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GUIDELINES ON THE IMPLEMENTATION OF THE LAW ON FREEDOM OF ASSEMBLY OF THE REPUBLIC OF AZERBAIJAN

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Introduction

Freedom of assembly is an essential element of democracy. The extent to which freedom of assembly is exercised is often described as the 'litmus test' for democracies in transition.

The Law of the Republic of Azerbaijan on Freedom of Assembly, last amended in May 2008, entered into force on 26 June 2008. The amendments to the Law on Freedom of Assembly were initially drafted in 2005 and since then, on the request of the authorities of Azerbaijan, they have been subjected to thorough review by both the Venice Commission and the OSCE/ODIHR. The last opinion of the amendments was issued by the Venice Commission in December 2007.

In the follow up discussion on the Law on Freedom of Assembly, the Venice Commission noted that it meets most of the international standards in relation to freedom of assembly. However they stated that great care should be devoted to the due implementation of the law so as to fully secure the enjoyment of this freedom in Azerbaijan. Proper implementation of the Law on Freedom of Assembly is particularly crucial in the context of election campaigns.

Given the importance of proper implementation, the OSCE/ODIHR and OSCE Office in Baku agreed to assist the authorities in Azerbaijan in drafting Guidelines on the implementation of the Law on Freedom of Assembly.

These Guidelines are primarily based on the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (March 2007) which have since been endorsed by the Venice Commission (June 2008). However, they also draw upon recent case law of the European Court of Human Rights in relation to cases under both Article 11 and Article 10 of the European Convention on Human Rights; on examples of good practice in relation to the regulation and policing of assemblies in a variety of countries; and on a number of reports that have been published in response to outbreaks of violence in relation to public assemblies. For ease of reference, the Guidelines are structured around the individual Articles of the Law on Freedom of Assembly. While this approach unavoidably results in some duplication of materials, it was felt that this was the best way to present the document, especially because those implementing the law may simply look to the particular section which prescribes their individual role, rather than reading the document as a whole.

ARTICLE 1

CHAPTER 1. GENERAL PROVISIONS

Article 1. Freedom of assembly

I. Everyone's freedom to assemble together with others is ensured by the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party.

Article 49 of the Constitution of the Republic of Azerbaijan provides that everyone should be able to enjoy the freedom to peacefully assemble. The present law should therefore be interpreted in light of this Constitutional presumption in favour of freedom of assembly. There should be no unnecessary restrictions, either direct or indirect, on the right to peacefully assemble.¹ Principle 1 of the OSCE ODIHR / Venice Commission Guidelines further emphasizes that the freedom to assemble should be enjoyed without unnecessary regulation:

As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden in law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so...²

II. The state ensures the realization of the freedom of assembly and takes relevant measures for having assemblies, organized peacefully and without arms in accordance with the present Law.

The European Convention on Human Rights (ECHR) is intended to guarantee rights that are 'practical and effective' not 'theoretical or illusory'. The European Court of Human Rights (ECtHR) has therefore often held that 'the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens.'³ Principle 2 of the OSCE ODIHR / Venice Commission Guidelines similarly highlights '...the responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom of assembly is enjoyed in practice and is not subject to unduly bureaucratic regulation.'⁴

As recognised by the Constitutional Court of the Azerbaijan Republic in its decision of October 21, 2005, *On Interpretation of Article 49 of the Constitution*, citing the judgment of the European Court of Human Rights in *Platform Ärzte für das Leben v. Austria* (1988):

Genuine, effective freedom of peaceful assembly cannot ... be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would

¹ *Balcik and Others v. Turkey* (2007) at para.47.

² OSCE ODIHR / Venice Commission Guidelines, at p.13.

³ See, for example, *Oya Ataman v. Turkey* (2006) at para. 35; *Balcik and Others v. Turkey* (2007) at para.46; *Makhmudov v. Russia* (2007) at para.64.

⁴ OSCE ODIHR / Venice Commission Guidelines, at p.14.

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not be compatible with the object and purpose of Article 11 [ECHR]. ... Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.⁵

The OSCE ODIHR / Venice Commission Guidelines explain the extent of the State's duty in this regard, and provide some examples of 'relevant measures' which should be taken by the State:

- **Providing protection from others:** 'This positive obligation requires the state to protect the participants of a peaceful assembly from any person or group (including *agents provocateurs* and counter-demonstrators) that attempts to disrupt or inhibit it in any way.'⁶ Indeed, '[t]he state's duty to protect peaceful assembly is of particular significance where the persons holding, or attempting to hold, the assembly are espousing a view that is unpopular, as this may increase the likelihood of violent opposition.'⁷
- **Protecting the right to life:** '...the State has a positive obligation to protect the right to life (Article 2 of the ECHR), and an applicant complaining of a breach of Article 2 need only show that the authorities did not do all that could reasonably be expected in the circumstances to avoid the risk.'⁸
- **Covering the Costs of Policing and Security:** '[T]he costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities. The state must not levy any additional monetary charge for providing adequate policing.'⁹
- **Responsibility for Cleaning-up:** '[T]he responsibility to clean up after an event will normally lie with the municipal authorities. Unreasonable or prohibitive clean-up costs should not be imposed on an assembly organizer. This is particularly the case where nonprofit assemblies are concerned. However, the mere existence of commercial sponsorship of an event should not be used by the authorities as an excuse to impose unreasonable clean-up costs.'¹⁰

While member States are accorded a certain 'margin of appreciation' in relation to *how* they protect the right to freedom of peaceful assembly (in particular, with regard to their assessment of whether interference with the right is necessary, and the means used), this margin is not unlimited and the ECtHR will closely scrutinize the degree of protection ultimately afforded to Convention rights.¹¹ It is significant, for example, that, in *Stankov and the United Macedonian Organisation (ILINDEN) v Bulgaria* (2001), the ECtHR

⁵ At para.32. See also *Oya Ataman v. Turkey* (2006) at para.36; *Djavit An v. Turkey*, at para.57; *Balcik and Others v. Turkey* (2007) at paras.46-47.

⁶ OSCE ODIHR / Venice Commission Guidelines, para.26.

⁷ OSCE ODIHR / Venice Commission Guidelines, para.28.

⁸ OSCE ODIHR / Venice Commission Guidelines, para.115. See further the commentary in relation to Article 12(VIII) below.

⁹ OSCE ODIHR / Venice Commission Guidelines, para.27.

¹⁰ OSCE ODIHR / Venice Commission Guidelines, para.27.

¹¹ See, for example, *Osmani and Others v. the former Yugoslav Republic of Macedonia* (2001); *Ashughyan v Armenia* (2008), para.89.

