

# FOAA ONLINE!

## The right to freedom of peaceful assembly

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## About FOAA Online!

The purpose of **FOAA Online!** is to provide easily accessible legal arguments to assist lawyers, activists and judges involved in freedom of peaceful assembly and freedom of association (FOAA) cases. The site is organized per thematic topic or sub-question in order to direct users as straightforwardly as possible to relevant legal arguments. The FOAA Q&A assists users to link actual facts and incidents to pertinent legal questions. The website focuses on the most widespread issues experienced by those exercising their FOAA rights around the world.

The legal arguments in **FOAA Online!** are based upon a range of international instruments. In addition to legally binding obligations under international human rights law, they refer to standards and principles emanating from international treaty bodies, jurisprudence of regional courts and existing or emerging practice. These include the findings of UN treaty bodies or of experts under the special procedures, as well as the jurisprudence of the Inter-American Court on Human Rights, the African Court on Human and People's Rights and the European Court on Human Rights. Further, the reports of the Inter-American Commission on Human Rights are included as well as guidelines and reports on the rights to freedom of peaceful assembly and of association emanating from the African Commission on Human and Peoples' Rights and the OSCE.

It is important to note that while some of these instruments or rulings may not be directly legally binding for a country, the findings and guidance provided by these instruments remain particularly relevant because of the similar wording used in all international instruments protecting these two rights.

We acknowledge that the materials presented are not geographically balanced, merely reflecting the fact that some mechanisms – notably the European Court of Human Rights – have decided more cases on FOAA than others. Note too that the materials do not offer a complete overview of the existing case-law; the objective has been to present a representative range of cases.

The UN Special Rapporteur is happy to add **FOAA Online!** to the [www.freeassembly.net](http://www.freeassembly.net) website before handing over his mandate on 1<sup>st</sup> of May 2017. He is grateful to the Open Society Justice Initiative for drafting the sections on freedom of peaceful assembly, and the American Bar Association, Justice Defenders Program for their contributions on the sections on freedom of association. As international law and jurisprudence and principles are continuously evolving, **FOAA Online!** will have to be updated over time. The UN Special Rapporteur vigorously encourages all actors involved not only to use the content of **FOAA Online!**, but also to spread the news about its existence so that the rights to freedom of peaceful assembly and of association may be enjoyed and protected globally.

## Abbreviations & Explanations

### **AComHPR** – African Commission on Human and Peoples’ Rights

The [AComHPR](#) is the body charged with promoting and protecting the rights guaranteed by the African Charter on Human and Peoples’ Rights and interpreting its provisions. It is empowered, among other things, to receive and consider Communications from individuals and organizations alleging that a State party to the Charter has violated one or more of the rights guaranteed therein.

### **ACTHPR**– African Court on Human and Peoples’ Rights

The [ACTHPR](#) is an international court that has jurisdiction over cases and disputes concerning the interpretation and application of the African Charter on Human and Peoples’ Rights, the Protocol to the Charter on the Rights of Women in Africa, and any other relevant human rights instrument ratified by the States concerned. The Court may receive cases filed by the African Commission of Human and Peoples’ Rights, State parties to the Protocol or African Intergovernmental Organizations. NGOs with observer status before the African Commission and individuals can also institute cases directly before the Court as long as the State against which they are complaining has recognized the jurisdiction of the Court to accept such cases. An overview of these States can be found [here](#).

### **ACHPR** – African Charter on Human and Peoples’ Rights

The [ACHPR](#) (also known as the Banjul Charter) is an international human rights treaty to which most African States are parties; an overview can be found [here](#). The rights to freedom of association and freedom of assembly are guaranteed by its Articles 10 and 11, respectively.

### **ACHR** – American Convention on Human Rights

The [ACHR](#) (also known as the Pact of San José) is an international human rights treaty to which most States in the Americas are parties; an overview can be found [here](#). The rights to freedom of assembly and freedom of association are guaranteed by its Articles 15 and 16, respectively.

### **ASEAN** – Association of Southeast Asian Nations

The ASEAN was established in 1967 with the signing of the ASEAN Declaration. In 2009 the ASEAN Intergovernmental Commission on Human Rights to promote human rights in the ASEAN Countries was established. In 2012 the Declaration of Human Rights was adopted.

### **Guidelines on Freedom of Association and Assembly in Africa**

In May 2017, during its 60<sup>th</sup> Ordinary Session, the AComHPR adopted the [Guidelines on Freedom of Assembly and Association in Africa](#). It was the result of an extensive process whereby first a draft of the guidelines (“Guidelines on Freedom of Association as Pertaining to Civil Society &

Guidelines on Peaceful Assembly – DRAFT”) was drawn up by the Study Group on Freedom of Association and Assembly in Africa, a task force made up primarily of civil society organizations established by the Commission that had previously delivered a [Report on Freedom of Association & Assembly in Africa](#). The process of adoption by the AComHPR was still ongoing at the time FOAA Online! was being developed. Therefore FOAA Online! may include references to the Study Report of the AComHPR and the draft guidelines. To the extent possible, earlier references to the draft principles have been replaced by the relevant references from the adopted guidelines. Alternatively, the relevant paragraph numbers have been added in the footnotes. (October 2017.)

#### **ECHR** – European Convention on Human Rights

The [ECHR](#) (formally called the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international human rights treaty to which most States wholly or partly located in Europe are parties; an overview can be found [here](#). The rights to freedom of assembly and freedom of association are guaranteed under Article 11 of the Convention.

#### **EComHR** – European Commission of Human Rights

The EComHR was a mechanism to which individuals claiming to be victims of violations of the European Convention on Human Rights could complain. The EComHR became defunct with the entry into force of Protocol No. 11 to the Convention in 1998, which gave individuals direct access to the European Court of Human Rights. The EComHR’s case-law on freedom of association and of peaceful assembly remains of some relevance in interpreting the Convention.

#### **ECJ** – European Court of Justice

The [ECJ](#) is the highest court in the European Union in matters of European Union law.

#### **ECtHR** – European Court of Human Rights

The [ECtHR](#) is an international court that rules on individual or State applications alleging violations of the rights set out in the European Convention on Human Rights.

#### **Human Rights Committee** – United Nations Human Rights Committee

The [Human Rights Committee](#) is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. The Committee’s activities include the examination of regular implementation reports that States parties are obliged to submit, and the issuance of General Comments on the interpretation of the ICCPR. The Committee also considers complaints lodged by individuals who claim that any of their rights under the ICCPR have been violated. Such complaints can only be lodged against States that are also parties to the [First Optional Protocol to the ICCPR](#). An overview of those States can be found [here](#).

## **IACHR – Inter-American Commission on Human Rights**

The [IACHR](#) is an organ of the Organization of American States (OAS) whose mission is to promote and protect human rights in the American hemisphere. Its activities include monitoring the human rights situation in OAS Member States and issuing reports on priority thematic areas. It is also empowered to consider complaints against OAS Member States alleging violations of the human rights guaranteed by the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and other inter-American human rights treaties.

## **IACtHR – Inter-American Court of Human Rights**

The [IACtHR](#) is an international court which interprets and applies the American Convention on Human Rights. Individuals do not have direct access to the Court; cases can be referred to the Court by either the Inter-American Commission on Human Rights or a State Party to the Convention.

The IACtHR can only hear a case against a State Party which accepts the Court's jurisdiction. Several countries have indicated such acceptance on a blanket basis (see [here](#) for an overview); it is also possible for a State to accept the Court's jurisdiction *ad hoc*, for a particular case. All Member States and some organs of the Organization of American States are also able to request an advisory opinion from the IACtHR regarding the interpretation of the Convention or of other treaties concerning the protection of human rights in the Americas.

## **ICCPR – International Covenant on Civil and Political Rights**

The ICCPR is the principal global treaty in the area of civil and political rights. It has been ratified by and is binding on a majority of States; an overview can be found [here](#). Article 21 guarantees the right of peaceful assembly, and Article 22 the right to freedom of association with others.

## **ILO – International Labor Organization**

### **Joint report on the proper management of assemblies**

The [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, UN Doc. A/HRC/31/66, 4 February 2016.

## **OSCE / ODIHR – Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe**

The [OSCE / ODIHR](#) assists the 57 participating States of the OSCE in meeting their commitments in the areas of elections, human rights, democracy, rule of law, and tolerance and non-discrimination. Jointly with the European Commission for Democracy through Law (also known as the Venice Commission) it adopted the [Guidelines on Freedom of Association](#) and the [Guidelines on Peaceful Assembly](#) that are widely regarded as an authoritative statement on good practice in the field.

**UDHR** – Universal Declaration of Human Rights

The [UDHR](#) was adopted by the United Nations General Assembly on 10 December 1948. While not itself legally binding, the UDHR inspired global and regional treaties including the ICCPR, ACHR, ACHPR and ECHR, as well as national constitutions and laws.

**UNGA** – the United Nations General Assembly

The General Assembly is the main deliberative, policymaking and representative organ of the United Nations.

**UN Special Rapporteur** – the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association

The [UN Special Rapporteur on the rights to freedom of peaceful assembly and of association](#) is an independent expert appointed by the UN Human Rights Council to examine, monitor, advise and publicly report on these rights worldwide. Work methods include responding to individual complaints, conducting studies, providing technical assistance to governments, and engaging in public outreach and promotional activities – all with the ultimate goal of promoting and protecting the rights to freedom of peaceful assembly and of association.

**Venice Commission** – the European Commission for Democracy through Law

The [Venice Commission](#) is an advisory body that, like the European Court of Human Rights, forms part of the Council of Europe. The Commission delivers legal advice to its [Member States](#) in the fields of democracy, human rights and the rule of law, usually in the form of legal opinions on draft or enacted legislation which is submitted to it for examination. The Commission has published [compilations](#) of its opinions concerning freedom of association and peaceful assembly. It also produces studies and reports on topical issues, such as the authoritative [Guidelines on Freedom of Association](#) and the [Guidelines on Peaceful Assembly](#) adopted jointly with the OSCE/ODIHR.

# FOAA ONLINE! - PART I: Freedom of peaceful assembly

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## 1. What is included within the notion of “assembly”?

The notion of “assembly” covers a wide range of different types of gatherings, whether in public or private places, and whether static or moving. Examples of gatherings that international courts and mechanisms have held to be assemblies include demonstrations,<sup>1</sup> pickets,<sup>2</sup> processions,<sup>3</sup> rallies,<sup>4</sup> sits-in,<sup>5</sup> roadblocks,<sup>6</sup> gatherings or meetings in privately-owned places,<sup>7</sup> occupations of buildings,<sup>8</sup> and the public reading of press statements.<sup>9</sup>

The UN Special Rapporteur has provided the following definition, which has also been embraced by the AComHPR’s Study Group on Freedom of Association and Assembly in Africa:

*An “assembly” is an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in.<sup>10</sup>*

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The ECtHR stresses that the term “assembly” should be broadly understood:

*The right to freedom of assembly is a fundamental right in a democratic society ... Thus, it should not be interpreted restrictively. As such this right covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals and those organising the assembly.<sup>11</sup>*

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The OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* use similar wording, but add that an assembly must have a “common expressive purpose”:

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<sup>1</sup> See, for example, [Alekseev v. Russian Federation](#), Human Rights Committee, Views of 25 October 2013, UN Doc. CCPR/C/109/D/1873/2009 and [Galstyan v. Armenia](#), ECtHR, Judgment of 15 November 2007.

<sup>2</sup> See, for example, [Galina Youbko v. Belarus](#), Human Rights Committee, Views of 24 April 2014, UN Doc. CCPR/C/110/D/1903/2009; [Shmushkovych v. Ukraine](#), ECtHR, Judgment of 14 November 2013.

<sup>3</sup> See, for example, [Christians against Racism and Fascism v. the United Kingdom](#), EComHR, Decision of 16 July 1980.

<sup>4</sup> See, for example, [Kasparov v. Russia](#), ECtHR, Judgment of 11 October 2016.

<sup>5</sup> See, for example, [Çiloğlu and others v. Turkey](#), ECtHR, Judgment of 6 March 2007.

<sup>6</sup> See, for example, [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015.

<sup>7</sup> [Emin Huseynov v. Azerbaijan](#), ECtHR, Judgment of 7 May 2015.

<sup>8</sup> See [Cissé v. France](#), ECtHR, Judgment of 9 April 2002.

<sup>9</sup> See, for example, [Oya Ataman v. Turkey](#), ECtHR, Judgment of 5 December 2006.

<sup>10</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 24; AComHPR, *Report of the Study Group on Freedom of Association and Assembly in Africa*, 2014, p. 25, para. 18. See AComHPR, *Guidelines on Freedom of Assembly and Association in Africa*, para 3.

<sup>11</sup> [Budaházy v. Hungary](#), ECtHR, Judgment of 15 December 2015, para. 33. See also, among others, [Djavit An v. Turkey](#), ECtHR, Judgment of 20 February 2003, para. 56 and [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 80.

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

*This definition recognizes that, although particular forms of assembly may raise specific regulatory issues, all types of peaceful assembly – both static and moving assemblies, as well as those that take place on publicly or privately owned premises or in enclosed structures – deserve protection.<sup>12</sup>*

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<sup>12</sup> [OSCE-ODIHR and Venice Commission, \*Guidelines on Freedom of Peaceful Assembly\*, 2<sup>nd</sup> edn, 2010, Guideline 1.2.](#)

## 2. Significance of the requirement “peaceful”

Most major global and human rights instruments guarantee a right of “peaceful” assembly (see Article 20 of the [UDHR](#), Article 21 of the [ICCPR](#), and, at the regional level, Article 15 of the [ACHR](#) and Article 11 of the [ECHR](#)). Article 11 of the [ACHPR](#), however, simply guarantees a right “to assemble freely with others”.

### 2.1. The intentions of the organizers and each participant determine whether his or her right is protected

If the organizers of an assembly have peaceful intentions, they are exercising the right to peaceful assembly.<sup>13</sup> This does not change if, despite these intentions, violent acts are committed by others. The ECtHR has stated:

*The right to freedom of peaceful assembly is secured to everyone who has the intention of organising a peaceful demonstration. The possibility of violent counter-demonstrations or the possibility of extremists with violent intentions joining the demonstration cannot as such take away that right.*<sup>14</sup>

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The same applies to participants in an assembly; an individual whose intentions and actions are peaceful does not lose the protection of the right when others engage in violent acts. In *Ziliberg v. Moldova*, the ECtHR held:

*[A]n individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour. Although the demonstration gradually became violent, there is no indication that the applicant was himself involved in violence or that he had any violent intentions. ... Accordingly, the Court concludes that Article 11 is applicable in the present case.*<sup>15</sup>

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### 2.2. Peaceful intentions must be presumed

The UN Special Rapporteur and the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* stress that when a person exercises the right to assemble, the peacefulness of his or her intentions must be

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<sup>13</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 25; OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Guideline 1.3.](#)

<sup>14</sup> [Christian Democratic People’s Party v. Moldova \(no. 2\)](#), ECtHR, Judgment of 2 February 2010, para. 23; see also [Schwabe and M.G. v. Germany](#), ECtHR, Judgment of 1 December 2011, para. 103 and [Christians against Racism and Fascism v. the United Kingdom](#), EComHR, Decision of 16 July 1980, para. 4.

<sup>15</sup> [Ziliberg v. Moldova](#), ECtHR, Decision of 4 May 2004, para. 2.

presumed, until the opposite is demonstrated.<sup>16</sup> The ECtHR agrees that the burden of proof is on the authorities:

*The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities.*<sup>17</sup>

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Moreover, the fact that violence occurs is not sufficient proof that it was intended by the organizers:

*[T]he mere fact that acts of violence occur in the course of a gathering cannot, of itself, be sufficient to find that its organisers had violent intentions.*<sup>18</sup>

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Even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to the normal limitations. No assembly should thus be considered unprotected.<sup>19</sup>

### 2.3. That an assembly is obstructive does not mean it is not peaceful

The fact that the organizers intend to cause hindrance or obstruction to the person or entity against which a demonstration is directed does not mean their intentions are not “peaceful”.<sup>20</sup> In *Karpyuk and Others v. Ukraine*, the ECtHR stated:

*[T]he organisers intended the rally to be an obstructive, but peaceful, gathering intended to occupy the space around the Shevchenko monument and thus prevent the President of Ukraine from laying flowers there. According to the Court’s settled case-law, such obstructive actions in principle enjoy the protection of Articles 10 and 11.*<sup>21</sup>

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In *Kudrevičius and Others v. Lithuania* [[click for full case explanation](#)], the Grand Chamber of the ECtHR struck a more cautious note regarding assemblies which deliberately disrupt the activities of third parties who are not the target of the protest, such as in this instance [blockades of major highways](#). The Court still considered that the blockades were protected by the right to assemble, but signaled that a restriction might more easily pass the [necessity test](#) for interferences with freedom of assembly:

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<sup>16</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 25; OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 25.](#)

<sup>17</sup> [Christian Democratic People’s Party v. Moldova \(no. 2\)](#), ECtHR, Judgment of 2 February 2010, para. 23; see also [Frumkin v. Russia](#), ECtHR, Judgment of 5 January 2016, para. 98.

<sup>18</sup> [Karpyuk and Others v. Ukraine](#), ECtHR, Judgment of 6 October 2015, para. 202.

<sup>19</sup> UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 9.

<sup>20</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Guideline 1.3.](#)

<sup>21</sup> [Karpyuk and Others v. Ukraine](#), ECtHR, Judgment of 6 October 2015, para. 207.

*In the Court's view, although not an uncommon occurrence in the context of the exercise of freedom of assembly in modern societies, physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by Article 11 of the Convention ... This state of affairs might have implications for any assessment of "necessity" to be carried out under the second paragraph of Article 11.*

*Nevertheless, the Court does not consider that the impugned conduct of the demonstrations for which the applicants were held responsible was of such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention.<sup>22</sup>*

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<sup>22</sup> [Kudrevičius and Others v. Lithuania, ECtHR, Grand Chamber Judgment of 15 October 2015, paras. 93-98.](#)

### 3. Protests: freedom of expression or freedom of peaceful assembly?

Freedom of peaceful assembly is sometimes difficult to separate from freedom of expression. Authors of communications to the Human Rights Committee that relate to protests often invoke both freedom of expression and of assembly, and the Human Rights Committee is willing to apply both rights.<sup>23</sup>

The IACHR has stated that demonstrations are “a form of expression involving the exercise of related rights such as the right of citizens to assemble and demonstrate and the right to the free flow of opinions and information.”<sup>24</sup>

The ECtHR also acknowledges that there is no clear dividing line between the two rights.<sup>25</sup> It considers the guarantee of freedom of peaceful assembly a *lex specialis*, which must be interpreted in light of freedom of expression, which is the *lex generalis*:

*The Court notes that ... Article 10 of the Convention is to be regarded as a lex generalis in relation to Article 11 of the Convention, a lex specialis ... On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 of the Convention must ... also be considered in the light of Article 10 of the Convention. The protection of personal opinions, secured by Article 10 of the Convention, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention.*<sup>26</sup>

In practice, the ECtHR has tended to analyze certain forms of protest as exercises of freedom of expression rather than freedom of peaceful assembly. These include one-person protests,<sup>27</sup> the establishment of protest camps,<sup>28</sup> shouting slogans during a ceremony,<sup>29</sup> hunger strikes,<sup>30</sup> symbolic acts of protest (such as hanging out clothing representing the “dirty laundry of the nation”,<sup>31</sup> pouring paint

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<sup>23</sup> See, for example, [Kivenmaa v. Finland](#), Human Rights Committee, Views of 9 June 1994, UN Doc. CCPR/C/50/D/412/1990 and

[Galina Youbko v. Belarus](#), Human Rights Committee, Views of 24 April 2014, UN Doc. CCPR/C/110/D/1903/2009.

<sup>24</sup> [IACHR, Report on the Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II, Doc.49/15, 31 December 2015, para.119.

<sup>25</sup> [Women on Waves and Others v. Portugal](#), ECtHR, Judgment of 3 February 2009, para. 28.

<sup>26</sup> [Yaroslav Belousov v. Russia](#), ECtHR, Judgment of 4 October 2016, paras. 166-167 (references omitted); see also [Ezelin v. France](#), ECtHR, Judgment of 26 April 1991, paras. 35-37.

<sup>27</sup> See, for example, [Novikova and Others v. Russia](#), ECtHR, Judgment of 26 April 2016.

<sup>28</sup> See [G and E v. Norway](#), EComHR, Decision of 3 October 1983 and [Frumkin v. Russia](#), ECtHR, Judgment of 5 January 2016, para. 107.

<sup>29</sup> [Açık and Others v. Turkey](#), ECtHR, Judgment of 13 January 2009, para. 36.

<sup>30</sup> [Atilla v. Turkey](#), ECtHR, Decision of 11 May 2010.

<sup>31</sup> [Tatár and Fáber v. Hungary](#), ECtHR, Judgment of 12 June 2012, para. 29.

on a sculpture<sup>32</sup> or burning flags and photos<sup>33</sup>), displaying signs or political symbols,<sup>34</sup> occupations of public buildings<sup>35</sup> and direct actions intended to block activities that demonstrators disapprove of.<sup>36</sup>

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<sup>32</sup> [Murat Vural v. Turkey](#), ECtHR, Judgment of 21 October 2014, paras. 40-56.

<sup>33</sup> [Christian Democratic People's Party v. Moldova \(no. 2\)](#), ECtHR, Judgment of 2 February 2010, para. 27.

<sup>34</sup> [Vajnai v. Hungary](#), ECtHR, Judgment of 8 July 2008, paras. 27-29; [Fratanoló v. Hungary](#), ECtHR, Judgment of 3 November 2011, para. 13; [Fáber v. Hungary](#), ECtHR, Judgment of 24 July 2012, para. 29.

<sup>35</sup> See [Taranenko v. Russia](#), ECtHR, Judgment of 15 May 2014, paras. 68-69.

<sup>36</sup> See, for example, [Steel and Others v. the United Kingdom](#), ECtHR, Judgment of 23 September 1998, para. 92; [Hashman and Harrup v. the United Kingdom](#), ECtHR, Grand Chamber Judgment of 25 November 1999, para. 28; [Drieman and Others v. Norway](#), ECtHR, Decision of 4 May 2000.

#### 4. Restrictions imposed on an assembly must comply with a three-prong test

The right to freedom of peaceful assembly is not absolute, and restrictions may be imposed. The main international treaties guaranteeing the right set out a similar strict test for restrictions (see Article 21 of the [ICCPR](#), Article 11 of the [ACHPR](#), Article 15 of the [ACHR](#) and Article 11(2) of the [ECHR](#)). Under this test, restrictions to freedom of peaceful assembly are only permissible when they: (1) are imposed in conformity with the law; (2) pursue a legitimate aim; and (3) are necessary in a democratic society, meaning that any restriction must comply with a strict test of necessity and proportionality.

##### 4.1. What constitutes a restriction?

Generally, any measure taken by the authorities that may have an adverse impact on the exercise of the right to freedom of assembly will constitute a restriction which needs to meet the three-prong test. The ECtHR has often stated:

*[A]n interference with the exercise of freedom of peaceful assembly does not need to amount to an outright ban, whether legal or de facto, but can consist in various other measures taken by the authorities. The term “restrictions” in Article 11 § 2 must be interpreted as including both measures taken before or during an act of assembly and those, such as punitive measures, taken afterwards.<sup>37</sup>*

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Thus, actions such as preventing an individual from traveling to an assembly, the dispersal of the assembly and the arrest of participants or the imposition of penalties for having taken part in an assembly all qualify as restrictions.<sup>38</sup> The ECtHR has clarified that penalties imposed for other offenses, such as disobedience towards the police, still constitute restrictions if the penalty is in reality directly related to the exercise of the right to freedom of peaceful assembly.<sup>39</sup>

##### 4.2. First prong: Prescribed in conformity with the law

International mechanisms have made it clear that the first prong of the test means, firstly, that a restriction on freedom of assembly should be based on an appropriate instrument of domestic law, and secondly, that that instrument must meet the requirement of legality, meaning it should be publicly available and clear and precise enough to prevent arbitrary interferences.

##### Types of instrument that qualify as ‘law’

The IACtHR has stated that, in the context of legitimate restrictions on rights, the term “law” refers to

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<sup>37</sup> See, for example, [Gafqaz Mammadov v. Azerbaijan, ECtHR, Judgment of 15 October 2015, para. 50](#); [Gülcü v. Turkey, ECtHR, Judgment of 19 January 2016, para. 91](#).

<sup>38</sup> [Gafqaz Mammadov v. Azerbaijan, ECtHR, Judgment of 15 October 2015, para. 50](#).

<sup>39</sup> [Gafqaz Mammadov v. Azerbaijan, ECtHR, Judgment of 15 October 2015, para. 50](#).

*a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.*<sup>40</sup>

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Thus, restrictions on freedom of peaceful assembly cannot be imposed through a government order or administrative decree,<sup>41</sup> unless the power to issue that order or decree is itself based on a law which meets the requirements stated above. The IACtHR stresses that any such delegation must be authorized by the Constitution; that the executive body should respect the limits of its delegated powers; and that it should be subject to effective controls.<sup>42</sup>

The African Court of Human and Peoples' Rights has also stated that limitations to rights guaranteed under the ACHPR "must take the form of 'law of general application'".<sup>43</sup> The ECtHR, however, takes a somewhat different approach; it takes the term 'law' in its 'substantive' sense and not necessarily in its formal one. It allows restrictions to be imposed through lower ranking statutes (even including regulatory measures taken by professional regulatory bodies under powers delegated to them) and even unwritten, judge-made law.<sup>44</sup> However, the ECtHR, similarly to the IACtHR, has emphasized that where powers are given to executive bodies to restrict the right to assemble, "the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise."<sup>45</sup>

#### Requirement of foreseeability and accessibility

Any law regulating the right to freedom of assembly should be publicly available and clear and precise enough to prevent arbitrary interferences and allow those exercising the right to understand their duties. The Human Rights Committee has stated as follows:

*[A] norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to*

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<sup>40</sup> [IACtHR, The Word "Laws" in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86, May 9, 1986, para. 38.](#)

<sup>41</sup> [IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 165.](#)

<sup>42</sup> [IACtHR, The Word "Laws" in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86, May 9, 1986, para. 36.](#)

<sup>43</sup> [Tanganyika Law Society and the Legal and Human Rights Centre v. Tanzania, African Court of Human and Peoples' Rights, Judgment of 14 June 2014, para. 107.1.](#)

<sup>44</sup> See [Gülçü v. Turkey, ECtHR, Judgment of 19 January 2016, para. 104](#), and references therein.

<sup>45</sup> [Lashmankin and Others v. Russia, ECtHR, Judgment of 7 February 2017, para. 411.](#)

*enable them to ascertain what sorts of expression are properly restricted and what sorts are not.*<sup>46</sup>

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The ECtHR similarly states that laws should be accessible and their operation foreseeable:

*[T]he expression “prescribed by law” in Article 11 of the Convention not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.*<sup>47</sup>

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The IACtHR<sup>48</sup> and the AComHPR’s Guidelines on Freedom of Association and Assembly in Africa<sup>49</sup> take a very similar view.

