Warsaw. They appointed a working group to prepare the Summit with representatives of the Defence, Interior and Transport Ministries, the city of Warsaw and the voivodship. The group was headed by representatives of the Foreign and Defence Ministries.³⁹⁵ In the context of the NATO Summit, the military gendarmerie was responsible for protecting heads of state and defence ministers, as well as other high-ranking officials, and they also provided protection for the places where these people were accommodated. A special police command centre in Legionowo was set up a week before the NATO Summit to be responsible for all police actions across the country

³⁹² *Ibid.*, para. 151.

³⁹³ OSCE/ODIHR, Human Rights Handbook on Policing Assemblies (Warsaw: ODIHR, 2016), <<http://www.osce.org/odihr/226981>>.

³⁹⁴ In the case of Austria the main competent authority is the district administrative authority. Article 16 of the Austrian Assembly Act.

³⁹⁵ Meeting with representatives of the Office of the Mazovia Voivodship, 5 July 2016.

during the Summit, as well as two other big international events following the Summit.³⁹⁶ During the NATO Summit, a joint command room was created with the military, and information was regularly exchanged between the two services.³⁹⁷

292. In Germany, there were two areas of operation during the G7 Summit. Law-enforcement responsibilities were divided between the Police Headquarters in Munich and the Southern Upper Bavarian Police covering Garmisch-Partenkirchen. The Ministry of Interior of Bavaria co-ordinated all operations while maintaining continuous contact with the federal government and co-operating with foreign counterparts.³⁹⁸ The German federal police were responsible for policing operations in the first security zone and the Bavarian state police in the second. In addition, police officers with experience in policing football events from other federal states were brought in to assist with the policing of the assemblies.³⁹⁹
293. The Bilderberg meeting in Telfs-Buchen, Austria, took place two days after the G7 Summit in Elmau, Germany. ODIHR was informed that the police strategy for the Bilderberg meeting was intrinsically linked to the G7 Summit in Germany, the venue for which was only about 10 kilometres away from the location of the Bilderberg meeting. Germany and Austria have a bilateral police co-operation treaty. A direct communication channel was established between the command centres in Garmisch-Partenkirchen, Germany, and Innsbruck, Austria, in addition to radio communication and a direct telephone line. Liaison officers from the Bavarian police and one police officer from the Bundespolizei (border control) were in Austria during the Bilderberg meeting, and Austrian liaison officers were also in Germany during the G7 Summit. At the time of the Bilderberg meeting, approximately 1,000 police officers were to be deployed around the area daily. Police deployment consisted of crowd-control police, traffic police and SWAT⁴⁰⁰ teams.
294. In several participating States, the municipal and/or police authorities collect statistical data regarding public assemblies. ODIHR received relevant information from the police authorities in Nicosia, Dublin, Riga, the municipality and police in Warsaw and the city of Gothenburg.

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

295. 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 police and

³⁹⁶ Meeting with representatives of the National Police Headquarters and Capital Police Command, 6 July 2016.

³⁹⁷ Information received from the Polish authorities, 8 December 2016.

³⁹⁸ Meeting with representatives of the Munich Police Headquarters and the Southern Upper Bavarian Police in Munich, 3 June 2015.

³⁹⁹ *Ibid.*

⁴⁰⁰ SWAT stands for “special weapons and tactics” (special law-enforcement units).

the military are involved in an operation, consideration should be given to establishing a “joint command room”, such as was the case in Warsaw in the context of the NATO Summit. However, given that issues relating to internal security are normally a policing responsibility, the concept of “police primacy” should be in place.

296. Some interlocutors acknowledged good co-operation between the municipality and the police regarding the facilitation of the assemblies observed by ODIHR. These included, for example, the Warsaw City Council and the police. ODIHR monitors observed effective communication and co-operation between the police forces and municipality in Telfs, Austria, and in Warsaw, Poland.

297. 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 is created at the national level to provide guidance when needed.

298. The regular collection of statistical data on public assemblies, including information on imposed restrictions and bans, as identified in several participating States where ODIHR monitored assemblies, is a good practice, as it facilitates accountability.

299. Recommendations for participating States:

- to ensure effective co-ordination and co-operation between the various authorities and agencies involved in the facilitation of the exercise of freedom of peaceful assembly;
- to ensure effective co-ordination among the various law-enforcement units and uniform application of the relevant codes governing police behaviour in the context of facilitating assemblies;
- to explore ways to share experiences and good practices among the various agencies and authorities on the facilitation of peaceful assemblies, both nationally and internationally, and to consider enlisting ODIHR expertise and monitoring experience 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

300. According to the European Court of Human Rights, “an unlawful situation does not justify an infringement of freedom of assembly”.⁴⁰¹ 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.⁴⁰² In general, as long as assemblies remain peaceful, they should not be dispersed by law-enforcement officials.⁴⁰³ Facilitating such assemblies does not insulate participants from sanctions for violating applicable laws after such an assembly has dispersed. The lack of compliance with legal requirements may give rise to liability for organizers and the imposition of sanctions after an assembly. Any sanctions imposed must have a legal basis and should be proportionate. 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.⁴⁰⁴
301. The UN Special Rapporteur reiterates that “should the organizers fail to notify the authorities, the assembly should not be dissolved automatically”.⁴⁰⁵ This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements or where there is no existing or identifiable organizer.⁴⁰⁶ In this regard, the ECtHR has emphasized that “in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without an illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.⁴⁰⁷

⁴⁰¹ *Oya Ataman v. Turkey*, Judgment, 5 December 2006, para. 39.

⁴⁰² *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 155.

⁴⁰³ *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>>.

⁴⁰⁴ Geneva Academy of International Humanitarian Law and Human Rights, “Facilitating Peaceful Protests”, *op. cit.*, note 363, p. 17.

⁴⁰⁵ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 29. The Special Rapporteur is also of the opinion that the organizers of such assemblies should not be subject to criminal or administrative sanctions resulting in fines or imprisonment. See “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 51.

⁴⁰⁶ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 29.

⁴⁰⁷ *Bukta and Others v. Hungary* (2007), para. 36.

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

302. In some of the participating States where ODIHR monitored assemblies, such as Germany, legislation specifically authorizes the dispersal of assemblies for which no notification was submitted or of banned assemblies.
303. ODIHR monitored assemblies or parts of assemblies that did not comply with legal requirements for notification in Sweden and Germany. The assemblies monitored by ODIHR were accommodated and facilitated by law-enforcement authorities, and communication was maintained with the protesting groups throughout the events. In Germany, assemblies not notified or altered compared to the original notification were able to take place.
304. In Sweden, ODIHR observed an assembly held by diverse anarchist and radical feminist groups where the organizer had not applied for a permit from the police. The police knew about the event, including the start time of the assembly, the gathering point and the main route of the march. As soon as the first participants started to gather, two unarmed female dialogue police officers in civilian clothes and highly visible vests started to engage with the participants. The marching participants were led by these officers and were accompanied by four more dialogue police and two regular police officers from a distance. Police work mainly concentrated on blocking roads and tram lines in order to prevent vehicular traffic from endangering the assembly. There was no identifiable organizer, and the assembly was not supported by stewards either; however, it was carried out in an orderly fashion. The assembly was peaceful, and no incidents of detention or use of force were observed. The police informed ODIHR that, although holding an assembly without a permit is a sanctionable offence, the police tend not to report this if it is carried out in an orderly fashion.⁴⁰⁸

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

305. The fact that the lack of compliance with formal legal requirements can constitute, as such, sufficient grounds for the dispersal of an assembly in some of the participating States where ODIHR monitored assemblies, such as in Germany, is contrary to international standards.
306. However, the assemblies observed by ODIHR that did not comply fully with relevant legal requirements were facilitated by the police, which is in line with international standards and good practices. This approach, which does not 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

⁴⁰⁸ Meeting with representatives of the Gothenburg Police, 2 May 2016.

necessary on grounds that are legitimate under OSCE commitments and international human rights law.

307. 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.

POLICING SIMULTANEOUS ASSEMBLIES: DEMONSTRATIONS AND COUNTERDEMONSTRATIONS, AS WELL AS PARALLEL ASSEMBLIES

The policing of simultaneous assemblies: international standards and good practice

308. Freedom of peaceful assembly includes the right to protection against violent counterdemonstrators. Law-enforcement officials must protect participants of a peaceful assembly from any person or group, including counterdemonstrators, who attempt to disrupt or inhibit an assembly in any way.⁴⁰⁹ The ECtHR has stated that:

[A] demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be likely to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counterdemonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the state not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. Like Article 8, Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.⁴¹⁰

⁴⁰⁹ *The Guidelines, op. cit.*, note 1, para. 5.3.

⁴¹⁰ *Plattform "Ärzte für das Leben" v. Austria* (1988) 13 E.H.R.R. 204, para. 32.