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did *not* accept the Bulgarian government's assertion that they should be granted a wide margin of appreciation because the country had experienced a difficult transition from a totalitarian regime to democracy (with the attendant economic and political difficulties, and inter-communal tensions), or because the demonstrations raised sensitive issues.¹²

¹² See *Stankov* judgment at paras.73-74 (for the Bulgarian government's view), and paras. 87 and 107 (for the relevant aspects of the Court's assessment). See also OSCE ODIHR / Venice Commission Guidelines, para.74.

ARTICLE 2

Article 2. Application of the freedom of assembly

- I. Freedom of assembly shall be applied in compliance with the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party on the basis of the present Law.**

As stated in relation to Article 1 above, the interpretation of this law should be consistent with the Constitutional presumption in favour of freedom of peaceful assembly, and with the relevant case law of the ECtHR. Those exercising the powers contained in this legislation should have regard to these Guidelines which are based primarily on the OSCE ODIHR *Guidelines on Freedom of Peaceful Assembly* (2007).

- II. The State shall ensure equality of persons during the realization of the freedom of assembly.**

The OSCE ODIHR / Venice Commission Guidelines emphasize that any interference with the right to freedom of peaceful assembly must be non-discriminatory:

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

46. Article 14 of the ECHR does not provide a freestanding right to non-discrimination but rather complements the other substantive provisions of the Convention and its Protocols. Thus, Article 14 is applicable only where the facts at issue (and arguably also the grounds of restriction) fall within the ambit of one or more of the other Convention rights. OSCE participating states and signatories to the ECHR are encouraged to ratify Protocol 12 (see below), which contains a prohibition of discrimination.

Protocol 12 to the ECHR, Article 1 — General prohibition of discrimination

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

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

47. Importantly, Article 26 of the ICCPR has been interpreted to include sexual orientation in the reference to non-discrimination on grounds of sex. Article 13 of the Amsterdam Treaty also provides for the European Union to “undertake necessary actions to fight discrimination based on ... sexual orientation”, and

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Article 21(2) of the EU Charter of Fundamental Rights prohibits “any discrimination on any ground”, including on the basis of sexual orientation.

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

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

Criticism or censorship of particular viewpoints or lifestyles by public officials may lead to a violation of Article 14 ECHR in conjunction with Article 11 ECHR. This is particularly likely where the decision-making authority acts on behalf of the public official in question. In the case of *Bączkowski and Others v. Poland* (2007), the Court ruled that public statements by the Mayor of Warsaw which were critical of homosexuals had affected the decision-making process in relation to the notified Gay Pride parade in Warsaw. These comments were held to have impacted in a discriminatory manner on the applicant’s right to freedom of assembly. The Court’s judgment stated:

98. ... the exercise of the freedom of expression by elected politicians, who at the same time are holders of public offices in the executive branch of the government, entails particular responsibility. In certain situations it is a normal part of the duties of such public officials to take personally administrative decisions which are likely to affect the exercise of individual rights, or that such decisions are given by public servants acting in their name. Hence, the exercise of the freedom of expression by such officials may unduly impinge on the enjoyment of other rights guaranteed by the Convention ... When exercising their freedom of expression they may be required to show restraint, bearing in mind that their views can be regarded as instructions by civil servants, whose employment and careers depend on their approval.

99. The Court is further of the view, having regard to the prominent place which freedom of assembly and association hold in a democratic society, that even appearances may be of a certain importance in the administrative proceedings

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where the executive powers exercise their functions relevant for the enjoyment of these freedoms ...

100. ... in the present case the Court considers that in the assessment of the case it cannot disregard the strong personal opinions publicly expressed by the Mayor on issues directly relevant for the decisions regarding the exercise of the freedom of assembly. It observes that the decisions concerned were given by the municipal authorities acting on the Mayor's behalf after he had made known to the public his opinions regarding the exercise of the freedom of assembly and "propaganda of homosexuality" (see paragraph 27 above). It is further noted that the Mayor expressed these views when a request for permission to hold the assemblies was already pending before the municipal authorities. The Court is of the view that it may be reasonably surmised that his opinions could have affected the decision-making process in the present case and, as a result, impinged on the applicants' right to freedom of assembly in a discriminatory manner.

101. Having regard to the circumstances of the case seen as a whole, the Court is of the view that there has been a violation of Article 14 in conjunction with Article 11 of the Convention.

ARTICLE 3

Article 3. Basic definitions

Notion of “assembly” in the present Law means temporary gathering of a number of persons in a public place, with intention to participate in such gathering. Such an assembly may be in the form of gathering, meeting, demonstration, street procession, and picket.

The interpretation of ‘temporary’ should not preclude the erection of protest camps or other impermanent constructions.¹³ There are examples in ECHR case law of protests that have lasted for lengthy periods without undue restriction.¹⁴ Similarly, in London, a protest against the war in Iraq in front of the Houses of Parliament has continued for more than seven years since 2 June 2001.¹⁵

While the definition of assembly requires ‘a number of persons’ to be gathered, the OSCE ODIHR / Venice Commission Guidelines stress that ‘an individual protester exercising his or her right to freedom of expression, where their physical presence is an integral part of that expression, should also be afforded the same protections as those who gather together as part of an assembly.’¹⁶

As the Article 3 definition suggests, it is vital to distinguish between those who *intend* to participate in an assembly and those who do not. By-standers or observers should not be regarded as participants in an assembly merely because they are in the vicinity of a location where an assembly is taking place.

Where individuals are prosecuted for breaches of the law, the burden of proof should rest on the authorities to show that a particular individual actually intended to participate in an assembly, and the authorities should be able to provide a detailed, ‘thorough and objective assessment of the circumstances’ surrounding the individual’s participation in, and behaviour at, the assembly in question (for example, by providing statements of witnesses other than the arresting officers).¹⁷ See further the commentary below in relation to Article 13 of the present law (*rights and duties of participants in a*

¹³ OSCE ODIHR / Venice Commission Guidelines, para.16.

¹⁴ In *Cisse v France* (2002), for example, the Court noted that the authorities had not intervened in a protest which had lasted for two months (albeit in this case, inside a church building). See also the European Court of Justice case of *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Osterreich* (Case C-C-112/00, ECR I-6959, Judgment of 12 June 2003). Here, the European Court of Justice held that allowing a demonstration that blocked the Brenner Motorway between Germany and Italy for almost 24 hours was not a disproportionate restriction on the free movement of goods under Article 28 of the EC Treaty. This was for three reasons: (1) the disruption was of a relatively short duration and on an isolated occasion; (2) measures were taken to limit the disruption caused; (3) excessive restrictions on the demonstration could have deprived the demonstrators of their rights to expression and assembly, and indeed possibly caused greater disruption. The Austrian authorities considered that they had to allow the demonstration to go ahead because the demonstrators were exercising their fundamental rights of freedom of expression and freedom of assembly under the Austrian constitution.