#### **4.3. Second prong: Legitimate aim**

Restrictions on freedom of assembly must pursue a legitimate aim. The ICCPR recognizes only the following aims as legitimate: “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.”<sup>50</sup> The regional treaties recognise similar aims, with certain differences in wording. The Human Rights Committee places the burden on the State to specify which aim which it is pursuing:

*The Committee notes that if the State imposes a restriction, it is up to the State party to show that it is necessary for the aims set out in this provision.*<sup>51</sup>

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In its General Comment No. 34, the Human Rights Committee provided clarification on the meaning of specific legitimate aims. Public order refers to the sum of rules ensuring the peaceful and effective functioning of society, while national security refers to the political independence and/or territorial

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<sup>46</sup> [Human Rights Committee, General Comment 34: Article 19 \(Freedoms of expression and opinion\), UN Doc. CCPR/C/GC/34 \(2011\), para. 25.](#)

<sup>47</sup> See, for example, [Shmushkovych v. Ukraine](#), ECtHR, Judgment of 14 November 2013, para. 37; [Rekvényi v. Hungary](#), ECtHR, Judgment of 20 May 1999, para. 34.

<sup>48</sup> [Fontevecchia and D’Amico v. Argentina](#), IACtHR, Judgment of November 29, 2011, para. 90.

<sup>49</sup> AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 85. See also [AComHPR, Report of the Study Group on Freedom of Association and Assembly in Africa, 2014, p. 20, para. 5.](#)

<sup>50</sup> Under to the AComHPR, restrictions may be enacted in the interest of “national security, the safety, health, ethics and rights and freedoms of others”; under the ACHR, “national security, public safety or public order, or to protect public health or morals or the rights or freedom of others”; and under the ECHR, “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.”

<sup>51</sup> [Vladimir Sekerko v. Belarus](#), Human Rights Committee, Views of 28 October 2013, UN Doc. CCPR/C/109/D/1851/2008, para. 9.4.

integrity of the State.<sup>52</sup> The *Joint report on the proper management of assemblies* clarified specifically that “national, political or government interest is not synonymous with national security or public order.”<sup>53</sup>

With regard to public morality, the Committee observes that its content may differ widely from society to society. However, it clarifies that the concept of morals cannot be derived exclusively from a single tradition.<sup>54</sup> Similarly, the ECtHR has found on many occasions that democracy does not simply mean that the views of the majority (or the collective) must always prevail. Fair and proper treatment of minorities must be assured and abuse of dominant positions must in general be avoided.<sup>55</sup> Economic interests as such are equally not part of the interests as enumerated.<sup>56</sup>

### Need for precision

There has been a growing global trend of States abusing the enumerated legitimate interests to restrict human rights by, for example, basing their restrictive actions upon broad interpretations of legitimate interests or terminology loosely related to it. On national security, the Special Rapporteur on the freedom of opinion and expression warned specifically against the

*use of an amorphous concept ... to justify invasive limitations on the enjoyment of human rights ... The concept is broadly defined and is thus vulnerable to manipulation by the State as a means to justifying actions that target vulnerable groups.*<sup>57</sup>

Arguments thus need to be specific; they cannot be made *in abstracto* or by indicating general, unspecified risks,<sup>58</sup> but must be made in an individualized fashion,<sup>59</sup> applied in the particular case<sup>60</sup> or with a specific justification.<sup>61</sup>

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<sup>52</sup> [Human Rights Committee, General Comment 34: Article 19 \(Freedoms of expression and opinion\), UN Doc. CCPR/C/GC/34 \(2011\), para. 33.](#)

<sup>53</sup> [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 49.](#)

<sup>54</sup> [Human Rights Committee, General Comment 34: Article 19 \(Freedoms of expression and opinion\), UN Doc. CCPR/C/GC/34 \(2011\), para. 33.](#)

<sup>55</sup> See [Young, James and Webster v United Kingdom, ECtHR, Judgement of 13 August 1981, para. 63.](#)

<sup>56</sup> [Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/32/36, 10 August 2016, para. 33.](#)

<sup>57</sup> [Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/HRC/23/40, 17 April 2013, para. 60.](#)

<sup>58</sup> [Alekseev v. Russian Federation, Human Rights Committee, Views of 25 October 2013, UN Doc. CCPR/C/109/D/1873/2009, para. 9.6:](#) The State argued that the subject addressed by the demonstration would provoke negative reaction that could lead to violations of public order. The Committee found that “an unspecified and general risk of a violent counterdemonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration.” See also [Mr. Jeong-Eun Lee v. Republic of Korea, Human Rights Committee, Views of 20 July 2005, UN Doc. CCPR/C/84/D/1119/2002, para. 7.3.](#)

#### 4.4. Third prong: Necessity in a democratic society

Under international law, restrictions on freedom of assembly must be “necessary in a democratic society” for the achievement of the aim they pursue.

The Human Rights Committee has explained that this implies a necessity and proportionality test:

*[A]ny restrictions on the exercise of the rights guaranteed under articles 19 and 21 must conform to strict tests of necessity and proportionality and be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.*<sup>62</sup>

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Necessity means that the restriction must not just be convenient, but must meet a compelling need which is capable of outweighing the importance of freedom of assembly. The IACtHR states:

*[I]t is not enough, for example, to demonstrate that a law performs a useful or desirable purpose; to be compatible with the Convention, the restrictions must be justified by reference to collective purposes which, owing to their importance, clearly outweigh the social need for the full enjoyment of the right ...*<sup>63</sup>

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Similarly, the ECtHR requires a demonstration that the restriction meets a “pressing social need”, which must be convincingly demonstrated by the authorities:

*An interference will be considered “necessary in a democratic society” for a legitimate aim if it answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are “relevant and sufficient”.*<sup>64</sup>

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Proportionality means that the interference with freedom of assembly should not go further than is strictly necessary to achieve the legitimate aim. Accordingly, if the State has different ways of achieving the aim, it should choose the least intrusive measure. For example, in a case where the authorities had flatly rejected an application to hold a demonstration, the Human Rights Committee stated:

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<sup>59</sup> [Human Rights Committee, General Comment 34: Article 19 \(Freedoms of expression and opinion\), UN Doc. CCPR/C/GC/34 \(2011\), para. 33.](#)

<sup>60</sup> [Schumilin v. Belarus, Human Rights Committee, UN Doc. CCPR/C/105/D/1784/2008, Views of 23 July 2012 para. 9.4](#) (the Committee found the restriction violated the ICCPR because the state had not explained “how, in practice, in this particular case, the author’s actions affected the respect of the rights or reputations of others, or posed a threat to the protection of national security or of public order (*ordre public*), or of public health or morals”).

<sup>61</sup> [Kim v. Republic of Korea, Human Rights Committee, CCPR/C/64/D/574/1994, Views of 4 January 1999, para. 12.5.](#)

<sup>62</sup> [Praded v. Belarus, Human Rights Committee, Views of 29 November 2014, UN Doc. CCPR/C/112/D/2029/2011, para. 7.5.](#)

<sup>63</sup> [Ricardo Canese v. Paraguay, IACtHR, Judgment of August 31, 2004, para. 96.](#)

<sup>64</sup> [Kasparov and Others v. Russia, ECtHR, Judgment of 3 October 2013, para. 86.](#)

*[T]he State party did not show how rejection of the request to demonstrate constituted a proportionate interference with the right of peaceful assembly –i.e., that it was the least intrusive measure to achieve the purpose sought by the State party and that it was proportionate to the interests the State party sought to protect.<sup>65</sup>*

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<sup>65</sup> [Vasily Poliakov v. Belarus, Human Rights Committee, Views of 17 July 2014, UN Doc. CCPR/C/111/D/2030/2011, para. 8.3.](#)

## 5. Sanctions for organizers or participants are restrictions and must thus strictly comply with the three-prong test

### 5.1. Sanctions must fully comply with the three-prong test

The three-prong test (see Assembly Section 4.4.) does not only apply to restrictions placed on an assembly before or during the event, but also to restrictions – such as sanctions – imposed afterwards.

In *Praded v. Belarus*, for example, the author of the communication had been given an administrative fine in connection with an unauthorised protest at the Iranian embassy. The HRC held that the proportionality of that fine needed to be demonstrated:

*[W]hile ensuring the security and safety of the embassy of the foreign State may be regarded as a legitimate purpose for restricting the right to peaceful assembly, the State party must justify why the apprehension of the author and imposition on him of an administrative fine were necessary and proportionate to that purpose.*<sup>66</sup>

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The starting point is that the imposition of any sanction – however minor – amounts to a restriction of the right and thus requires a clear justification. The ECtHR has repeatedly held that even sanctions at the lower end of the scale should not be imposed on participants in an assembly that has not been forbidden unless the defendant has personally committed a “reprehensible act”:

*[T]he freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion.*<sup>67</sup>

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Acts the ECtHR has considered reprehensible include throwing rocks at the police,<sup>68</sup> the incitement of inter-ethnic violence<sup>69</sup> and damaging property.<sup>70</sup> A person does not commit a reprehensible act by failing to disavow an assembly when others resort to such acts.<sup>71</sup> The ECtHR recently accepted that

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<sup>66</sup> [Praded v. Belarus](#), Human Rights Committee, Views of 29 November 2014, UN Doc. CCPR/C/112/D/2029/2011, para. 7.8.

<sup>67</sup> [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 149; see also [Ezelin v. France](#), ECtHR, Judgment of 26 April 1991, para. 53; [Galstyan v. Armenia](#), ECtHR, Judgment of 15 November 2007, para. 115.

<sup>68</sup> [Gülcü v. Turkey](#), ECtHR, Judgment of 19 January 2016, para. 116.

<sup>69</sup> [Osmani and Others v. the Former Yugoslav Republic of Macedonia](#), ECtHR, Decision of 11 October 2001.

<sup>70</sup> [Taranenko v. Russia](#), ECtHR, Judgment of 15 May 2014, para. 92.

<sup>71</sup> [Ezelin v. France](#), ECtHR, Judgment of 26 April 1991, para. 53.

obstructing major highways in disregard of police orders may also be qualified as reprehensible.<sup>72</sup> The UN Special Rapporteur expressed his regret at this latter decision.<sup>73</sup>

If there are grounds to apply a penalty, the ECtHR will scrutinize whether the nature (criminal or administrative) and the severity of penalties of penalties is justified:

*The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued.*<sup>74</sup>

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The Court has warned that, even if they are not imposed in practice, high fines are “conducive to creating a ‘chilling effect’ on legitimate recourse to protests.”<sup>75</sup>

## **5.2. Criminal law should in principle not be used in response to a peaceful assembly**

There is increasing concern globally about the criminalization of persons who exercise the right to assemble; a concern expressed by, among others, the UN Special Rapporteur.<sup>76</sup> “Criminalization” refers to administrative or criminal measures taken to sanction participants or organizers of assemblies.<sup>77</sup>

A number of international courts and mechanisms have made it clear that the application of criminal or administrative sanctions to organizers of or participants in peaceful assemblies warrants particular scrutiny; in principle there should be no threat of sanctions for participation in assemblies. This is true all the more of the imposition of prison sentences.

The ECtHR’s position is as follows:

*Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty. Thus, the Court must examine with particular scrutiny the cases where*

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<sup>72</sup> [Kudrečiūsis and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 174.

<sup>73</sup> [UN Special Rapporteur and Human Rights Centre of the University of Ghent, Third Party Intervention before the European Court of Human Rights in Mahammad Majidli v. Azerbaijan \(no. 3\) and three other applications](#), November 2015, para. 15.

<sup>74</sup> [Kudrečiūsis and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 146 (references omitted).

<sup>75</sup> [Novikova and Others v. Russia](#), ECtHR, Judgment of 26 April 2016, para. 211.

<sup>76</sup> [UN Special Rapporteur and Human Rights Centre of the University of Ghent, Third Party Intervention before the European Court of Human Rights in Mahammad Majidli v. Azerbaijan \(no. 3\) and three other applications](#), November 2015, paras. 14-16.

<sup>77</sup> [UN Special Rapporteur and Human Rights Centre of the University of Ghent, Third Party Intervention before the European Court of Human Rights in Mahammad Majidli v. Azerbaijan \(no. 3\) and three other applications](#), November 2015, para. 14; see also [IACHR, Report on the Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II, Doc.49/15, 31 December 2015, para. 12.

*sanctions imposed by the national authorities for non-violent conduct involve a prison sentence.*<sup>78</sup>

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The ECtHR has noted that in some legal systems, administrative law is used to punish offences that are criminal in nature. Where sanctions imposed are punitive and deterrent in nature, and in particular where individuals are deprived of their liberty, even briefly, the Court classifies these measures as “criminal”, even if they are considered administrative under national law.<sup>79</sup>

The IACHR has published an extensive report on the “Criminalization of the Work of Human Rights Defenders” in which it expresses its concern about the overuse of criminal law in a number of contexts, including in response to protest. In particular, it voices its

*concern about the existence of provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and of any kind), or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected rights such as those to life, security, or the liberty of individuals.*<sup>80</sup>

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<sup>78</sup> [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 146 (references omitted); see also [Akaöl and Göl v. Turkey](#), ECtHR, Judgment of 17 May 2011, para. 43; [Pekaslan and Others v. Turkey](#), ECtHR, Judgment of 20 March 2012, para. 81; [Yılmaz Yıldız and Others v. Turkey](#), ECtHR, Judgment of 14 October 2014, para. 46.

<sup>79</sup> See, for example, [Kasparov and Others v. Russia](#), ECtHR, Judgment of 3 October 2013, paras. 41-45.

<sup>80</sup> [IACHR, Report on the Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II, Doc.49/15, 31 December 2015, para. 127. See also [IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2008](#), OEA/Ser.L/V/II.134 Doc. 5, Doc. 5 rev. 1, 25 February 2009, Chapter IV, para. 70.

## 6. Disruption: authorities should display tolerance

Demonstrations in a public place will normally cause some disruption to others. It is a well-established principle in international law that a degree of tolerance towards such disruptions is required from the public and the authorities.

The ECtHR has repeatedly underlined that

*[A]lthough a demonstration in a public place may cause some disruption to ordinary life, including disruption of traffic, 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 its substance.<sup>81</sup>*

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Similarly, the IACHR has stated:

*In balancing, for example, freedom of movement and the right to assembly, it should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure ... strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests may naturally cause annoyances or even damages that are necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression.<sup>82</sup>*

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The UN Special Rapporteur likewise considers that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly”;<sup>83</sup> the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* and the *Guidelines on Freedom of Association and Assembly in Africa* both state that assemblies are equally legitimate uses of public space as commercial activity or the movement of vehicular and pedestrian traffic.<sup>84</sup>

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<sup>81</sup> [Disk and Kesk v. Turkey](#), ECtHR, Judgment of 27 November 2012, para. 29; see also, among others, [Ashughyan v. Armenia](#), ECtHR, Judgment of 17 July 2008, para. 90; [Barraco v France](#), ECtHR, Judgment of 5 March 2009, para. 43; [Gün and Others v. Turkey](#), ECtHR, Judgment of 18 June 2013, para. 74; [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 155.

<sup>82</sup> [IACHR, Report on the Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II, Doc.49/15, 31 December 2015, paras.126-127.

<sup>83</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/20/27, 21 May 2012, para. 41.

<sup>84</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Guideline 3.2 and Explanatory Notes, para. 20; See AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 87.

The requirement of tolerance towards disruption means, for example, that authorities should show significant [restraint in resorting to dispersal](#), including when an assembly [takes place on a public street or road](#).

## 7. Annoyance or provocation: no ground to ban or move an assembly

The Human Rights Committee underscores that the right of peaceful assembly is a fundamental human right that is essential for public expression of one's views and opinions and indispensable in a democratic society.<sup>85</sup> Like freedom of expression,<sup>86</sup> the right to freedom of peaceful assembly in particular also protects the right to express a view that others will disagree with. It is the duty of the authorities to permit this and indeed to protect the safety of those manifesting the controversial view.

The case of *Alekseev v. Russian Federation* was lodged with the Human Rights Committee by an activist who had been denied permission to picket in front of the Iranian Embassy in Moscow to express concern over the execution of homosexuals and minors in Iran. The local authorities justified their refusal by reference to the risk of a "negative reaction in society" that could lead to "group violations of public order". The Human Rights Committee considered there had been a violation of the right to assemble and stressed the duty to protect the participants in such an assembly:

*The Committee notes that freedom of assembly protects demonstrations promoting ideas that may be regarded as annoying or offensive by others and that, in such cases, States parties have a duty to protect the participants in such a demonstration in the exercise of their rights against violence by others. It also notes that an unspecified and general risk of a violent counterdemonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration ... the obligation of the State party was to protect the author in the exercise of his rights under the Covenant and not to contribute to suppressing those rights. The Committee therefore concludes that the restriction on the author's rights was not necessary in a democratic society in the interest of public safety, and violated article 21 of the Covenant.<sup>87</sup>*

The ECtHR has taken a very similar line. In *Barankevich v. Russia*, for example, the applicants had been refused permission to hold an Evangelical Christian service in public, on the grounds that the majority of the local residents professed a different religion and the service could thus cause discontent and public disorder. The ECtHR held that that amounted to a violation; they authorities should have taken reasonable and appropriate measures to enable the assembly to proceed peacefully:

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<sup>85</sup> Human Rights Committee, [Denis Turchenyak et al. v. Belarus](#), Human Rights Committee, Views of 10 September 2013, UN Doc. CCPR/C/108/D/1948/2010, para. 7.4; reiterated in [Praded v. Belarus](#), Human Rights Committee, Views of 29 November 2014, UN Doc. CCPR/C/112/D/2029/2011, para. 7.4.

<sup>86</sup> Human Rights Committee, [General Comment 34: Article 19 \(Freedoms of expression and opinion\)](#), UN Doc. CCPR/C/GC/34 (2011), para. 11.

<sup>87</sup> [Alekseev v. Russian Federation](#), Human Rights Committee, Views of 25 October 2013, UN Doc. CCPR/C/109/D/1873/2009, para. 9.6.

*It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were it so a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention ...*

*The Court stresses in this connection that freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents. It is thus the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully.<sup>88</sup>*

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The ECtHR has further stated that the negative attitudes of others are no reason to move an assembly out of the city center:

*[N]egative attitudes of others towards the views expressed at a public assembly cannot serve as a justification either for a refusal to approve such an assembly or for a decision to banish it from the city centre to the outskirts.<sup>89</sup>*

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<sup>88</sup> [Barankevich v. Russia](#), ECtHR, Judgment of 26 July 2007, paras. 31-32 (references omitted); see also [Plattform "Ärzte für das Leben" v. Austria](#), ECtHR, Judgment of 21 June 1988, para. 32.

<sup>89</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 425.

## 8. Assemblies concerning public figures or interests are especially protected

Freedom of peaceful assembly provides, in the words of the UN Human Rights Council, “invaluable opportunities” for a range of political, literary, cultural, economic, social and religious activities.<sup>90</sup> International courts and mechanisms recognize that there is a particular risk of illegitimate restrictions when the right to assemble is used to express views critical of the authorities or other powerful interests. Restrictions in these areas are to be closely scrutinized.

The Human Rights Committee has stated, with regard to the ICCPR:

*[T]he value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.*<sup>91</sup>

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The IACHR and the Inter-American Court have

*consistently held that the necessity test for limitations should be applied more strictly when dealing with expressions referring to the State, public interest affairs, public officials in the exercise of their functions or candidates running for public office, or private individuals voluntarily involved in public affairs, as well as political discourse and discussions.*<sup>92</sup>

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The ECtHR similarly underlined, in *Sergey Kuznetsov v. Russia*, that restrictions on assemblies on “political speech or serious matters of public interest” do a disservice to democracy and require strong reasons:

*[A]ny measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, the ideas which challenge the existing order must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means ...*

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<sup>90</sup> [UN Human Rights Council, Resolution 15/21 on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/RES/15/21, 6 October 2010.](#)

<sup>91</sup> [Human Rights Committee, General Comment 34: Article 19 \(Freedoms of expression and opinion\), UN Doc. CCPR/C/GC/34 \(2011\), para. 34.](#)

<sup>92</sup> [IACHR, Report on the Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, Doc.49/15, 31 December 2015, para. 95.](#)

*[T]he Court notes that the purpose of the picket was to attract public attention to the alleged dysfunction of the judicial system in the Sverdlovsk Region. This serious matter was undeniably part of a political debate on a matter of general and public concern. The Court reiterates in this connection that it has been its constant approach to require very strong reasons for justifying restrictions on political speech or serious matters of public interest such as corruption in the judiciary ...<sup>93</sup>*

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In *Hyde Park and Others v. Moldova (Nos. 5 and 6)*, the ECtHR further stressed the need to be tolerant towards criticism of public figures, even if it is expressed in harsh terms:

*The applicants sought to protest against alleged harassment by the Ministry of Internal Affairs. ... Even if their signs and chants were calculated to insult the Minister, he was clearly a public figure of some prominence in Moldova. In a democratic society, greater tolerance should be shown to those expressing opinions which are critical of such figures, even if those opinions are expressed inarticulately or intemperately.<sup>94</sup>*

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<sup>93</sup> [Sergey Kuznetsov v. Russia, ECtHR, Judgment of 23 October 2008, paras. 45-47.](#)

<sup>94</sup> [Hyde Park and Others v. Moldova \(Nos. 5 and 6\), ECtHR, Judgment of 14 September 2010, para. 43.](#)

## 9. The location of assemblies

### 9.1. Do organizers and participants have the right to choose the location of their assembly?

The choice of the venue or location of an assembly by the organizers is an integral part of the right to freedom of peaceful assembly. In many instances the location where an assembly takes part is an important part of its message; a protest demanding accountability for a gas explosion, for example, may be held at the site and exact time of the explosion. Likewise, public areas around iconic buildings are a logical place for to convey a message with regard to institutions housed in these buildings.

The Human Rights Committee,<sup>95</sup> the UN Special Rapporteur,<sup>96</sup> the ECtHR,<sup>97</sup> the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*<sup>98</sup> and the AComHPR's *Guidelines on Freedom of Association and Assembly in Africa*<sup>99</sup> all underline that organizers have the right to demonstrate “within sight and sound” of their target audience or target object, and that the authorities have a duty to facilitate the assembly at this location.

The ECtHR has also stated, more generally, that:

*For the Court, the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of Article 11.<sup>100</sup>*

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Since freedom of assembly [covers both static and moving assemblies](#), the chosen venue may either be a single place or a series of locations along a route.

The organizers' preferred venue will not always be a convenient one from the point of view of the authorities or the public. The general principle that [tolerance should be displayed towards the disruption inevitably caused by assemblies](#) means that the choice of venue must in principle be respected. According to the ECtHR, it is the duty of the authorities to:

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<sup>95</sup> See, for example, [Denis Turchenyak et al. v. Belarus](#), Human Rights Committee, Views of 10 September 2013, UN Doc. CCPR/C/108/D/1948/2010, para. 7.4; [Pavel Kozlov et al. v. Belarus](#), Human Rights Committee, Views of 7 May 2015, UN Doc. CCPR/C/113/D/1949/2010, para. 7.4; and [Leonid Sudalenko v. Belarus](#), Human Rights Committee, Views of 28 December 2015, UN Doc. CCPR/C/115/D/2016/2010, para. 8.4.

<sup>96</sup> UN Human Rights Council, *Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 60.

<sup>97</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 405.

<sup>98</sup> OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> edn, 2010, Guideline 3.5 and Explanatory Notes, para. 45

<sup>99</sup> See AComHPR, *Guidelines on Freedom of Assembly and Association in Africa*, para 90. [AComHPR, Report of the Study Group on Freedom of Association and Assembly in Africa](#), 2014, p. 62, para. 17.

<sup>100</sup> [Sáska v. Hungary](#), ECtHR, Judgment of 27 November 2012, para. 21.

*[Consider] ways of minimising disruption to ordinary life, for example by organising a temporary diversion of traffic on alternative routes or by taking other similar measures, and at the same time accommodating the organisers' legitimate interest in assembling within sight and sound of their target audience.*<sup>101</sup>

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If a [simultaneous assembly](#) is planned in the same location, this is not a reason to deny approval for the venue, if there is no “clear and objective indication that both events cannot be managed in an appropriate manner through the exercise of policing powers”.<sup>102</sup> Similarly, the fact that an [assembly may annoy or provoke others](#) obliges the authorities to look for ways to allow the assembly to proceed without disturbance, rather than moving it to a less prominent location.<sup>103</sup>

In *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* [[click for full case explanation](#)], the ECtHR made it clear that a particular effort should be made to accommodate the assembly if the chosen location is of crucial importance to the organizers, for example because it is connected to a historic event.<sup>104</sup> This additional effort may, for example, consist of the deployment of the police to facilitate the assembly.

The applicants in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* were involved in advocacy on behalf of the Macedonian minority in Bulgaria. They wished to organize commemorative events at the graves of historical personalities whom they regarded as Macedonian martyrs. The same figures were however also celebrated as Bulgarian national heroes. Fearing disturbances, the authorities had adopted a practice of not allowing the applicants' events to take place at the same time and place as the official celebrations. The ECtHR rejected the Bulgarian Government's argument that the applicants should have chosen other sites or dates for their meetings:

*[I]t is apparent that the time and the place of the ceremonies were crucial to the applicants, as well as for those attending the official ceremony. Despite the margin of appreciation enjoyed by the Government in such matters, the Court is not convinced that it was not possible to ensure that both celebrations proceeded peacefully either at the same time or one shortly after the other.*<sup>105</sup>

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<sup>101</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 423 (references omitted).

See also [Sáska v. Hungary](#), ECtHR, Judgment of 27 November 2012, para. 21.

<sup>102</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 422.

See also [Sáska v. Hungary](#), ECtHR, Judgment of 27 November 2012, para. 21.

<sup>103</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 422.

See also [Sáska v. Hungary](#), ECtHR, Judgment of 27 November 2012, para. 21.

<sup>104</sup> [Stankov and the United Macedonian Organisation Ilinden v. Bulgaria](#), ECtHR, Judgment of 2 October 2001, para. 109.

<sup>105</sup> [Stankov and the United Macedonian Organisation Ilinden v. Bulgaria](#), ECtHR, Judgment of 2 October 2001, para. 109.

The ECtHR made a comparable finding in *Öllinger v. Austria*. The applicant, a member of the Austrian Parliament, had informed the police of his intention to hold a silent, respectful meeting of about six persons at the Salzburg municipal cemetery, to commemorate the Salzburg Jews killed by the SS during the Second World War. The meeting would take place on All Saints' Day, a religious holiday on which the population traditionally visits cemeteries in order to commemorate the dead. It would coincide with a controversial annual commemoration of SS soldiers killed in the war, held by an association of former SS members. The police prohibited the meeting, arguing that it could lead to disturbances that would harm the religious feelings of members of the public visiting the cemetery.

The ECtHR considered that the prohibition was disproportionate and the authorities should have instead deployed police to ensure both assemblies could proceed without incident:

*First and foremost, the assembly was in no way directed against the cemetery-goers' beliefs or the manifestation of them. Moreover, the applicant expected only a small number of participants. They envisaged peaceful and silent means of expressing their opinion, namely the carrying of commemorative messages, and had explicitly ruled out the use of chanting or banners. Thus, the intended assembly in itself could not have hurt the feelings of cemetery-goers. ...*

*In these circumstances, the Court is not convinced by the Government's argument that allowing both meetings while taking preventive measures, such as ensuring police presence in order to keep the two assemblies apart, was not a viable alternative which would have preserved the applicant's right to freedom of assembly while at the same time offering a sufficient degree of protection as regards the rights of the cemetery's visitors.<sup>106</sup>*

### Assemblies may not be limited to pre-determined locations

The right of the organizers to choose the venue implies that limiting assemblies to certain locations predetermined by law is not permissible. This has been confirmed by the Human Rights Committee:

*The Committee observes that limiting pickets to certain predetermined locations ... does not appear to meet the standards of necessity and proportionality under article 19 of the Covenant.<sup>107</sup>*

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<sup>106</sup> [Öllinger v. Austria, ECtHR, Judgment of 29 June 2006, paras. 47-48.](#)

<sup>107</sup> [Pavel Levinov v. Belarus, Human Rights Committee, Views of 14 July 2016, UN Doc. CCPR/C/117/D/2082/2011, para. 8.3.](#)

The UN Special Rapporteur has also underscored that limiting protests to specific areas “prevents organizers and participants from choosing venues they consider the most appropriate to express their aspirations and grievances.”<sup>108</sup>

## 9.2. What conditions must authorities meet to refuse the use of the chosen location?

Any denial or alteration must conform to the three-prong test

Like freedom of peaceful assembly itself, the right to choose the venue is not absolute. But any limitations imposed should meet the [three-prong test for legitimate restrictions on freedom of assembly under international law](#). The Human Rights Committee has stated in a number of cases:

*The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience and no restriction to this right is permissible, unless (a) imposed in conformity with the law, and (b) necessary in a democratic society, in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others.*<sup>109</sup>

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Similarly, the ECtHR held in *Lashmankin and Others v. Russia*:

*The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11 ... Accordingly, in cases where the time and place of the assembly are crucial to the participants, an order to change the time or the place may constitute an interference with their freedom of assembly.*

....