309. However, the obligation to protect a demonstration from violent counterdemonstrators is about the measures to be taken and not the results to be achieved. States therefore have a duty to take “reasonable and appropriate” measures to enable demonstrations to proceed peacefully, but they cannot guarantee this absolutely.⁴¹¹
310. The positive duty to protect peaceful assemblies also applies to counter-protests, and police forces should act in a way that ensures respect for both demonstrators’ and counterdemonstrators’ right to assemble. In particular, the state should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within sight and sound of one another.⁴¹² Moreover, the principle of non-discrimination further requires that assemblies under comparable circumstances not face different levels of restrictions.⁴¹³
311. However, the right to counterdemonstrate does not extend to inhibiting the right of others to demonstrate.⁴¹⁴ When a counterdemonstration is organized specifically to prevent another assembly from taking place, it will not enjoy the protection afforded according to the right to freedom of peaceful assembly.⁴¹⁵
312. Law-enforcement officials should be appropriately trained to fully understand their responsibility to facilitate as far as possible the holding of peaceful assemblies.⁴¹⁶ They should be prepared and properly trained to handle the presence of *agents provocateurs* and counterdemonstrators aiming to disrupt or disperse an assembly, and to remove them from the assembly or effectively contain them. The authorities should also be prepared to handle simultaneous demonstrations, which should be facilitated and protected when possible.⁴¹⁷

The policing of demonstrations and counterdemonstrations in selected participating States

313. ODIHR monitored assemblies and related counterdemonstrations in Latvia and Sweden. In Riga, Latvia, on 20 June 2015, the ODIHR team monitored the EuroPride march and a counterdemonstration organized by a group called Antiglobalists. Since previous Pride events held in the Latvian capital were marred by attacks targeting assembly participants, the state and municipal police regarded the assembly as a high-risk event and prepared accordingly. The counterdemonstration was restricted by the Riga municipality by assigning it a venue on the pavement next to a road adjacent to Vermanes Park in the centre of Riga, which also served as the gathering point for the EuroPride march. Upon an appeal by the organizer of the Antiglobalist assembly, the District Court confirmed the restriction.

⁴¹¹ *Ibid.*, para. 34.

⁴¹² *The Guidelines, op. cit.*, note 2, para. 4.4.

⁴¹³ *Ibid.*, Explanatory Notes, para. 33.

⁴¹⁴ *Ibid.*, para. 124.

⁴¹⁵ *Ibid.*

⁴¹⁶ *Ibid.*, para. 34.

⁴¹⁷ "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/23/39, 24 April 2013, para. 70.

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314. Approximately 5,000 people from numerous countries participated in the EuroPride event. State and municipal police were present in large numbers several hours before the march commenced, and metal barriers were erected around the venue for the gathering, which could be accessed through two checkpoints staffed by assembly stewards with support from the police. The assembly route was secured by municipal and state police, including several police officers in full riot gear and masks. The march took place without any major incidents directed at participants and was mostly welcomed by bystanders along the assembly route. However, about 50 protesters on both sides of the entrance to the park showed their disapproval in the form of gestures, yelling and holding up posters as the Pride participants left and returned to the park. One man set a rainbow flag on fire and was quickly apprehended by the police. In total, ODIHR monitors saw four arrests, including that of the organizer of the counterdemonstration, just 15 minutes prior to its announced commencement. In spite of this, the counterdemonstration had between 20 and 50 participants throughout its duration, and took place at the location assigned by the authorities next to the venue of the EuroPride event, which was not within sight and sound of the EuroPride participants. At the same time, both onlookers and people with banners with messages against the EuroPride event were able to stand right at the entrance to the park next to the cordons and could freely express their opinions in the direction of the Pride participants. Based on information received by the ODIHR team in advance of the events, 500 police officers facilitated the assemblies that day. Some representatives of the Georgian police were also present to observe the work of their Latvian counterparts.
315. The ODIHR team monitored six May Day assemblies in Gothenburg on 1 May 2016. The ruling Social Democratic Party's march met a small authorized counterdemonstration along its route. A handful of protesters with banners and placards protested against the prime minister right next to the march, as no physical barriers had been erected between the protest participants and the May Day march. Later on, the protesters were also seen walking freely at the end point of the assembly route.
316. The six assemblies monitored by ODIHR in Gothenburg ranged in size from 70 to 6,000 participants. The gathering points and/or route of some of these assemblies overlapped, but except for a short extra waiting period at the start of the Feminist march, each of the assemblies was facilitated by the police as planned in advance. Despite the large number of assembly participants, police visibility remained very limited throughout the monitored events. Based on information from the police, all in all, only 68 police officers facilitated the assemblies. For example, at the demonstration organized by the Syndicalists (the local branch of a trade union), ODIHR observed only two male police officers in soft uniforms and highly visible vests and one female dialogue police officer walking 10-20 metres ahead of the demonstration. The assembly organized by the Feminist Initiative was also policed by only three officers, one of whom was a dialogue officer. The Left Party march, with its approximately 6,000 participants, was facilitated by a handful of police officers.

317. The approach of the police was simply to have a presence and to ensure traffic regulation during the assemblies in Gothenburg by blocking streets and facilitating the assemblies without interfering. Generally, police kept their distance from the participants and allowed the marchers to proceed at their own pace. The majority of the assemblies were self-regulated by assembly stewards. No force was used or arrests made. The police officers seem to have maintained regular communication with the assembly organizers, and police were ready to engage with assembly participants too when answering logistical or other practical questions. All the assemblies were able to communicate their message to their target audiences at the desired locations.

Conclusions and recommendations on policing of simultaneous assemblies

318. The policing of assemblies and related counterdemonstrations may pose specific risks of confrontation between opposing groups. This is underscored by the need to ensure that assemblies are consistently policed in line with principles providing that an assembly should be allowed to take place within sight and sound of its intended audience.

319. In policing demonstrations and counterdemonstrations, the police must ensure that assembly participants are able to convey their message to their audience, while ensuring the safety and security of all individuals present.

320. Police authorities should be encouraged to find ways to allow demonstrations and counterdemonstrations to take place in proximity of one another (unless counterdemonstrations directly threaten the rights of others), and should avoid the establishment of unnecessarily large buffer zones. Whenever possible, they should limit their interventions to keeping opposing groups close to each other, albeit physically separated.

321. In Riga, the peaceful counter-protesters at the assembly organized by the Antiglobalists were not located within sight and sound of the EuroPride participants. At the same time, they and other individual counter-protesters were able to express their opinions right next to the Pride event. The fact that the authorities in Riga facilitated unannounced counterdemonstrations and devoted adequate policing resources to prevent violence and protect the physical safety and security of the assembly participants is a positive practice.

322. Recommendations for participating States:

- to ensure that law-enforcement authorities facilitate assemblies and counterdemonstrations within sight and sound of each other to the extent possible and that adequate policing resources are made available to that effect;
- to facilitate all simultaneous assemblies (including peaceful counterdemonstrations) to the extent possible, while protecting the right to assemble and the security of all participants by deploying an adequate number of properly trained law-enforcement personnel to this end;

- to ensure that potential disorder arising from hostility directed at those participating in a peaceful assembly is not used to justify the imposition of restrictions on a peaceful assembly;
- in particular, whenever possible, to ensure that any measures taken to physically separate demonstrators and counterdemonstrators or onlookers, including by creating buffer zones, interfere as little as possible with the ability of assembly participants to be within sight and sound of one another or their other intended audience;
- to take adequate measures to protect the safety and security of all assembly participants and counterdemonstrators alike, as well as of onlookers; such measures should place an emphasis on allowing opposing groups to assemble close to each other, albeit separated physically.

USE OF FORCE, FIREARMS, DETENTION, CONTAINMENT AND DISPERSALS

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

323. The use of force by law-enforcement officials should always be an exception,⁴¹⁸ 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.⁴¹⁹ In fulfilling their duties, police officers may only use force in line with the principles of necessity and proportionality.⁴²⁰ 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, 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.⁴²¹
324. Moreover, OSCE commitments reinforce the fundamental right to life (Helsinki 2008) and require participating States to prohibit torture and other cruel, inhuman or degrading treatment or punishment and to take effective legislative, administrative, judicial and other measures to prevent and punish such practices (Vienna 1989, Copenhagen 1990). The prohibition of

⁴¹⁸ See the commentary to Article 3 of the Code of Conduct for Law Enforcement Officials.

⁴¹⁹ 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.

⁴²⁰ 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).

⁴²¹ European Court of Human Rights, *McCann and Others v. United Kingdom*, application No. 18984/91, 27 September 1995.

torture and other forms of ill-treatment is also enshrined in a number of international human rights treaties, including the ICCPR (Article 7), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 2 and 16)⁴²² and the ECHR (Article 3).

325. States should, as far as possible, apply non-violent means before resorting to the use of force or firearms,⁴²³ which may be employed only if other means remain ineffective or without any promise of achieving the intended result.⁴²⁴ 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.⁴²⁵ According to the UN Special Rapporteur, the only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or life-threatening injury.⁴²⁶ Deadly force should only be used when strictly unavoidable and when less extreme measures are insufficient to achieve the intended objective of protecting life.⁴²⁷
326. Human rights principles on the prohibition of torture and other ill-treatment and on the use of force by law-enforcement officers have specific implications with respect to the policing of assemblies. It is worth noting that, in addition to being in violation of human rights obligations, the inappropriate, excessive or unlawful use of force by law-enforcement authorities can be counterproductive, notably in undermining police-community relationships and causing widespread tension and unrest.⁴²⁸ Police should resort to the use of force only in line with the principles of exceptionality, proportionality and necessity.⁴²⁹ In particular, they should as much and as long as possible differentiate between those individuals who are engaged in violence and those who wish to assemble peacefully and not use force against them.
327. In the context of assemblies, the use of force should be preceded by adequate prior warnings that permit individual participants to leave peacefully.⁴³⁰ A variety of responses should enable a differentiated and proportional use of force⁴³¹ that is adequate to the threat, and under no circumstances should force be used against peaceful demonstrators who are unable to leave

⁴²² All participating States covered in this report are parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴²³ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4.