¹⁵ See <http://www.parliament-square.org.uk/>

¹⁶ OSCE ODIHR / Venice Commission Guidelines, para.15. This can be contrasted with the argument of the Armenian government in *Galstyan v Armenia* (2007) at paras.97-98.

¹⁷ See, for example *Ashughyan v Armenia* (2008) at para.99.

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peaceful assembly) and Article 14(II)(5) (detention of individuals who refuse to follow an order to disperse on the suspension of an assembly).

ARTICLE 4

Article 4. Assemblies not regulated by the present Law

I. Without prejudice to the right to hold assemblies on private property, peaceful assemblies conducted in the following places shall not be regulated by the present Law:

- **In places which are in private ownership of persons, are under rent or other type of lawful usage;**

While assemblies on private property raise different issues from the public assemblies regulated by the present law,¹⁸ the state may have a positive obligation to protect the right to assemble on private property in cases where assemblies on private property are heavily restricted, and the essence of the right has thus been destroyed.¹⁹ As the ECtHR stated in the case of *Appleby and Others v. The United Kingdom* (2003):

*'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.'*²⁰

- **In closed places especially designed for conducting public events.**

The use of closed places for conducting public events should be available for the holding of any assembly to the extent that such facilities are made available for similar activities.²¹ The equality and anti-discrimination provisions of the OSCE ODIHR / Venice Commission Guidelines may be particularly relevant in this regard (see Article 2(II) above).

II. The following forms of assemblies shall not be regulated by the present Law:

- **Wedding and funerals ceremonies;**
- **Holiday and mourning events;**
- **Religious ceremonies.**

Using wedding and funeral ceremonies, holiday and mourning events and religious ceremonies for organizing gatherings, meetings, demonstrations, street procession and pickets can be limited or suspended on the basis of the requirements stipulated in Articles 7 and 8 of the present Law.

¹⁸ Although see *Cisse v France* (2002); and *Kuznetsov and Others v Russia* (2007) at paragraphs 70-72.

¹⁹ Thus demanding intervention in the sphere of relations between private individuals, see *Platform Ärzte* extract in the commentary on Article 1 above.

²⁰ *Appleby and Others v. the United Kingdom* (2003) at para.47.

²¹ See OSCE ODIHR / Venice Commission Guidelines, para.19.

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This provision recognises that funerals, commemorative events, and religious ceremonies may, on occasion, involve gatherings, meetings, or street processions etc. Furthermore, in some cases funerals (particularly the funerals of politicians or political activists) may easily become politicised and legitimately used as platforms for political speeches or criticism of the government. Every effort should be made to allow such events to proceed without regulation. For example, during the conflict in Northern Ireland, the funerals of IRA activists were inevitably politicised events, but were nevertheless largely policed as funerals and allowed to take place unhindered. As discussed below (in relation to Article 7(III)) where restrictions are deemed necessary, the least intrusive measures possible should be chosen.

It should also be noted that public assemblies relating to religious belief or matters of conscience may also attract the protection of Article 9, ECHR (the right to freedom of thought, conscience and religion). Like freedom of peaceful assembly, this is regarded by the ECtHR as one of the foundations of a “democratic society” within the meaning of the Convention. In the case of *Kuznetsov v. Russia* (2007), the ECtHR clarified that Article 9 ‘...is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.’²² Furthermore, in *Barankevich v. Russia* (2007), the ECtHR stated that:

30. a democratic society, in which several religions coexist within one and the same population, it may be necessary to place restrictions on the “freedom to manifest one's religion or belief” in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial. What is at stake here is the preservation of pluralism and the proper functioning of democracy, and the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other. ...

31. ... It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority.’²³

The regulation of any public assembly not covered by the present law should be no more restrictive than is permitted under the relevant European and international standards as detailed here.

III. Each participant of peaceful assemblies provided for in parts I and II of the present article has to follow general requirements of the legislation of the Republic of Azerbaijan.

²² *Kuznetsov v. Russia* (2007) at para.56.

²³ *Barankevich v. Russia* (Application no. 10519/03, judgment of 26 July 2007) at paras.30-31.

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The requirement that any restrictions on freedom of assembly be ‘prescribed by law’ is discussed further in relation to Articles 7(I) and 14(VII) below.²⁴ The OSCE ODIHR / Venice Commission Guidelines state that ‘[a]ll provisions that create criminal or administrative liability must comply with the principle of legality...’²⁵ The ECtHR has explained this principle in the following terms:

*‘a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen – 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.’*²⁶

The OSCE ODIHR / Venice Commission Guidelines further provide that participants should be afforded a defence in certain cases where they have not followed the general requirements of the legislation:

*...[O]rganizers and participants should benefit from a “reasonable excuse” defence. For example, participants in unlawful assemblies should be exempted from liability for the offence of “participation in an unlawful assembly” when they had no prior knowledge that the assembly was unlawful. Similarly, a participant should not be held liable for anything done under the direction of a police officer.’*²⁷

²⁴ Citing the case of *Kuznetsov and Others v. Russia* (2007).

²⁵ OSCE ODIHR / Venice Commission Guidelines, para.48.

²⁶ See, for example, *Galstyan v Armenia* (2007) at para.106 and *Mkrtchyan v Armenia* (2007) at para.39.

²⁷ OSCE ODIHR / Venice Commission Guidelines, at para.48. Also discussed in relation to Article 16 of the present law, below.

ARTICLE 5

CHAPTER II. RULES OF ORGANIZATION OF ASSEMBLIES

Article 5. Notification on convening an assembly

- I. A person or persons organizing any assembly enumerated in Article 3 of the present Law have to notify in advance the relevant body of executive power in writing. A notification has to be submitted, as a rule, 5 days prior to the day of convening the intended assembly for coordinating its time and venue, and the route of a street procession in order to allow the relevant body of executive power to make necessary arrangements. In cases of notification in lesser time prior to the assembly, this should be justified by the organisers.**

Under this legislation, assembly organizers do not need permission from the relevant body of executive power to hold a lawful assembly. Only notification (not authorization) is required.

Assembly organizers should be able to submit their notification to an office of the relevant body of executive power that is in the vicinity of the location of the notified commencement point of the assembly. That office should act as a single gateway for all notifications in that locality.