*Such an interference will constitute a breach of Article 11 unless it is “prescribed by law”, pursues one or more legitimate aims under paragraph 2, and is “necessary in a democratic society” for the achievement of the aim or aims in question.*<sup>110</sup>

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<sup>108</sup> [UN Human Rights Council, Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association, Mission to Kazakhstan, UN Doc. A/HRC/29/25/Add.2, para. 53.](#)

<sup>109</sup> See, for example, [Denis Turchenyak et al. v. Belarus, Human Rights Committee, Views of 10 September 2013, UN Doc. CCPR/C/108/D/1948/2010, para. 7.4](#); [Pavel Kozlov et al. v. Belarus, Human Rights Committee, Views of 7 May 2015, UN Doc. CCPR/C/113/D/1949/2010, para. 7.4](#); and [Leonid Sudalenko v. Belarus, Human Rights Committee, Views of 28 December 2015, UN Doc. CCPR/C/115/D/2016/2010, para. 8.4.](#)

<sup>110</sup> [Lashmankin and Others v. Russia, ECtHR, Judgment of 7 February 2017, paras. 405 – 409 \(references omitted\).](#) See also [Sáska v. Hungary, ECtHR, Judgment of 27 November 2012, para. 21.](#)

This means, in the first place, that any power the authorities have to deny the organizer’s preferred venue should be [prescribed by law](#), in a way which effectively limits the discretion of the authorities. The ECtHR considered a Russian law that allowed authorities to make “well-reasoned” proposals to change the venue of an assembly to be unduly vague. The Court pointed out that it would be difficult if not impossible to prove that any decision was not well-reasoned.<sup>111</sup>

Second, any refusal to use the chosen venue should pursue a [legitimate aim](#), such as public order or safety. This could be the case if the number of participants expected by the organizers clearly exceeds the capacity of the proposed venue<sup>112</sup> or there are objective security concerns.<sup>113</sup>

Third, the refusal must be genuinely [necessary and proportionate](#), meaning that the problems caused by the proposed venue cannot be mitigated and are sufficiently severe to justify the refusal. The authorities must “attach sufficient importance to freedom of assembly” and avoid setting the balance too much “in favour of protection of other interests, such as rights and freedoms of non-participants or avoidance of even minor disturbances to everyday life.”<sup>114</sup>

In *Chebotareva v. Russian Federation* [[click for full case explanation](#)], the Human Rights Committee found a violation of the right to freedom of assembly because authorities wanted to redirect a picket to another location – which the organizer considered unsuitable – in circumstances where that was not clearly necessary.<sup>115</sup>

The case of *Chebotareva v. Russian Federation* was lodged by a Russian citizen who had twice tried to organize a small picket commemorating a murdered journalist. On the first occasion, the local authorities informed her they were themselves planning an event in the same place at the same time, and instead proposed another location. According to Ms. Chebotareva, the proposed location was unsuitable as it was outside the city center, and the conflicting event supposedly planned by the authorities never took place. On the second occasion, the authorities denied permission to use the chosen location, claiming it was not safe due to heavy vehicle and pedestrian traffic. The Committee considered that the reasons provided by the authorities were not adequate and there had therefore been a violation of Article 21 of the ICCPR:

*[T]he State party has not demonstrated to the Committee’s satisfaction that the impeding of the two pickets in question was necessary for the purpose of protecting the interests of national security or public safety, public order (ordre public), the*

<sup>111</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, paras. 416-430.

See also [Sáska v. Hungary](#), ECtHR, Judgment of 27 November 2012, para. 21.

<sup>112</sup> [Primov and Others v. Russia](#), ECtHR, Judgment of 12 June 2014, paras. 130-131.

<sup>113</sup> [Disk and Kesik v. Turkey](#), ECtHR, Judgment of 27 November 2012, paras. 29-32.

<sup>114</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 427.

See also [Sáska v. Hungary](#), ECtHR, Judgment of 27 November 2012, para. 21.

<sup>115</sup> [Chebotareva v. Russian Federation](#), Human Rights Committee, Views of 26 March 2012, UN Doc. CCPR/C/104/D/1866/2009, para. 9.3.

*protection of public health or morals or the protection of the rights and freedoms of others. Moreover, the State party never refuted the author's claim that no event actually occurred at Gorky Square on 7 October 2007, and that the city administration's claim of a competing Teachers' Day event was in fact a mere pretext given in order to reject the author's request. In these circumstances, the Committee concludes that in the present case the State party has violated the author's right under article 21 of the Covenant.*<sup>116</sup>

Similarly, in *Sáska v. Hungary* [[click for full case explanation](#)], the ECtHR found that Hungarian authorities had violated the right to freedom of assembly by asking the organizer to limit a demonstration to a particular area of the square he wished to use, without providing compelling reasons why the entire square was unavailable.<sup>117</sup>

In *Sáska v. Hungary*, the applicant had wished to hold a demonstration on the vast square outside of the Hungarian Parliament. The police asked him to limit the gathering to a secluded part of the square, rather than its entirety. Sáska refused, after which the police banned the demonstration. The ECtHR was unconvinced by the Hungarian Government's argument that the square needed to be kept clear to ensure MPs could go about their work unhindered. Accordingly, the ban was not justified:

*The Court notes the applicant's unrefuted assertion that another demonstration planned on exactly the same location for 15 October 2008 had not been forbidden by the authorities. For the Court, this is a remarkable element, since on that date ... five parliamentary commissions were in session ... [O]n the date of the event planned by the applicant no parliamentary activity was underway ... Therefore, the Court cannot but conclude that the prohibition of the demonstration did not respond to a pressing social need, even in the face of the applicant's intransigence in considering the police's conciliatory suggestion (see paragraph 8 above). Thus, the measure was not necessary in a democratic society.*<sup>118</sup>

### A proper alternative venue should be proposed if the chosen one is truly unsuited

The Human Rights Committee has repeatedly stated that when authorities restrict freedom of peaceful assembly, they should be guided by the objective of facilitating the right:

*When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and ... interests of general concern, it should be guided by the*

<sup>116</sup> [Chebotareva v. Russian Federation, Human Rights Committee, Views of 26 March 2012, UN Doc. CCPR/C/104/D/1866/2009, para. 9.3.](#)

<sup>117</sup> [Sáska v. Hungary, ECtHR, Judgment of 27 November 2012, paras. 22-23.](#)

<sup>118</sup> [Sáska v. Hungary, ECtHR, Judgment of 27 November 2012, paras. 22-23.](#)

*objective of facilitating the right, rather than seeking to impose unnecessary or disproportionate limitations on it.*<sup>119</sup>

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Consistently with this, the ECtHR held in *Primov and Others v. Russia* [[click for full case explanation](#)] that, if there are compelling reasons why a protest cannot go ahead in the organizer’s preferred place, it is “the authorities’ duty to reflect on the possible alternative solutions and propose another venue to the organisers.”<sup>120</sup> Such an offer must be made in a timely manner, and not “at the last moment, when it [is] virtually impossible for the organisers to modify the form, scale and timing of the event.”<sup>121</sup>

In *Primov and Others v. Russia*, local authorities had banned a demonstration on various grounds, including that the organizers were expecting 5,000 participants and the park where they wanted to gather had a capacity of only 500. The ECtHR accepted that a risk of overcrowding is a legitimate reason to restrict the use of a particular place for an assembly. However, simply banning the event is a disproportionate response:

*[E]ven though a park is, a priori, a “public space” suitable for mass gatherings, its size is a relevant consideration, since overcrowding during a public event is fraught with danger. It is not uncommon for State authorities in various countries to impose restrictions on the location, date, time, form or manner of conduct of a planned public gathering ... The Court is therefore prepared to accept that such restrictions, in principle, pursue a legitimate aim. ... That being said, the Court does not consider that the size of the park was sufficient reason for a total ban on the demonstration. ... The Court considers that in the present case it was the authorities’ duty to reflect on the possible alternative solutions and propose another venue to the organisers.*<sup>122</sup>

Despite being banned, the protest went ahead anyway. The demonstrators aimed to reach the premises of the district administration; the authorities blocked their way and then proposed an alternative venue in the village, namely the municipal garage. In the opinion of the ECtHR, a proposal for a venue change must be made in a timely manner:

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<sup>119</sup> See, for example, [Vladimir Kirsanov v. Belarus](#), Human Rights Committee, Views of 5 June 2014, UN Doc. CCPR/C/110/D/1864/2009, para. 9.7;

<sup>120</sup> [Primov and Others v. Russia](#), ECtHR, Judgment of 12 June 2014, paras. 130-131. In the same vein, see [UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/23/39, 24 April 2013, para. 60.

<sup>121</sup> [Primov and Others v. Russia](#), ECtHR, Judgment of 12 June 2014, para. 147.

<sup>122</sup> [Primov and Others v. Russia](#), ECtHR, Judgment of 12 June 2014, paras. 130-131.

*That offer was made at the last moment, when it was virtually impossible for the organisers to modify the form, scale and timing of the event. Thus, the alternative proposal made by the administration was, in the Court's opinion, inappropriate.*<sup>123</sup>

The alternative venue proposed by the authorities should be one which does not detract from the effectiveness of the protest. The UN Special Rapporteur has warned against “the practice whereby authorities allow a demonstration to take place, but only in the outskirts of the city or in a specific square, where its impact will be muted.”<sup>124</sup> The ECtHR agrees:

*[T] he location or time proposed by the authorities as an alternative to the location chosen by the organisers should be such that the message which they seek to convey is still capable of being communicated ... The Court considers that the practice whereby the authorities allow an assembly to take place, but only at a location which is not within sight and sound of its target audience and where its impact will be muted, is incompatible with the requirements of Article 11 of the Convention.*<sup>125</sup>

Any restriction on the place of an assembly should be promptly appealable

If the authorities place any restriction on the location of an assembly, the organizer has the right to [a rapid appeals procedure](#).

### 9.3. Using streets and roads for assemblies

Streets can in principle be used for protest, even when it causes traffic disruption

The general principle that [the authorities should display tolerance towards the disruption caused by an assembly](#) is of particular relevance when the assembly takes place on a road or other public thoroughfare.

The UN Special Rapporteur and the IACHR have explicitly recognized that in a democratic society “the urban space is not only an area for circulation, but also a space for participation.”<sup>126</sup> In a similar vein, the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* state that “public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine

<sup>123</sup> [Primov and Others v. Russia](#), ECtHR, Judgment of 12 June 2014, para. 147.

<sup>124</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/20/27, 21 May 2012, para. 40.

<sup>125</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 426.

See also [Sáska v. Hungary](#), ECtHR, Judgment of 27 November 2012, para. 21.

<sup>126</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/20/27, 21 May 2012, para. 11; [IACHR, Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 136.

purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic).”<sup>127</sup>

Thus, neither of these competing uses of public space takes automatic priority. The duty of the public authorities, in the words of the ECtHR, is “to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may ... [be] frustrated temporarily.”<sup>128</sup>

### The authorities have a duty to manage traffic around an assembly

States have a positive obligation to facilitate peaceful assemblies. The IACHR has indicated that

*the competent institutions of the state have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly ... [including] rerouting pedestrian and vehicular traffic in a certain area.*<sup>129</sup>

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The ECtHR has similarly recognized an obligation for the authorities to take

*necessary measures in order to minimise any disruption to traffic or other security measures such as providing first-aid services at the site of the demonstrations, in order to guarantee the smooth conduct of the events.*<sup>130</sup>

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In [Körtvélyessy v. Hungary](#), the Hungarian authorities had prohibited a demonstration out of fear that it would have seriously hampered circulation in the area. The ECtHR found a violation of the right to assemble, as it was not convinced that proper facilitation measures “could not have helped to accommodate the demonstration without serious traffic disruption.”<sup>131</sup>

If the authorities fail in their duty to try to manage traffic proactively during an assembly, the resulting disruption may not easily justify an interference with the assembly.

### Criteria for restrictions on assemblies that seriously impact traffic

If the disruption to traffic threatened or caused by an assembly is particularly severe and cannot be avoided by [taking management measures](#), restrictions may in some cases be justified, provided they comply with [the three-prong test](#), including the [proportionality requirement](#).

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<sup>127</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Explanatory Notes, para 20.](#)

<sup>128</sup> [Körtvélyessy v. Hungary, ECtHR, Judgment of 5 April 2016, para. 29](#) and [Patyi and Others v. Hungary, ECtHR, Judgment of 7 October 2008, para. 42.](#)

<sup>129</sup> [IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, Doc 57, 31 December 2009, para. 193.](#)

<sup>130</sup> [Novikova and Others v. Russia, ECtHR, Judgment of 26 April 2016, para 171.](#) See also [Oya Ataman v. Turkey, ECtHR, Judgment of 5 December 2006, para. 39.](#)

<sup>131</sup> [Körtvélyessy v. Hungary, ECtHR, Judgment of 5 April 2016, paras. 28-29](#)

The case-law of the ECtHR and other sources suggest the following factors are relevant when deciding whether a restriction in the interest of freedom of movement is justified: (1) the actual impact of the assembly; (2) its duration; (3) whether the authorities have prior notice of the assembly; (4) whether the disruption is intentional and serious (for example, because the assembly takes the form of a blockade of a motorway).

The lack of **actual impact** prompted the ECtHR to find a violation of the right to assemble in *Körtvélyessy v. Hungary* [[click for full case explanation](#)].<sup>132</sup> The Court was not convinced that a planned assembly on a dead-end street, albeit with shops and other facilities, would have caused a level of traffic disruption sufficient to justify the ban imposed on it.

The applicant in *Körtvélyessy v. Hungary* had notified the police of his intention to hold a demonstration of no more than 200 persons outside the Budapest penitentiary, which is located on a dead-end street. The Budapest Police Department prohibited the protest because it feared access to shops, a waste disposal site and the suppliers' entrance of the prison would be impeded. The ECtHR felt that too much weight had been given to traffic considerations, which moreover were not convincing:

*The Court observes that ... the basis for upholding the ban on the assembly related exclusively to traffic issues ... In this connection, the Court reiterates that a demonstration in a public place may cause a certain level of disruption to ordinary life ...*

*[T]he Court is not convinced by the Government's explanation to the effect that Venyige Street, a road of five or eight metres in width, with a broad service lane adjacent, could not have helped to accommodate the demonstration without serious traffic disruption. Indeed, their arguments appear not to take into account that the street is a dead end; and the through traffic is thus of limited importance ...*

*Consequently, the Court concludes that the authorities, when issuing the prohibition on the demonstration and relying on traffic considerations alone, failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all.*<sup>133</sup>

<sup>132</sup> [Körtvélyessy v. Hungary, ECtHR, Judgment of 5 April 2016, paras. 28-29](#) (references omitted); see also [Patyi and Others v. Hungary, ECtHR, Judgment of 7 October 2008, para. 42](#).

<sup>133</sup> [Körtvélyessy v. Hungary, ECtHR, Judgment of 5 April 2016, paras. 28-29](#) (references omitted); see also [Patyi and Others v. Hungary, ECtHR, Judgment of 7 October 2008, para. 42](#).

The *joint report on the proper management of assemblies* recognizes that if an assembly prevents access to essential services, such as blocking the emergency entrance to a hospital, this may justify dispersal.<sup>134</sup>

Second, the **duration of the traffic disruption** is an important criterion. The ECtHR has repeatedly criticized domestic authorities for acting too quickly to end assemblies that threatened to cause traffic disruption.<sup>135</sup> In general, demonstrators [should be given an effective opportunity to convey their views](#), provided there is no urgent danger to public order.

Third, the ECtHR recognizes that **prior notice** of an assembly makes it easier for the authorities to meet their [obligation to manage traffic](#). In *Oya Ataman v Turkey*, the Court considered the very rapid termination of the assembly disproportionate, but accepted that

*notification would have enabled the authorities to take the necessary measures in order to minimise the disruption to traffic that the demonstration could have caused during rush hour.*<sup>136</sup>

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This implies that if the authorities are aware in advance of an assembly, the threshold to interfere with it because of traffic disruption is higher.

A good example of the application of this principle is the case before the ECJ of *Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria* [[click for full case explanation](#)]. The dispute arose from a protest blockade of a major motorway lasting almost 30 hours. The organizers had given the Austrian authorities one month's advance notice of their intention to stage the blockade. The authorities allowed the protest to go ahead, and took various preparatory measures to limit the disruption to road traffic. A transport company that nevertheless suffered some delay demanded compensation, arguing that the assembly should have been banned to safeguard the free movement of goods. The ECJ sided with the Austrian authorities, finding that they had justifiably considered that they were required to permit the demonstration.<sup>137</sup>

The case of *Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria* before the ECJ concerned a blockade of the Brenner motorway, a major trunk road between Germany and Italy, which lasted almost 30 hours. The blockade was organized by an environmental organization that aimed to draw attention to the health and environmental costs of the increased transit of heavy goods vehicles on the motorway. It had given the Austrian authorities a month's notice of its intentions. Schmidberger, a German transport company that had incurred losses as a

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<sup>134</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 62.

<sup>135</sup> [Oya Ataman v. Turkey](#), ECtHR, Judgment of 5 December 2006, para. 41; [Balçık and Others v. Turkey](#), ECtHR, Judgment of 29 November 2007, para. 51; [Tahirova v. Azerbaijan](#), ECtHR, Judgment of 3 October 2013, para. 73.

<sup>136</sup> [Oya Ataman v. Turkey](#), ECtHR, Judgment of 5 December 2006, para. 39.

<sup>137</sup> [Case C-112/00, Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria](#), ECJ, Judgment of 12 June 2003.

result of the roadblock, sued the Austrian government. It considered that by failing to ban the demonstration and keep the motorway open, Austria had violated the right to free movement of goods guaranteed by European Community law. The ECJ found, however, that the Austrian authorities had struck a reasonable balance between the interests at stake:

*[T]he competent national authorities were entitled to consider that an outright ban on the demonstration would have constituted unacceptable interference with the fundamental rights of the demonstrators to gather and express peacefully their opinion in public.*

*The imposition of stricter conditions concerning both the site - for example by the side of the Brenner motorway - and the duration - limited to a few hours only - of the demonstration in question could have been perceived as an excessive restriction, depriving the action of a substantial part of its scope. Whilst the competent national authorities must endeavour to limit as far as possible the inevitable effects upon free movement of a demonstration on the public highway, they must balance that interest with that of the demonstrators, who seek to draw the aims of their action to the attention of the public.*

*An action of that type usually entails inconvenience for non-participants, in particular as regards free movement, but the inconvenience may in principle be tolerated provided that the objective pursued is essentially the public and lawful demonstration of an opinion.<sup>138</sup>*

A somewhat comparable dispute has played out in South America between Uruguay and Argentina. Uruguay's authorization of the construction of a pulp mill on the banks of the river separating the two countries caused deep concern on the Argentine side about possible pollution. Beginning in 2005, demonstrators began to intermittently block the bridges across the river. The Argentine authorities did not intervene, and as a result the main border crossing was closed for months on end. In July 2006, Uruguay brought a case against Argentina under the dispute settlement system of the Mercosur trading bloc. The arbitral tribunal hearing the case acknowledged the importance of the rights to freedom of expression and peaceful assembly, but considered that Argentina had given them unreasonable priority over the free circulation of goods and services by allowing blockades to continue for as long as three months at a peak time for commerce and tourism.<sup>139</sup>

The ECtHR has made it clear that what matters is whether the authorities have *actual* prior knowledge

<sup>138</sup> [Case C-112/00, Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria, ECJ, Judgment of 12 June 2003, paras. 89-91.](#)

<sup>139</sup> [Award of the Mercosur Ad Hoc Tribunal \(Uruguay v. Argentina\), 6 September 2006, paras. 178-179.](#)

of the assembly, such that they can take traffic management measures, and not whether the organizers of the assembly have complied with any formal advance notification requirement. In *Balçık and Others v. Turkey*, the police had received intelligence reports that demonstrators would gather in central Istanbul and block a tram line. The Court criticized the “impatience” of the authorities in ending the protest within 30 minutes to restore public order, pointing out that:

*although no notification had been given, the authorities had prior knowledge ... that such a demonstration would take place on that date and could have therefore taken preventive measures.*<sup>140</sup>

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Fourth, the ECtHR seems to require less tolerance from the authorities for **intentional and serious obstruction** of traffic than for assemblies on public roads where disruption to traffic is a side-effect, or smaller blockades. In *Kudrevičius and Others v. Lithuania* [[click for full case explanation](#)], the Court’s Grand Chamber stated:

*[T]he intentional serious disruption, by demonstrators, to ordinary life and to the activities lawfully carried out by others, to a more significant extent than that caused by the normal exercise of the right of peaceful assembly in a public place, might be considered a “reprehensible act” within the meaning of the Court’s case-law.*<sup>141</sup>

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The case concerned the blockading of Lithuania’s three main motorways for about 48 hours, without prior notice to the authorities. Previous ECtHR judgments suggest that smaller-scale roadblocks do not justify a reduced level of tolerance from the authorities. In *Balçık and Others v. Turkey*, the Court criticized the Turkish authorities’ lack of tolerance towards the temporary blocking of a single tram line.<sup>142</sup>

The applicants in *Kudrevičius and Others v. Lithuania* were amongst a group of farmers who were struggling under low milk, grain and meat prices. They were given permission to demonstrate in a number of places. After negotiations with the Government stagnated, the applicants, along with other farmers, moved tractors onto the Lithuania’s three major highways. They did not give prior notice of this move, and ignored police orders to leave. The blockade caused significant disruption over a period of two days. The applicants were subsequently sentenced by domestic courts to 60 days’ imprisonment for “rioting”, suspended for one year. They were also ordered not to leave their homes for more than seven days without the authorities’ prior agreement.

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<sup>140</sup> [Balçık and Others v. Turkey](#), ECtHR, Judgment of 29 November 2007, para. 51.

<sup>141</sup> [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 173. See also [Barraco v. France](#), ECtHR, Judgment of 5 March 2009, paras. 46-47.

<sup>142</sup> [Balçık and Others v. Turkey](#), ECtHR, Judgment of 29 November 2007, paras. 51-52.

The ECtHR stated, with regard to the applicable level of protection:

*The intentional failure by the organisers to abide by these rules and the structuring of a demonstration, or of part of it, in such a way as to cause disruption to ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances constitutes conduct which cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest or the peaceful manifestation of opinions on such matters.*<sup>143</sup>

At the same time, the Court stressed that the authorities are still bound to respond to such roadblocks in a proportionate manner:

*The absence of prior authorisation and the ensuing “unlawfulness” of the action do not give carte blanche to the authorities; they are still restricted by the proportionality requirement of Article 11. Thus, it should be established why the demonstration was not authorised in the first place, what the public interest at stake was, and what risks were represented by the demonstration. The method used by the police for discouraging the protesters, containing them in a particular place or dispersing the demonstration is also an important factor in assessing the proportionality of the interference.*<sup>144</sup>

The Court ultimately found that there had not been a violation of the applicants’ rights. It noted that the farmers had been able to hold peaceful assemblies at specific locations as requested beforehand, and that when they moved onto the motorways, the police had not forcefully dispersed these gatherings. The sanctions imposed afterwards, while criminal in nature, were not excessive.<sup>145</sup>

The UN Special Rapporteur expressed his concern at the Court’s willingness to permit the use of criminal law in this context.<sup>146</sup>

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<sup>143</sup> [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2010, para. 156.

<sup>144</sup> [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2010, para. 151. See also [Primov and Others v. Russia](#), ECtHR, Judgment of 12 June 2014, para. 119.

<sup>145</sup> [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2010, paras. 176-183.

<sup>146</sup> [United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association and Human Rights Centre of the University of Ghent, Third Party Intervention before the European Court of Human Rights in Mahammad Majidli v. Azerbaijan \(no. 3\) and three other applications](#), November 2015, paras. 14-15.

#### 9.4. Blanket bans on assemblies at particular locations, such as public buildings

The UN Special Rapporteur has stated on several occasions that blanket location restrictions on assemblies are intrinsically disproportionate and should thus not be imposed.<sup>147</sup> This includes spaces outside iconic buildings:

*Spaces in the vicinity of iconic buildings such as presidential palaces, parliaments or memorials should also be considered public space, and peaceful assemblies should be allowed to take place in those locations. In this regard, the imposition of restrictions on “time, place and manner” should meet the aforementioned strict test of necessity and proportionality.*<sup>148</sup>

This position is supported by regional bodies<sup>149</sup> and by the jurisprudence of the Human Rights Committee, which emphasizes that assemblies should be able to take place “within sight and sound” of their target audience.<sup>150</sup>

The ECtHR has repeatedly found violations of freedom of assembly when domestic authorities prohibited or forcefully dispersed assemblies outside a range of public buildings, including parliaments,<sup>151</sup> government buildings,<sup>152</sup> courts,<sup>153</sup> and the house of a prime minister.<sup>154</sup>

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<sup>147</sup> [UN Human Rights Council, \*First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai\*, UN Doc. A/HRC/20/27, 21 May 2012, para. 39](#); [UN Human Rights Council, \*Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association, Mission to the United Kingdom of Great Britain and Northern Ireland\*, UN Doc. A/HRC/23/39/Add.1, 17 June 2013, para. 62](#); [UNGA, \*First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai\*, UN Doc. A/68/299, 7 August 2013, para. 25](#); [UN Human Rights Council, \*Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association, Mission to Oman\*, UN Doc. A/HRC/29/25/Add.1, 27 April 2015, para. 29](#); [UN Special Rapporteur, \*amicus curiae brief before the Supreme Court of the Nation of Mexico in constitutionality challenges 96/2014 and 97/2014 regarding the Mexico City Mobility Law\*, 20 August 2015, para. 40](#); [UN Special Rapporteur, \*amicus curiae brief before the High Court of Kenya at Nairobi, Constitutional and Human Rights Division, in petition no. 544 of 2015\*, 11 April 2016, para. 32](#).

<sup>148</sup> [UN Human Rights Council, \*Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai\*, UN Doc. A/HRC/23/39, 24 April 2013, para. 66](#).

<sup>149</sup> [OSCE-ODIHR and Venice Commission, \*Guidelines on Freedom of Peaceful Assembly\*, 2<sup>nd</sup> edn, 2010, Explanatory Notes, paras. 43 and 102](#); See AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 83-84; [AComHPR, \*Report of the Study Group on Freedom of Association and Assembly in Africa\*, 2014, p. 20, para. 25](#).

<sup>150</sup> See, for example, [Denis Turchenyak et al. v. Belarus](#), Human Rights Committee, Views of 10 September 2013, UN Doc. CCPR/C/108/D/1948/2010, para. 7.4; [Pavel Kozlov et al. v. Belarus](#), Human Rights Committee, Views of 7 May 2015, UN Doc. CCPR/C/113/D/1949/2010, para. 7.4; and [Leonid Sudalenko v. Belarus](#), Human Rights Committee, Views of 28 December 2015, UN Doc. CCPR/C/115/D/2016/2010, para. 8.4.