⁴²⁴ *Ibid.* On the use of force by the police, also see OSCE, *Guidebook on Democratic Policing* (Vienna: OSCE, 2008), paras. 54 and *ff.* According to 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.

⁴²⁵ Amnesty International Use of Force Guidelines, *op. cit.*, note 419, Guideline 7(k), Sections 7(i) and 7.4.3.

⁴²⁶ "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.

⁴²⁷ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Articles 12-14.

⁴²⁸ *The Guidelines, op. cit.*, note 2, Explanatory Notes, para. 171.

⁴²⁹ 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.

⁴³⁰ *The Guidelines, op. cit.*, note 1, para. 5.5.

⁴³¹ *Ibid.*

the scene.⁴³² 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.⁴³³

328. These principles also apply to so-called less than lethal weapons, including plastic and rubber bullets, attenuated energy projectiles, water cannons and other forceful methods of crowd control, which must be strictly regulated⁴³⁴ to ensure that they are used only when necessary by police officers who are trained in their use. More generally, such types of equipment should be seen as being close to the far end of a continuum, which begins with equipment designed to minimize the need for the use of force (e.g., protective gear, shields, helmets, etc.) and moves to different types of weapons, disabling chemicals, etc., depending on the threat faced by police officers or others.
329. Weapons that by 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.⁴³⁵ 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.⁴³⁶ 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, bystanders.⁴³⁷
330. 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.⁴³⁸ The kettling of protesters may also result in a violation of their rights to liberty and freedom of movement.⁴³⁹ The UN Special Rapporteur has noted that kettling is

⁴³² *Ibid.*, Explanatory Notes, para. 176.

⁴³³ *Izci v. Turkey* (2013), para. 56.

⁴³⁴ *Ibid.*

⁴³⁵ Amnesty International Use of Force Guidelines, *op. cit.*, note 419, Guideline 7(h), sections 7.4.2(a) and (b).

⁴³⁶ *Ali Günes v. Turkey* (2012), para. 168.

⁴³⁷ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, para. 35. On the use of tear gas, also see *Izci v. Turkey* (2013); *Abdullah Yasa v. Turkey* (2013) and *Ataykaya v. Turkey* (2014).

⁴³⁸ *The Guidelines, op. cit.*, note 1, para. 160.

⁴³⁹ 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”⁴⁴⁰ and has opposed this practice.⁴⁴¹

331. 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.”⁴⁴² OSCE commitments provide that no one shall be deprived of his or her liberty except on such grounds and in accordance with procedures that are established by law (Moscow 1991).⁴⁴³ 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.⁴⁴⁴ While mass arrests have high potential for being arbitrary and are therefore to 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.⁴⁴⁵ Similarly, intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence actually exists.⁴⁴⁶ 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.⁴⁴⁷
332. 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.⁴⁴⁸ Stemming from the presumption in favour of holding assemblies, non-violent unlawful assemblies should not be terminated for the mere reason of

⁴⁴⁰ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39/Add.1, 17 June 2013, para. 37.

⁴⁴¹ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, 21 May 2012, para. 37.

⁴⁴² “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 44.

⁴⁴³ A similar principle is enshrined in Article 9 of the ICCPR.

⁴⁴⁴ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 161.

⁴⁴⁵ *Ibid.*

⁴⁴⁶ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 45.

⁴⁴⁷ *Ibid.*, para. 46.

⁴⁴⁸ *Ibid.*, para. 61.

being unlawful. Rather, the principle of proportionality requires that unlawful assemblies—so long as they remain peaceful—should not be dispersed unless required due to additional factors linked to public order and security.⁴⁴⁹ Even then, the authorities should follow a graduated response and should aim to exhaust non-forceful means of intervention before adopting more forceful methods.

333. 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.⁴⁵⁰ 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.⁴⁵¹
334. 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.⁴⁵²

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

335. In several participating States where ODIHR observed assemblies, legislation lays down the general principles of police intervention. In Poland, the Police Act prescribes that, in the course of performing their official duties, police officers are obliged to respect human dignity, as well as observe and protect human rights.⁴⁵³ Police officers may only apply means of direct coercion if this meets the needs of a particular situation and it is necessary to ensure that people obey any orders given.⁴⁵⁴ The detailed conditions and procedures for the use of force and firearms are determined by ordinances issued by the Council of Ministers. A differentiated response is prescribed as physical force against women who are visibly pregnant, people appearing to be under 13 years of age and people with visible disabilities and can only be used in the form of incapacitation techniques.⁴⁵⁵

⁴⁴⁹ Amnesty International Use of Force Guidelines, *op. cit.*, note 419, Guideline 7(b) and Section 7.2.

⁴⁵⁰ *Ibid.*, para. 165.

⁴⁵¹ Principle 13, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁴⁵² *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 168.

⁴⁵³ Article 14 of the Police Act.

⁴⁵⁴ Article 16 of the Police Act.

⁴⁵⁵ Article 9(1) of the Act on Firearms and Measures.

336. In Sweden, the Police Act regulates the general principles for police interventions. Force can only be used in a form and to the extent necessary to achieve the intended outcome⁴⁵⁶ when other means are insufficient and the circumstances are justifiable.⁴⁵⁷
337. In Latvia, the general principles of police intervention are regulated by a document called “Professional Ethics and Conduct of the State Police Personnel”, according to which a police officer may use force, special equipment or a weapon only in the cases stipulated by law and in order to attain a legal aim. Spontaneous or ill-intentioned use cannot be justified.⁴⁵⁸ The types of special means and the intensity of the use of physical force or special means is determined by taking into account the specific situation, the nature of the violation in question and the individual characteristics of the violator, while attempting to restrict as much as possible the harm done through such means. It is prohibited to use special fighting techniques, handcuffs, batons, tear-eliciting substances and service dogs against women, against people with obvious signs of disability and against minors except in cases when such individuals engage in a group attack, endanger the lives or health of other people or police officers or show armed resistance. If there are victims as a result of the use of physical force or special means, a police officer is obliged to provide medical assistance to the victims without delay and to report the incident to his or her immediate supervisor, who must notify the prosecutor in this regard. A police officer must report in writing to their immediate supervisor regarding all instances of the use of special means.⁴⁵⁹
338. In Ireland, there is no legislation that provides specific guidance on the use of force. However, in the case of *Lynch v Fitzgerald (No. 2)*, the Supreme Court examined the use of lethal force by members of the An Garda Síochána (Irish National Police) in the context of the shooting of a man during a civil disturbance. The court expressed the view that the force used must always be moderate and proportionate to the circumstances of the case and to the end to be attained. The court went on to state that “a gun should never be used, or used with any specific degree of force, if there is any doubt as to the necessity”.⁴⁶⁰ The usage of a baton is set out in the Gardaí training material, which explains that force is only to be used for legal law-enforcement purposes when strictly necessary, justified and proportionate to the lawful objective.⁴⁶¹
339. Most states regulate the grounds for dispersal in their legislation on assemblies, and the legislation in several states also specifies the methods of dispersal. As discussed above, in

⁴⁵⁶ Article 8.

⁴⁵⁷ Article 10.

⁴⁵⁸ Article 6.

⁴⁵⁹ Section 13 of the Latvian Law on the Police.

⁴⁶⁰ <http://garda.blackhallpublishing.com/index.php/2013-05-31-05-54-16/subject-index/109-arrest%20of%20offenders/1045-use-of-force-etc-and-entering-premises-to-arrest>

⁴⁶¹ The document is cited by the Garda Ombudsman Commission report on the policing of the student protests of 2010, <<http://www.gardaombudsman.ie/publications/S103reports.html>>. The document itself does not appear to be publicly available.

some jurisdictions a prior ban or lack of notification may constitute grounds for dispersal, but there are a number of other conditions that could lead to this end.

340. In Austria, if an assembly is held against the provisions of the Assembly Act, the competent authority may ban it and dissolve it, depending on the circumstances. The representative of the competent authority, or the authority itself if no representatives have been sent, may also dissolve a lawful assembly if illegal incidents take place during the assembly or if the assembly becomes a threat to public order.⁴⁶² As soon as an assembly is declared as dissolved, all those present are obliged to immediately leave the location of the assembly and disperse. In case of non-compliance, authorities may apply means of enforcement to dissolve the assembly.⁴⁶³ It is also noteworthy that, in addition to the competent authority, any other authority responsible for maintaining public order or security is equally entitled to prohibit or dissolve an assembly in case of urgent danger to public order or security. In this case the competent authority must be informed without delay.⁴⁶⁴
341. In Poland, a representative of the relevant municipal body can decide to disperse an assembly if the assembly presents a threat to human life or health or to property to a substantial degree, or if it infringes the provisions of the Act on Assemblies or of criminal law, and if the leader of the assembly, having been warned by a representative of the municipal body about the necessity to dissolve the assembly, fails to do so.⁴⁶⁵ A police officer can also address the representative of the municipal body to request the dissolution of an assembly in case of the above-mentioned circumstances.⁴⁶⁶ The dissolution of an assembly takes place following a verbal order that is subject to immediate execution, and is preceded by a double warning to assembly participants about the possibility of its dissolution, and is followed by the announcement of the decision either to the leader of the assembly or to its participants should it be impossible to contact the leader. The decision is delivered to the organizer of the assembly in writing within 72 hours of its issuance.⁴⁶⁷ A spontaneous assembly can be dissolved by a commanding police officer if it presents a threat to human life or health or to property to a substantial degree, if it presents a serious threat to public safety or order, if it poses a substantial threat to the safety or order of road traffic on public roads, if it violates the provisions of the Act on Assemblies or provisions of criminal law or if it disrupts another assembly organized pursuant to the terms specified in the Act on Assemblies.⁴⁶⁸

⁴⁶² Article 13 of the Austrian Assembly Act.