As the OSCE ODIHR / Venice Commission Guidelines suggest:

*The official receiving the notice should issue a receipt explicitly confirming that the organizers of the assembly are in compliance with the applicable notice requirements. The notice should also be communicated immediately to all state organs involved in the regulatory process, including the relevant police authorities.*²⁸

The notification process should be as straightforward as possible and avoid unnecessary bureaucracy.

As soon as the organizer of an assembly has submitted written notification to the relevant body of executive power, the notification should be passed immediately to the officers vested with the powers (under Articles 7-9 of the present law) to restrict or prohibit an assembly and with responsibility for assessing whether or not restrictions are necessary.

The authorities should act promptly upon notification in this way even where written notification is submitted early (i.e. more than 5 days prior to the assembly). In such cases, the organiser should be given as much time as possible to plan and proceed with any preparatory work necessary (as envisaged by Article 12(1) below). Indeed, early notification should be viewed by the authorities as an opportunity to discuss with the organizer how the notified assembly might best be facilitated. Such co-operation can

²⁸ OSCE ODIHR / Venice Commission Guidelines, para.94.

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significantly reduce the risk of later confrontation. As the OSCE ODIHR / Venice Commission Guidelines state:

‘...assembly organizers and regulatory authorities should make every effort to reach a mutual agreement on the time, place, and manner of an assembly. Such negotiation serves as a preventive tool helping avoid the imposition of arbitrary and unnecessary restrictions.’²⁹

Where no agreement, or only partial agreement, is reached between the authorities and the organizer, the relevant body of executive power should consider whether or not it is necessary to exercise the powers under Articles 7-9 of the present law. As provided in Article 10 below, if the organizer does not receive a response at least three days prior to the notified start time of assembly, the event should be facilitated according to the terms of the notification.

The relevant body of executive power should move as quickly as possible to consider the details contained in the notification, and should not necessarily wait until 3-days prior to the event to issue a response and communicate this to the organiser (see further the commentary in relation to Article 10 below). The present law requires that any restrictions be imposed no later than 3 working days prior to the notified date of the event. This implies that the relevant body of executive power may neither revoke nor amend a decision once it has been issued.³⁰ It is vitally important to have such finality of legal judgment, although it is worth noting that in some jurisdictions, a decision can be reviewed by the decision-making body if (and only if) there is a significant material change in circumstances after the decision has been issued.

Where it is not possible for the organiser to give at least 5 days notice because the assembly is a response to circumstances which that organiser could not reasonably have foreseen, the organiser should provide notice at the earliest possible date and explain the circumstances which made timely notification impossible. The relevant body of executive power should accept as satisfactory any explanation provided by the organiser if, having regard to the justification provided, timely notification would not have been practicable.

Fortuitous or spontaneous assemblies should not be suspended solely because they have not complied with the requisite notification requirement where timely notification was not practicable. Furthermore, as highlighted in the OSCE ODIHR / Venice Commission Guidelines:

‘...Even if no reasonable grounds for the failure to give advance notice are provided, the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature. Organizers who ignore or refuse to comply with valid advance-notice requirements may be subsequently prosecuted.’³¹

²⁹ OSCE ODIHR / Venice Commission Guidelines, at para.105.

³⁰ Similarly, the Applicant’s submission in *Makhmudov v. Russia* (2007) at para.59.

³¹ OSCE ODIHR / Venice Commission Guidelines, p.15, ‘Procedural Issues’, para.2.

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The authorities should only respond to a notification where, in accordance with Article 7 of the present law, restrictions are considered necessary in a democratic society. There is no legislative basis for the authorities to grant permission for public assemblies. Consequently (as stated above) where an organizer does not receive any response to his/her notification from the relevant authorities, the assembly should be facilitated according to the terms of the notification. As the OSCE ODIHR / Venice Commission Guidelines emphasize:

*If the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able to proceed with the planned activity in accordance with the terms notified and without restriction.*³²

Detailed and up-to-date records should be maintained by the relevant body of executive power of the number of notifications received and any actions taken. This information should be made available to any person or organization on request, and it is good practice to publish an annual report on the regulation of public assemblies. One example of this is the Parades Commission in Northern Ireland, which publishes such information in an annual report, and on its website.³³ This should include statistics relating to the total number of assemblies notified, the total number of assemblies restricted, a breakdown of these restrictions by type (*i.e.* time, place, manner, or a combination thereof), the total number suspended, and the total number prohibited.

Similarly in Moldova good practice is being developed, particularly by the authorities in Chisinau, around the availability of information on assemblies since the introduction of the new law on assemblies in April 2008.

II. A written notification shall include the following information:

- 1) form of an intended assembly;**
- 2) general purpose of assembly;**
- 3) place and time of convening an assembly;**
- 4) approximate number of participants;**
- 5) if it is a street procession, a proposed route (a place of beginning, distance and place of ending the procession);**
- 6) name, surname, patronymic name and address of organizers of an assembly;**
- 7) date of submission of a written notification;**
- 8) contact phones or in case of their absence contact addresses.**

The factors identified in Article 5(II)(1)-(8) should be regarded as exhaustive, and organisers of assemblies should not be required to supply any additional details beyond those enumerated in sub-sections (1)-(8).

Organisers can submit additional information prior to the decision taken by the relevant body of executive power.

³² OSCE ODIHR / Venice Commission Guidelines, p.15, 'Procedural Issues', para.1.

³³ <http://www.paradescommission.org>

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Where any of these required details are missing from the submitted notification, the relevant body of executive power should immediately contact the organizer and ask for the requisite details to be provided. Notifications should never be rejected simply because they do not contain all the necessary information until the organiser has been given an opportunity to correct the notification and supply the missing details.

III. All organizers of an assembly have to sign a written notification.

In other jurisdictions, requiring an organiser to sign the written notification is sometimes used to highlight their legal responsibilities and potential liability should the assembly depart in any way from that which has been notified. In relation to the responsibilities and liability of organisers of public assemblies, the OSCE ODIHR / Venice Commission Guidelines highlight that:

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

IV. For fortuitous assemblies submission of a written notification is not required. Fortuitous assemblies in accordance with the requirements specified in Article 7 and 8 of the present Law can be restricted or suspended.

This provision acknowledges that fortuitous (spontaneous) assemblies might not have any identifiable organiser. The OSCE ODIHR / Venice Commission Guidelines further emphasize that such events should be regarded as a normal occurrence in any democratic society:

97. Spontaneous assemblies. The ability to respond peacefully and immediately (spontaneously) to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. Spontaneous events should be regarded as an expectable (rather than exceptional) feature of a healthy democracy. As such, the authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.