<sup>151</sup> [Nurettin Aldemir and Others v. Turkey](#), ECtHR, Judgment of 18 December 2007; [Sáska v. Hungary](#), ECtHR, Judgment of 27 November 2012.

<sup>152</sup> [Christian Democratic People’s Party v. Moldova](#), ECtHR, Judgment of 14 February 2006; [Özbent and Others v. Turkey](#), ECtHR, Judgment of 9 June 2015.

<sup>153</sup> [Sergey Kuznetsov v. Russia](#), ECtHR, Judgment of 23 October 2008; [Malofeyeva v. Russia](#), ECtHR, Judgment of 13 May 2013; [Kakabadze and Others v. Georgia](#), ECtHR, Judgment of 2 October 2012.

<sup>154</sup> [Pátyi and Others v. Hungary](#), ECtHR, Judgment of 7 October 2008.

In *Lashmankin and Others v. Russia*, the applicants complained about a law which prohibited holding public events “in the immediate vicinity” of various types of buildings, such as courthouses, detention facilities, the residences of the President, dangerous production facilities, railway lines and pipelines. The ECtHR held that:

*[A] general ban on demonstrations can only be justified if there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures. In this connection, the authority must take into account the effect of a ban on demonstrations which do not by themselves constitute a danger to public order. Only if the disadvantage of such demonstrations being caught by the ban is clearly outweighed by the security considerations justifying the issue of the ban, and if there is no possibility of avoiding such undesirable side effects of the ban by a narrow circumscription of its scope in terms of territorial application and duration, can the ban be regarded as being necessary within the meaning of Article 11 § 2 of the Convention.*<sup>155</sup>

In the circumstances of the case, the Court concluded that the law at issue violated the right to freedom of assembly because it did not “address a precise risk to public safety or a precise risk of disorder with the minimum impairment of the right of assembly.”<sup>156</sup> For example, the law prevented any demonstration near a courthouse, not only those held with the intention of interfering with the administration of justice.<sup>157</sup>

The scope for restrictions on assemblies *inside* public buildings may be greater. In *Taranenko v. Russia* [click for full case explanation] the ECtHR held that freedom of expression “does not require the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property, such as, for instance, government offices and ministries.”<sup>158</sup>

The applicant in *Taranenko v. Russia* had been arrested together with a group of about 40 people who had occupied the reception area of the President’s administration building in Moscow, waved placards and distributed leaflets calling for the President’s resignation. She claimed she was not a member of the National Bolsheviks Party, who had organized the protest, but attended to collect information for her thesis in sociology. After spending almost a year in pre-trial detention, Ms. Taranenko was convicted of participation in mass disorder and sentenced to three years’ imprisonment, suspended on probation. The trial court considered it irrelevant whether she had joined the action for research or not, as she had directly participated in a violation of the admission procedure to the building, during which the demonstrators had pushed aside a guard and destroyed furniture (which they

<sup>155</sup> [Lashmankin and Others v. Russia, ECtHR, Judgment of 7 February 2017, para. 434.](#)

<sup>156</sup> [Lashmankin and Others v. Russia, ECtHR, Judgment of 7 February 2017, para. 437.](#)

<sup>157</sup> [Lashmankin and Others v. Russia, ECtHR, Judgment of 7 February 2017, para. 440.](#)

<sup>158</sup> [Taranenko v. Russia, ECtHR, Judgment of 15 May 2014, para. 78.](#)

later paid compensation for). The ECtHR noted that:

*[T]he applicant and the other participants in the protest action wished to draw the attention of their fellow citizens and public officials to their disapproval of the President's policies and their demand for his resignation. This was a topic of public interest ... That being said, the Court reiterates that, notwithstanding the acknowledged importance of freedom of expression, Article 10 does not bestow any freedom of forum for the exercise of that right. In particular, that provision does not require the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property, such as, for instance, government offices and ministries.<sup>159</sup>*

The Court then went on to assess the [proportionality of the sanction](#) imposed, comparing it to sanctions in other cases that had come before it. It concluded that the penalty was clearly disproportionate:

*[T]he protesters' conduct, although involving a certain degree of disturbance and causing some damage, did not amount to violence ... although a sanction for the applicant's actions might have been warranted by the demands of public order, the lengthy period of detention pending trial and the long suspended prison sentence imposed on her were not proportionate to the legitimate aim pursued. The Court considers that the unusually severe sanction imposed in the present case must have had a chilling effect on the applicant and other persons taking part in protest action.<sup>160</sup>*

## 9.5. Assemblies on private property

Assemblies which take place on private property enjoy the protection of the right to freedom of assembly,<sup>161</sup> meaning that any restriction placed on them by the authorities must conform to the requirements of [the three-prong test](#).

International law does not impose any duty on owners of private property to consent to assemblies taking place there. However, in *Appleby and others v. United Kingdom* [[click for full case explanation](#)],<sup>162</sup> the ECtHR held that if the privatization of public space reaches a stage where effective protest is no longer possible, the State may need to step in and ensure access to private spaces.

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<sup>159</sup> [Taranenko v. Russia](#), ECtHR, Judgment of 15 May 2014, paras. 77-78.

<sup>160</sup> [Taranenko v. Russia](#), ECtHR, Judgment of 15 May 2014, paras. 93-95.

<sup>161</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 22; [Cissé v. France](#), ECtHR, Judgment of 9 April 2002, paras 39-40.

<sup>162</sup> [Appleby and others v. United Kingdom](#), ECtHR, Judgment of 6 May 2003.

Indeed, while private landowners generally have the right to determine who may access their property, the rights related to assembly may require positive measures of protection even in the sphere of relations between individuals<sup>163</sup>.

The case of *Appleby and others v. United Kingdom* was brought by three individuals and an environmental group, who had wished to collect signatures for a petition at the entrance to “The Galleries”, a shopping mall built by a public development corporation as the new town center and subsequently sold to a private company. The manager of the mall refused permission to set up a stall in the mall or its car parks, referring to the owner’s policy of neutrality. The applicants instead set up stalls on public footpaths and in the old town center.

Before the ECtHR, the applicants argued that the State was directly responsible for the interference with their freedom of expression and assembly as it had built the Galleries on public land and approved the transfer into private ownership. The Court disagreed, finding that this circumstance did not make the State directly responsible for the manager’s actions.<sup>164</sup> The applicants also argued that the State was indirectly responsible, as it was under a positive obligation to secure the exercise of their rights within the Galleries, since access to the town center was essential for effective communication with the population.

The Court chose to analyze this argument under Article 10 ECHR (freedom of expression) but indicated that largely identical considerations would apply under Article 11 (freedom of peaceful assembly).<sup>165</sup> It rejected the notion that there is an automatic right of entry to property for expressive purposes; at the same time, it accepted that a positive obligation may arise for the State to ensure access to property if effective exercise of freedom of expression would otherwise become impossible:

*That provision [Article 10], notwithstanding the acknowledged importance of freedom of expression, does not bestow any freedom of forum for the exercise of that right. While it is true that demographic, social, economic and technological developments are changing the ways in which people move around and come into contact with each other, the Court is not persuaded that this requires the automatic creation of rights of entry to private property, or even, necessarily, to all publicly*

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<sup>163</sup> [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 84.](#)

<sup>164</sup> [Appleby and others v. United Kingdom, ECtHR, Judgment of 6 May 2003, para. 41.](#)

<sup>165</sup> [Appleby and others v. United Kingdom, ECtHR, Judgment of 6 May 2003, para. 52.](#)

*owned property (government offices and ministries, for instance). Where ... the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights. The corporate town, where the entire municipality was controlled by a private body, might be an example.*<sup>166</sup>

In the instant case, however, the Court saw insufficient evidence that the applicants had been effectively prevented from communicating their views to their fellow citizens. They had still been able to obtain individual permission from businesses within the Galleries to collect signatures, and to campaign on public access paths in the area or in the old town center.

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<sup>166</sup> [Appleby and others v. United Kingdom, ECtHR, Judgment of 6 May 2003, para. 47.](#)

## 10. The manner of assemblies

Freedom of assembly includes the right to choose the manner in which the assembly is organized. The ECtHR has stated:

*For the Court, the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of Article 11.<sup>167</sup>*

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Moreover, in *Women on Waves and Others v. Portugal* [[click for full case explanation](#)], the European Court underlined the importance that the form of the activity can have for those seeking to protest:

*[D]ans certaines situations le mode de diffusion des informations et idées que l'on entend communiquer revêt une importance telle que des restrictions ... peuvent affecter de manière essentielle la substance des idées et informations en cause. Tel est notamment le cas lorsque les intéressés entendent mener des activités symboliques de contestation à une législation qu'ils considèrent injuste ou attentatoire aux droits et libertés fondamentaux.<sup>168</sup>*

Unofficial translation:

*In certain situations the mode of dissemination of the information and ideas to be communicated is of such importance that restrictions ... may substantially affect the substance of the ideas and information in question. This is particularly the case where the persons concerned intend to carry out symbolic activities in protest against legislation which they regard as unfair or as infringing on fundamental rights and freedoms.*

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The case of *Women on Waves and Others v. Portugal* arose from a decision to deny the vessel *Borndiep* entry to Portuguese territorial waters. The applicant associations had chartered this vessel for use in a campaign for the decriminalization of abortion, and planned to hold meetings on sexual and reproductive health and rights on board. The Portuguese authorities sent a warship to ensure the vessel would not enter port.

Before the ECtHR, Portugal argued that the applicants had not been prevented from expressing themselves, as they could have organized their meetings on land. The

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<sup>167</sup> [Sáska v. Hungary, ECtHR, Judgment of 27 November 2012, para. 21.](#)

<sup>168</sup> [Women on Waves and Others v. Portugal, ECtHR, Judgment of 3 February 2009, para. 39.](#)

European Court, however, considered that the denial of permission to use the vessel restricted the applicants' rights, as the manner of spreading their ideas was important for them:

*En l'occurrence, ce n'était pas uniquement le contenu des idées défendues par les requérantes qui était en cause mais également le fait que les activités choisies afin de communiquer de telles idées – comme les séminaires et ateliers pratiques en matière de prévention des maladies sexuellement transmissibles, de planning familial et de dépenalisation de l'interruption volontaire de grossesse – auraient lieu à bord du navire en cause, ce qui revêtait une importance cruciale pour les requérantes et correspondait à une activité menée depuis un certain temps par la première requérante dans d'autres Etats européens.*<sup>169</sup>

Unofficial translation:

*In this case, it was not only the content of the ideas advocated by the applicants that was at issue, but also the fact that the activities chosen to communicate such ideas - such as seminars and workshops on the prevention of sexually transmitted diseases, family planning and the decriminalization of abortion - would take place on board the vessel in question, which was of crucial importance to the applicants and corresponded to an activity which had been carried out for some time by the first applicant in other European States.*

The Court acknowledged the Portuguese authorities' fear that the vessel was carrying medications which might be used to perform unlawful abortions, but considered they could have reached their objective through less restrictive measures, such as seizing the medications, instead of denying the *Borndiep* entry and deploying a warship against this civilian vessel.<sup>170</sup>

In some instances, limitations on the manner of assemblies – such as the use of sound-amplification equipment – may be justifiable. The UN Special Rapporteur,<sup>171</sup> the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*<sup>172</sup> and the AComHPR's *Guidelines on Freedom of Association and Assembly in Africa*<sup>173</sup> emphasize that such restrictions must meet the [tests of necessity and proportionality](#).

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<sup>169</sup> [Women on Waves and Others v. Portugal](#), ECtHR, Judgment of 3 February 2009, para. 39.

<sup>170</sup> [Women on Waves and Others v. Portugal](#), ECtHR, Judgment of 3 February 2009, paras. 41-44.

<sup>171</sup> [UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/23/39, 24 April 2013, para. 59.

<sup>172</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, paras. 99-100.

<sup>173</sup> See AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 83-84; 90-91 and 93; AComHPR, [Report of the Study Group on Freedom of Association and Assembly in Africa](#), 2014, p. 60, para. 19.

## 10.1. Restrictions on masks, symbols and clothing

The UN Special Rapporteur has expressed concern at laws that prohibit the wearing of a mask during assemblies, and has pointed out that there may be legitimate reasons to cover one's face during a demonstration, including fear of retribution.<sup>174</sup> The OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* state that masks worn for expressive purposes (rather than to avoid arrest) should in principle be permitted.<sup>175</sup>

The use of symbols during assemblies, both on clothing and flags, has given rise to a number of cases before the ECtHR. The Court has stated, in general terms, that:

*for the determination of the proportionality of a specific restrictive measure, the location and the timing of the display of a symbol or of other expressions with multiple meanings play an important role.*<sup>176</sup>

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In *Vajnai v. Hungary* and *Fratanoló v. Hungary*, the applicants had been sanctioned for using a “totalitarian symbol” in public, after wearing a five-pointed red star while participating in an assembly. The European Court was mindful that for some, the symbol stood for the mass human rights violations committed under communism, but for others it represented the struggle for a fairer society, as well as certain lawful political parties in different countries.<sup>177</sup> A “careful examination of the context” was needed when deciding whether a ban was permitted.<sup>178</sup> In this instance the context did not justify the ban:

*[F]or a restriction on the display of that symbol to be justified, it was required that there was a real and present danger of any political movement or party restoring the Communist dictatorship. However, the Government had not shown the existence of such a threat ... the ban in question was too broad in view of the multiple meanings of the red star... and there was no satisfactory way to sever the different meanings of the incriminated symbol.*<sup>179</sup>

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<sup>174</sup> UN Human Rights Council, *Third Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly, Maina Kiai*, UN Doc. A/HRC/26/29, 14 April 2014, paras. 32-33.

<sup>175</sup> OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> edn, 2010, Explanatory Notes, paras. 99-100.

<sup>176</sup> *Fabér v. Hungary*, ECtHR, Judgment of 24 July 2012, para. 55.

<sup>177</sup> *Vajnai v. Hungary*, ECtHR, Judgment of 8 July 2008, para. 52.

<sup>178</sup> *Vajnai v. Hungary*, ECtHR, Judgment of 8 July 2008, para. 53.

<sup>179</sup> *Fratanoló v. Hungary*, ECtHR, Judgment of 3 November 2011, para. 25, summarizing and endorsing the judgment in *Vajnai v. Hungary*, ECtHR, Judgment of 8 July 2008. See also *Solari v. Moldova*, ECtHR, Judgment of 28 March 2017, paras. 34-36.

## 11. Notification and authorization procedures for assemblies

Many jurisdictions provide a procedure to follow for organizers of an assembly. The nature and content of this procedure differs from country to country. An important distinction can be drawn between [authorization requirements](#) (that is, requirements to obtain prior permission from the authorities for an assembly) and [prior notification procedures](#) (that is, procedures to inform the authorities in advance of a planned assembly, without a duty to secure permission).

### 11.1. Are authorization requirements permissible?

Most international authorities consider that a prior authorization requirement for assemblies is illegitimate.

The UN Special Rapporteur finds that States should not impose authorization requirements<sup>180</sup> as they turn the right into a privilege to be dispensed by authorities, and shift the burden to organizers or participants to challenge a refusal, rather than requiring authorities to justify restrictions.<sup>181</sup> The IACHR has clearly stated that assemblies should not be subject to an authorization requirement:

*The IACHR reiterates that the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.*<sup>182</sup>

The same point of view is shared by the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*<sup>183</sup> and the AComHPR's *Guidelines on Freedom of Association and Assembly in Africa*.<sup>184</sup>

The Human Rights Committee has not taken an express position on authorization requirements, but has made it clear that any procedures that are put in place must not be used to stifle freedom of peaceful assembly in practice:

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<sup>180</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 28; UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 52.](#)

<sup>181</sup> [United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association and Human Rights Centre of the University of Ghent, Third Party Intervention before the European Court of Human Rights in Mahammad Majidli v. Azerbaijan \(no. 3\) and three other applications, November 2015, paras. 9 and 10.](#)

<sup>182</sup> [IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 139; see also IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005, OEA/Ser.L/V/II.124 Doc. 7, 27 February 2006, Chapter V, para. 95; IACHR, Annual Report 2015, March 17, 2016, Chapter IV.A, para. 65.](#)

<sup>183</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 118.](#)

<sup>184</sup> [See AComHPR, Guidelines on Freedom of Assembly and Association in Africa, para 71; AComHPR, Report of the Study Group on Freedom of Association and Assembly in Africa, 2014, p. 63, para. 23.](#)

*[E]ven if, in principle, States parties may introduce a system aimed at reconciling an individual's freedom to impart information and to participate in a peaceful assembly with the general interest of maintaining public order in a certain area, the system must not operate in a way that is incompatible with the object and purpose of articles 19 and 21 of the Covenant.*<sup>185</sup>

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The ECtHR, in contrast to most authorities, accepts in principle that authorization requirements for assemblies may be legitimate, though only insofar as their aim is to enable the authorities to meet their duty to facilitate the assembly:

*[N]otification, and even authorisation procedures, for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering.*<sup>186</sup>

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Both the Human Rights Committee and the ECtHR have articulated several important parameters which procedures established by the authorities must respect, and have frequently held that a refusal of authorization, the dispersal of an unauthorized assembly or the imposition of sanctions on organizers or participants were unjustified because the interference served no [legitimate aim](#) or was not [necessary and proportionate](#). This case law is discussed further in the section on [consequences of a failure to follow the prescribed procedure](#).

## 11.2. Are prior notification procedures permissible?

It is accepted in international law that domestic authorities are permitted (though not obliged) to request advance notification of an assembly. The Human Rights Committee, for example, has held that:

*[A] requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible with the permitted limitations laid down in article 21 of the Covenant.*<sup>187</sup>

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The ECtHR has stated that notification procedures are permissible “as long as they do not represent a hidden obstacle to the freedom of peaceful assembly.”<sup>188</sup>

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<sup>185</sup> [Galina Youbko v. Belarus](#), Human Rights Committee, Views of 24 April 2014, UN Doc. CCPR/C/110/D/1903/2009, para. 9.5.

<sup>186</sup> [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 147 (references omitted); see also [Rassemblement Jurassien and Unité Jurassienne v. Switzerland](#), EComHR, Decision of 10 October 1979, para. 3.

<sup>187</sup> [Kivenmaa v. Finland](#), Human Rights Committee, Views of 9 June 1994, UN Doc. CCPR/C/50/D/412/1990, para. 9.2.

<sup>188</sup> [Éva Molnár v. Hungary](#), ECtHR, Judgment of 7 October 2008, para. 37.

The rationale of a notice procedure is to allow State authorities to facilitate and safeguard the exercise of the right to freedom of peaceful assembly, to protect public safety and order and the rights and freedoms of others, and to meet their [obligation to reroute traffic](#) and deploy security when necessary.<sup>189</sup> In the words of the IACHR:

*The requirement established in some laws that advance notice be given to the authorities before a social protest may be held in public places is compatible with the right of assembly, as long as this requirement has the purpose of informing the authorities and allowing them to take measures to facilitate the exercise of the right without significantly disturbing the normal activities of the rest of the community, or making it possible for the State to take necessary steps to adequately protect those participating in the demonstration.*<sup>190</sup>

Consistently with this rationale, the UN Special Rapporteur, the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* and the Guidelines on Freedom of Assembly and Association in Africa recommend only requiring notice when a substantial number of participants are expected, or only for certain types of assembly, such as assemblies where disruption is reasonably expected by the organizers.<sup>191</sup>

Notification procedures are subject to a proportionality assessment. A notification procedure should not be onerous or bureaucratic and the amount of notice requested should not be excessive.<sup>192</sup> In *Poliakov v. Belarus*, for example, the Human Rights Committee criticized a requirement for organizers of assemblies to secure various written commitments from local government departments:

*The Committee observes that the restrictions imposed on the author's freedom of assembly were based on provisions of domestic law and included the burdensome requirements of securing three separate written commitments from three different*

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<sup>189</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, paras. 26-28.](#)

<sup>190</sup> [IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 137.](#) In a similar vein, see AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 71-76; AComHPR, [Report of the Study Group on Freedom of Association and Assembly in Africa, 2014](#), p. 60, para. 5; [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Guideline 4.1](#); [Kudrevičius and Others v. Lithuania, ECtHR, Grand Chamber Judgment of 15 October 2015, para. 147.](#)

<sup>191</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 115](#); UN Human Rights Council, UN Human Rights Council, [Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 28](#); AComHPR, [Report of the Study Group on Freedom of Association and Assembly in Africa, 2014](#), p. 62, para. 9. AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 71-76.

<sup>192</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Guideline 4.1](#); UN Human Rights Council, [Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, paras. 51-58](#); AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 71-76; AComHPR, [Report of the Study Group on Freedom of Association and Assembly in Africa, 2014](#), p. 62, para. 12.

*administrative departments, which might have rendered illusory the author's right to demonstrate. The State party has failed, however, to present any arguments as to why those requirements were necessary 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.*<sup>193</sup>

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In *Lashmankin and others v Russia*, the ECtHR has criticized the requirement under Russian law to give notice well ahead of time and within a short window (no earlier than fifteen days and no later than ten days before the intended public event). It held that the “automatic and inflexible application” of this requirement violates the right to freedom of peaceful assembly.<sup>194</sup>

### 11.3. Spontaneous assemblies should not be subject to prior notice procedures

Multiple sources in international law concur that spontaneous assemblies which are held in rapid response to an unforeseen development should not be subjected to prior notification procedures. UN Special Rapporteurs,<sup>195</sup> the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*<sup>196</sup> and the AComHPR's *Guidelines on Freedom of Association and Assembly in Africa*<sup>197</sup> all underscore that spontaneous assemblies should be recognized in law, and be exempted from prior notification.

In *Bukta and Others v. Hungary* [[click for full case explanation](#)], the ECtHR held that domestic authorities should not disperse a peaceful assembly held as an immediate response to a political event because of the absence of formal notice:

*In the Court's view, 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 any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.*<sup>198</sup>

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The applicants in *Bukta and Others v. Hungary* were part of a group of about 150 people that had gathered for a demonstration in front of a hotel in Budapest where

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<sup>193</sup> [Vasily Poliakov v. Belarus](#), Human Rights Committee, Views of 17 July 2014, UN Doc. CCPR/C/111/D/2030/2011, para. 8.3.

<sup>194</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 456. Note that request for referral to the Grand Chamber is currently pending (May 2017).

<sup>195</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/20/27, 21 May 2012, para. 91; [UNGA, Report of the Special Representative of the Secretary-General on Human Rights Defenders to the General Assembly, Hina Jilani](#), A/61/312, 5 September 2006, para. 97.

<sup>196</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Guideline 4.2.

<sup>197</sup> AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 75; [AComHPR, Report of the Study Group on Freedom of Association and Assembly in Africa](#), 2014, p. 62, para. 13.

<sup>198</sup> [Bukta and Others v. Hungary](#), ECtHR, Judgment of 17 July 2007, para. 36.

the Romanian Prime Minister was hosting a reception. The day before, the Hungarian Prime Minister had announced he would attend the reception. The applicants were of the opinion that Prime Minister should refrain from joining the reception, as it marked the occasion of Romania's national day, which commemorates a 1918 assembly at which the union of Transylvania with Romania was declared. Transylvania had previously been under Hungarian control.

The police were also present during the demonstration. After a loud noise was heard, the police considered that there was a risk to the security of the reception and forced the demonstrators back to a park next to the hotel where, after a while, they dispersed.

The applicants sought a judicial review of the decision to disperse. The Hungarian courts held that the dispersal had been justified and necessary because the three-day time-limit for informing the police of a planned assembly applicable under Hungarian law had not been observed.

The ECtHR held:

*[T]he legal basis for the dispersal of the applicants' assembly lay exclusively in the lack of prior notice. The courts based their decision to declare the police measures lawful solely on that argument and did not take into account other aspects of the case, in particular, the peaceful nature of the event. ...*

*[I]n the circumstances of the present case, the failure to inform the public sufficiently in advance of the Prime Minister's intention to attend the reception left the applicants with the option of either foregoing their right to peaceful assembly altogether, or of exercising it in defiance of the administrative requirements.*

*In the Court's view, 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 any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.*

*In this connection, the Court notes that there is no evidence to suggest that the applicants represented a danger to public order beyond the level of the minor disturbance which is inevitably caused by an assembly in a public place. ...*

*Having regard to the foregoing considerations, the Court finds that the dispersal of the applicants' peaceful assembly cannot be regarded as having been necessary in a democratic society in order to achieve the aims pursued.*<sup>199</sup>

The ECtHR has however cautioned that the right to hold spontaneous demonstrations “may override the obligation to give prior notification to public assemblies only in special circumstances, namely if an immediate response to a current event is warranted in the form of a demonstration.”<sup>200</sup> The Court has considered the pronouncement of a judgment by a court to be such a “special circumstance.”<sup>201</sup> In *Mehtiyev v. Azerbaijan*, the Court considered that the death of a disabled war veteran who had set himself on fire as a protest against bureaucratic injustices was a “special circumstance”; however, the death of a soldier was not, since by the applicants' admission, deaths in the army had already been a widespread problem for a longer time.<sup>202</sup>

It should be noted that even if an assembly is not exempt from the notice procedure, [failure to give notice will not by itself justify the dispersal or other interferences by the authorities](#).

#### **11.4. The authorities should respond to the notification in a timely way**

Once advance notification of an assembly is received, the authorities should promptly confirm receipt and provide clear reasons if they wish to impose any restrictions. In the words of the ECtHR:

*[T]he authorities have wide discretion to choose the means of communication with the organisers ... However ... the Court considers that whatever the chosen method of communication, it should ensure that the organisers are informed of the authorities' decision reasonably far in advance of the planned event, in such a way as to guarantee the right to freedom of assembly which is practical and effective, not theoretical or illusory. Indeed, if the organisers are not informed in timely fashion of the authorities' approval or the proposal to change the location, time or manner of conduct of the planned event, the organisers may have insufficient time to announce to the participants the approved time and location of the event, and may even have to abandon it.*<sup>203</sup>

The OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* recommend that, in the absence of a prompt reply from the authorities, the organizers should be permitted to proceed with the assembly as announced.<sup>204</sup>

<sup>199</sup> [Bukta and Others v. Hungary](#), ECtHR, Judgment of 17 July 2007, paras. 34-38.

<sup>200</sup> [Éva Molnár v. Hungary](#), ECtHR, Judgment of 7 October 2008, para. 38; see also [Mehtiyev v. Azerbaijan](#), ECtHR, Judgment of 6 April 2017, para. 46.

<sup>201</sup> [Khalilova and Ayyubzade v. Azerbaijan](#), ECtHR, Judgment of 6 April 2017, para. 41.

<sup>202</sup> [Mehtiyev v. Azerbaijan](#), ECtHR, Judgment of 6 April 2017, paras. 46-47.

<sup>203</sup> [Lashmankin and Others v. Russia](#), ECtHR, Judgment of 7 February 2017, para. 457.

<sup>204</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 120.

## 11.5. How may the authorities respond to a failure to follow the prescribed procedure?

If an assembly is peaceful, the fact that it is unlawful under national legislation – for example because a notice or authorization procedure has not been followed – does not in and of itself justify an interference with the right to assemble. The UN Special Rapporteur has stated:

*Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically ... and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment.*<sup>205</sup>

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The ECtHR has held as follows:

*An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person's right to freedom of assembly. While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public demonstrations, since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself ... The absence of prior authorisation and the ensuing "unlawfulness" of the action do not give carte blanche to the authorities; they are still restricted by the proportionality requirement of Article 11.*<sup>206</sup>

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At the same time, the ECtHR has also cautioned that this principle "cannot be extended to the point that the absence of prior notification can never be a legitimate basis for crowd dispersal."<sup>207</sup>

From international case-law, it appears that the following factors determine whether an interference with an assembly that has not been announced in advance violates freedom of assembly or not: (1) whether there is a risk to public order or another legitimate aim that cannot be managed; (2) whether the participants in the assembly are given an effective opportunity to manifest their views; (3) whether the authorities refrain from the use of unnecessary force or the imposition of disproportionate sanctions.