⁴⁶³ Article 14 of the Austrian Assembly Act.

⁴⁶⁴ Article 17 of the Austrian Assembly Act.

⁴⁶⁵ Article 20(1) of the Polish Act on Assemblies.

⁴⁶⁶ Article 20(2) of the Polish Act on Assemblies.

⁴⁶⁷ The organizer of an assembly has the right to lodge an appeal against a decision about its dissolution to the regional court with jurisdiction respective of the location of the seat of the municipal body within seven days of the dissolution of the assembly. The regional court considers the appeal no later than within 30 days of receiving the appeal. The decision of the regional court may be appealed within five days of the delivery of the complaint to the appellate court. No cassation complaint is envisaged against the decision of the appellate court.

⁴⁶⁸ Article 28 of the Polish Act on Assemblies.

342. Latvia's Assembly Law authorizes representatives of the local government or the police to announce the dissolution of an assembly if assembly participants violate the provisions of the Assembly Law and do not obey the instructions of the manager or his or her assistants or stewards, as well as the instructions of the police or a representative of the local government.⁴⁶⁹ Otherwise, the law remains silent on the methods for dispersal in case the participants refuse to leave voluntarily without delay.
343. The Bavarian Assembly Act prescribes that a prohibited assembly must be dissolved⁴⁷⁰ but does not further describe the circumstances or methods of dispersal. ODIHR was informed that the Chief of Police decides on the dispersal of an assembly⁴⁷¹ and the methods and circumstances of dispersal are regulated by a Bavarian Police Act covering all enforcement measures.⁴⁷²
344. In Ireland, the Criminal Justice (Public Order) Act of 1994 replaced a number of common-law offences related to public order and also gave the Gardaí extended powers of crowd control. The common-law offences of riot, rout and unlawful assembly were replaced by statutory offences of riot or violent disorder. The Gardaí Síochána can disperse such an assembly but only by using force that is “moderate and proportioned to the circumstances”.
345. Use of force, arrests and detentions by law-enforcement officials were observed by ODIHR monitors in Garmisch-Partenkirchen, Germany; Riga, Latvia; and Dublin, Ireland.
346. On 6 June 2015, ODIHR monitored a moving assembly against the G7 Summit in Garmisch-Partenkirchen, Germany. Around 3,600 people took part in the assembly, which was heavily policed. Restrictions were imposed on the route of the assembly, which involved shortening the originally planned route of the march. About 100 metres before the police blockade at the end point of the route, there was a clash between some demonstrators and police officers that involved the use of fire extinguishers by participants to which the police responded with tear gas and batons. The violence de-escalated quickly, after which the demonstration continued peacefully. According to medics at the scene, at least 60 people were injured by tear gas and truncheon blows. There were three arrests.⁴⁷³
347. ODIHR was informed that, in the context of the G7 Summit, 41 people were arrested, seven preventive arrests took place and 105 people’s personal details were recorded.⁴⁷⁴ A mobile arrest station with arrest containers for detainees was set up in Garmisch-Partenkirchen, with representatives from the office of the public prosecutor, solicitors and interpreters available on site.

⁴⁶⁹ Section 23 of the Latvian Law on Meetings, Processions and Pickets.

⁴⁷⁰ Article 15(6) of the Bavarian Assembly Act.

⁴⁷¹ Meeting with representatives of the police and municipal authorities in Munich, 3 June 2015.

⁴⁷² Information received from the German authorities on 13 December 2016.

⁴⁷³ Meeting with representatives of the police and municipal authorities in Munich, 9 June 2015.

⁴⁷⁴ *Ibid.*

348. ODIHR monitors saw the arrest of one assembly participant in Dublin. The police acted correctly in balancing the facilitation of the assembly, the security of parliamentarians and the freedom of movement of non-participants. The police facilitated the assembly without interfering by means of constant communication with the organizer while maintaining a certain distance from assembly participants. ODIHR monitors saw four arrests in Riga.
349. One person was reportedly detained in connection with the assembly organized by the World Hazara Council in Warsaw. One day before the assembly, a person was distributing flyers about the assembly. After being photographed, he was reportedly taken to a police car and held there for an hour. Meanwhile, his passport was taken and checked by the police. He was then transported to a police station, where he was photographed with registration numbers on a placard and put in an unlocked cell for 20 minutes. He was reportedly kept at the station for two hours in total, and then released without any arrest report or other document on his arrest. He was not given any reason why he was detained.⁴⁷⁵

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

350. In some participating States, assemblies may be dispersed in a broad range of situations, and these are not limited only to the most serious cases. Generally, the termination of assemblies should be considered a measure of last resort. As long as assemblies remain peaceful, they 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 the assembly from harm, i.e., unless there is an imminent threat of violence.⁴⁷⁶
351. 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 not therefore be taken when a small group of participants in an assembly act in a violent manner. In such instances, action should be taken against those individuals.
352. In several of the participating States where ODIHR monitored assemblies, legislation does not specify the reasons or 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.

⁴⁷⁵ Information received by ODIHR from the assembly organizer per phone in advance of the monitoring exercise.

⁴⁷⁶ ODIHR opinion on the draft Law on Assemblies of Poland, para. 34.

353. As discussed earlier, some participating States authorize dispersal when the proper notification or permit for an assembly has not been provided. Participating States should consider, however, that in line with internationally accepted good practice, unannounced assemblies should be allowed to continue without dispersal if they remain peaceful.
354. 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 assemblies that presented specific challenges in relation to the maintenance of public order and the protection of participants. In the cases where ODIHR observed the use of force by police, such as at the assembly in Garmisch-Partenkirchen, the use of force was judged to be necessary and proportionate.
355. However, the circumstances related to the arrest of an individual handing out flyers concerning the assembly of the World Hazara Council, which was reported to ODIHR, raise concerns as to its necessity and proportionality, as well as with respect to the general rule of law. As confirmed by the German Federal Constitutional Court (GFCC), 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.⁴⁷⁷
356. The GFCC interpreted the freedom of peaceful assembly to cover not only participation in an assembly but also activities related to the planning and preparation of an assembly, such as public announcement of the event, distribution of leaflets, the right to freely determine the purpose, place, time and manner of the assembly, as well as to have access to the place where the assembly takes place.⁴⁷⁸ 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.⁴⁷⁹ (Please see the section on prior restrictions of assemblies for more information.)
357. 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 Summit, the NATO Summit and the EuroPride march, which may have had an intimidating effect on peaceful protesters.
358. In Riga, the potential risk of violence and clashes between EuroPride participants and counterdemonstrators might have accounted for the presence of a large number of law-

⁴⁷⁷ “Comparative study on national legislation on freedom of peaceful assembly”, op. cit., note 61, p. 57.

⁴⁷⁸ *Ibid.*

⁴⁷⁹ OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*, op.cit., note 393, p. 18.

enforcement personnel, including regular and riot police. 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 Telfs and in the context of the NATO Summit in Warsaw and the G7 Summit in Elmau were facilitated with a significant police presence in riot gear compared to the number of peaceful protesters in those locations. (Please see the section on engagement and communication by the police with assembly organizers and participants for more information.)

359. Recommendations for participating States:

- to ensure that rules on the use of force by law-enforcement officials policing assemblies are established, in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and made public;
- 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 policing tactics and training emphasize prevention 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) and (3) who may issue a dispersal order, and to prioritize voluntary dispersal before resorting to any use of force;
- to ensure that participants in assemblies are only detained when there are reasonable grounds for the deprivation of liberty and without resorting to excessive use of force during arrests;
- to provide training for law-enforcement officials on facilitating assemblies 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 support in this regard;
- to ensure that law-enforcement officials are adequately trained, resourced and equipped (including with non-lethal technologies) so as to best enable restrained and proportionate policing of people exercising their freedom of assembly.

PHOTOGRAPHY AND VIDEO RECORDING BY LAW-ENFORCEMENT PERSONNEL

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

360. 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 are likely to have a chilling effect on assembly organizers and participants, and should therefore not be carried out routinely.⁴⁸⁰ 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.⁴⁸¹
361. 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.⁴⁸² 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 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 record kept may involve violations of their privacy.⁴⁸³
362. 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.⁴⁸⁴ Law-enforcement agencies should develop and publish a policy relating to their use of overt filming/photography at public assemblies.⁴⁸⁵ The use of camera

⁴⁸⁰ *The Guidelines, op. cit.*, note 1, para. 169.

⁴⁸¹ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 76.

⁴⁸² *Ibid.*, para. 73.

⁴⁸³ *The Guidelines, op. cit.*, note 1, para. 169.

⁴⁸⁴ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 74.

⁴⁸⁵ *The Guidelines, op. cit.*, note 1, para. 169.