98. The issue of spontaneous assemblies merits special attention with regard to the requirement of prior notification. The law should explicitly provide for an exception from the requirement of prior notification where giving prior notification is impracticable. The law should also provide a defence for participants charged with taking part in an unlawful assembly if they were unaware of the unlawful nature of the event. Furthermore, if there are reasonable

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*grounds for non-compliance with the notification requirement, then no liability or sanctions should adhere.*³⁴

It is vital that suspension of a spontaneous assembly is considered a measure of last resort (as stated in relation to Article 8(VII) below), and where the power to suspend such an assembly (under Article 8(VI)) is exercised, the decision must be based only upon the legitimate considerations specified in Article 7. See also the commentary later in this document in relation to Article 14(I)(2) and the reference to the decision of the ECtHR in the cases of *Oya Ataman v Turkey* (2007), *Balcik v Turkey* (2007), *Bukta v Hungary* (2007) and *Nurettin Aldemir v Turkey* (2007)).

³⁴ The OSCE ODIHR / Venice Commission Guidelines again emphasize (at para.88) that: ‘...participants in unlawful assemblies should be exempted from liability for the offence of “participation in an unlawful assembly” when they had no prior knowledge that the assembly was unlawful.’

ARTICLE 6

Article 6. An organizer of an assembly

- I. Organizer of a gathering, meeting, demonstration, street procession or picket is a person who organized a peaceful assembly and whose name is mentioned in a written notification submitted to the relevant body of executive power.**

The authorities should note that the OSCE ODIHR / Venice Commission Guidelines highlight that the right to freedom of assembly extends to various categories of non-nationals:

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

- II. Persons under 18 without written consent of their parents or other legal representatives, as well as persons whose capability is restricted by a court decision that entered into legal force, without written consent of their custodians, may not be organizers of a peaceful assembly.**

The provision in this section relating to persons under 18 is consistent with the OSCE ODIHR / Venice Commission Guidelines. The Guidelines state that:

56. In light of the important responsibilities of the organizers of public assemblies, the law may set a certain minimum age for organizers, having due regard to the evolving capacity of the child ... The law may also provide that minors may organize a public event only if their parents or legal guardians consent to their doing so.

The provision in this section of the law regarding persons whose capability is restricted by a court decision that entered into legal force must not be interpreted in a way that would unduly restrict the rights of persons without full legal capacity to organise a public assembly. The OSCE ODIHR / Venice Commission Guidelines state that:

57. Other persons without full legal capacity. International standards provide that "[e]very person with a mental illness shall have the right to exercise all civil,

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political, economic, social and cultural rights as recognized in ... the International Covenant on Civil and Political Rights, and in other relevant instruments". The UN Convention on the Rights of Persons with Disabilities similarly emphasizes the need to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities". Everyone's enjoyment of the freedom of peaceful assembly should thus be facilitated regardless of their legal capacity.

- III. A political party, public unions, organizations of trade unions or an initiative group advancing a proposal on holding an assembly have to appoint an organizer of the mentioned event.**
- IV. Organizers of assemblies or their representatives have to participate in assemblies in person. If it is impossible then organizers or their representatives have to inform the relevant body of executive power no later than 3 hours prior to the beginning of the event that they can not come to an assembly, and at the same time they have to inform the participants about it. An assembly cannot be held if none of the organizers is present.**

It is good practice for the organiser or their representative to make themselves known to the police at the time of a notified public assembly. Requiring the participation of the organizer or their representative is thus broadly consistent with the responsibilities of the organiser as prescribed in Article 12 of the present law (in particular, see the commentary in relation to Article 12(III) below). Where the organizer is unable to participate in the assembly *due to circumstances beyond his/her control*, he/she should not face any administrative or criminal sanction for failing to provide at least 3 hours prior notice to the authorities.

ARTICLE 7

CHAPTER III. GROUNDS AND ORDER OF RESTRICTING OR BANNING A PEACEFUL ASSEMBLY

Article 7. Lawful restrictions of freedom of assembly

I. No restrictions shall be placed on the exercise of the right to freedom of assembly other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

This section of the law highlights two related but distinct issues, the quality of the decision making process, and the legitimate grounds for restricting public assemblies.

The decision making procedure:

The ECtHR assesses whether the respondent State exercised its discretion reasonably, carefully and in good faith.³⁵ The requirement that restrictions be ‘prescribed by law’ means that no restrictions can be imposed without legal basis (see also the discussion above in relation to Article 4(III) and Article 14(VII) of the present law). For example, in *Kuznetsov and Others v. Russia* (2007) the ECtHR held that:

*74. ... the legal basis for breaking up a religious event conducted on the premises lawfully rented for that purpose was conspicuously lacking. Against that background the Court finds that the interference was not “prescribed by law” and that the Commissioner did not act in good faith and breached a State official's duty of neutrality and impartiality vis-à-vis the applicants' religious congregation.*³⁶

The OSCE ODIHR / Venice Commission Guidelines further state that:

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

In addition, the OSCE ODIHR / Venice Commission Guidelines contain important stipulations in relation to the decision-making procedure:

42. The regulatory authority should ensure that the general public has adequate access to reliable information relating to public assemblies. Many countries

³⁵ See, for example, *Makhmudov v. Russia* (2007) at para.65.

³⁶ *Kuznetsov and Others v. Russia* (Application no. 184/02, judgment of 11 January 2007, final on 11 April 2007) at para.74.

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already have legislation specifically relating to access to information, open decision-making, and good administration, and these laws should be applicable to the regulation of freedom of assembly.

43. Procedural transparency should ensure that freedom of peaceful assembly is not restricted on the basis of imagined risks or even real risks that, if opportunities were given, could be adequately reduced prior to the event. Article 41 of the Charter of Fundamental Rights of the European Union provides that everyone has the right to good administration.

Article 41, Charter of Fundamental Rights of the European Union (proclaimed on 7 December 2000)

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
- the obligation of the administration to give reasons for its decisions.*

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

The Guidelines also underscore the importance of early communication with the assembly organizer if the relevant body of executive power has any concerns about the event which relate to the possible grounds for restriction specified in Article 7(1). This gives the organizer an opportunity to take steps to address any such concerns. As the Guidelines state:

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

Where the relevant body of executive power suggests that there is, for example, a risk of disorder or an unjustifiable impact on the rights of others if the assembly were to proceed without restriction, the burden of proving such a risk should fall to the relevant body of executive power, not to the assembly organiser.³⁷ Furthermore, the relevant

³⁷ *Makhmudov v. Russia* (2007) at paras.68-73.