As discussed [here](#), particular tolerance must be shown when an assembly is a spontaneous, immediate reaction to a recent event.

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<sup>205</sup> [UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 29.](#)

<sup>206</sup> [Kudrevičius and Others v. Lithuania, ECtHR, Grand Chamber Judgment of 15 October 2015, paras. 150-151 \(references omitted\).](#)

<sup>207</sup> [Éva Molnár v. Hungary, ECtHR, Judgment of 7 October 2008, para. 37.](#)

## Only a genuine risk to public order or another legitimate aim can justify an interference

An interference with a non-notified assembly will only be justified if there is a genuine risk of harm to a legitimate aim, such as protection of public order.

According to the IACHR, the threat must be serious and imminent, and not future or generic:

*[P]ublic demonstrations in which human rights defenders or other people are participating may only be restricted to prevent a serious and imminent threat from materializing, and a future, generic danger would be insufficient.*<sup>208</sup>

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The Human Rights Committee takes the same approach. In *Praded v. Belarus*, for example, the author of the communication had been arrested and fined for participating in a small and peaceful but unauthorized demonstration for gay rights in front of the Iranian Embassy in Minsk. The Committee failed to see what legitimate aim the measures taking against him pursued:

*[W]hile imposing the restrictions to the right of freedom of peaceful assembly, the State party should be guided by the objective to facilitate the right, rather than seeking unnecessary or disproportionate limitations to it ... [T]he State party has not attempted to explain why such restrictions were necessary and whether they were proportionate for one of the legitimate purposes set out in article 19, paragraph 3, and the second sentence of article 21 of the Covenant. Nor did the State party explain how, in practice, in the present case, the author's participation in a peaceful demonstration in which only a few persons participated could have violated the rights and freedoms of others or posed a threat to the protection of public safety or public order, or of public health or morals.*<sup>209</sup>

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The ECtHR has stated, with regard to the response to a non-notified assembly, that, “what, if any, measures it calls for on the part of the police should primarily depend on the seriousness of the nuisance it [is] causing.”<sup>210</sup> Public order should not be invoked as a reason to disperse an assembly unless the authorities are acting on a genuine concern:

*[I]n order to rely on the aim of “prevention of disorder”, it was incumbent on the respondent Government to demonstrate that either the applicants’ omission to notify the public event or their participation in such a non-notified event was, per se, capable of leading or actually led to disorder – for instance, in the form of public disturbance ...*<sup>211</sup>

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<sup>208</sup> [IACHR, Annual Report 2015, March 17, 2016, Chapter IV.A, para. 130.](#)

<sup>209</sup> [Praded v. Belarus, Human Rights Committee, Views of 29 November 2014, UN Doc. CCPR/C/112/D/2029/2011, paras. 7.8 – 7.9.](#)

<sup>210</sup> [Navalnyy v. Russia, ECtHR, Judgment of 2 February 2017, para. 49.](#)

<sup>211</sup> [Novikova and Others v. Russia, ECtHR, Judgment of 26 April 2016, para. 136.](#)

Where possible, police should allow the assembly to proceed and take less intrusive measures, such as managing traffic or redirecting protestors. In *Gafqaz Mammadov v. Azerbaijan*, where a peaceful demonstration had been dispersed on the grounds that it was not authorized, the ECtHR held that there had been a violation of the right:

*It has not been argued or demonstrated that it would have been difficult for the police to contain or redirect protestors, or control the situation otherwise, protect public safety and prevent any possible disorder or crime. Nor has it been shown ... that the demonstration posed a high level of disruption of public order. It follows that the authorities have not adduced relevant and sufficient reasons justifying the dispersal of the demonstration.*<sup>212</sup>

A clear position in the jurisprudence of the ECtHR is that domestic authorities should not take an overly formalistic approach to breaches of the procedure for holding assemblies. The Court has criticized the rapid dispersal of an assembly which, while not formally notified to the authorities, was anticipated by the police as a result of intelligence reports, and could have been facilitated to minimize disruption to public order.<sup>213</sup> In another case, an inconsequential breach of the notification time-limit (eight days' notice when 10 were required by law) did not justify imposing a fine.<sup>214</sup> In *Tahirova v. Azerbaijan*, the Court considered disproportionate the forceful dispersal of a peaceful demonstration merely because it had continued somewhat beyond the time at which it was scheduled to end.<sup>215</sup>

### Demonstrators should have a chance to convey their views before dispersal

The ECtHR has emphasized in a number of cases that, even where grounds for the dispersal of an assembly are present, the authorities should display an appropriate degree of patience and, as far as possible, allow the demonstrators an effective opportunity to convey their views before interfering.<sup>216</sup>

In *Oya Ataman v. Turkey* [[click for full case explanation](#)], for example, the assembly had lasted only about 30 minutes before the authorities interfered, on the grounds that the demonstration was unlawful and would disrupt traffic at a busy time of day. The ECtHR stated it was “particularly struck by the authorities’ impatience in seeking to end the demonstration”, taking into account that the demonstration didn’t pose “a danger to public order, apart from possibly disrupting traffic.”<sup>217</sup>

In *Oya Ataman v. Turkey*, the applicant had organized a demonstration of 40-50 persons in a central square in Istanbul, in the form of a march followed by a

<sup>212</sup> [Gafqaz Mammadov v. Azerbaijan](#), ECtHR, Judgment of 15 October 2015, para. 61.

<sup>213</sup> [Balçık and Others v. Turkey](#), ECtHR, Judgment of 29 November 2007, paras. 51-53.

<sup>214</sup> [Sergey Kuznetsov v. Russia](#), ECtHR, Judgment of 23 October 2008, para. 43.

<sup>215</sup> [Tahirova v. Azerbaijan](#), ECtHR, Judgment of 3 October 2013, paras. 71-75.

<sup>216</sup> [Oya Ataman v. Turkey](#), ECtHR, Judgment of 5 December 2006, para. 41; [Balçık and Others v. Turkey](#), ECtHR, Judgment of 29 November 2007, para. 51; [Aytaş and Others v. Turkey](#), ECHR, Judgment of 8 December 2009, para. 31; [Tahirova v. Azerbaijan](#), ECtHR, Judgment of 3 October 2013, para. 73.

<sup>217</sup> [Oya Ataman v. Turkey](#), ECtHR, Judgment of 5 December 2006, para. 41. See also [Balçık and Others v. Turkey](#), ECtHR, Judgment of 29 November 2007, para. 51.

statement to the press, to protest against plans for “F-type” high-security prisons. The police promptly asked the group to disperse, as their failure to provide advance notice meant the gathering was unlawful and was likely to cause public-order problems at a busy time of day. After the demonstrators refused, the police used pepper spray and arrested 39 demonstrators, including the applicant. The ECtHR considered these actions disproportionate:

*In the instant case ... notification would have enabled the authorities to take the necessary measures in order to minimise the disruption to traffic that the demonstration could have caused during rush hour ...*

*However, there is no evidence to suggest that the group in question represented a danger to public order, apart from possibly disrupting traffic. There were at most fifty people, who wished to draw attention to a topical issue. The Court observes that the rally began at about 12 noon and ended with the group’s arrest within half an hour. It is particularly struck by the authorities’ impatience in seeking to end the demonstration ... In the Court’s view, where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.*

*Accordingly, the Court considers that in the instant case the police’s forceful intervention was disproportionate.<sup>218</sup>*

By contrast, in *Éva Molnár v. Hungary* [[click for full case explanation](#)], the assembly had lasted for several hours before the authorities dispersed it, despite serious traffic disruption. The authorities had not been notified beforehand of the assembly, and tried unsuccessfully to manage the flow of traffic. In this case the ECtHR found that the domestic authorities had given a “sufficiently long time” to the demonstrators to make themselves heard.<sup>219</sup>

The demonstration at issue in *Éva Molnár v. Hungary* arose from elections that were held in Hungary in April 2002. International observers considered the elections to have been fair, but some in the country believed them to have been rigged. In July, a few weeks before the statutorily scheduled destruction of the ballots, several hundred demonstrators blocked a central bridge in Budapest with their cars to demand a recount. After the police dispersed this gathering, another demonstration broke out at Kossuth Square, which the applicant joined. Traffic and public transport, including the circulation of trams and trolleybuses, were seriously disrupted. The police initially attempted to allow the circulation of traffic to continue but eventually had to close some streets nearby. After a few hours, they broke up the demonstration without using any force. The applicant was not prosecuted, but

<sup>218</sup> [Oya Ataman v. Turkey, ECtHR, Judgment of 5 December 2006, paras. 39-42.](#)

<sup>219</sup> [Éva Molnár v. Hungary, ECtHR, Judgment of 7 October 2008, para. 43.](#)

considered that the termination of the protest had violated her right to assemble. The ECtHR disagreed:

*[T]he applicant had a sufficiently long time to show solidarity with her co-demonstrators ... the ultimate interference with the applicant's freedom of assembly does not appear to have been unreasonable. [The Court] is satisfied that the police showed the necessary tolerance towards the demonstration, although they had had no prior knowledge of the event, which, in the Court's view, inevitably disrupted the circulation of the traffic and caused a certain disturbance to public order. In this respect, the instant case is different from others where the dispersal was quite prompt.*<sup>220</sup>

### The authorities should refrain from unnecessary force or sanctions

Interferences with non-notified assemblies should always respect the three-pronged test, including the principles of [necessity and proportionality](#). The ECtHR has stated:

*The method used by the police for discouraging the protesters, containing them in a particular place or dispersing the demonstration is also an important factor in assessing the proportionality of the interference.*<sup>221</sup>

The Court has repeatedly condemned the deployment of forceful means (including the use of pepper spray, tear gas or truncheons) to [disperse](#) “unlawful” but peaceful assemblies that pose no threat other than possibly disrupting traffic.<sup>222</sup>

Separate from the question of dispersal is the question whether the authorities may impose a sanction on organizers or participants after the fact. The UN Special Rapporteur has stated:

*Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically ... and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment.*<sup>223</sup>

In an *amicus curiae* brief regarding criminal sanctions imposed on the organizers of a non-notified gathering, the Special Rapporteur underlined that the exercise of the right to freedom of peaceful assembly [should not be criminalized](#):

<sup>220</sup> [Éva Molnár v. Hungary](#), ECtHR, Judgment of 7 October 2008, para. 43 (references omitted).

<sup>221</sup> [Kudrevičius and Others v. Lithuania](#), ECtHR, Grand Chamber Judgment of 15 October 2015, para. 151.

<sup>222</sup> [Oya Ataman v. Turkey](#), ECtHR, Judgment of 5 December 2006, paras. 41-43; [Balçık and Others v. Turkey](#), ECtHR, Judgment of 29 November 2007, paras. 51-53; [Aytaş and Others v. Turkey](#), ECHR, Judgment of 8 December 2009, paras. 31-33.

<sup>223</sup> [UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/23/39, 24 April 2013, para. 29.

*When no other punishable behaviour is involved, sanctioning the mere non-notification of a peaceful assembly means de facto that the exercise of the right to freedom of peaceful assembly is penalized ... The use of definitions of crimes or penalties, including administrative fines, that essentially criminalise the exercise of the right to freedom of peaceful assembly or other activities otherwise protected under international human rights law, have no place in the State law of a democratic society.*<sup>224</sup>

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The AComHPR's Study Group on Freedom of Association and Assembly in Africa has also stated that "[i]n no case should assembly organizers be penalized or an assembly dispersed merely for failure to notify."<sup>225</sup>

The ECtHR has taken apparently contradictory positions on the issue. It has on a number of occasions held that "[s]ince States have the right to require authorisation, they must be able to impose sanctions on those who participate in demonstrations that do not comply with such requirement."<sup>226</sup> This appears at odds with its well-established and core principle that a participant in a peaceful assembly that has not been prohibited "cannot be subject to a sanction ... so long as that person does not himself commit any reprehensible act on such an occasion."<sup>227</sup>

The 2016 ruling in *Novikova and Others v. Russia* goes some way towards resolving the contradiction, at least for smaller assemblies. A number of the applicants in the case had been given administrative fines for holding demonstrations without prior notice to the public authorities. They claimed to have been conducting solo protests, which are exempt from the notice procedure under Russian law; the Government disputed this, but conceded that no more than six persons had participated in any of the demonstrations. In its ruling, the ECtHR held that "aggravating elements" must be present before a penalty can be imposed for failure to give notice. The Court observed that under Russian law, "a conviction for lack of prior notification did not require proof of potential or actual damage."<sup>228</sup> It considered that convicting the applicants merely for breaking the law – when their protests posed no credible risk – was not necessary for any legitimate aim:

*[T]he Court cannot see what legitimate aim, in terms of Article 10 of the Convention, the authorities genuinely sought to achieve. It fails to discern sufficient reasons constituting a "pressing social need" for convicting for non-observance of*

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<sup>224</sup> [UN Special Rapporteur, amicus curiae brief before the High Court of South Africa, Western Cape Division, in Case No. A431/15, 31 March 2017, paras. 62-63.](#)

<sup>225</sup> [AComHPR, Report of the Study Group on Freedom of Association and Assembly in Africa, 2014, p. 75, para. 53.](#) AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para 71 and 99.

<sup>226</sup> [Ziliberberg v. Moldova, ECtHR, Decision of 4 May 2004, para. 2.](#) See also [Skiba v. Poland, ECtHR, Decision of 7 July 2009](#); [Rai and Evans v. the United Kingdom, ECtHR, Decision of 17 November 2009](#); [Kudrevičius and Others v. Lithuania, ECtHR, Grand Chamber Judgment of 15 October 2015, para. 149.](#)

<sup>227</sup> [Kudrevičius and Others v. Lithuania, ECtHR, Grand Chamber Judgment of 15 October 2015, para. 149](#); see also [Ezelin v. France, ECtHR, Judgment of 26 April 1991, para. 53](#); [Galstyan v. Armenia, ECtHR, Judgment of 15 November 2007, para. 115.](#)

<sup>228</sup> [Novikova and Others v. Russia, ECtHR, Judgment of 26 April 2016, para. 195.](#)

*the notification requirement ... Indeed, no compelling consideration relating to public safety, prevention of disorder or protection of the rights of others was at stake. The only relevant consideration was the need to punish unlawful conduct. This is not a sufficient consideration in this context ... in the absence of any aggravating elements.*<sup>229</sup>

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The Court also warned that the high maximum fines applicable under Russian law are “conducive to creating a “chilling effect” on legitimate recourse to protests.”<sup>230</sup> Previously, the Court had already insisted that any sanctions actually imposed must be proportionate.<sup>231</sup> In *Hyde Park and Others v. Moldova (Nos. 5 and 6)*, for example, it considered that fines of 800 Moldovan lei (about US \$63 at the time) for organizing an unauthorized demonstration were “disproportionate and thus were not necessary in a democratic society.”<sup>232</sup>

The Human Rights Committee also emphasizes the need for any sanctions to be necessary and proportionate. In *Praded v. Belarus*, where the author of the communication had been fined for participating in a peaceful but unauthorized demonstration for gay rights in front of the Iranian Embassy in Minsk, the Committee stated:

*The Committee observes that, while ensuring the security and safety of the embassy of the foreign State may be regarded as a legitimate purpose for restricting the right to peaceful assembly, the State party must justify why the apprehension of the author and imposition on him of an administrative fine were necessary and proportionate to that purpose.*<sup>233</sup>

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#### **11.6. Any restrictions placed on an assembly must be announced promptly, state reasons, and be appealable**

If the authorities decide to place any restrictions on an assembly, they should inform the organizers promptly, and an expedited appeals procedure should be available before an independent and impartial body. The UN Special Rapporteur,<sup>234</sup> the IACHR,<sup>235</sup> the OSCE-ODIHR *Guidelines on Freedom of Peaceful*

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<sup>229</sup> [Novikova and Others v. Russia](#), ECtHR, Judgment of 26 April 2016, para. 199.

<sup>230</sup> [Novikova and Others v. Russia](#), ECtHR, Judgment of 26 April 2016, para. 211.

<sup>231</sup> See, for example, [Ziliberberg v. Moldova](#), ECtHR, Decision of 4 May 2004, para. 2; [Hyde Park and Others v. Moldova \(Nos. 5 and 6\)](#), ECtHR, Judgment of 14 September 2010, para. 47.

<sup>232</sup> [Hyde Park and Others v. Moldova \(Nos. 5 and 6\)](#), ECtHR, Judgment of 14 September 2010, para. 47.

<sup>233</sup> [Praded v. Belarus](#), Human Rights Committee, Views of 29 November 2014, UN Doc. CCPR/C/112/D/2029/2011, para. 7.9; see also [Androsenko v. Belarus](#), Human Rights Committee, Views of 30 March 2016, UN Doc. CCPR/C/116/D/2092/2011, para. 7.6.

<sup>234</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/20/27, 21 May 2012, para. 42; [UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/23/39, 24 April 2013, para. 64.

<sup>235</sup> [IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 139; IACHR, Annual Report 2015, March 17, 2016, Chapter IV.A, para. 130.](#)

Assembly<sup>236</sup> and the AComHPR's Guidelines on Freedom of Association and Assembly in Africa<sup>237</sup> all make recommendations in this regard.

The *Guidelines on Freedom of Association and Assembly in Africa* as adopted by the AComHPR in May 2017 state, for example:

*89. Any conditions imposed shall be communicated promptly in writing to the organizers of the event, along with an explanation of the rationale for the condition.*

*89.1. The law shall set out a clear procedure through which, prior to the imposition of such conditions, the authorities shall reach out to assembly organizers with their concerns in such a manner as to facilitate the sharing of information and the production of a mutually positive and agreed approach. Organizers shall not be compelled or coerced during this process.*

*89.2. Where time allows, a procedure of administrative review shall be available in cases of conflict.*

*89.3. Prompt recourse to an independent court shall be available to assembly organizers to challenge the decision of the authorities should they wish to do so.*<sup>238</sup>

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The UN Special Rapporteur underscores the importance that the authorities give clear and adequate reasons in writing for any restriction they impose, in order to enable the organizers of the assembly to appeal:

*[W]henver authorities decide to restrict an assembly, they should provide assembly organizers, in writing, with “timely and fulsome reasons” which should satisfy the strict test of necessity and proportionality of the restrictions(s) imposed on the assembly pursuant to legitimate aims.*<sup>239</sup>

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The ECtHR has held that organizers of assemblies must have access to an appeals procedure that is capable of reaching a decision prior to the date of the planned assembly. This also implies that the **law should impose time-limits** within which the administrative authorities must act. In *Bączkowski and Others v. Poland* [[click for full case explanation](#)], the applicants had been denied permission to stage a number of anti-discrimination assemblies in Warsaw, and had lodged appeals against these refusals. The

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<sup>236</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Recommendation 4.6 and Explanatory Notes, paras. 66 and 132-140.](#)

<sup>237</sup> [AComHPR, Report of the Study Group on Freedom of Association and Assembly in Africa, 2014, p. 25, para. 21.](#)

<sup>238</sup> [AComHPR, Guidelines on Freedom of Association and Assembly in Africa, para. 89.](#) Earlier referred to as [AComHPR, Draft Guidelines on Freedom of Association and Assembly in Africa, 2017, Guideline 31.](#)

<sup>239</sup> [UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/23/39, 24 April 2013, para. 48.](#)

appeals were eventually upheld, but only after the date of the assemblies had passed. The Court found that Poland had violated the right to an effective remedy under Article 13 ECHR:

*[B]earing in mind that the timing of the rallies was crucial for their organisers and participants and that the organisers had given timely notice to the competent authorities, the Court considers that, in the circumstances, the notion of an effective remedy implied the possibility to obtain a ruling before the time of the planned events. ...*

*Freedom of assembly – if prevented from being exercised at a propitious time – can well be rendered meaningless.*

*The Court is therefore of the view that it is important for the effective enjoyment of freedom of assembly that the applicable laws provide for reasonable time-limits within which the State authorities, when giving relevant decisions, should act.*<sup>240</sup>

The applicants in *Bączkowski and Others v. Poland* had sought permission from the Warsaw municipal authorities to organize a march and a series of meetings to alert public opinion to the issue of discrimination against minorities (sexual, national, ethnic and religious) and against women and disabled persons. The authorities refused permission for the march and some of the meetings, citing traffic issues and the risk of clashes with participants in other demonstrations planned at the same time.

Shortly before the planned date of the assemblies, the Mayor of Warsaw said in a newspaper interview that he would ban any demonstration by the applicants as he was opposed to “public propaganda about homosexuality”, which, according to the applicants, revealed the real reasons for the refusal.

The applicants went ahead with their planned march despite the refusal. The municipal authorities' decisions were subsequently quashed on appeal, but the applicants argued before the ECtHR that they had still suffered a disadvantage as this decision had come only after the event.

The ECtHR found that there had been a violation of the right to freedom of peaceful assembly, and in coming to this conclusion it stated:

*The Court acknowledges that the assemblies were eventually held on the planned dates. However, the applicants took a risk in holding them given the official ban in force at that time. The assemblies were held without a presumption of legality, such a*

<sup>240</sup> [Bączkowski and Others v. Poland](#), ECtHR, Judgment of 3 May 2007, paras. 81-83. See also [Alekseyev v. Russia](#), ECtHR, Judgment of 21 October 2010, para. 98; [Genderdoc-M v. Moldova](#), ECtHR, Judgment of 12 June 2012, paras. 35-38.

*presumption constituting a vital aspect of effective and unhindered exercise of freedom of assembly and freedom of expression. The Court observes that the refusals to give authorisation could have had a chilling effect on the applicants and other participants in the assemblies. It could also have discouraged other persons from participating in the assemblies on the grounds that they did not have official authorisation and that, therefore, no official protection against possible hostile counter-demonstrators would be ensured by the authorities.*<sup>241</sup>

Moreover, there had been a violation of the right to an effective remedy:

*Further, the Court accepts that the administrative authorities ultimately acknowledged that the first-instance decisions given in the applicants' case had been given in breach of the applicable laws. However, the Court emphasises that they did so after the dates on which the applicants planned to hold the demonstrations. ... [B]earing in mind that the timing of the rallies was crucial for their organisers and participants and that the organisers had given timely notice to the competent authorities, the Court considers that, in the circumstances, the notion of an effective remedy implied the possibility to obtain a ruling before the time of the planned events ....*

*If a public assembly is organised after a given social issue loses its relevance or importance in a current social or political debate, the impact of the meeting may be seriously diminished. Freedom of assembly – if prevented from being exercised at a propitious time – can well be rendered meaningless.*

*The Court is therefore of the view that it is important for the effective enjoyment of freedom of assembly that the applicable laws provide for reasonable time-limits within which the State authorities, when giving relevant decisions, should act.*<sup>242</sup>

In *Lashmankin and Others v. Russia*, the ECtHR added two important conditions which an appeals process against a restriction placed on an assembly must meet. Firstly, the body hearing the appeal must examine not only whether the restriction imposed is [prescribed by law](#), but also whether it meets requirements of [necessity and proportionality](#). Secondly, the decision should not just be issued, but actually be enforceable before the date of the planned assembly:

*[T]he Court considers that the applicants did not have at their disposal an effective remedy which would allow an enforceable judicial decision to be obtained on the authorities' refusal to approve the location, time or manner of conduct of a public event before its planned date. Moreover, the scope of judicial review was limited to*

<sup>241</sup> [Bączkowski and Others v. Poland](#), ECtHR, Judgment of 3 May 2007, para. 67.

<sup>242</sup> [Bączkowski and Others v. Poland](#), ECtHR, Judgment of 3 May 2007, paras. 81-83. See also [Alekseyev v. Russia](#), ECtHR, Judgment of 21 October 2010, para. 98; [Genderdoc-M v. Moldova](#), ECtHR, Judgment of 12 June 2012, paras. 35-38.

*examining the lawfulness of the proposal to change the location, time or manner of conduct of a public event, and did not include any assessment of its “necessity” and “proportionality” ...*

*There has therefore been a violation of Article 13 of the Convention in conjunction with Article 11 of the Convention.*<sup>243</sup>

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<sup>243</sup> [Lashmankin and Others v. Russia, ECtHR, Judgment of 7 February 2017, paras. 360-61.](#)

## 12. Simultaneous assemblies and counter-demonstrations

### 12.1. Are the authorities required to allow multiple demonstrations at the same place and time?

If multiple groups wish to assemble in the same place at the same time for separate demonstrations, the authorities should as far as possible take steps to facilitate this. The UN Special Rapporteur has stated:

*In the case of simultaneous assemblies at the same place and time, the Special Rapporteur considers it good practice to allow, protect and facilitate all events, whenever possible.*<sup>244</sup>

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This view is echoed in the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*<sup>245</sup> and the AComHPR's *Guidelines on Freedom of Association and Assembly in Africa*.<sup>246</sup>

In *Lashmankin and Others v. Russia*, the ECtHR held that the Russian authorities' practice of automatically proposing to change the location of a planned assembly if it coincided with another gathering was impermissible. A change of venue may only be proposed if there are genuine reasons that both events cannot be accommodated simultaneously:

*The Court considers that the refusal to approve the venue of a public assembly solely on the basis that it is due to take place at the same time and at the same location as another public event and in the absence of a clear and objective indication that both events cannot be managed in an appropriate manner through the exercise of policing powers, is a disproportionate interference with the freedom of assembly.*<sup>247</sup>

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The OSCE-ODIHR *Guidelines* suggest that, if it is genuinely impossible to hold both events at the same time, the parties should be encouraged to find a mutually satisfactory resolution. If that fails, a non-discriminatory method should be found to allocate the events to different locations, such as drawing

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<sup>244</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 30](#); see also [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 24.](#)

<sup>245</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Guideline 4.3 and Explanatory Notes, para. 122.](#)

<sup>246</sup> AComHPR, [Guidelines on Freedom of Assembly and Association in Africa](#), para. 97. See also [AComHPR, Report of the Study Group on Freedom of Association and Assembly in Africa, 2014, p. 65, para. 36.](#)

<sup>247</sup> [Lashmankin and Others v. Russia, ECtHR, Judgment of 7 February 2017, para. 42.](#)

See also [Sáska v. Hungary, ECtHR, Judgment of 27 November 2012, para. 21.](#)

lots. The *Guidelines* caution that while a “first come, first served” rule may be legitimate, it can be abused by submitting early notice of an assembly to thwart another planned event.<sup>248</sup>

## 12.2. How should counter-demonstrations be managed?

The duty of the authorities to enable simultaneous assemblies takes on particular importance where participants in one assembly are protesting against the other one. This follows from the principle that demonstrators have a [right to assemble within sight and sound of their target audience](#).

At the same time, the authorities are also under an obligation to ensure that the counter-demonstration does not have the effect of inhibiting the right to demonstrate. The UN Special Rapporteur emphasizes the important role of law enforcement in this regard:

*In the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial.*<sup>249</sup>

Similar language can be found in the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*<sup>250</sup> and the report of the AComHPR’s *Guidelines on Freedom of Association and Assembly in Africa*.<sup>251</sup>

In the case of *Plattform "Ärzte für das Leben" v. Austria* [[click for full case explanation](#)], the ECtHR stressed that [freedom of peaceful assembly includes the right to voice an opinion that others find annoying or offensive](#). The authorities are under a positive obligation protect participants in an assembly against physical violence by opponents:

*A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the*

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<sup>248</sup> OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 122.