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.⁴⁸⁶ In such cases, photography and video recording of assemblies by law-enforcement personnel allow police to take a more permissive view of certain behaviour because they can then address illegal actions retrospectively and therefore do not risk escalating tension through an immediate police reaction.⁴⁸⁷

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

363. In the German federal state of Bavaria, the police may produce overview images of outdoor assemblies and their surrounding areas in a transparent way in order to guide and direct their operations. Overview images may be recorded if there are “actual grounds to justifiably suspect significant risks to national security or order” deriving from an assembly, from parts of an assembly or from its surroundings. Only if this condition is fulfilled are the police permitted to produce images or sound recordings or overview images of outdoor assemblies and of participants in an identifiable way.
364. Image, sound or overview recordings must be analysed immediately after an assembly and must be deleted no later than two months after the assembly, provided that they are no longer needed for an investigation into criminal offences that took place at or in connection with the assembly or for an emergency response in a particular case because the person in question is suspected of having planned or committed criminal offences at or in connection with the assembly and might pose a significant danger to future assemblies. The identification of individuals on images or on sound or overview recordings must be technically and irreversibly prevented unless required because the individuals in question are suspected of having planned or committed criminal offences at or in connection with an assembly. Images or sound or overview recordings that have not been deleted because the person in question is suspected of having planned or committed criminal offences at or in connection with an assembly must be deleted no later than six months after production unless they are needed for the prosecution of criminal acts at or in connection with an assembly. Reasons for the production of images or sound and overview recordings and for their intended use must be documented.⁴⁸⁸
365. On 4 June 2015, ODIHR monitored a moving assembly in Munich against the G7’s free-trade agreements and for protection of the environment, human rights and combating global poverty. Approximately 34,000 people participated in the assembly, which was policed by 3,000 police officers. The assembly took place without any incidents and in a family-friendly atmosphere. However, ODIHR observed the use of video cameras by law-enforcement authorities, who were filming the assembly participants. The assembly participants appeared

⁴⁸⁶ *Ibid.*, para. 169.

⁴⁸⁷ Gary White, retired Assistant Chief Constable, Director of Operations, Ineqe Group, United Kingdom.

⁴⁸⁸ Article 9 of the Bavarian Assembly Act.

to have no information on the reasons for the use of cameras and whether only overview images were being produced or if the assembly and its participants were being recorded. On 6 June 2015, ODIHR monitored a march in Garmisch-Partenkirchen. The procession was led by an unmarked and a marked police van with video cameras mounted on the top and was surrounded by additional camera vans.

366. In Latvia, the Law on Meetings, Street Processions and Pickets authorizes video and audio recording, filming and photography during public assemblies.⁴⁸⁹ The law does not provide further details. ODIHR was informed that the Latvian Personal Data Protection Law guarantees and safeguards must also be observed during meetings, processions and pickets if any actions are performed that can be regarded as processing of personal data.⁴⁹⁰ In Riga, ODIHR observed that the entrance to the park where the EuroPride participants were gathering was monitored by a camera van.

367. The Austrian Assembly Act does not specify the conditions for video recording or photographing assemblies. Police representatives informed ODIHR that they use video buses with cameras that only transmit but do not record. One such van was observed by ODIHR facing the demonstration in Telfs-Buchen right next to the entrance leading to the InterAlpen Hotel, which served as the venue for the Bilderberg meeting. At this assembly, one police officer from the intelligence unit took photographs of the assembly participants and ODIHR monitors. At the assembly in Telfs, one riot police officer was holding up a video camera on a stick and filming the demonstration. The organizer of the assembly expressed concern about the intimidating effect of the recording of assemblies on the participants. Police representatives informed ODIHR at a follow-up meeting that the police were authorized to record assemblies in anticipation of the assembly turning violent.⁴⁹¹

368. In Poland, police may record audio and images during their official duties.⁴⁹² In Warsaw, the assembly organized by the Polish Resistance Movement was visibly recorded by the police without any obvious justification. A police officer also took photos and recorded video of the ODIHR monitors. There was an unmarked van with a 360-degree camera parked nearby throughout the duration of the assembly organized by KOD. During the assembly organized by Zmiana, a police officer recorded video footage with a handheld camera. He filmed one of the banners and stopped filming when one of the people carrying the banner expressed his discomfort with this. He continued filming during the assembly, however. Police were spotted by ODIHR monitors recording several aspects of the assembly organized by the Stop the War Initiative Poland. Police informed ODIHR that these recordings were being made for evidentiary purposes and were authorized by a regulation of the Council of Ministers on how to proceed with the execution of certain police powers. The use of the recordings is connected with the policy of handling personal data, which is regulated by the Data Protection Act,

⁴⁸⁹ Section 22 of the Law on Meetings, Street Processions and Pickets.

⁴⁹⁰ Information received by ODIHR from the Latvian authorities on 13 December 2016.

⁴⁹¹ Meeting with the police in Innsbruck, 15 June 2015. Article 13 (a) para. 3 and Article 54 para. 5 of the Security Police Act Nr. 566/1991.

⁴⁹² Article 17, Ordinance of the Council of Ministers on how to carry out certain police powers.

which is, in turn, implemented by the Inspector-General for the Protection of Personal Data. The data is destroyed if there is no suspicion of a crime, if no complaints against the police measures are made and if the materials are not needed to identify perpetrators.⁴⁹³

369. ODIHR was informed that, in Ireland, police officers have been equipped with body cameras since October 2014 so as to be able to record assemblies in order to gather evidence. However, the officers have to always announce to the public whenever they are recording. The recorded material is retained in north Dublin for six years in order to be used for relevant legal actions, after which it is destroyed.⁴⁹⁴ ODIHR was also informed that, in Sweden, mounted police often use cameras on their helmets. They make recordings, and the data is processed later. Some police officers have cameras on their chests to record arrests or attacks against the police.⁴⁹⁵ In Cyprus as a general rule assemblies are not videotaped.⁴⁹⁶

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

370. In a large 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 the domestic legislation regulating the exercise of freedom of peaceful assembly except for the Bavarian Assembly Act.
371. Participants at the assemblies observed by ODIHR did not appear to be informed about the details of the recording, 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 and about the procedures and policies for the 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.

372. Recommendations for participating States

- to legally regulate the permissible purpose and basic conditions for overt filming and

⁴⁹³ Meeting with representatives of the National Police Headquarters and the Capital Police Command, 20 July 2016.

⁴⁹⁴ Meeting with the Garda Ombudsman, 16 April 2015.

⁴⁹⁵ Meeting with representatives of the Swedish Police Authority, 28 April 2016.

⁴⁹⁶ Information received by ODIHR from the authorities of Cyprus on 6 December 2016.

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 for 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 put in place mechanisms whereby individuals can ascertain whether, and if so what, information has been stored, and 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.

LIABILITY AND ACCOUNTABILITY OF LAW-ENFORCEMENT PERSONNEL

Accountability for violations in the context of policing assemblies: international standards and good practice

373. 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.⁴⁹⁷ Effective investigation includes the following factors: an official investigation initiated by the state; independence from those 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.⁴⁹⁸ States also have an obligation to provide those whose rights have been violated in the context of an assembly an adequate, effective and prompt remedy determined by a competent authority with the power to enforce remedies.⁴⁹⁹ 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.⁵⁰⁰

⁴⁹⁷ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, p. 19, para. 77.

⁴⁹⁸ 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.

⁴⁹⁹ 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.

⁵⁰⁰ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 89.

374. 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.⁵⁰¹ 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.⁵⁰² Law-enforcement officials should also be responsible for undue restrictions on the exercise of the freedom of peaceful assembly, and they should be accountable to an independent body.⁵⁰³ The law should also provide for criminal and disciplinary sanctions against those who unduly interfere with or violently disperse public assemblies.⁵⁰⁴
375. 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.⁵⁰⁵ 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.⁵⁰⁶ 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.⁵⁰⁷ 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.⁵⁰⁸
376. 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.⁵⁰⁹ These systems should operate in addition to,

⁵⁰¹ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/23/39/Add.1, 17 June 2013, paras. 7, 54.

⁵⁰² *The Guidelines*, *op. cit.* note 1, Explanatory Notes, para. 179.

⁵⁰³ *Ibid.*, para. 108.

⁵⁰⁴ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, p. 19, para. 78.

⁵⁰⁵ 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.

⁵⁰⁶ *The Guidelines*, *op. cit.* note 1, Explanatory Notes, para. 182.

⁵⁰⁷ Principle 24 of the Basic Principles.

⁵⁰⁸ *McCann and Others v. The United Kingdom*.

⁵⁰⁹ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 94.

and not as an alternative to, criminal, public and private legal remedies for police misconduct.⁵¹⁰ 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 complaint mechanism should be established where none exists, with a range of potential resolutions at its disposal.⁵¹¹

377. 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.⁵¹² (For more information on the media, please see Section IV.)
378. 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.⁵¹³
379. 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.⁵¹⁴ 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 than lethal weapons, firearms and ammunition.⁵¹⁵

Accountability for violations in the context of policing assemblies in selected participating States

380. In Ireland, police officers have to wear distinctive numbers on the outside of their uniform.⁵¹⁶ In Austria, police officers are not individually identifiable by a number on their uniforms. However, if a police officer has an incident with a civilian, the police officer is obliged, upon the civilian's request, to hand over a card with a personal identification number.⁵¹⁷ In Latvia, each time a police officer restricts the rights and freedoms of individuals, he or she should

⁵¹⁰ 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.

⁵¹¹ *Ibid.*, para. 180.

⁵¹² OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 393, p. 32.

⁵¹³ *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.

⁵¹⁴ Principles 24-26 of the Basic Principles.

⁵¹⁵ "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, 4 February 2016,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 65.

⁵¹⁶ Meeting with the Garda Ombudsman, 16 April 2015.