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body of executive power must substantiate and corroborate any such claims – restrictions cannot be based upon mere presuppositions, assumptions or speculation.³⁸ The organiser should not be required to produce evidence to disprove or contradict the existence of an unsubstantiated risk.³⁹

Finally, we reiterate the point made in relation to Article 5(I) of this law, that an open and transparent decision-making process requires that the public should be able to access information about all proposed public assemblies, and the nature and details of any restrictions or prohibition imposed by the relevant body of executive power. The OSCE ODIHR / Venice Commission Guidelines recommend in this regard:

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

The legitimate grounds for restricting public assemblies:

Any restrictions must be based on ‘an acceptable assessment of the relevant facts’⁴⁰ and the reasons for restriction must be both ‘relevant and sufficient’ and ‘convincing and compelling’.⁴¹ This requirement means that the relevant body of executive power must state the basis for its conclusions (for example, about any alleged threat to public order) and provide further relevant and persuasive detail.⁴² Moreover, the ECtHR has emphasized that:

*The Court observes that the right to freedom of assembly is a fundamental right in a democratic society and is one of the foundations of such a society ... This right, of which the protection of personal opinion is one of the objectives, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established.*⁴³

The provision relating to equality and non-discrimination in Article 2(II) of the present law should also inform the relevant body of executive power when deciding what, if any, restrictions are necessary. The ECtHR’s judgment in the case of *Bączkowski and Others v. Poland* (discussed above) is particularly significant.

³⁸ See, for example, *Vajnai v. Hungary* (2008) at para.55.

³⁹ *Makhmudov v. Russia* (2007) at para.70.

⁴⁰ See, for example, *Christian Democratic People’s Party v Moldova* (Application no.28793/02, judgment of 2006) at para.70. Similarly, *Zana v Turkey* (judgment of 25 November 1997, *Reports* 1997-VII, pp. 2547–48) at para.51.

⁴¹ See, for example, *Ouranio Toxo v Greece* (Application no. 74989/01, judgment of 20 October 2005, final 20 January 2006) at para.36; *Barankevich v Russia* (Application no. 10519/03, judgment of 26 July 2007) at paras.25-26. ‘In view of the essential nature of freedom of assembly and association and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right.’

⁴² See, for example, *Ivanov and Others v. Bulgaria*, (Application no. 46336/99, judgment of 24 November 2005, final on 24 February 2006) at para.63 (discussed below in relation to Article 10 of the present law)..

⁴³ *Galstyan v. Armenia* at (2007) para.114; *Ashughyan v. Armenia* (2008) at para.89 (emphasis added).

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The OSCE ODIHR / Venice Commission Guidelines are emphatic that ‘regulation must not be based on the content of the message communicated by the assembly.’⁴⁴ Under no circumstances, therefore, should the authorities attempt to assess the merits or expediency of, or need for, any notified assembly. An assembly should never be restricted, suspended or prohibited because the authorities believe either that there is no need to organise an assembly about a particular issue, or that public assembly is not the best means to raise a particular issue. The relevant body of executive power should never attempt to judge the merits or rectitude of the point of view being expressed by those wishing to assemble. Doing so would fundamentally undermine the nature of the rights to freedom of peaceful assembly and expression, and would render their protection theoretical and illusory. It would therefore deny the constitutional protection afforded by Article 49 of the Constitution of the Republic of Azerbaijan.

The grounds listed in Article 7(1) of the present law are exhaustive and should not be supplemented by any additional grounds.⁴⁵ In assessing the factual circumstances surrounding a notified assembly, the relevant body of executive power must ensure that any concerns about, for example, disruption to traffic or proximity to residential properties, meet the high threshold identified in the relevant case law of the ECtHR. Unless the severity of the concerns raised meets this threshold, they cannot properly be cited as grounds for imposing restrictions. The OSCE ODIHR / Venice Commission Guidelines elaborate on the ‘legitimate aims’ in Article 11(2) ECHR, and this interpretative guidance is based on the case law of the ECtHR:

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

*63. **Public order.** The inherent imprecision of this term must not be exploited to justify the prohibition or dispersal of peaceful assemblies. Neither a hypothetical risk of public disorder nor the presence of a hostile audience is a legitimate basis for prohibiting a peaceful assembly. Prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate, and any isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint. The European Court of Human Rights has noted that “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.”*

64. Restrictions should only be imposed on public-order grounds when participants in the assembly incite imminent lawless action and such action is likely to occur. This principle is based on the doctrine of a clear and present

⁴⁴ OSCE ODIHR / Venice Commission Guidelines, at para.39.

⁴⁵ OSCE ODIHR / Venice Commission Guidelines, at para.61.

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danger drawn from US jurisprudence, and it is very similar to Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. This requires that there be an intention to incite violence, a likelihood of imminent violence, and a causal connection between that violence and the expression in question. This approach is designed to extend protection to controversial speech and political criticism as long as it does not present a real and imminent threat of violence. The application of the “clear and present danger” test in freedom-of-assembly and -expression cases therefore ensures consistency of the outcome with the right to political participation.

65. Public safety. *There is a significant overlap between public-safety considerations and those concerning the maintenance of public order. The state has a duty to protect public safety, and under no circumstances should this duty be assigned or delegated to the organizer of an assembly. That is not to say, however, that the organizer and stewards cannot assist in ensuring the safety of members of the public. An assembly organizer could counter any claims that public safety might be compromised by his or her event by, for example, ensuring adequate stewarding (see paras. 156–160).*

66. Protection of health and morals. *It should be noted that “the right to health is closely related to and dependent upon the realization of other human rights ... including ... the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.”*

67. *Any limitations imposed on freedom of assembly should not undermine the very essence of the freedom. Adherence to the principles of a particular political ideology or religious creed cannot warrant the imposition of preventive or penal sanctions on freedom of assembly. Furthermore, not only are the main human rights treaties (the ICCPR and ECHR) “living instruments” and thus attuned to changing moral values, but the moral views of the holders of political power are not synonymous with public morals as intended in this context as a premise for limiting freedom of assembly.*

68. *As stated above ... any restrictions must have a basis in domestic law, and this must be sufficiently clear and precise to enable individuals to foresee the consequences of their actions. It is not sufficient for behaviour merely to offend morality, but it must be behaviour that is deemed criminal and has been defined in law as such. This requirement of legal certainty applies equally to all types of restriction (prior, during, and retrospective), including, for example, legislative provisions that purport to allow restrictions on assemblies deemed “injurious to public morals”, and administrative offences that penalize the use of “vulgar expressions in public”.*

69. *Measures allegedly safeguarding public morals should also meet an objective standard of whether they answer a pressing social need and comply with the principle of proportionality. There should be a requirement of state neutrality that precludes moral judgments on, for example, preferences for any sexual orientation over another (see paras. 45–59).*