<sup>249</sup> UN Human Rights Council, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para.30; see also UN Human Rights Council, *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*, UN Doc. A/HRC/31/66, 4 February 2016, paras. 24-25.

<sup>250</sup> OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> edn, 2010, Guideline 4.4 and Explanatory Notes, paras. 123-124.

<sup>251</sup> AComHPR, *Guidelines on Freedom of Assembly and Association in Africa*, para. 97. See also AComHPR, *Report of the Study Group on Freedom of Association and Assembly in Africa*, 2014, p. 65, para. 36.

*right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art. 11) ... Article 11 (art. 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.*<sup>252</sup>

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The applicant in the case *Plattform "Ärzte für das Leben" v. Austria* was an association of doctors opposed to abortion. In 1980 and 1982 it held two demonstrations in Austria which were disrupted by counter-demonstrators, despite the presence of a large contingent of police. The first demonstration consisted of a religious service in a church followed by a further ceremony at an altar on a hillside. Counter-demonstrators disrupted the march to the hillside by mingling with the marchers and shouting down their prayers; subsequently they interrupted the service at the altar by using loudspeakers and throwing eggs and clumps of grass. Special riot-control units placed themselves between the opposing groups when tempers had risen to the point where violence threatened to break out. The second demonstration took place in the cathedral square in Salzburg. One hundred policemen were sent to the scene to separate the participants from their opponents and avert the danger of direct attacks; they eventually cleared the square so as to prevent any disturbance of the doctors' religious service.

The ECtHR held that freedom of peaceful assembly imposes a duty on the State to take positive measures to ensure that participants are able to hold a demonstration without having to fear that they will be subjected to physical violence by their opponents. However, the Court also added that the authorities have a wide discretion to choose the appropriate measures and that their obligation is one of effort, not of result:

*While it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used. In this area the obligation they enter into under Article 11 (art. 11) of the Convention is an obligation as to measures to be taken and not as to results to be achieved.*<sup>253</sup>

In the instant case, the Court found that although there had been some incidents, the Austrian police had overall taken reasonable and appropriate measures and managed to ensure that the applicants' assemblies were able to proceed to their

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<sup>252</sup> [Plattform "Ärzte für das Leben" v. Austria, ECtHR, Judgment of 21 June 1988, para. 32.](#)

<sup>253</sup> [Plattform "Ärzte für das Leben" v. Austria, ECtHR, Judgment of 21 June 1988, para. 34](#) (references omitted).

conclusion. There was accordingly no violation of the right to freedom of peaceful assembly.<sup>254</sup>

The fact that a demonstration may attract a violent counter-demonstration [is no ground to ban or move it](#). Nor may the counter-demonstration be banned merely because of a fear – even a justified one – of a violent confrontation. Wherever possible, the authorities must take adequate preventive measures. In *Fáber v. Hungary*, the ECtHR stated:

*In the exercise of the State’s margin of appreciation, past violence at similar events and the impact of a counter-demonstration on the targeted demonstration are relevant considerations for the authorities, in so far as the danger of violent confrontation between the two groups – a general problem of public order – is concerned. Experience with past disorders is less relevant where the situation, as in the present case, allows the authorities to take preventive measures, such as police presence keeping the two assemblies apart and offering a sufficient degree of protection, even if there was a history of violence at similar events necessitating police intervention.*<sup>255</sup>

Where there is a known history of public hostility towards a minority group that has announced an intention to stage an assembly, the duty of the authorities goes beyond deploying sufficient police resources; they should use all available means to advocate tolerance, such as through public statements and warnings to potential law-breakers. In *Identoba and Others v. Georgia*, for example, the applicants, members of the lesbian, gay, bisexual and transgender (LGBT) community in Georgia, had been insulted, threatened and assaulted by a larger group of counter-demonstrators during a peaceful demonstration to mark the International Day against Homophobia. Rather than restraining the most aggressive counter-demonstrators, the police had briefly detained some of the applicants, allegedly for their own protection. The ECtHR found a violation of the rights to freedom of assembly and to freedom from discrimination. It stated:

*[G]iven the attitudes in parts of Georgian society towards the sexual minorities, the authorities knew or should have known of the risk of tensions associated with the applicant organisation’s street march ... They were thus under an obligation to use any means possible, for instance by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance as well as to warn potential law-breakers of the nature of possible sanctions. Furthermore, it was apparent from the outcome of the LGBT procession, that the number of police patrol officers dispatched to the scene of the demonstration was not sufficient, and it would have been only prudent if the domestic authorities,*

<sup>254</sup> [Plattform “Ärzte für das Leben” v. Austria, ECtHR, Judgment of 21 June 1988, paras. 35-39.](#)

<sup>255</sup> [Fáber v. Hungary, ECtHR, Judgment of 24 July 2012, para. 44](#) (references omitted).

*given the likelihood of street clashes, had ensured more police manpower by mobilising, for instance, a squad of anti-riot police.*<sup>256</sup>

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<sup>256</sup> [Idetoba and Others v. Georgia](#), ECtHR, Judgment of 12 May 2015, para. 99; see also [Ouranio Toxo and Others v. Greece](#), ECtHR, Judgment of 20 October 2005, paras. 42-43 and [Alekseyev v. Russia](#), ECtHR, Judgment of 21 October 2010, para. 75.

## 13. The handling of assemblies by law-enforcement agents

### 13.1. The authorities have a duty to facilitate assemblies

States have an obligation to facilitate peaceful assemblies.<sup>257</sup> This means, at a basic level, that those exercising the right must have access to public space and must be protected, for example when they are confronted with a violent [counter-demonstration](#) or if [persons with violent intentions or agents provocateurs join the assembly](#). The UN Human Rights Council urges States to:

*facilitate peaceful protests by providing protestors with access to public space and protecting them, without discrimination, where necessary, against any form of threat and harassment, and underlines the role of local authorities in this regard.*<sup>258</sup>

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Furthermore, the State must provide a number of basic and free services, as identified in the *Joint report on the proper management of assemblies*:

*The State's obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance and clean-up services. 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.*<sup>259</sup>

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The IACHR has emphasized the importance of operating plans, including traffic management measures:

*the competent institutions of the state have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly ... [including] rerouting pedestrian and vehicular traffic in a certain area.*<sup>260</sup>

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The ECtHR has similarly recognized an obligation for the authorities to take

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<sup>257</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, paras. 37-49; [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/20/27, 21 May 2012, paras. 26-28; [Praded v. Belarus](#), Human Rights Committee, Views of 29 November 2014, UN Doc. CCPR/C/112/D/2029/2011, para. 7.8.

<sup>258</sup> [UN Human Rights Council, Resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests](#), UN Doc. A/HRC/RES/25/38, 11 April 2014, para. 4.

<sup>259</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 40.

<sup>260</sup> [IACHR, Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II, Doc 57, 31 December 2009, para. 193.

*necessary measures in order to minimise any disruption to traffic or other security measures such as providing first-aid services at the site of the demonstrations, in order to guarantee the smooth conduct of the events.*<sup>261</sup>

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More generally, the duty to facilitate implies a wide range of actions on the part of the authorities to ensure they are able to ensure the safe and effective conduct of the right to assemble. This includes the [training of law enforcement personnel](#), effective [communication with organizers and participants](#), and proper [preparedness](#) for assemblies.

The duty to facilitate assemblies applies also to [assemblies that have not been formally notified to the authorities](#), including [spontaneous assemblies](#). The IACHR has stated, for example:

*In those states in which notification or prior notice is called for one must recall that this does not mean that the states only have the positive obligation to facilitate and protect those assemblies notice of which is given.*<sup>262</sup>

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The OSCE-ODIHR has published a detailed [Human Rights Handbook on Policing Assemblies](#) that aims to provide guidance to the police on how to facilitate the right to assemble peacefully. Another in-depth resource in this area is the AComHPR's [Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#).

### **13.2. May the authorities use stop-and-search and arrest powers before an assembly?**

The *Joint report on the proper management of assemblies* urges States to refrain from undue stop-and-search operations or arrests of persons on their way to an assembly:

*Intrusive anticipatory measures should not be used in an assembly. Participants on their way to an assembly should not be stopped, searched or arrested unless there is a clear and present danger of imminent violence.*<sup>263</sup>

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This view finds support in the case-law of the ECtHR.

In *Gillan and Quinton v. the United Kingdom*, the Court emphasized that the law should limit the discretion of individual police officers to conduct searches, including of prospective participants in demonstrations. The applicants – one of them a journalist, the other a protestor – had been on their way to a demonstration against an arms fair in London when they were stopped and searched. The

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<sup>261</sup> [Novikova and Others v. Russia](#), ECtHR, Judgment of 26 April 2016, para 171; see also [Oya Ataman v. Turkey](#), ECtHR, Judgment of 5 December 2006, para. 39.

<sup>262</sup> [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 66.

<sup>263</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 49.

ECtHR criticized the fact that the applicable legislation did not require “any assessment of the proportionality of the measure” and that the police could conduct searches “based exclusively on the “hunch” or “professional intuition” of the officer concerned.”<sup>264</sup> Accordingly, there had been a violation of the right to respect for private life. The Court warned that the legislation could also enable violations of the right to freedom of assembly:

*[T]here is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer ... There is, furthermore, a risk that such a widely framed power could be misused against demonstrators and protestors in breach of Article 10 and/or 11 of the Convention.*<sup>265</sup>

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The ECtHR has also frequently condemned arrests or other hindrances caused by the authorities that prevented participants from reaching an assembly and lacked a clear justification.<sup>266</sup> A “refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference with individual’s freedom of assembly,”<sup>267</sup> which must be justified under the [three-prong test](#). The Court has held that the authorities may not prevent participants from reaching an assembly merely because the assembly is considered unlawful due to the [absence of prior notice or authorization](#).<sup>268</sup>

### 13.3. How should violent participants and *agents provocateurs* be dealt with?

An individual whose intentions and actions are peaceful [does not lose the right to assemble when others turn violent](#). The ECtHR has held:

*[A]n individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the*

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<sup>264</sup> [Gillan and Quinton v. the United Kingdom](#), ECtHR, Judgment of 12 January 2010, paras. 80-83.

<sup>265</sup> [Gillan and Quinton v. the United Kingdom](#), ECtHR, Judgment of 12 January 2010, para. 85.

<sup>266</sup> See, for example, [Djavit An v. Turkey](#), ECtHR, Judgment of 20 February 2003 (the applicant was prevented by Turkish and Turkish-Cypriot authorities from visiting the “buffer-zone” or the southern part of the island in order to participate in bi-communal meetings with Greek Cypriots); [Schwabe and M.G. v. Germany](#), ECtHR, Judgment of 1 December 2011 (the applicants were detained on their way to a demonstration where the police feared terrorism or rioting, because they were carrying banners bearing the inscriptions “Freedom for all prisoners” and “Free all now” and held for almost six days in order to prevent them from inciting others to liberate prisoners); [Huseynli and Others v. Azerbaijan](#), ECtHR, Judgment of 11 February 2016 (the applicants were arrested two days prior to a demonstration and rapidly sentenced to seven days’ administrative detention on arbitrary grounds, in order to prevent their participation in the demonstration and to punish them for having participated in opposition protests); [Eğitim ve Bilim Emekçileri Sendikası v. Turkey](#), ECtHR, Judgment of 5 July 2016 (the applicants were stopped on a highway on their way to a demonstration for free and quality education and held there for several hours); [Kasparov v. Russia](#), ECtHR, Judgment of 11 October 2016 (the applicant’s flight ticket was seized for “forensic examination”, preventing him from reaching an opposition rally).

<sup>267</sup> [Kasparov v. Russia](#), ECtHR, Judgment of 11 October 2016, para. 66.

<sup>268</sup> [Eğitim ve Bilim Emekçileri Sendikası v. Turkey](#), ECtHR, Judgment of 5 July 2016, paras. 106-109.

*demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.*<sup>269</sup>

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It follows that the law-enforcement officials facilitating an assembly must, as far as possible, enable the peaceful participants in an assembly to continue to exercise their rights. They must be prepared and trained to remove individual participants or infiltrators (sometimes referred to as ‘agents provocateurs’) with violent intentions, rather than prohibiting or dispersing the assembly.<sup>270</sup> The *joint report on the proper management of assemblies* states:

*Before countenancing dispersal, law enforcement agencies should seek to identify and isolate any violent individuals separately from the main assembly and differentiate between violent individuals in an assembly and others. This may allow the assembly to continue.*<sup>271</sup>

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OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* express the same view:

*Dispersal should not ... result where a small number of participants in an assembly act in a violent manner. In such instances, action should be taken against those particular individuals. Similarly, if agents provocateurs infiltrate an otherwise peaceful assembly, the authorities should take appropriate action to remove the agents provocateurs rather than terminating or dispersing the assembly or declaring it to be unlawful.*<sup>272</sup>

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The AComHPR has also taken a similar line.<sup>273</sup>

In [Frumkin v. Russia](#), the ECtHR criticized Russian authorities for dispersing an assembly in its entirety rather than trying to isolate one sector that had become turbulent:

*The authorities have not shown that prior to declaring the whole meeting closed they had attempted to separate the turbulent sector and target the problems there,*

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<sup>269</sup> [Ziliberg v. Moldova](#), ECtHR, Decision of 4 May 2004, para. 2; [Frumkin v. Russia](#), ECtHR, Judgment of 5 January 2016, para. 99; [Primov and Others v. Russia](#), ECtHR, Judgment of 12 June 2014, para. 155.

<sup>270</sup> See [UN Human Rights Council, Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), UN Doc. A/HRC/23/39, 24 April 2013, para. 70; OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 46; AComHPR, *Guidelines on Freedom of Assembly and Association in Africa*, para 76 and 94; AComHPR, *Report of the Study Group on Freedom of Association and Assembly in Africa*, 2014, p. 26, para. 24.

<sup>271</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 61.

<sup>272</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 154.

<sup>273</sup> AComHPR, *Guidelines on Freedom of Assembly and Association in Africa*, para 94; AComHPR, *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*, 4 March 2017, para. 22.3.

*so as to enable the meeting to continue in the sector of the stage where the situation remained peaceful. The Court is therefore not convinced that the termination of the meeting ... was inevitable.*<sup>274</sup>

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#### 13.4. Dispersal of assemblies

Dispersal should be resorted to only when strictly unavoidable

The dispersal of assemblies carries a significant risk of escalation and human rights violations. For these reasons, the *joint report on the proper management of assemblies* urges a high level of restraint in resorting to dispersal:

*Dispersing an assembly carries the risk of violating the rights to freedom of expression and to peaceful assembly as well as the right to bodily integrity. Dispersing an assembly also risks escalating tensions between participants and law enforcement. For these reasons, it must be resorted to only when strictly unavoidable.*<sup>275</sup>

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The OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* also warn that the use of dispersal powers often creates more law-enforcement problems than it solves and undermines police-community relationships. They point out that police have options in between non-intervention and dispersal, such as post-event prosecution for violations of the law.<sup>276</sup> For the AComHPR, dispersal should be “a measure of last resort”.<sup>277</sup> It should be used only when de-escalation and containment strategies and targeted arrests of violent individuals have failed:

*Where participants in an assembly are acting non-peacefully or in violation of the law, law enforcement officials should use, to the extent possible, communication and de-escalation strategies and measures for the containment of individuals committing or threatening violence or, if necessary and proportionate, the arrest of individuals who are committing or preparing to commit violent acts, before attempting to disperse an assembly.*<sup>278</sup>

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<sup>274</sup> [Frumkin v. Russia, ECtHR, Judgment of 5 January 2016, para. 133.](#)

<sup>275</sup> [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 61.](#)

<sup>276</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Explanatory Notes, paras. 155-156.](#)

<sup>277</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4 March 2017, para. 22.1;](#) [AComHPR, Guidelines on Freedom of Assembly and Association in Africa, para. 94;](#) [AComHPR, Report of the Study Group on Freedom of Association and Assembly in Africa, 2014, p. 65, para. 39.](#)

<sup>278</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4 March 2017, para. 22.3.](#)

## In what circumstances may dispersal be considered?

The IACHR holds that “breaking up a demonstration can only be justified by the duty to protect persons.”<sup>279</sup> The *joint report on the proper management of assemblies* states that dispersal of an assembly marred by violence may be considered only

*where violence is serious and widespread and represents an imminent threat to bodily safety or property, and where law enforcement officials have taken all reasonable measures to facilitate the assembly and protect participants from harm.*<sup>280</sup>

The AComHPR takes a similar line.<sup>281</sup> An important principle is that the [authorities should seek to identify and isolate any violent individuals before contemplating dispersal](#).

Assemblies that remain peaceful may only be dispersed in exceptional cases. The following circumstances do not, by themselves, justify dispersal:

- The fact that the organizers have [failed to notify the authorities of the assembly in advance](#), even where this is required by domestic law;
- The fact that the assembly is causing disruption to traffic. This [must normally be tolerated](#), and will [only justify dispersal in exceptional cases](#).
- The presence of persons perceived to be a risk. As the ECtHR has stated, “it would be wrong to disperse a demonstration simply because some of its participants have a history of violent behaviour.”<sup>282</sup>

In those rare cases where dispersal is in principle warranted, [demonstrators should normally be given a chance to convey their views before the authorities break up the assembly](#).

The *joint report* recognizes that an assembly that incites to discrimination, hostility or violence contrary to Article 20 [ICCPR](#) may warrant dispersal, if less intrusive and discriminatory measures have failed.<sup>283</sup> In *R.B. v. Hungary* – a case where the applicant, who was of Roma origin, had faced racist insults and been threatened with an axe by participants in a far-right rally – the ECtHR also recognized that “in certain

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<sup>279</sup> [IACHR, Annual Report 2015, March 17, 2016, Chapter IV.A, para. 67.](#)

<sup>280</sup> [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 61.](#)

<sup>281</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4 March 2017, para. 22.5.](#)

<sup>282</sup> [Primov and Others v. Russia, ECtHR, Judgment of 12 June 2014, para. 152.](#)

<sup>283</sup> [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 62.](#)

situations the domestic authorities might be required to proceed with the dispersal of a violent and blatantly intolerant demonstration.”<sup>284</sup>

### How should dispersal be handled?

According to the *joint report on the proper management of assemblies*<sup>285</sup> and the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*,<sup>286</sup> the steps to be taken before dispersal should be laid down in comprehensive, publicly available guidelines.

The decision to disperse should be taken by an officer of sufficient rank, who has accurate information of the situation unfolding on the ground.<sup>287</sup> In line with [the duty of the authorities to communicate effectively with organizers and participants](#), the first step will always be to clearly inform those present of the intention to disperse the assembly, and to give participants time to leave voluntarily before taking any further action.<sup>288</sup>

Mass arrests during dispersal should be avoided.<sup>289</sup> The IACtHR has underlined that substantiated evidence of the commission of a crime is needed to justify an arrest:

*[A] massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest.*<sup>290</sup>

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<sup>284</sup> [R.B. v. Hungary](#), ECtHR, Judgment of 12 April 2016, para. 99. See also [Király and Dömötör v. Hungary](#), ECtHR, Judgment of 17 January 2017, para. 64.

<sup>285</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 61.

<sup>286</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 165.

<sup>287</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 63; [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 22.5.

<sup>288</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 63; [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 22.4; [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 168.

<sup>289</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 45; [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 23.3; [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 161.

<sup>290</sup> [Servellón García et al. v. Honduras](#), IACtHR, Judgment of September 21, 2006, para. 93.

The use of force to disperse an assembly should always comply strictly with the [principles applicable to the use of force](#). In line with the [necessity and proportionality principle](#), force should only be used if there is no alternative, and should be limited to the minimum needed. The *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* state:

*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.*<sup>291</sup>

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The AComHPR states in a similar vein:

*If assembly participants are generally behaving peacefully, law enforcement officials must avoid the use of force to disperse the assembly. Where force is deemed to be a lawful and proportionate response, law enforcement officials must only use the minimum level of force necessary.*<sup>292</sup>

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The need to disperse an assembly will never justify the use of lethal force. The UN Human Rights Council has called on States to ensure, as a priority, that their laws and procedures give effect to the principle that “lethal force may only be used to protect against an imminent threat to life and that it may not be used merely to disperse a gathering.”<sup>293</sup> The IACHR has echoed this, stating:

*One derives from the general principles on the use of force that there are no situations authorizing the use of lethal force to break up a protest or demonstration, or to shoot indiscriminately into the multitude. The states should implement mechanisms for effectively prohibiting recourse to the use of lethal force in public demonstrations*<sup>294</sup>

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The use of firearms for law enforcement during assemblies is subject to [specific rules](#). A core principle is that firearms may never be used simply to control or disperse an assembly.<sup>295</sup>

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<sup>291</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 13.

<sup>292</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 22.2.

<sup>293</sup> [UN Human Rights Council, Resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests](#), UN Doc. A/HRC/RES/25/38, 11 April 2014, para. 10.

<sup>294</sup> [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 81.

<sup>295</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 60; [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 22.6; [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 82.

The [right to record](#) continues to apply during the dispersal of an assembly. According to the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*,

*Third parties (such as monitors, journalists and photographers) may also be asked to disperse, but they should not be prevented from observing and recording the policing operation.*<sup>296</sup>

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The AComHPR takes a similar view.<sup>297</sup>

### **13.5. Law enforcement agencies must communicate effectively with organizers and participants**

International mechanisms widely stress the importance of open dialogue between the authorities and organizers and participants in assemblies, as a means to avoid or defuse tension and prevent escalation. The UN Human Rights Council has for example underlined “the important role that communication between protestors, local authorities and officials exercising law enforcement duties can play in the proper management of assemblies,”<sup>298</sup> while the *joint report on the proper management of assemblies* affirms that:

*Law enforcement agencies and officials should take all reasonable steps to communicate with assembly organizers and/or participants regarding the policing operation and any safety or security measures.*<sup>299</sup>

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The report adds that communication must be entirely voluntary and not a means to impose on organizers an obligation to negotiate about restrictions on the assembly.<sup>300</sup>

The IACHR recommends the

*Promotion of opportunities for communication prior to demonstrations and of the activities of liaison officers to coordinate with demonstrators concerning ... law enforcement operations, in order to avoid conflict situations.*<sup>301</sup>

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<sup>296</sup> [OSCE-ODIHR and Venice Commission, \*Guidelines on Freedom of Peaceful Assembly\*, 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 168.](#)

<sup>297</sup> [AComHPR, \*Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa\*, 4 March 2017, para. 22.7.](#)

<sup>298</sup> [UN Human Rights Council, \*Resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests\*, UN Doc. A/HRC/RES/25/38, 11 April 2014, para. 5.](#)

<sup>299</sup> [UN Human Rights Council, \*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\*, UN Doc. A/HRC/31/66, 4 February 2016, para. 38.](#)

<sup>300</sup> [UN Human Rights Council, \*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\*, UN Doc. A/HRC/31/66, 4 February 2016, para. 39.](#)

<sup>301</sup> [IACHR, \*Report on the Situation of Human Rights Defenders in the Americas\*, OEA/Ser.L/V/II.124](#)

The AComHPR also emphasizes the need for “continuous dialogue and negotiation ... to proactively address any issues that may arise during the conduct of an assembly”.<sup>302</sup> Like the IACHR, it suggests appointing communications liaisons:

*Law enforcement officials should maintain open communication with all relevant stakeholders, including assembly organisers and participants, other essential services providers and stewards. Law enforcement officials must proactively and continually communicate the intention of the assembly operation, any limitations or restrictions imposed on the assembly and contingency planning in place with stakeholders, and should consider the appointment of a specially trained communication liaison as a focal point for communication with stakeholders.*<sup>303</sup>

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The OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* contain language to similar effect, and state that police operations should be characterized by a policy of “no surprises”.<sup>304</sup> They also recommend the use of negotiation or dialogue to attempt to resolve any stand-off during an assembly:

*If a stand-off or other dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. Such dialogue – although not always successful – can serve as a preventive tool to help avoid the escalation of conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force.*<sup>305</sup>

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The authorities’ duty to communicate with the organizers of an assembly is also confirmed by international jurisprudence. According to the ECtHR, it is “an essential part of their positive obligation to ensure the peaceful conduct of the assembly.”<sup>306</sup> The case of *Frumkin v. Russia* [click for full case explanation] concerned a rally against alleged electoral fraud that descended into a standoff after riot police barred access to a park that the demonstrators had expected to be able to use. The Court found that the authorities’ failure to communicate effectively with the leaders of the demonstration amounted to a violation of the right to freedom of peaceful assembly:

*[I]n the present case the authorities made insufficient effort to communicate with the assembly organisers to resolve the tension caused by the confusion about the venue layout. The failure to take simple and obvious steps at the first signs of the*

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[Doc. 5 Rev. 1, 7 March 2006, para. 68.](#)

<sup>302</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4 March 2017, para. 13.1.](#)

<sup>303</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4 March 2017, para. 13.2.](#)

<sup>304</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Explanatory Notes, paras. 149-150.](#)

<sup>305</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Guideline 5.4.](#)

<sup>306</sup> [Frumkin v. Russia, ECtHR, Judgment of 5 January 2016, para. 129.](#)

*conflict allowed it to escalate, leading to the disruption of the previously peaceful assembly ... The Court considers that from any point of view the authorities in this case did not comply with even the minimum requirements in their duty to communicate with the assembly leaders, which was an essential part of their positive obligation to ensure the peaceful conduct of the assembly, to prevent disorder and to secure the safety of all the citizens involved.*<sup>307</sup>

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The applicant in *Frumkin v. Russia* had participated in a demonstration at Bolotnaya Square in Moscow against alleged “abuses and falsifications” in parliamentary and presidential elections held in 2011 and 2012. The route and conduct of the assembly had been agreed beforehand between the organizers and the authorities, after substantial discussions. The Moscow Department of the Interior had published information about the forthcoming demonstration on its website, including a map indicating the area allotted to the assembly, which included the park at Bolotnaya Square.

When the march approached the square, however, the leaders found that a cordon of riot police barred access to the park and the meeting venue was limited to Bolotnaya embankment, where the organisers had set up a stage. The leaders of the march then demanded that the police open access to the park, and announced a “sit-down strike”, which was joined by between twenty and fifty people. At the request of the police, the Ombudsman of the Russian Federation attempted to convince the leaders of the sit-in to resume the procession, but no senior police officers or municipal officials came to the site, and there was no direct communication between the authorities and the leaders of the sit-in.

Although the leaders eventually abandoned the sit-in, some commotion later arose at the same site, with members of the crowd tossing various objects at the police cordon, including a Molotov cocktail. Riot police then began to disperse the demonstration and arrested some participants, including the applicant.