⁵¹⁷ Meeting with police representatives in Innsbruck, 10 June 2015. Directive of the Federal Minister of Interior of Austria, Nr. 266/1993.

offer an explanation justifying each specific restriction. In such cases, pursuant to the request of the person involved, the police officer must give his or her surname, position and service location, and must also show his or her service identification document.⁵¹⁸ In Sweden, police officers are identified by a number on their helmets and/or on their uniform.

381. ODIHR received information about the existence of a separate police oversight mechanism overseeing the actions of the police in the context of policing assemblies in Cyprus and Ireland. In Cyprus, the Independent Authority for the Investigation of Allegations and Complaints against the Police (IAIACAP) was established in 2006. The main purpose of the authority is to examine and investigate complaints regarding police misconduct. The five members of the authority are appointed by the Council of Ministers. In the absence of an express complaint, the IAIACAP has the power to act *ex officio* and initiate its own investigations in cases of human rights violations or abuses by the police. Once an investigation is completed and if criminal offences are found to have taken place, the case is forwarded to the Attorney-General, who decides whether or not to move forward with criminal prosecution. In the case of disciplinary offences, the case is forwarded to the Chief of Police, who is obliged to prosecute the offending officer(s) on disciplinary charges based on the evidence obtained by the IAIACAP.⁵¹⁹
382. The Garda Síochána Ombudsman Commission in Ireland was established in December 2005 and commenced operations on 9 May 2007. It is an independent statutory body. The Commission consists of three members, all appointed by the President. Its mission is to provide civilian oversight of policing, in particular by handling complaints against members of the Garda Síochána. The objectives, functions and powers of the Commission are set down in the Garda Síochána Act 2005.⁵²⁰ These are: (a) to ensure that its functions are performed in an efficient and effective manner and with full fairness to all individuals involved in complaints and investigations under Part 4 concerning the conduct of members of the Garda Síochána; and (b) to promote public confidence in the process for resolving those complaints. In addition to receiving complaints, the Commission is empowered to act where it considers it to be in the public interest to do so or in response to a request from the Minister for Justice, Equality and Law Reform requiring it to act even where no complaint has been made. The Garda Ombudsman also has investigative powers, can investigate individual complaints and can also examine thematic issues, such as public-order policing.⁵²¹
383. In several OSCE participating States where ODIHR monitored assemblies, NHRIs 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.

⁵¹⁸ Section 5 of the Police Act of Latvia.

⁵¹⁹ Information received from the Cypriot authorities on 6 December 2016.

⁵²⁰ Department of Justice and Equality response to Note Verbale from the UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions.

⁵²¹ Meeting with the Garda Ombudsman, 16 April 2015.

ODIHR met with the ombudspersons or their representatives in Austria, Cyprus, Ireland, Sweden, Latvia and Poland.

384. The Irish Human Rights and Equality Commission (IHREC) is an autonomous body with 15 members appointed by the President. It may comment on draft legislation, engage in research and policy advice, review laws and policies and interact with international and regional human rights monitoring mechanisms.⁵²² ODIHR was also informed that a human rights strategic commission had been set up by the police, which is a civilian and public-sector co-operation mechanism to facilitate communication between civil society organizations and the police. The IHREC is a member of this mechanism.
385. The police in Austria have a legislative duty to inform the Austrian Ombudsperson's Office and the head of the relevant regional commission (there are six regional commissions dealing with matters that are within the states' authority) whenever there is a major assembly involving a bigger police operation.⁵²³ The ombudsperson institutions can decide whether they would like to observe an operation and report on their findings in their annual presentation to the parliament and in their annual report. ODIHR met with the representatives of the Tirolean Regional Commission monitoring the assembly in Telfs. In addition, ODIHR was informed that the policing of the assembly in Telfs was also monitored by the Interior Ministry.⁵²⁴
386. Similarly, the Polish Ombudsman had also been actively engaged in the past in monitoring assemblies with the facilitation of the police.
387. Freedom of peaceful assembly is covered by the mandate of the Ombudsperson in Latvia, who is able to receive individual complaints on this issue. The Ombudsperson issued a decision, for example, on the use of loudspeakers in the context of demonstrations and counterdemonstrations.⁵²⁵
388. The National Independent Authority for Human Rights in the Republic of Cyprus independently examines and prepares reports with views, suggestions and recommendations on the human rights situation in the republic in general or on specific human rights issues or any situation regarding violations of human rights. Such reports may also be submitted when it is found that there is a need to promote and protect human rights or maintain or extend the protection and observance of fundamental principles by law-enforcement services. Opinions, suggestions and proposals within the above framework may be related to practical measures and legislation. Regarding the issue of freedom of assembly, the Ombudsman has issued guidelines on how police should behave in the context of demonstrations, with a special focus on police video recording of demonstrations, profiling and the use of force.⁵²⁶

⁵²² Meeting with the Irish Human Rights and Equality Commission, 16 April 2015.

⁵²³ Austrian Ombudsman Law 1982.

⁵²⁴ Meeting with the police in Innsbruck, 15 June 2015.

⁵²⁵ Meeting with representatives of the Latvian Ombudsperson's Office, 19 June 2015.

⁵²⁶ Ombudsman's Report as National Independent Authority for Human Rights Regarding the Policing of Protests,

389. The parliamentary ombudsmen in Sweden represent the oldest such institutions in the world. The four ombudsmen are elected for a renewable four-year term by the parliament. They are responsible for the application of laws in the public service at all levels. They can review (draft) laws, receive individual complaints or conduct *ex officio* investigations. They have full investigative powers and also perform the function of a national preventive mechanism. They have also addressed various issues regarding the policing of assemblies, such as policing demonstrations and counterdemonstrations, as well as accountability.⁵²⁷
390. Challenges regarding the identification of law-enforcement officials for the sake of ensuring accountability were noted by interlocutors in Cyprus. ODIHR observed no individual identification numbers on police at the assemblies monitored in Cyprus, Austria and Latvia. In Germany, 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. At the assemblies monitored by ODIHR in Warsaw, police officers facilitating the assemblies wore nametags.
391. In order to ensure accountability, the organizers of some of the Stop G7 Elmau assemblies in Germany employed legal observers to facilitate any potential complaints regarding police abuse by assembly participants and to provide on-the-spot legal advice in case of need. They also informed ODIHR about the presence of parliamentary observers from Die Linke at the assemblies.⁵²⁸
392. A project called GODIAC (Good Practice for Dialogue and Communication as Strategic Principles for Policing Political Manifestations in Europe) ran between 2010 and 2013 and was co-ordinated through the Swedish National Police Board. The project involved 20 organizations and bodies (police organizations, teaching and research institutions, NHRIs) from 12 countries and field studies in 10 countries observing assemblies and using the peer review method. The project resulted in several publications, including a booklet with good practices and recommendations on assembly policing.

Conclusions and recommendations on accountability for violations in the context of policing assemblies

393. 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

2/2012, 7 September 2012.

⁵²⁷ Meeting with representatives of the Parliamentary Ombudsmen, 3 May 2016.

⁵²⁸ Meeting with the organizer of the Stop G7 Elmau protest in Garmisch-Partenkirchen, 5 June 2015.

powers to respond to complaints or act *ex officio*, as is the case in Sweden, is a positive practice.

394. The establishment of a positive duty on the part of the Austrian police to pre-announce to the ombudsman institution any major police operation, thus allowing the representatives of the ombudsman to observe such events, is also commendable, as is the good practice of the Polish police in facilitating the monitoring of public assemblies by the Polish Ombudsman and the Polish Helsinki Foundation.
395. Non-adversarial peer review of policing operations, such as the experience in the GODIAC project co-ordinated by the Swedish police, is a positive practice, and peer reviews by law-enforcement bodies should be encouraged. However, such reviews should be conducted in addition to, and not instead of, the state's obligation to establish independent judicial review mechanisms for the investigation and sanctioning of human rights violations.⁵²⁹
396. The practice whereby police officers facilitating assemblies were not clearly and individually identifiable at the outset, such as it was observed by ODIHR in Cyprus, Austria, Germany and Latvia, is not in compliance with internationally accepted good practices.
397. 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).
398. 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 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

⁵²⁹ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 96.

easily and clearly identifiable at all times while policing assemblies (including when wearing protective or other special gear);

- to respect and facilitate the work of independent NHRIs to receive and investigate allegations of human rights violation 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

399. 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).

400. 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.⁵³⁰ 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.⁵³¹ 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.⁵³² The freedom to monitor public assemblies should be guaranteed not only to all media representatives, including so-called citizen journalists,⁵³³ but also to other members of civil society, such as human rights activists.⁵³⁴
401. Independent monitoring may also be 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.⁵³⁵
402. 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 also protects the rights of those monitoring peaceful assemblies.⁵³⁶ He has, therefore, called on states to ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies⁵³⁷ and to respect and facilitate the right to observe and monitor all aspects of an assembly.⁵³⁸ The

⁵³⁰ *The Guidelines, op. cit.*, note 1, Principles 5.9 and 5.10, p. 21; “Human Rights Defenders”, United Nations Human Rights Council A/62/225, 13 August 2007, para. 91; “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council A/HRC/20/27, 21 May 2012, para. 48.

⁵³¹ *The Guidelines, op. cit.*, note 1, para. 5.9.

⁵³² “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, 4 February 2016,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 68.

⁵³³ 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.

⁵³⁴ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 199.

⁵³⁵ *Ibid.*, para. 201.

⁵³⁶ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, Summary.

⁵³⁷ *Ibid.*, para. 94.