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70. **Protection of the rights and freedoms of others.** *The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of those who live, work, shop, trade, and carry on business in the locality affected by an assembly. That balance should ensure that other activities taking place in the same space may also proceed if they themselves do not impose unreasonable burdens. Mere disruption, or even opposition to an assembly, is not therefore, of itself, a reason to impose prior restrictions on it. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe the rights and freedoms of others. This is particularly so given that freedom of assembly, by definition, amounts only to temporary interference with these other rights.*

71. *Where the regulatory authority restricts an assembly for the purpose of protecting the competing rights and freedoms of others, the body should state:*

- *The nature of any valid rights claims made;*
- *How, in the particular context, these rights might be infringed (outlining the specific factors considered);*
- *How, precisely, the authority's decision mitigates against any such infringement (the necessity of the restrictions); and*
- *Why less intrusive measures could not be used.*

72. *The rights that might be claimed by non-participants affected by an assembly include the right to privacy (protected by Article 17 of the ICCPR and Article 8 of the ECHR), the right to peaceful enjoyment of one's possessions (protected by Article 1 of Protocol 1 to the ECHR), the right to liberty and security of person (Article 9 of the ICCPR and Article 5 of the ECHR), and the right to freedom of movement (Article 12 of the ICCPR and Article 2 of Protocol 4 to the ECHR). It may also be that restrictions on freedom of assembly could be justified to protect the right of others to manifest their religion or belief (Article 18 of the ICCPR and Article 9 of the ECHR), but to uphold such a claim, it would have to be shown that the assembly posed a direct and immediate threat to the exercise of the religious beliefs of others.*

73. **National security.** *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1985) limit reliance on national-security grounds to justify restrictions of freedom of expression and assembly:*

'National Security', Part VI, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights

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

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

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

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

74. The issue of national security is often given too wide an interpretation in relation to freedom of assembly. Drawing on Principles 7, 8, and 9 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the following examples of expression should not be regarded as constituting a threat to national security:

- Mere advocacy of change of government policy, or of the government itself, where that advocacy does not incite immediate and substantial violation of the law or create a serious and imminent threat that a substantial violation of the law will actually occur. A similar point has been made by the European Court of Human Rights: “It is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is currently organised.”
- Criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials. Similarly, the restriction of assemblies that promote views considered to be unconstitutional is a form of content regulation and thus an unjustifiable incursion on freedom of peaceful assembly. Concerns relating to territorial integrity must pass a high threshold in order to justify restrictions on national-security grounds. In the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), which concerned the actions of a separatist group in Bulgaria, the European Court of Human Rights found that the Bulgarian government had unduly restricted the applicants’ right to freedom of assembly. The Court ruled that, even though the issues at stake touched on national symbols and national identity, that was not sufficient reason for the national authorities to be granted broad discretion.
- Objection, or advocacy of objection, on grounds of religion, conscience, or belief to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes.
- The transmission of information issued by or about an organization that a government has declared threatens national security or a related interest, or the expression of views in a particular language, especially the language of a national minority.

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II. Restriction of the freedom of assembly provided for in part 1 of the present Article must be proportionate to pursued goals. To reach the goal such a restriction must not exceed necessary and sufficient limits.

Any action taken which impinges on the exercise of these rights must be proportionate to the aim pursued. The nature and severity of any subsequent penalties should also be assessed in terms of their proportionality.⁴⁶

III. Measures taken for restriction of the freedom of assembly provided for in part 1 of the present Article must be highly needed for reaching the goal which was the cause for making the restrictions.

In interpreting the phrase, ‘necessary in a democratic society’, ‘necessary’ means that any restrictions imposed must correspond to a *pressing social need*, and, in particular, must be *proportionate* to the legitimate aim being pursued by the authorities. Some examples from the ECtHR’s case law suggest that it would *not* be regarded as ‘highly needed’ to restrict public assemblies in the following scenarios:

- **Displaying symbols that might be regarded by others as contentious or offensive.** In *Vagnai v. Hungary* (2008), the ECtHR took the view that: ‘a legal system which applies restrictions on human rights in order to satisfy the dictates of public feeling – real or imaginary – cannot be regarded as meeting the pressing social needs recognised in a democratic society, since that society must remain reasonable in its judgement. To hold otherwise would mean that freedom of speech and opinion is subjected to the heckler’s veto.’⁴⁷
- **Making loud noises or shouting slogans during a demonstration, where others are doing the same, and no obscenity is involved.** In *Galstyan v. Armenia* (2007), the ECtHR held that ‘[T]here is no suggestion that this noise involved any obscenity or incitement to violence. The Court ... finds it hard to imagine a huge political demonstration, at which people express their opinion, not generating a certain amount of noise.’⁴⁸
- **Participating in a demonstration on the public highway, where the police are in a position to regulate traffic and facilitate the assembly.** Again, in the case of *Galstyan v. Armenia* (2007), the ECtHR held that the applicant could not be charged with ‘obstruction of street traffic’ because this merely ‘amounted to his physical presence at a demonstration held on a street where traffic had already been suspended beforehand by the authorities with the apparent intention of facilitating the conduct of a lawful demonstration.’⁴⁹ As such it could not justify the imposition of restrictions on his right to freedom of peaceful assembly.

⁴⁶ See, for example, *Osmani and Others v Former Yugoslav Republic of Macedonia*, Application no. 50841/99, Admissibility; *Öztürk v Turkey*, Application no. 22479/93 at para.70 (Grand Chamber); *Ezelin v France* (Application no. 11800/85, Judgment of 26 April 1991) at para.52.

⁴⁷ *Vagnai v. Hungary* (Application no. 33629/06, judgment of 8 July 2008) at para.57.

⁴⁸ *Galstyan v. Armenia* (2007) at paras.113 and 116.

⁴⁹ *Galstyan v. Armenia* (2007) at para.116.

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IV. Freedom of assembly can be restricted in any forms including change of time, venue and route of an assembly, but only for the purposes prescribed by paragraph 1 of this Article.

The OSCE ODIHR / Venice Commission Guidelines make clear that a wide variety of time, place and manner restrictions may, if necessary, be imposed on an assembly which still allows it to take place. There may, however, be some circumstances, in which place or time restrictions would be disproportionate (see further discussion under Article 9 of the present law below).