Before the ECtHR, the Russian Government explained that the assembly venue had been limited to the embankment out of a concern that opposition activists were plotting a popular uprising, and as part of this were planning to erect a protest camp in the park of Bolotnaya Square. The Court recognized the possible legitimacy of the authorities’ concerns, but stressed the crucial need to communicate their position openly:

*The fact that the police were exercising caution against the park being taken over by a campsite ... might have justified the refusal to allow access to the park, given that in any event the assembly had sufficient space for a meeting. Crucially, whatever course*

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<sup>307</sup> [Frumkin v. Russia, ECtHR, Judgment of 5 January 2016, paras. 128-129.](#)

*of action the police deemed correct, they had to engage with the sit-in leaders in order to communicate their position openly, clearly and promptly.*<sup>308</sup>

Although the police had contacted the protest leaders through an intermediary, the Ombudsman, no attempt had been made beforehand to arrange a channel of communication and no effort was made on the spot to communicate with them directly. The Court considered this a striking omission:

*In the Court's view, the controversy about the placement of the police cordon could reasonably have been dealt with had the competent officials been prepared to come forward in order to communicate with the assembly organisers ...*

*The Court's findings ... lead to the conclusion that the police authorities had not provided for a reliable channel of communication with the organisers before the assembly. This omission is striking, given the general thoroughness of the security preparations ... Furthermore, the authorities failed to respond to the real-time developments in a constructive manner ... no official took any interest in talking to the march leaders showing signs of distress in front of the police cordon ...*

*In the light of the foregoing, the Court finds that in the present case the authorities made insufficient effort to communicate with the assembly organisers to resolve the tension caused by the confusion about the venue layout. The failure to take simple and obvious steps at the first signs of the conflict allowed it to escalate, leading to the disruption of the previously peaceful assembly.*<sup>309</sup>

The Court concluded that these failures amounted to a violation of the right to freedom of peaceful assembly:

*The Court considers that from any point of view the authorities in this case did not comply with even the minimum requirements in their duty to communicate with the assembly leaders, which was an essential part of their positive obligation to ensure the peaceful conduct of the assembly, to prevent disorder and to secure the safety of all the citizens involved.*

*The authorities have thus failed to discharge their positive obligation in respect of the conduct of the assembly at Bolotnaya Square. There has accordingly been a violation of Article 11 of the Convention on that account.*<sup>310</sup>

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<sup>308</sup> [Frumkin v. Russia, ECtHR, Judgment of 5 January 2016, para. 118.](#)

<sup>309</sup> [Frumkin v. Russia, ECtHR, Judgment of 5 January 2016, paras. 126-128.](#)

<sup>310</sup> [Frumkin v. Russia, ECtHR, Judgment of 5 January 2016, paras. 129-130.](#)

### 13.6. Personnel managing assemblies must receive adequate training

The proper management of assemblies can place high demands on the officers to whom it is entrusted. The *joint report on the proper management of assemblies* stresses the importance of adequate training of law enforcement officials to prepare them for the facilitation of assemblies.<sup>311</sup>

The ECtHR, too, considers that full respect for freedom of peaceful assembly requires that “a system be in place that guarantees adequate training of law enforcement personnel and control and supervision of that personnel during demonstrations.”<sup>312</sup> The Court has not defined the subjects such training should cover, except in one area. It has stated that training must ensure firearms are used only in cases of absolute necessity:

*[L]aw-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value.*<sup>313</sup>

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The IACtHR has ruled to similar effect:

*An appropriate legislation would not fulfill its goal if, inter alia, States would not educate and train members of their armed forces and security agencies on principles and rules of human rights protection and on the limits to which the use of weapons by law enforcement officials must be subject to in all circumstances.*<sup>314</sup>

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Further guidance on the content that training of law-enforcement personnel should receive has been provided by the UN Special Rapporteur together with the Special Rapporteur on extrajudicial, summary or arbitrary executions,<sup>315</sup> the AComHPR,<sup>316</sup> the IACHR,<sup>317</sup> the OSCE-ODIHR *Guidelines on Freedom of*

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<sup>311</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 42.

<sup>312</sup> [İzci v. Turkey](#), ECtHR, Judgment of 23 July 2013, para. 99.

<sup>313</sup> [Giuliani and Gaqqio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 250.

<sup>314</sup> [Zambrano Vélez et al. v. Ecuador](#), IACtHR, Judgment of July 4, 2007 (Merits, Reparations and Costs), para. 87.

<sup>315</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, paras. 38, 42, 49, 52, 55, 66 and 67.

<sup>316</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 7.

<sup>317</sup> [IACHR, Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124 Doc. 5 Rev. 1, 7 March 2006, para. 141.

*Peaceful Assembly*<sup>318</sup> and the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.<sup>319</sup> Skills that training should deliver, according to these authorities, include:

- An understanding of human rights in the context of assemblies, and the important role of assemblies in a democracy;
- Knowledge of police ethics;
- Knowledge of the legal framework governing assemblies and the actions of law-enforcement personnel;
- An understanding of crowd behavior and techniques of crowd facilitation and management;
- Control and planning of operations;
- “Soft skills” needed to settle conflicts peacefully, such as verbal and non-verbal communication, negotiation, persuasion and mediation;
- Alternatives to recourse to force and the imperative of minimizing its use;
- The correct use of any firearms or less-lethal weapons issued;
- The safety and protection of persons and groups who are particularly vulnerable.

The UN Human Rights Council has called upon States to ensure adequate training not only of law enforcement officials, but also private personnel acting on behalf of the State during assemblies.<sup>320</sup>

### 13.7. The exceptionality of force when facilitating assemblies

Under international law, the use of force during assemblies must strictly comply with principles of legality, precaution, necessity, proportionality and accountability.<sup>321</sup>

#### Legality

The circumstances and degree to which force may be used during an assembly must be regulated by law and administrative rules (such as standard operating procedures and rules of engagement), limiting the discretion of law enforcement personnel; this is confirmed by many authorities.<sup>322</sup> The IACHR has stated:

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<sup>318</sup> [OSCE-ODIHR and Venice Commission, \*Guidelines on Freedom of Peaceful Assembly\*, 2<sup>nd</sup> edn, 2010, Explanatory Notes, paras. 147-148.](#)

<sup>319</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials \(adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990\), UN Doc. A/CONF.144/28/Rev.1 at 112, Principles 18-21.](#)

<sup>320</sup> [UN Human Rights Council, \*Resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests\*, UN Doc. A/HRC/RES/25/38, 11 April 2014, para. 13.](#)

<sup>321</sup> [UN Human Rights Council, \*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\*, UN Doc. A/HRC/31/66, 4 February 2016, para. 50.](#)

<sup>322</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials \(adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990\), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 1; UN Human Rights Council, \*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\*, UN Doc. A/HRC/31/66, 4 February 2016, para. 51; IACHR, \*Second Report on the Situation of Human Rights Defenders in the Americas\*,](#)

*In order to prevent an inappropriate intervention by State forces that could infringe on the human rights of demonstrators, the States should adopt measures both of a regulatory as well as an administrative nature that enable police forces to have clear rules of conduct and the professional training needed to perform their jobs in situations involving mass concentrations of people.*<sup>323</sup>

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The Grand Chamber of the ECtHR similarly warns that law enforcement personnel should not “be left in a vacuum”, but rather be guided by a legal and administrative framework:

*[P]olicing operations must be sufficiently regulated by national law, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force ... Police officers should not be left in a vacuum when performing their duties: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect.*<sup>324</sup>

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## Precaution

In preparing for an assembly, the authorities should take steps to avoid the need to use force or, if this is impossible, to minimize the consequences.<sup>325</sup> The ECtHR has stated that the operation should be “regulated and organised in such a way as to minimise to the greatest extent possible any risk to the life of the demonstrators.”<sup>326</sup>

In addition to [training](#), the principle of precaution requires adequate planning for assemblies. The *joint report on the proper management of assemblies* states:

*States should plan properly for assemblies, which requires the collection and analysis of information, anticipation of different scenarios and proper risk assessments. Contingency plans and precautionary measures must also be put in*

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[OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 141; IACHR, Annual Report 2015, March 17, 2016, Chapter IV.A, paras. 7-8; OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Guideline 5.5 and Explanatory Notes, paras. 171-178.](#)

<sup>323</sup> [IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 141.](#) See also [Zambrano Vélez et al. v. Ecuador, IACTHR, Judgment of July 4, 2007 \(Merits, Reparations and Costs\), para. 86.](#)

<sup>324</sup> [Giuliani and Gaggio v. Italy, ECtHR, Grand Chamber Judgment of 24 March 2011, para. 249.](#)

<sup>325</sup> [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 52.](#)

<sup>326</sup> [Şimşek and Others v. Turkey, ECtHR, Judgment of 26 July 2005, para. 106.](#)

*place. Proper planning and preparation requires continuous monitoring of activities and should be adaptable to changing circumstances.*<sup>327</sup>

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The OSCE-ODIHR [Human Rights Handbook on Policing Assemblies](#) and the AComHPR [Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#) provide guidance on the how to plan for assemblies.

Precaution also requires that law enforcement officials should have access to proper equipment for self-defense and coordination (such as shields, helmets, bullet-proof and fire-retardant clothing, portable communications devices) and [appropriate less-lethal weapons](#), as underlined by many authorities.<sup>328</sup>

The case of *Simşek and Others v. Turkey* before the ECtHR arose from two assemblies during which police had used live fire in response to acts of violence and resistance, leading to 17 deaths. The ECtHR found that the Turkish State had violated the right to life by failing to deliver proper training, instructions and equipment to the police officers on duty:

*It appears from the case file that the police officers who were on duty at both incidents enjoyed great autonomy of action, and they took initiatives whilst in the grip of panic and pressure, which they would probably not have taken had they had the benefit of proper training and instructions. The Court ... finds that the absence of a clear, centralised command was an important lacuna which must have increased the risk of police officers shooting directly at the crowd.*

*Furthermore, it was the responsibility of the Security Forces, who had been aware of the tense situation in both districts, to provide the necessary equipment, such as tear gas, plastic bullets, water cannons, etc., to disperse the crowd. In the Court's view, the lack of such equipment is unacceptable.*

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<sup>327</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 37.

<sup>328</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 2; [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, paras. 52-55; [UN Human Rights Council, Resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests](#), UN Doc. A/HRC/RES/25/38, 11 April 2014, para. 14; [IACHR, Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 143; [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 15; [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Guideline 5.5 and Explanatory Notes, para. 172.

*In conclusion, the Court considers that, in the circumstances of the instant case, the force used to disperse the demonstrators, which caused the death of seventeen people, was more than absolutely necessary within the meaning of Article 2.*<sup>329</sup>

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In equipping law enforcement personnel, regard should also be had to the impression their visual appearance will make on participants, to avoid any provocative or intimidating effect. The UN Special Rapporteur found that massive deployment of force increases tension and aggression begets aggression<sup>330</sup>. The AComHPR similarly states:

*In the deployment of officials to an assembly, law enforcement agencies must take into account the potential adverse influence that the visible appearance of law enforcement officials, deployment tactics and equipping of officials at an assembly can have on the way in which an assembly develops.*<sup>331</sup>

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### Necessity and proportionality

The requirement of necessity and proportionality means first that assemblies should ordinarily be managed with no resort to force;<sup>332</sup> force may only be used when the alternatives have been exhausted. The *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* state:

*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.*<sup>333</sup>

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Consistently with this, the IACtHR has held that “force or coercive means can only be used once all other methods of control have been exhausted.”<sup>334</sup> The AComHPR takes the same view.<sup>335</sup>

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<sup>329</sup> [Şimşek and Others v. Turkey](#), ECtHR, Judgment of 26 July 2005, paras. 110-112. See also [Güleç v. Turkey](#), ECtHR, Judgment of 27 July 1998, para. 71: “The gendarmes used a very powerful weapon because they apparently did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province of Şırnak, as the Government pointed out, is in a region in which a state of emergency has been declared, where at the material time disorder could have been expected.”

<sup>330</sup> UN Human Rights Council, *Report of the UNSR on his mission to the Republic of Korea*, A/HRC/32/36/ Add.2, para 31.

<sup>331</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 14.2.

<sup>332</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 57.

<sup>333</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials \(adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990\)](#), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 4.

<sup>334</sup> [Zambrano Vélez et al. v. Ecuador](#), IACtHR, Judgment of July 4, 2007 (Merits, Reparations and Costs), para. 83.

Second, where the use of force becomes unavoidable, it should be directed as precisely as possible at the person(s) necessitating its use. The ECtHR has repeatedly held that force should be “made strictly necessary by a person’s own conduct;”<sup>336</sup> the AComHPR states that law enforcement officials using force “must, as far and for as long as possible, differentiate between peaceful assembly participants and those who engage in violent acts.”<sup>337</sup>

Third, force should be limited to the minimum extent necessary in the circumstances. The *joint report on the proper management of assemblies* articulates this requirement as follows:

*The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit.*<sup>338</sup>

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The IACtHR has elaborated further on the circumstances relevant to determining whether the force used is indeed the minimum necessary in the circumstances:

*To determine the proportionality of the use of force, the severity of the situation that the agent faces must be assessed. To this end, among other circumstances, it is necessary to consider: the level of intensity and danger of the threat; the attitude of the individual; the conditions of the surrounding area, and the means available to the agent to deal with the specific situation. In addition, this principle requires the law enforcement agent, at all times, to reduce to a minimum the harm or injuries caused to anyone, as well as to use the lowest level of force required to achieve the legitimate purpose sought.*<sup>339</sup>

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The principles of necessity and proportionality apply to all uses of force, including lethal force and the [use of firearms](#). The UN Human Rights Council holds that “lethal force may only be used to protect

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<sup>335</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4 March 2017, para. 21.1.2.](#)

<sup>336</sup> See, for example, [Pekaslan and Others v. Turkey](#), ECtHR, Judgment of 20 March 2012, para. 81; [İzci v. Turkey](#), ECtHR, Judgment of 23 July 2013, para. 55.

<sup>337</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4 March 2017, para. 21.1.2.](#)

<sup>338</sup> [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 58.](#)

<sup>339</sup> [Landaeta Mejías Brothers et al. v. Venezuela](#), IACtHR, Judgment of August 27, 2014, para. 136.

against an imminent threat to life,” and never in an indiscriminate manner against a crowd,<sup>340</sup> views echoed in the *joint report on the proper management of assemblies*<sup>341</sup> and by the AComHPR.<sup>342</sup>

The IACHR stresses that any use of lethal force should be preceded by a warning from a State agent who clearly identifies himself or herself, unless that is impossible:

*Should the use of lethal force be strictly necessary, the rules of conduct should require that the agents of the State first identify themselves as such, and then give the persons involved a clear warning of their intention to use force, so as to give them time to cease and desist, except in those cases where the life or personal safety of third persons or the agents themselves is in imminent danger.*<sup>343</sup>

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The *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* contain similar language.<sup>344</sup>

Under Article 2 of the ECHR, the use of lethal force must be “absolutely necessary”. The ECtHR has explained that whether this standard is met depends not only on the actions of the agent administering the force, but also on [precautionary measures](#) such as planning and control:

*The use of the term “absolutely necessary” indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” ... the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination.*<sup>345</sup>

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## Accountability

Governments are under a duty to establish effective reporting and review procedures for any [incidents where law enforcement officials cause injury or death by the use of force](#) or [discharge a firearm in the](#)

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<sup>340</sup> [UN Human Rights Council, Resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests](#), UN Doc. A/HRC/RES/25/38, 11 April 2014, paras. 10 and 11.

<sup>341</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 60.

<sup>342</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 21.1.4.

<sup>343</sup> [IACHR, Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II, Doc 57, 31 December 2009, para. 118.

<sup>344</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials \(adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990\)](#), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 10.

<sup>345</sup> [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 176.

[performance of their duty.](#)

### 13.8. Conditions for the use of firearms and less-lethal weapons by law enforcement agents

Which rules govern the use of firearms during assemblies?

The use of firearms during assemblies is fully subject to the [principles governing the use of force during assemblies](#). In addition, a number of specific rules apply.

The [principle of legality](#) means that the use of firearms must be governed by clear rules and regulations so that, in the words of the ECtHR, law enforcement officials are not “left in a vacuum”.<sup>346</sup> Principle 1 of the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* states:

*Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.*<sup>347</sup>

The [principle of precaution](#) implies that law enforcement officials should be selected by thorough screening procedures<sup>348</sup> and receive continuous and thorough [professional training](#), including in the correct use of firearms issued to them. They should be properly equipped, including with protective

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<sup>346</sup> [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 249.

<sup>347</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 1.

<sup>348</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 18.

clothing and less-lethal weapons to reduce the need to resort to firearms as far as possible.<sup>349</sup> Automatic firearms should never be part of the equipment used during assemblies.<sup>350</sup>

The IACHR considers that firearms and lead munitions should be stored away from the scene of an assembly and only issued to law enforcement officials when a serious and imminent risk arises:

*The prohibition on officials who might have contact with demonstrators carrying firearms and lead munitions has proven to be the best measure for preventing lethal violence and deaths in contexts of social protest. The operations may include having firearms and lead munitions somewhere outside the radius of action of the demonstration for those exceptional cases in which there is a situation of actual, serious, and imminent risk to persons that makes their use warranted. In such an extreme circumstance there should be explicit rules concerning who has the power to authorize their use and the ways in which such authorization is to be documented.*<sup>351</sup>

In line with the [requirement of necessity and proportionality](#), law enforcement agents may use firearms during an assembly only to the extent necessary to avert a life-threatening situation, and only after exhausting less hazardous alternatives.<sup>352</sup> Firearms may never be used simply to control or [disperse](#) an assembly or to fire indiscriminately into a crowd.<sup>353</sup>

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<sup>349</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 2; UN Human Rights Council, [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](#), UN Doc. A/HRC/31/66, 4 February 2016, paras. 52-55; UN Human Rights Council, [Resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests](#), UN Doc. A/HRC/RES/25/38, 11 April 2014, para. 14; IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II, Doc. 66, 31 December 2011, para. 143; IACHR, [Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 15; OSCE-ODIHR and Venice Commission, [Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Guideline 5.5 and Explanatory Notes, para. 172.

<sup>350</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 67(e).

<sup>351</sup> [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 82.

<sup>352</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 18; IACHR, [Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II, Doc 57, 31 December 2009, para. 118; IACHR, [Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 81; AComHPR, [Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 21.1.4.

<sup>353</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 60; [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 22.6; [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 82.

In order to be able to comply with the [principle of accountability](#), States must enact procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them.<sup>354</sup> The IACHR recommends the implementation of ammunition registration and inventories of firearms:

*The Commission has ... recommended implementing ammunition registration and control systems. Registration of this type, both before and after operations, is an administrative control measure that helps to facilitate judicial and administrative investigations into possible violations of rules and principles on the use of force. Therefore, states should have in place effective mechanisms for making inventories of firearms, ammunition, and other control devices, such as chemical weapons, to be used in a security operation.*<sup>355</sup>

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The *joint report on the proper management of assemblies* likewise states that there should be “a clear system of record keeping or register of the equipment provided to individual officers in an operation, including vehicles, firearms and ammunition.”<sup>356</sup>

States should ensure that there is a system of reporting to a superior whenever law enforcement officials use firearms during an assembly.<sup>357</sup> If the use of a firearm causes an injury or death, it triggers the [legal obligation to launch an investigation](#).

### Which rules govern the use of less-lethal weapons during assemblies?

In line with the [principle of precaution](#), States are required under international law to equip their law enforcement agencies with less-lethal weapons, to enable a graduated response to threats and to minimize the use of firearms.<sup>358</sup>

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<sup>354</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 11(d).

<sup>355</sup> [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 227.

<sup>356</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 65.

<sup>357</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 11(f); [IACHR, Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II, Doc 57, 31 December 2009, para. 119; [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 24.4.

<sup>358</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 2; [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 55; [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in](#)

Several international mechanisms have warned that less-lethal weapons may still have injurious or even lethal effects, and have underlined the importance of independent scientific testing of such weapons prior to deployment, and appropriate control of their use, including through [training](#) of and instructions to the law enforcement officials to which they are issued.<sup>359</sup>

The ECtHR has forcefully condemned failures to deliver such training and instructions. In *Abdullah Yaşa and Others v. Turkey*, it held:

*Given that during the events in Diyarbakır between 28 and 31 March 2006 two persons were killed by tear-gas grenades and that the applicant was injured on the same occasion, it may be deduced that the police officers were able to act very independently and take ill-considered initiatives, which would probably not have been the case if they had been given appropriate training and instructions. In the Court's view, such a situation is incompatible with the level of protection of the physical integrity of individuals which is required in contemporary democratic societies in Europe ...*

*There has accordingly been a violation of Article 3 of the Convention.*<sup>360</sup>

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The IACHR cautions that a warning should be issued before using less-lethal weapons, and that there should be accountability for improper use:

*The use of less lethal weapons should be preceded by formal notices so as to give persons the opportunity to evacuate the zone without provoking situations of panic or stampedes, and guidelines should be put in place for attributing responsibility for their incorrect use.*<sup>361</sup>

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[Africa](#), 4 March 2017, para. 21.3.1; IACHR, *Annual Report 2015*, March 17, 2016, Chapter IV.A, para. 15; OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> edn, 2010, Guideline 5.5.

<sup>359</sup> UN Human Rights Council, *Resolution 25/38 on the promotion and protection of human rights in the context of peaceful protests*, UN Doc. A/HRC/RES/25/38, 11 April 2014, para. 15; *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 3; UN Human Rights Council, *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*, UN Doc. A/HRC/31/66, 4 February 2016, para. 55; AComHPR, *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*, 4 March 2017, para. 21.3.1; IACHR, *Annual Report 2015*, March 17, 2016, Chapter IV.A, para. 84.

<sup>360</sup> *Abdullah Yaşa and Others v. Turkey*, ECtHR, Judgment of 16 July 2013, paras. 49-51. . See also *Ataykaya v. Turkey*, ECtHR, Judgment of 22 July 2014, para. 57.

<sup>361</sup> IACHR, *Annual Report 2015*, March 17, 2016, Chapter IV.A, para. 16.

## *Tear gas*

The UN Special Rapporteur has warned about the dangers of the use of tear gas, due to its indiscriminate nature:

*With regard to the use of tear gas, the Special Rapporteur recalls that gas does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions. He also warns against any modification of the chemical composition of the gas for the sole purpose of inflicting severe pain on protestors and, indirectly, bystanders.*<sup>362</sup>

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The ECtHR has found violations of human rights in a substantial number of cases in connection with the inappropriate use of tear gas.<sup>363</sup> The Court has underlined the full applicability of the [principle of legality](#) to the use of tear gas:

*[P]olice operations – including the launching of tear-gas grenades – should not only be authorised but should also be sufficiently delimited by domestic law, under a system of adequate and effective safeguards against arbitrary action, abuse of force and avoidable accidents.*<sup>364</sup>

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Furthermore, it has held that the firing of tear-gas grenades along a direct, flat trajectory is prohibited:

*In the Court's view, firing a tear-gas grenade along a direct, flat trajectory by means of a launcher cannot be regarded as an appropriate police action as it could potentially cause serious, or indeed fatal injuries, whereas a high-angle shot would generally constitute the appropriate approach, since it prevents people from being injured or killed in the event of an impact.*<sup>365</sup>

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Tear gas may not be used “indiscriminately ... to the extent that not only the demonstrators but also unconnected persons in the vicinity [are] affected”<sup>366</sup> and “there can be no justification for the use of such gases against an individual who has already been taken under the control of the law enforcement authorities.”<sup>367</sup>

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<sup>362</sup> [UN Human Rights Council, First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 35.](#)

<sup>363</sup> See, among others, [Ali Güneş v. Turkey, ECtHR, Judgment of 10 April 2012](#); [Abdullah Yaşa and Others v. Turkey, ECtHR, Judgment of 16 July 2013](#); [İzci v. Turkey, ECtHR, Judgment of 23 July 2013](#); [Ataykaya v. Turkey, ECtHR, Judgment of 22 July 2014](#).

<sup>364</sup> [Abdullah Yaşa and Others v. Turkey, ECtHR, Judgment of 16 July 2013, para. 43.](#)

<sup>365</sup> [Abdullah Yaşa and Others v. Turkey, ECtHR, Judgment of 16 July 2013, para. 48.](#) See also [Ataykaya v. Turkey, ECtHR, Judgment of 22 July 2014, para. 56.](#)

<sup>366</sup> [İzci v. Turkey, ECtHR, Judgment of 23 July 2013, para. 60.](#)

<sup>367</sup> [Ali Güneş v. Turkey, ECtHR, Judgment of 10 April 2012, para. 41.](#)

## Pepper spray

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has expressed its concerns over the use of pepper spray in law enforcement:

*[P]epper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered an antidote. Pepper spray should never be deployed against a prisoner who has already been brought under control.*<sup>368</sup>

### 13.9. Law-enforcement officials should be individually identifiable

The UN Special Rapporteur,<sup>369</sup> the AComHPR,<sup>370</sup> the IACHR<sup>371</sup> and the OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly*<sup>372</sup> all state that law-enforcement personnel deployed during an assembly should be clearly and individually identifiable, for example from a nameplate or number that is visible at all times.

The ECtHR has held that States have [a duty effectively to investigate injuries and deaths during assemblies](#), and that this duty is violated if security forces take steps that make it impossible to identify individual responsibilities. In *Ataykaya v. Turkey* [[click for full case explanation](#)], the Court sidestepped the question whether officers may cover their faces during a demonstration; however, it stated that if a mask or balaclava is worn, the officer must at least “visibly display some distinctive insignia – for example a warrant number” to enable “identification and questioning in the event of challenges to the manner in which the operation was conducted.”<sup>373</sup> The Court has not discussed whether such insignia are also required if the faces of the officers are sufficiently visible to enable identification.

*Ataykaya v. Turkey* arose from the death of a passer-by who was struck on the head by a teargas grenade when masked security forces dispersed an assembly. The Court

<sup>368</sup> [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Bosnia and Herzegovina on the Visit to Bosnia and Herzegovina Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 19 March to 30 March 2007, CPT/Inf \(2009\) 25, 14 October 2009, para. 79.](#)

<sup>369</sup> [UN Human Rights Council, 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, UN Doc. A/HRC/31/66, 4 February 2016, para. 65.](#)

<sup>370</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4 March 2017, para. 14.1.](#)

<sup>371</sup> [IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc. 5 Rev. 1, 7 March 2006, para. 68.](#)

<sup>372</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 153.](#)

<sup>373</sup> [Ataykaya v. Turkey, ECtHR, Judgment of 22 July 2014, paras. 52-54](#) (references omitted); see also [Cestaro v. Italy, ECtHR, Judgment of 7 April 2015, para. 217.](#)

stopped short of making a finding of whether the use of balaclavas by law-enforcement personnel is permissible. However, it held that masked members of the security forces must always be identifiable by other means, such as a warrant number, so that they can be investigated after the event:

*The Court takes the view that it is not necessary to assess in general terms whether it is compatible with the Convention for balaclavas to be worn by security forces whose task it is to confront demonstrators. It is obvious, however, that this practice has had, in the present case, the direct consequence of giving those responsible immunity from prosecution. ...*

*The Court finds that this circumstance, namely the inability of eyewitnesses to identify the officer who fired the shot because he was wearing a balaclava, is in itself a matter of concern. In this connection it would refer to its previous finding, under Article 3 of the Convention, to the effect that any inability to determine the identity of members of the security forces, when they are alleged to have committed acts that are incompatible with the Convention, breaches that provision. Similarly, the Court has already stated that where the competent national authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly display some distinctive insignia – for example a warrant number – thus, while ensuring their anonymity, enabling their identification and questioning in the event of challenges to the manner in which the operation was conducted. Those considerations are all the more valid in the present case as it concerns a death following a shot fired by a member of the security forces who was wearing a balaclava.<sup>374</sup>*

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<sup>374</sup> [Ataykaya v. Turkey, ECtHR, Judgment of 22 July 2014, paras. 52-54](#) (references omitted).

## 14. The duty effectively to investigate violations of the right to freedom of peaceful assembly

The occurrence of human rights violations during assemblies triggers a duty on the part of the authorities to investigate. The *joint report on the proper management of assemblies* states in this regard:

*States must investigate any allegations of violations in the context of assemblies promptly and effectively through bodies that are independent and impartial.*<sup>375</sup>

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This duty notably comes into play when deaths or injuries occur. The UN Human Rights Council has urged States to:

*investigate any death or injury committed during protests, including those resulting from the discharge of firearms or the use of non-lethal weapons by law enforcement officials.*<sup>376</sup>

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The legal obligation to investigate deaths, injuries and inhuman or degrading treatment occurring in connection with assemblies is confirmed by the jurisprudence of a range of international courts and mechanisms.<sup>377</sup> The ECtHR has held in this regard:

*The general legal prohibition of arbitrary killing and torture and inhuman or degrading treatment or punishment by agents of the State would be ineffective in practice if there existed no procedure either for reviewing the lawfulness of the use of lethal force by State authorities, or for investigating arbitrary killings and allegations of ill-treatment of persons held by them.*

*Thus, having regard to the general duty on the State under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention”, the provisions of Articles 2 and 3 require by*

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<sup>375</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 90.