⁵³⁸ Subject to the narrow permissible restrictions outlined in Article 19(3) of the ICCPR. “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 70.

former Special Representative of the UN Secretary-General on the situation of human rights defenders called on states to allow human rights defenders to operate freely in the context of assemblies in order to enable them to perform their monitoring role.⁵³⁹

403. 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, *inter alia*, 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).
404. 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.⁵⁴⁰ The media also have a very important role to play in providing independent coverage of public assemblies.⁵⁴¹ Media reports and footage provide a key element of public accountability, both for 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.⁵⁴² 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”.⁵⁴³ 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.⁵⁴⁴
405. 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.⁵⁴⁵

⁵³⁹ “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).

⁵⁴⁰ *The Guidelines, op. cit.*, note 1, Explanatory Notes, para. 206.

⁵⁴¹ *Ibid.*, para. 207.

⁵⁴² *Ibid.*, para. 208.

⁵⁴³ “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>>.

⁵⁴⁴ OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies, op. cit.*, note 393, p. 33.

⁵⁴⁵ “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, 4 February 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 71.

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

406. During their monitoring deployments, ODIHR observers generally did not experience restrictions on their ability to observe assemblies or to gather information. ODIHR regrets that Lithuania was not ready to facilitate ODIHR's assembly-monitoring exercise and considers that decision a restriction of its monitoring mandate. At the same time, ODIHR acknowledges that Poland has already facilitated its assembly-monitoring work twice in the past five years.
407. In the vast majority of cases, both before and after assemblies, ODIHR was able to secure the meetings it had requested with the local authorities of participating States where monitoring was conducted. Co-operation and the exchange of information were usually good or very good. An exceptionally high degree of openness and co-operation were noted in meetings with the authorities in Germany and Sweden.
408. In Germany and Austria, the monitoring preparations were greatly facilitated by the materials sent in advance by the Ministry of Interior and the Tirolean police, respectively. Moreover, a visit to the detention facility temporarily established for the period of the G7 Summit in Garmisch-Partenkirchen was also made possible for the ODIHR monitoring team on very short notice. The Austrian police facilitated access for ODIHR monitors to a restricted area.
409. The assembly in Telfs, Austria, was also independently monitored by the Office of the Austrian Ombudsperson, and based on information available to ODIHR, their work was unhindered.⁵⁴⁶
410. During most of its assembly-monitoring exercises, ODIHR did not directly observe any restrictions imposed by state agents on the professional activities of journalists. Most of the assemblies ODIHR observed, such as in Germany, were extensively covered by the media.
411. However, during the protest against the Bilderberg meeting in Telfs-Buchen, Austria, the media were not allowed to access the venue of the demonstration freely. Only media representatives whom the organizers had brought with them in pre-registered cars could access and report on the assembly. Access to the assembly venue for the assembly participants was anyway restricted, and along with the extra duty to shuttle the media representatives in addition to the demonstrators to the assembly venue, the transportation of the assembly participants and journalists took up almost the entire duration of the assembly.
412. In addition, a French journalist reporting on the Bilderberg meeting told ODIHR that, at one of the checkpoints, he was allegedly ordered by a police officer to delete pictures where the

⁵⁴⁶ ODIHR was informed that the Polish police had supported the monitoring of the Polish Ombudsman and the Polish Helsinki Foundation in the past, and the latter systematically monitored public assemblies between 2011 and 2013.

faces of police officers were visible despite there being no prohibition on taking photos of law-enforcement personnel in Austria.⁵⁴⁷

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

413. In line with their OSCE commitments, Austria, Cyprus, Ireland, Germany, Latvia, Poland and Sweden facilitated ODIHR's assembly-monitoring missions by providing access to assembly locations and official interlocutors, as well as by supplying additional information when requested.

414. In most of the participating States included in this monitoring exercise, there is no established practice of independent assembly monitoring. Facilitation of the monitoring of assemblies by the Office of the Ombudsman in Austria and by the Polish Ombudsman and the Helsinki Foundation in Poland is positive. The promotion and facilitation of the independent observation of assemblies by participating States is a good practice in line with OSCE commitments, which should be promoted.

415. 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, in the vast majority of participating States, ODIHR, in the course of its monitoring, did not directly observe any significant impediments to the work of journalists. However, the work of the media could have been better facilitated in Austria in the context of the protest against the Bilderberg meeting in Telfs-Buchen. States should ensure that journalists and assembly monitors have access to assemblies, so that they can operate effectively and that their work is not obstructed, but rather facilitated. 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 record, of the conduct of demonstrators and law enforcement.⁵⁴⁸

416. Recommendations for participating States:

- to expressly recognize and actively facilitate independent monitoring, recording and reporting on assemblies by international and local observers or NHRIs, including

by:

⁵⁴⁷ Meeting with a media representative, 11 June 2015.

⁵⁴⁸ "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, 21 May 2012, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf>, para 48.

- routinely notifying NHRIs or other relevant independent oversight or monitoring bodies (such as NGOs working in the area of freedom of assembly) of anticipated assemblies;
 - providing information and access to the media and observers that enables them to monitor all aspects of an assembly and by communicating consistently with them before, during and after the assembly;
 - not imposing undue limitations on monitoring activities, but ensuring that monitors can operate effectively in the context of assemblies;
 - engaging with monitors in light of their findings and recommendations, and following their assessment of the facilitation of assemblies by the state authorities in order to feed into the institutional lessons-learned process;
- 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, except under rare circumstances where resources, such as time and space, are limited; in particular, to ensure that access is provided to the greatest extent possible to assembly monitors and journalists, to all locations where they may carry out their activities;
 - to ensure that assembly participants, observers, media representatives or bystanders 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 recordings can be accepted as evidence in relevant disciplinary, administrative or criminal proceedings.

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.

[...]

ANNEX 2: KEY OSCE COMMITMENTS ON FREEDOM OF PEACEFUL ASSEMBLY

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

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

[...]

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

- establish and maintain freely accessible places of worship or assembly

[...]

Sofia 1989 (Preamble)

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

OSCE Copenhagen Document 1990

[...] The participating States reaffirm that:

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

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

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

Istanbul 1999 (Summit Declaration)

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

Helsinki 2008

[...] We reiterate that everyone has the right to freedom of thought, conscience, religion or belief;

freedom of opinion and expression, freedom of peaceful assembly and association. The exercise of these rights may be subject to only such limitations as are provided by law and consistent with our obligations under international law and with our international commitments. [...]

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

MAIN INTERNATIONAL TREATIES AND DECLARATIONS:

Universal Declaration of Human Rights, Article 20(1)

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

International Covenant on Civil and Political Rights, Article 21

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

Convention on the Rights of the Child, Article 15

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

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

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

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

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

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

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

States Parties shall guarantee to persons with disabilities political rights and the opportunity to

enjoy them on an equal basis with others, and shall undertake to:

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

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

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

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

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

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

United Nations Code of Conduct for Law Enforcement Officials

Article 2

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

Article 3

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

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

Principle 4

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

Principle 5

Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve

human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

Principle 9

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

Principle 12

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

Principle 13

In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

Principle 14

In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

MAIN REGIONAL TREATIES AND DECLARATIONS

European Convention 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 (...)

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 14 APRIL 2015 AND 9 JULY 2016

No	Date	Participating State	City	Type of event	Short description
1	15/4/2015	Ireland	Dublin	March against homelessness	A march with about 100 participants
2	1/5/2015	Cyprus	Nicosia	May Day demonstration	A march with about 2,500 participants uniting with another march to form a single static assembly in the UN Buffer Zone
3	4/6/2015	Germany	Munich	Protest against the G7, free-trade agreements, for the protection of environment, human rights and combating global poverty	A march with about 34,000 participants
4	6/6/2015	Germany	Garmisch-Partenkirchen	Protest against the G7	A march with about 3,600 participants
5	7/6/2015	Germany	Elmau	Protest against the G7	A march of about 100 participants uniting with another march of about 150 to form a single static assembly
6	7/6/2015	Germany	Elmau	Protest against the G7	A march of about 150 participants uniting with another march of about 100 to form a single static assembly
7	8/6/2015	Germany	Garmisch-Partenkirchen	Protest against the G7	A static assembly with about 30 participants held in place of a planned march
8	12/6/2015	Austria	Telfs-Buchen	Protest in reaction to the Bilderberg Group meeting	A static assembly with about 50 participants
9	13/6/2015	Austria	Telfs	Protest in reaction to the Bilderberg	A march with about 500 participants

No	Date	Participating State	City	Type of event	Short description
				Group meeting	
10	20/6/2015	Latvia	Riga	EuroPride	A march with about 5,000 participants
11	20/6/2015	Latvia	Riga	Counterdemonstration against the EuroPride march	A static rally with up to 50 participants
12	1/5/2016	Sweden	Gothenburg	May Day demonstration	A march with about 60 participants (no authorization sought)
13	1/5/2016	Sweden	Gothenburg	Commemoration of Spanish Civil War volunteers	A static assembly with about 200 participants
14	1/5/2016	Sweden	Gothenburg	May Day demonstration	A march with about 6,000 participants
15	1/5/2016	Sweden	Gothenburg	May Day demonstration	A march that ended with a static rally with about 5,000 participants
16	1/5/2016	Sweden	Gothenburg	May Day demonstration	A march with about 450 participants
17	1/5/2016	Sweden	Gothenburg	May Day demonstration	A march with about 800 participants
18	9/7/2016	Poland	Warsaw	Protest against the NATO Summit	A march with about 150 participants
19	9/7/2016	Poland	Warsaw	Protest against the NATO Summit/Food Not Bombs event	A static assembly with about 75 participants
20	9/7/2016	Poland	Warsaw	Protest by an opposition movement	A static assembly with about 400 participants
21	9/7/2016	Poland	Warsaw	Public presentation of the programme of a political party	A static assembly with fewer than 10 participants
22	9/7/2016	Poland	Warsaw	Protest against the NATO Summit	A static assembly with about 30 participants
23	9/7/2016	Poland	Warsaw	Protest against the Discrimination of the Hazara	A static assembly with about 150 participants