<sup>376</sup> [UN Human Rights Council, The promotion and protection of human rights in the context of peaceful protests](#), UN Doc. A/HRC/RES/22/10, adopted on 9 April 2013, para. 9.

<sup>377</sup> See, for instance, [Florentina Olmedo v. Paraguay](#), Human Rights Committee, Views of 22 March 2012, UN Doc. CCPR/C/104/D/1828/2008/CCPR/C/104/D/1828/2008, para. 7.5; [Ernesto Benítez Gamarra v. Paraguay](#), Human Rights Committee, Views of 22 March 2012, UN Doc. CCPR/C/104/D/1829/2008, para. 7.5; [Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt](#), AComHPR, Decision of 12 October 2013, para. 208; [Velásquez-Rodríguez v. Honduras](#), IACtHR, Judgment of 21 July 1989, para. 174; [Mocanu and Others v. Romania](#), ECtHR, Judgment of 17 September 2014, para. 316-317.

*implication that there should be some form of effective official investigation, both when individuals have been killed as a result of the use of force by, inter alia, agents of the State ... and where an individual makes a credible assertion that he has suffered treatment infringing Article 3 of the Convention ...*<sup>378</sup>

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The duty to investigate death or ill-treatment applies regardless of whether private actors or government agents are responsible.<sup>379</sup> It is important to note that the awarding of damages cannot come in the place of the duty to investigate.<sup>380</sup> This duty can generally only be satisfied through criminal law.<sup>381</sup>

The ECtHR has underlined that the duty to investigate applies to any demonstration, “however illegal it may have been.”<sup>382</sup>

#### 14.1. What prompts the duty to investigate?

The authorities should initiate an investigation as soon as they obtain knowledge of a credible allegation of a violation.

The ECtHR has held with regard to killings that they trigger an automatic duty to investigate:

*[T]he mere knowledge of the killing on the part of the authorities gave rise ipso facto to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death.*<sup>383</sup>

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In other words, the investigation should not be left to initiative of the victim’s next of kin:

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<sup>378</sup> [Mocanu and Others v. Romania](#), ECtHR, Judgment of 17 September 2014, para. 316-317 (references omitted); see also, among others, [McCann and Others v. The United Kingdom](#), ECtHR, Judgment of 27 September 1995, para. 161; [Labita v. Italy](#), ECtHR, Judgment of 6 April 2000, para. 131.

<sup>379</sup> [Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt](#), AComHPR, Decision of 12 October 2013, paras. 156-157; [Velásquez-Rodríguez v. Honduras](#), IACtHR, Judgment of 21 July 1989, paras. 172 and 176; [M.C. and A.C. v. Romania](#), ECtHR, Judgment of 12 July 2016, paras. 110-111; [Rod v Croatia](#), ECtHR, Decision of 18 September 2008, para. 1.

<sup>380</sup> See [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 7; [Tahirova v. Azerbaijan](#), ECtHR, Judgment of 3 October 2013, para. 53.

<sup>381</sup> See [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 7; [Bautista de Arellana v. Colombia](#), Human Rights Committee, Views of 27 October 1995, UN Doc. CCPR/C/55/D/563/1993, para. 8.2; IACHR, [Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 228; [Jeronovičs v. Latvia](#), ECtHR, Grand Chamber Judgment of 5 July 2016, paras. 76 and 104-105.

<sup>382</sup> [Güleç v. Turkey](#), ECtHR, Judgment of 27 July 1998, para. 81.

<sup>383</sup> [Ergi v. Turkey](#), ECtHR, Judgment of 28 July 1998, para. 82. See also [Miguel Castro v. Peru](#), IACHR, Judgment of 25 November 2006, para. 256.

*[T]he authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures (...).*<sup>384</sup>

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In cases of alleged ill-treatment, the victim does not need to prove the facts; if there is an arguable case which raises a reasonable suspicion, the authorities must investigate:

*The Court reiterates that Article 3 of the Convention requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion”.*<sup>385</sup>

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The Human Rights Committee and ECtHR have held that the circumstances and severity of ill-treatment, such as the duration and manner of the treatment, its physical or mental effects, as well as the sex, age and state of health of the victim will determine whether the duty to investigate is triggered; e.g. when it constitutes torture or inhuman or degrading treatment.<sup>386</sup> International courts and mechanisms have not defined these conditions precisely. Yet, the duty to investigate is not limited to physical ill-treatment, but can also cover humiliating, discriminatory or intimidating acts.<sup>387</sup>

## 14.2. What requirements must an investigation meet?

### Effectiveness

The duty to investigate can only be satisfied if the investigation is effective. An effective investigation is one that is capable of bringing out the truth about what happened.<sup>388</sup> It should be aimed at establishing the identity of perpetrators, punishing them, and thus provide accountability and redress to victims.<sup>389</sup> In the words of the IACtHR:

*[T]he power of access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin that everything possible be done*

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<sup>384</sup> [Solomou and Others v. Turkey](#), ECtHR, Judgment of 24 June 2008, para. 80.

<sup>385</sup> [Dilek Aslan v. Turkey](#), ECtHR, Judgment of 20 October 2015, para. 53 (references omitted); See also [Khashiyev and Akayeva v. Russia](#), ECtHR, Judgment of 24 February 2005, para. 177.

<sup>386</sup> [Vuolanne v. Finland](#), Human Rights Committee, Views of 7 April 1989, UN Doc. CCPR/C/35/D/265/1987, para. 9.2; [Ireland v. the United Kingdom](#), ECtHR, Judgment of 18 January 1978, para. 162.

<sup>387</sup> [R.B. v. Hungary](#), ECtHR, Judgment of 12 April 2016, paras. 43-45.

<sup>388</sup> See, for example, [Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt](#), AComHPR, Decision of 12 October 2013, para. 230; [Miguel Castro v. Peru](#), IACtHR, Judgment of 25 November 2006, para. 256; [Korobov and Others v. Estonia](#), ECtHR, Judgment of 28 March 2013, para. 113.

<sup>389</sup> See, for example, [Landaeta Mejías Brothers et al. v. Venezuela](#), IACtHR, Judgment of 27 August 2014, para. 143; [Nadege Dorzema et al. v. Dominican Republic](#), IACtHR, Judgment of 24 October 2012, para. 100; [McKerr v. The United Kingdom](#), ECtHR, Judgement of 4 May 2001, para. 121; [Khashiyev and Akayeva v. Russia](#), ECtHR, Judgment of 24 February 2005, para. 177.

*to know the truth of what happened and that the possible responsible parties be punished.*<sup>390</sup>

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The ECtHR adds that the investigation must make it possible to determine “whether the force used in such cases was or was not justified in the circumstances.”<sup>391</sup> Each case is different, and its circumstances along with “practical realities” will determine “the nature and degree of scrutiny” that will satisfy the duty to investigate effectively.<sup>392</sup> However, the duty to investigate effectively is “not an obligation as to the results to be achieved but as to the means to be employed.”<sup>393</sup>

An early step in any effective investigation is the securing of all possible evidence. The IACHR and IACtHR have indicated that the investigating authorities must preserve the communications between personnel involved in the operation and originals of any recordings or images made at the scene.<sup>394</sup> In addition, in cases of deaths, they must:

*a) identify the victim; b) collect and preserve evidence related to the death in order to assist with any investigation; c) identify possible witnesses and obtain testimonies in relation to the death under investigation; d) determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and e) distinguish between natural death, accidental death, suicide and homicide. The scene of the crime must be examined exhaustively, using autopsies and analysis of human remains by competent professionals and employing rigorous and appropriate procedures.*<sup>395</sup>

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The ECtHR similarly requires the authorities to take

*reasonable steps available to them to secure the evidence concerning the incident including, inter alia, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death.*<sup>396</sup>

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<sup>390</sup> [Miguel Castro v. Peru](#), IACHR, Judgment of 25 November 2006, para. 382.

<sup>391</sup> [Solomou and Others v. Turkey](#), ECtHR, Judgment of 24 June 2008, para. 81.

<sup>392</sup> [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 302.

<sup>393</sup> See, among others, [M.C. and A.C. v. Romania](#), ECtHR, Judgment of 12 July 2016, para.111; [Khashiyev and Akayeva v. Russia](#), ECtHR, Judgment of 24 February 2005, para 154; [Solomou and Others v. Turkey](#), ECtHR, Judgment of 24 June 2008, para. 81; [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 301; [Miguel Castro v. Peru](#), IACHR, Judgment of 25 November 2006, para.255.

<sup>394</sup> [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 230.

<sup>395</sup> [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 234. See also [Myrna Mack Chang v. Argentina](#), IACtHR, Judgment of 25 November 2003, para. 166; [Case of the “Mapiripán Massacre” v. Colombia](#), IACtHR, Judgment of 15 September 2005, para. 227.

<sup>396</sup> [Solomou and Others v. Turkey](#), ECtHR, Judgment of 24 June 2008, para. 81.

In cases of alleged torture or ill-treatment, a medical report must be drawn up that complies with relevant international guidelines and protocols.<sup>397</sup>

If there is a possibility of discriminatory intent, the investigation should aim to reveal it. In *M.C and A.C. v. Romania*, demonstrators were targeted and attacked by private individuals on their way back from a gay rights march. The ECtHR held:

*When investigating violent incidents, such as ill-treatment, State authorities have a duty to take all reasonable steps to uncover any possible discriminatory motives ... The authorities must do whatever is reasonable in the circumstances to collect and secure the evidence, to explore all practical means of discovering the truth, and to deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence induced by, for instance, racial or religious intolerance, or violence motivated by gender-based discrimination. Treating violence and brutality arising from discriminatory attitudes on an equal footing with violence occurring in cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.*<sup>398</sup>

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## Promptness

It is important that the investigation is conducted in a manner that maintains public confidence in State authorities, especially in cases where law enforcement authorities are involved. The investigation must therefore be initiated and concluded within a reasonable time.<sup>399</sup> Conduct that violates the requirement of promptness includes: delays in taking statements from key witnesses,<sup>400</sup> repeated adjournments of hearings because of procedural errors,<sup>401</sup> and excessive overall length of the proceedings.<sup>402</sup> Authorities cannot delay proceedings in the hope that they will become time-barred.<sup>403</sup>

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<sup>397</sup> See [Dilek Aslan v. Turkey](#), ECtHR, Judgment of 20 October 2015, para. 57 referring to the [UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment](#) (the "Istanbul Protocol").

<sup>398</sup> [M.C. and A.C. v. Romania](#), ECtHR, Judgment of 12 July 2016, para.113 (references omitted).

<sup>399</sup> See among others, [Solomou and Others v. Turkey](#), ECtHR, Judgment of 24 June 2008, para. 82; [Pastor and Ticlete v. Romania](#), ECtHR, Judgment of 19 April 2011, paras. 69-71; [M.C. and A.C. v. Romania](#), ECtHR, Judgment of 12 July 2016, paras.111-112; see also General Comment No. 20 of the Human Rights Committee in [Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies](#), UN Doc. HRI/GEN/1/Rev.1, p.30, para 14.

<sup>400</sup> See, for example, [Dilek Aslan v. Turkey](#), ECtHR, Judgment of 20 October 2015, paras. 56 and 58.

<sup>401</sup> [Pastor and Ticlete v. Romania](#), ECtHR, Judgment of 19 April 2011, paras. 76 and 77-79.

<sup>402</sup> See, for example, [Florentina Olmedo v. Paraguay](#), Human Rights Committee, Views of 22 March 2012, UN Doc. CCPR/C/104/D/1828/2008CCPR/C/104/D/1828/2008, para. 7.5 (investigation not completed after almost 9 years); [Pastor and Ticlete v. Romania](#) (16 years) or [Mocanu and Others v. Romania](#) (23 years).

<sup>403</sup> See, among others, [Mocanu and Others v. Romania](#), ECtHR, Judgment of 17 September 2014, para. 346; [Association "21 December 1989" and Others v. Romania](#), ECtHR, Judgment of 24 May 2011, para. 144.

The ECtHR has underlined the social importance of investigating deaths during protests promptly, even if the case is complex. In *Mocanu and Others v. Romania*, a case decided in 2014, the Court remarked about the failure to complete investigations into shootings of demonstrators in 1990:

*While acknowledging that the case is indisputably complex, as the Government have themselves emphasised, the Court considers that the political and societal stakes referred to by the latter cannot justify such a long period. On the contrary, the importance of those stakes for Romanian society should have led the authorities to deal with the case promptly and without delay in order to avoid any appearance of collusion in or tolerance of unlawful acts.*<sup>404</sup>

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Finally, the State should not enact provisions that effectively prevent accountability of perpetrators, such as amnesties or inflexible statute of limitations:

*The Court has also held that in cases concerning torture or ill-treatment inflicted by State agents, criminal proceedings ought not to be discontinued on account of a limitation period, and also that amnesties and pardons should not be tolerated in such cases ... Furthermore, the manner in which the limitation period is applied must be compatible with the requirements of the Convention. It is therefore difficult to accept inflexible limitation periods admitting of no exceptions.*<sup>405</sup>

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## Independence

To be effective and preserve confidence in the State, the investigation must also be independent, in particular when law enforcement personnel are implicated. According to the ECtHR:

*it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence.*<sup>406</sup>

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According to the IACtHR, military courts and military prosecutors are not the appropriate bodies to conduct an effective investigation:

*[T]he Court has established that remedies before the military courts are not effective to decide cases of serious human rights violations, much less to establish the truth, prosecute those responsible, and make reparation to the victims, because*

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<sup>404</sup> [Mocanu and Others v. Romania](#), ECtHR, Judgment of 17 September 2014, para. 338.

<sup>405</sup> [Mocanu and Others v. Romania](#), ECtHR, Judgment of 17 September 2014, para.326.

<sup>406</sup> [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 300; see also [Solomou and Others v. Turkey](#), ECtHR, Judgment of 24 June 2008, para.81.

*those remedies that, for different reasons, result illusory cannot be considered effective, such as when the judicial organ lacks independence and impartiality.*<sup>407</sup>

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The ECtHR has also criticized investigations by military prosecutors into violations human rights violations allegedly committed by others within the military hierarchy.<sup>408</sup> On the other hand, the European Court has accepted a situation where the police performed certain steps in the investigation, though the accused were police officers, provided it did not alter the impartiality and independence of the investigation.<sup>409</sup> There should not be a hierarchical link between the officers investigating and the officers subject to investigation.<sup>410</sup>

### Accessibility to the public and relatives

For the sake of public trust and effectiveness, an investigation must also leave room for public scrutiny.

The UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment (the “Istanbul Protocol”) states:

*Alleged victims of torture or ill-treatment and their legal representatives must be informed of, and have access to, any hearing as well as to all information relevant to the investigation and must be entitled to present other evidence.*<sup>411</sup>

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The ECtHR has taken the same view,<sup>412</sup> and has added that there must be “a sufficient element of public scrutiny of the investigation”.<sup>413</sup> If the investigation concerns a death during an assembly, it is the family of the victim who must have access to it. That access is not unlimited; it must be granted “to the extent necessary to safeguard their legitimate interests”.<sup>414</sup> Consideration must be given to possible prejudicial effects to private individuals or other investigations, which may lead to access being provided for in later stages of the procedure.<sup>415</sup>

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<sup>407</sup> [Nadege Dorzema et al. v. Dominican Republic](#), IACtHR, Judgment of 24 October 2012, para. 189; see also [29 and 247](#).

<sup>408</sup> [Pastor and Ticlete v. Romania](#), ECtHR, Judgment of 19 April 2011, para. 74; [Mocanu and Others v. Romania](#), ECtHR, Judgment of 17 September 2014, paras. 320 and 333.

<sup>409</sup> [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 324.

<sup>410</sup> [McKerr v. The United Kingdom](#), ECtHR, Judgement of 4 May 2001, paras. 128 and 157.

<sup>411</sup> [UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment](#), para. 80.

<sup>412</sup> [El-Masri v. the former Yugoslav Republic of Macedonia](#), ECtHR, Grand Chamber ruling of 13 December 2012, para. 185.

<sup>413</sup> [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 303.

<sup>414</sup> [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 303.

<sup>415</sup> [Giuliani and Gaggio v. Italy](#), ECtHR, Grand Chamber Judgment of 24 March 2011, para. 304.

## Punishment of agents responsible for unlawful killings, torture or ill-treatment

An investigation is only adequate if it results in those responsible for any unlawful killings, torture or ill-treatment being punished, to a degree sufficient to ensure a deterrent effect. The ECtHR has held:

*[I]f the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity ... [T]he outcome of the investigations and of the ensuing criminal proceedings, including the sanction imposed as well as disciplinary measures taken, has been considered decisive. It is vital in ensuring that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined.*<sup>416</sup>

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The IACHR too emphasizes that States have an “international obligation to investigate, try, and, where applicable, punish security agents responsible for violating the rights to life and personal liberty.”<sup>417</sup>

Criminal sanctions should not only be applied to those enforcement officials using unlawful force, but also to any superior officer who failed to take measures within his or her power to prevent, suppress or report such use.<sup>418</sup>

A State agent facing charges as a result of an investigation into an injury or death during an assembly must be suspended and, if convicted, dismissed. The ECtHR has stated:

*[W]here a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance that he or she should be suspended from duty during the investigation and trial, and should be dismissed if convicted.*<sup>419</sup>

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<sup>416</sup> [Jeronovičs v. Latvia](#), ECtHR, Grand Chamber Judgment of 5 July 2016, paras. 105-106.

<sup>417</sup> [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 235.

<sup>418</sup> [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) (adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), UN Doc. A/CONF.144/28/Rev.1 at 112, Principle 24; UN Human Rights Council, [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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 91; [IACHR, Annual Report 2015](#), March 17, 2016, Chapter IV.A, para. 233.

<sup>419</sup> [İzci v. Turkey](#), ECtHR, Judgment of 23 July 2013, para. 74. See also [Yaman v. Turkey](#), ECtHR, Judgment of 2 November 2004, para. 55.

## 15. The right to observe and record assemblies, including law enforcement operations

The presence of the journalists, monitors and other observers plays a key role in ensuring the accountability of security personnel during the management of large gatherings. The Grand Chamber of the ECtHR has held that the authorities should not deliberately prevent or hinder the media from covering a demonstration.<sup>420</sup> In *Pentikäinen v. Finland* [[click for full case explanation](#)], it stated:

*[T]he crucial role of the media in providing information on the authorities' handling of public demonstrations and the containment of disorder must be underlined. The "watch-dog" role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account for their conduct vis-à-vis the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order. Any attempt to remove journalists from the scene of demonstrations must therefore be subject to strict scrutiny.*<sup>421</sup>

*Pentikäinen v. Finland* concerned a photojournalist who was sent by a weekly newspaper to report on a demonstration in Helsinki. After the demonstration turned violent, the police decided to prevent the demonstrators from marching. They later sealed off the area and ordered the protesters to disperse. The applicant decided to stay on the scene, despite being asked to leave repeatedly. He was then arrested along with some demonstrators and detained for over 17 hours. He was subsequently found guilty of disobeying police orders, but no penalty was imposed.

The Grand Chamber of the ECtHR ultimately found that the measures taken against Pentikäinen were not disproportionate. It stressed, however, that "this conclusion must be seen on the basis of the particular circumstances of the instant case, due regard being had to the need to avoid any impairment of the media's "watch-dog" role."<sup>422</sup>

Those particular circumstances included the fact that the violence took place in an unpredicted area, so that there was no possibility for the authorities to provide a secure viewing area for journalists;<sup>423</sup> that the applicant "was not readily identifiable

<sup>420</sup> [Pentikäinen v. Finland](#), ECtHR, Grand Chamber Judgment of 20 October 2015, para. 114.

<sup>421</sup> [Pentikäinen v. Finland](#), ECtHR, Grand Chamber Judgment of 20 October 2015, para. 89. See also [Najafli v. Azerbaijan](#), ECtHR, Judgment of 2 October 2012, para. 66.

<sup>422</sup> [Pentikäinen v. Finland](#), ECtHR, Grand Chamber Judgment of 20 October 2015, para. 114.

<sup>423</sup> [Pentikäinen v. Finland](#), ECtHR, Grand Chamber Judgment of 20 October 2015, para. 97.

as a journalist prior to his apprehension”;<sup>424</sup> that when the police became aware of the applicant’s status as a journalist, his equipment had immediately been treated as a journalistic source and not confiscated;<sup>425</sup> that the applicant could have, in the Court’s view, continued to exercise his assignment effectively from outside the cordoned-off area;<sup>426</sup> and more generally, that:

*the authorities did not deliberately prevent or hinder the media from covering the demonstration in an attempt to conceal from the public gaze the actions of the police with respect to the demonstration in general or to individual protesters.*<sup>427</sup>

The finding of no violation attracted criticism from scholars, as well as from four dissenting judges. The dissenters accepted that the police were initially justified in apprehending the applicant, but questioned whether detaining and prosecuting him beyond the moment when it had become clear that he was a journalist was really “[necessary in a democratic society](#)”.

The IACtHR has similarly emphasized the role of journalists in holding the authorities to account. In *Vélez Restrepo and Family v. Colombia*, a reporter had filmed how members of the Colombian army were beating a defenseless protester during a demonstration. Several soldiers then attacked the journalist, causing serious injuries, attempting (unsuccessfully) to seize his cassette, and destroying his camera. The IACtHR found that:

*[T]he content of the information that Mr. Vélez Restrepo was recording was of public interest. Mr. Vélez Restrepo captured images of soldiers involved in actions to control the demonstration ... The dissemination of that information enabled those who saw it to observe and verify whether, during the demonstration, the members of the armed forces were performing their duties correctly, with an appropriate use of force. This Court has stressed that “[d]emocratic control by society, through public opinion, encourages transparency in the State’s actions and promotes the accountability of public officials in relation to their public functions.”<sup>428</sup>*

The Court went on to conclude that the attack on Vélez Restrepo had violated his rights to personal integrity and to freedom of thought and expression. It also found various violations stemming from the State’s failure to meet its [duty to investigate](#) the attack and act against subsequent threats and harassment directed against Vélez Restrepo.<sup>429</sup>

<sup>424</sup> [Pentikäinen v. Finland](#), ECtHR, Grand Chamber Judgment of 20 October 2015, para. 98.

<sup>425</sup> [Pentikäinen v. Finland](#), ECtHR, Grand Chamber Judgment of 20 October 2015, para. 104.

<sup>426</sup> [Pentikäinen v. Finland](#), ECtHR, Grand Chamber Judgment of 20 October 2015, para. 101.

<sup>427</sup> [Pentikäinen v. Finland](#), ECtHR, Grand Chamber Judgment of 20 October 2015, para. 114.

<sup>428</sup> [Vélez Restrepo and Family v. Colombia](#), IACtHR, Judgment of September 3, 2012, para. 145.

<sup>429</sup> [Vélez Restrepo and Family v. Colombia](#), IACtHR, Judgment of September 3, 2012, p. 89.

UN Special Rapporteurs and several regional human rights mechanisms have similarly emphasized that there is a right to observe and make recordings at assemblies and to disseminate these.<sup>430</sup>

When the authorities decide to [disperse an assembly](#), those observing or recording should not be prevented from continuing to do so. The OSCE-ODIHR *Guidelines on Freedom of Peaceful Assembly* state:

*Third parties (such as monitors, journalists and photographers) may also be asked to disperse, but they should not be prevented from observing and recording the policing operation.*<sup>431</sup>

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The AComHPR takes a similar view.<sup>432</sup>

### 15.1. Do non-journalists have the same right to record as the press?

Both the IACtHR and the ECtHR have stated in general terms that professional journalists should not enjoy special privileges compared to others fulfilling a comparable function. The Grand Chamber of the ECtHR has held that “public watchdogs” (a term which includes NGOs, academic researchers, authors, bloggers and popular users of social media) should enjoy similar protection as the press when they report on matters of public interest.<sup>433</sup> The IACtHR, in an advisory opinion, has taken the view that the practice of journalism is a right of every person, which should not be subject to formal requirements such as obtaining a license or becoming a member of a professional association.<sup>434</sup>

The UN Special Rapporteur and his counterpart, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions state unambiguously that the right to record during assemblies belongs to “everyone” and should be protected:

*Everyone — whether a participant, monitor or observer — shall enjoy the right to record an assembly, which includes the right to record the law enforcement*

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<sup>430</sup> See [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 71; [IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005](#), OEA/Ser.L/V/II.124 Doc. 7, 27 February 2006, p. 145, para. 101; [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Guidelines 5.9 and 5.10 and Explanatory Notes, paras. 169 and 206-10; [Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe, Special Report on handling of the media during political demonstrations](#), 21 June 2007, p. 2; [Parliamentary Assembly of the Council of Europe, Resolution 2116 \(2016\)](#), 27 May 2016, para. 7.11.

<sup>431</sup> [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 168.

<sup>432</sup> [AComHPR, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), 4 March 2017, para. 22.7.

<sup>433</sup> [Maqyar Helsinki Bizottság v. Hungary](#), ECtHR, Grand Chamber Judgment of 8 November 2016, paras. 165-68.

<sup>434</sup> [IACtHR, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism \(Arts. 13 and 29 of the American Convention on Human Rights\)](#), Advisory Opinion OC-5/85, November 13, 1985, paras. 74-81.

*operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent — sometimes referred to as the right to “record back”. The State should protect this right.*<sup>435</sup>

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## 15.2. May recordings of assemblies be seized by the authorities?

An order to turn recordings of an assembly over to the authorities qualifies as an interference with the right to freedom of expression,<sup>436</sup> which must comply with the same [three-prong test applicable to limitations on freedom of peaceful assembly](#).

In the first place, an order should not be issued unless it rests on a [clear basis in law](#). Officers seizing material on the spot will fall foul of this requirement unless the law clearly empowers them to do so. The UN Special Rapporteur underlines the importance of due process:

*Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.*<sup>437</sup>

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Second, the order must pursue [a legitimate aim](#), such as the investigation of an offense committed during the assembly. A seizure whose aim is to conceal the actions of the authorities does not meet this requirement. Third and finally, the seizure must meet requirements of [necessity and proportionality](#).

The EComHR has however clarified that the enhanced right of journalists and other watchdogs to protect their confidential sources of information does not apply when they receive a summons to turn over recordings of assemblies, since no particular secrecy or duty of confidentiality is in play when recordings are made in public.<sup>438</sup>

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<sup>435</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 71.

<sup>436</sup> See [British Broadcasting Corporation v. the United Kingdom](#), EComHR, Decision of 18 January 1996; [Sanoma Uitgevers B.V. v. the Netherlands](#), ECtHR, Grand Chamber Judgment of 14 September 2010, para. 60.

<sup>437</sup> [UN Human Rights Council, 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](#), UN Doc. A/HRC/31/66, 4 February 2016, para. 71; see also [OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly](#), 2<sup>nd</sup> edn, 2010, Explanatory Notes, para. 169 (“any requirement to surrender film or digitally recorded images or footage to the law-enforcement agencies should be subject to prior judicial scrutiny”).

<sup>438</sup> [British Broadcasting Corporation v. the United Kingdom](#), EComHR, Decision of 18 January 1996; [Nordisk Film & TV A/S v. Denmark](#), ECtHR, Decision of 8 December 2005.