No	Date	Participating State	City	Type of event	Short description
.				minority in Afghanistan	
24	9/7/2016	Poland	Warsaw	Protest against the NATO Summit	A static assembly with up to 30 participants

ANNEX 5: TABLE OF THE PARTICIPATING STATES WHERE ODIHR MONITORED ASSEMBLIES IN THE THIRD MONITORING CYCLE

State	Place(s)	Month and Year	Number of Monitored Assemblies	
Austria	Telfs-Buchen, Telfs	June 2016	2	
Cyprus	Nicosia	May 2015	1	
Germany	Munich, Garmisch-Partenkirchen, Elmau	June 2015	5	
Ireland	Dublin	April 2015	1	
Latvia	Riga	June 2015	2	
Sweden	Gothenburg	May 2016	6	
Poland	Warsaw	July 2016	7	
Total	7	10	April 2015 – July 2016	24

ANNEX 6: GLOSSARY OF KEY TERMS

This glossary clarifies key terms used in this report. The definitions are from the OSCE/ODIHR and Venice Commission's *Guidelines on Freedom of Assembly*⁵⁴⁹ unless otherwise indicated and are not official OSCE definitions.

Agent provocateur

A person who infiltrates a public assembly and incites others to commit an illegal or impetuous act so that they can be detained and/or convicted, or so that the public assembly is discredited as a whole.

Arbitrary use of force

Use of force that does not seek to achieve a lawful law-enforcement purpose or that contains elements of inappropriateness, injustice or lack of predictability under the circumstances.⁵⁵⁰

Abusive use of force

Intentional application of force beyond the limits of existing powers to use such force.⁵⁵¹

Arrest

Any deprivation of liberty. It is not limited to formal arrest under domestic law.⁵⁵²

Assembly

The intentional and temporary gathering of a number of individuals in a public or private space for a common expressive purpose.

Assembly monitor

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

Authorization

The act of authorizing; permission (expressly provided in writing). An authorization system presumes that an assembly cannot proceed unless express permission is obtained.⁵⁵³

Blanket ban/restriction

Effective or applicable in all instances to assemblies happening at a particular location, time or in a particular manner.

⁵⁴⁹ See *The Guidelines, op. cit.*, note 1, pp. 15, 35, 41, 58, 94, 116-121.

⁵⁵⁰ Amnesty International Use of Force Guidelines, *op. cit.*, note 419, p. 21.

⁵⁵¹ *Ibid.*

⁵⁵² “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, 4 February 2016,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, para. 44.

⁵⁵³ *The Right to Freedom of Assembly in the Euro-Mediterranean Region, Part I. Legislation Review* (Copenhagen: Euro-Mediterranean Human Rights Network, 2013), p. 155.

Citizen journalist

Citizen journalism is an activity conducted by individuals who do not work for the mainstream media but who collect, report, analyse and disseminate news and information.⁵⁵⁴

Content-based restrictions

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

Content-neutrality principle

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

Counterdemonstration

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

Demonstration

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

Dispersal

A formal requirement that participants in an assembly leave the site of the assembly under threat of the use of force by the authorities.

Firearm

A weapon that by the nature of its ammunition is designed to take life.⁵⁵⁵

Force

Any physical means deployed against a person in order to achieve a law-enforcement purpose, in particular to obtain compliance with an order.⁵⁵⁶

Flash mob

A flash mob occurs when a group of people assemble at a location for a short time, perform some form of action and then disperse. While these events are planned and organized, they do not involve any formal organization or group. Their *raison d'être* demands an element of surprise that may be defeated by prior notification.

Kettling or corralling

A strategy of crowd control whereby police create cordons that contain a crowd in specific locations and do not allow it to move or disperse.⁵⁵⁷

⁵⁵⁴ S. Bowman and C. Willis, "We Media: How Audiences Are Shaping the Future of News and Information", 2003, The Media Center at the American Press Institute, <<http://www.hypergene.net/wemedia/weblog.php?id=P36>>.

⁵⁵⁵ Amnesty International Use of Force Guidelines, *op. cit.*, note 419, p. 21.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2011–June

Lawful assembly

An assembly that complies with all local laws and legislation.⁵⁵⁸

Law-enforcement agency

Any security forces, including military forces, who exercise police powers, especially the power of arrest and detention. A law-enforcement agency is a state institution charged with the enforcement of the law, which may include traffic police, prison service, criminal investigation bodies, public-order units or departments, border guards etc.⁵⁵⁹

Less than lethal weapon

A weapon that is designed for the use of force without causing death, while acknowledging the inherent risk of any weapon to cause death depending on the circumstances and manner of its use.⁵⁶⁰

National security

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

Non-discrimination

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

Notification

A notice that provides information on an upcoming assembly and does not constitute a request for permission. A notification system presumes that an assembly can proceed unless the authorities impose restrictions on specified legitimate grounds.⁵⁶¹

Organizer

The person or people with primary responsibility for preparing and conducting an assembly.

Participant

A person intentionally and voluntarily present at an assembly for the purpose of supporting the message of the assembly.

Peaceful assembly

An assembly where the actions of the collective group, as well as of the participants, are of a

2012", OSCE/ODIHR, p. 62, note 203, 9 November 2012, <<http://www.osce.org/odihr/97055>>.

⁵⁵⁸ OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 393, p. 120.

⁵⁵⁹ Amnesty International *Use of Force Guidelines*, *op. cit.*, note 419, p. 22.

⁵⁶⁰ *Ibid.*, p. 23.

⁵⁶¹ *The Right to Freedom of Assembly in the Euro-Mediterranean Region*, *op. cit.*, note 555, p. 15.

peaceful nature, even in cases of violence perpetrated by a few isolated individuals.

Penalty

A punishment established by law for a breach thereof.

Permit

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

Presumption in favour of holding assemblies

The presumption that an assembly may proceed in the absence of well-founded justifications for the imposition of restrictions or for preventing an assembly from occurring. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so.

Prior restraint

Restrictions imposed in advance of an event.

Proportionality (principle of)

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

Protection of rights and freedoms of others

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

Protest

A formal declaration of disapproval or objection issued by a concerned person, group or organization, which can involve assemblies, non-violent direct action or civil disobedience.⁵⁶²

Public order

Security in public places.

Public safety

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

Public space

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

Rally

A static demonstration.

Regulatory authority

⁵⁶² OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 393, p. 121.

The authority responsible for taking decisions about public assemblies.

Risk assessment

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

Sanction

A coercive measure intended to ensure compliance with the law.

Simultaneous assemblies

Two or more assemblies that take place at the same time and place as one another but that are not related.

Spontaneous assembly

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

Steward

A person working in co-operation with the assembly organizer(s) responsible for facilitating an event and helping ensure compliance with any lawfully imposed restrictions.

Time, place and manner restrictions

A wide spectrum of possible limitations that do not interfere with the content of the message communicated. These limitations can relate to changes to the time or place of an event, or the manner in which an event is conducted.

Unlawful assembly

An assembly that is not in compliance with national legislation regulating assemblies.

Violent assembly

An assembly that involves collective behaviour causing or threatening physical or emotional harm to others.⁵⁶³

⁵⁶³ *Ibid.*, p. 122.

ANNEX 7: 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 governments and civil society in OSCE participating States.

ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY	
TOOL	DESCRIPTION
Legislative review	ODIHR provides legal reviews of respective draft and existing legislation in OSCE participating States upon request. 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: http://www.legislationline.org/topics/topic/15
Guidelines on Freedom of Peaceful Assembly	The OSCE/ODIHR-Venice Commission <i>Guidelines on Freedom of Peaceful Assembly</i> , 2 nd edition (2010), < http://www.osce.org/odihr/73405 >. <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 for 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.
Assembly monitoring	In line with its mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been monitoring public assemblies across the OSCE space

	<p>since 2011. The reports of the first two monitoring cycles covering assembly monitoring exercises in 20 OSCE participating States were published in November 2012: http://www.osce.org/odihr/97055 and December 2014: http://www.osce.org/odihr/132281?download=true</p>
<p>Capacity-building for civil society actors in the area of assembly monitoring</p>	<p>Recognizing the need to build the capacity of non-governmental organizations and human rights defenders to systematically monitor assemblies and policing thereof, to analyse the findings and report them in order to have another tool in co-operating with the authorities tasked with taking adequate measures while regulating this freedom, ODIHR published a <i>Handbook on Monitoring Freedom of Peaceful Assembly</i> in 2011, <http://www.osce.org/odihr/82979?download=true>. ODIHR has conducted several training courses on the basis of this handbook.</p>
<p>Capacity-building for law-enforcement actors on human rights-compliant policing of assemblies</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: http://www.osce.org/odihr/226981?download=true ODIHR has also developed a trainer's manual that, together with the handbook, can be used as a practical toolkit to train police (command-level) on how to facilitate assemblies in a human rights-compliant way.</p>