As discussed above, the least intrusive restrictions possible should always be chosen, and the starting point for any consideration of whether or not it is necessary to restrict an event is the State's positive obligation to facilitate and protect freedom of peaceful assembly, as guaranteed by Article 49 of the Constitution of the Republic of Azerbaijan. The OSCE ODIHR / Venice Commission Guidelines state:

80. Restrictions on time, place, and manner

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

81. The regulatory authority must not impose restrictions simply to pre-empt possible disorder or interference with the rights of others. The fact that restrictions can be imposed during an event (and not only before it takes place) enables the authorities to both avoid imposing onerous prior restrictions and to ensure that restrictions correspond with and reflect the situation as it develops. This, however, in no way implies that the authorities can evade their obligations in relation to good administration (see paras. 41-44) by simply regulating freedom of assembly by administrative fiat. Furthermore (as discussed at paras. 117 and 151), the use of negotiation and/or mediation can help resolve disputes around assemblies by enabling law enforcement authorities and the event organizer to reach agreement about any necessary limitations.

82. Given that there are often a limited number of ways to effectively communicate a particular message, the scope of any restrictions must be precisely defined. In situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should always aim to facilitate the assembly within sight and sound of its object/target audience.

ARTICLE 8

Article 8. Prohibition or suspension of an assembly

I. Assemblies accompanied by calls to discrimination, hostility, violence, propagandizing national, racial or religious discord shall be prohibited.

The powers to prohibit or suspend an assembly should be exercised only very rarely and exceptionally. This is emphasized in Article 8(VII) below, and also by the OSCE ODIHR / Venice Commission Guidelines:

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

In *Barankevich v. Russia* (2007), finding that the municipal authorities had violated Article 11 ECHR, the ECtHR found that there were a wide range of restrictions open to the authorities other than prohibition. The Court emphasized that these less restrictive options should have been considered before the assembly was prohibited:

*1. Assuming that there existed a threat of a violent counter-demonstration, the Court observes that the domestic authorities had a wide discretion in the choice of means which would have enabled the religious assembly planned by the applicant to take place without disturbance (see Plattform, loc. cit.). However, there is no indication that an evaluation of the resources necessary for neutralising the threat was part of the domestic authorities' decision-making process. Instead of considering measures which could have allowed the applicant's religious assembly to proceed peacefully, the authorities imposed a ban on it. They resorted to the most radical measure, denying the applicant the possibility of exercising his rights to freedom of religion and assembly. It moreover appears from the wording of the refusal that the applicant's requests for permission to hold a service of worship in public had already been rejected on many occasions without detailed reasons (see paragraph **Error! Reference source not found.** above). Such a comprehensive ban cannot be considered justified.*

If only a small number of those participating, or likely to participate, in an assembly make public calls to discrimination, hostility, or violence, propagandizing national, racial or religious discord, this section of the legislation should not be interpreted to mean that an assembly would automatically be prohibited. It is necessary to distinguish between participants (or groups of participants) who are likely to behave entirely peacefully and those who are not. Restrictions should not be placed on those who act peacefully even if other participants in the same assembly become violent. The OSCE ODIHR / Venice Commission Guidelines state that:

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89. ...*Individual participants who do not themselves commit any violent act cannot be prosecuted solely on the ground of participation in a non-peaceful gathering. As stated in the case of Ezelin v. France (1991), “[i]t is not ‘necessary’ in a democratic society to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights”.*⁵⁰

Particular care must be taken in the interpretation of ‘propagandizing national, racial or religious discord.’ This must be narrowly construed, and should be interpreted in a manner which is consistent with international obligations in relation to hate speech. Guidance on the difference between merely hostile or offensive speech (which should be protected) and hate speech (which should not be protected) can be found in the OSCE ODIHR / Venice Commission Guidelines:

Public assemblies where hatred is expressed: Speech and other forms of expression will normally enjoy protection under Article 19 of the ICCPR and Article 10 of the ECHR. This is the case even where such expression is hostile or insulting to other individuals, groups, or particular sections of society. However, as provided by Article 20 of the ICCPR, “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Principle 4 of the Council of Europe Committee of Ministers Recommendation No. R(97)20 further provides that specific instances of hate speech “may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.” Even then, resort to such speech by participants in an assembly does not of itself turn an otherwise peaceful assembly into a non-peaceful or unlawful assembly, and the regulatory authorities should arrest the particular individuals involved rather than dispersing the entire event.⁵¹

II. Assemblies propagandizing war shall be prohibited.

The OSCE ODIHR / Venice Commission Guidelines state that:

*Calls for the imminent and violent overthrow of the constitutional order might provide a sufficient ground for restricting an event, whereas an assembly where non-violent change of the constitutional order is advocated would be deserving of protection.*⁵²

See further the discussion of *Freedom and Democracy Party (Özdep) v Turkey* (1999) and *United Communist Party of Turkey and Others v Turkey* (1998) in relation to Article 8(III) below.

⁵⁰ OSCE ODIHR / Venice Commission Guidelines, para.89.

⁵¹ OSCE ODIHR / Venice Commission Guidelines, para.135 (emphasis added).

⁵² OSCE ODIHR / Venice Commission Guidelines, para.135.

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III. Holding peaceful assembly with political goals shall be prohibited in the following cases:

1) 24 hours prior to the day of elections of a President of the Republic of Azerbaijan (on state territory), elections of deputies to Milli Mejlis (Parliament) of the Republic of Azerbaijan (on state territory), elections of deputies to Ali Mejlis (Parliament) of Nakhichevan Autonomous Republic (on the territory of Nakhichevan Autonomous Republic), municipal elections (on the territory of respective city and region) and till closure of constituencies on a day of elections;

2) 24 hours prior to the day of referenda and till closure of constituencies;

As emphasized above in relation to Article 7(1), regulation must not be based on the content of the message communicated by the assembly. In all cases, the touchstone must be the existence of an imminent threat of violence. This is equally true for assemblies with a political message – including political statements which voice or encourage opposition to the current government. There is an increased likelihood of such assemblies being notified in the days and weeks preceding an election, and the regulation of assemblies with political goals must be subjected to the same stringent requirements as apply to the regulation of all other public assemblies. The ECtHR has stated that there is little scope under Article 10(2) of the Convention for restrictions on political speech or on debate on questions of public interest.⁵³

It was stated in the *Freedom and Democracy Party (Özdep) v Turkey* (1999) that: “It is of the essence of democracy to allow diverse political projects to be proposed and debated, *even those that call into question the way a State is currently organised.*” It is significant that the group concerned (ÖZDEP) had publicly declared its support for ‘the just and legitimate struggle of the peoples for independence and freedom. It stands by them in this struggle.’ While the Court considered that that phrase did represent a statement of intent by ÖZDEP to make certain political demands, it found nothing in it that would incite people to use violence or break the rules of democracy. The Court also considered the background to the case, including the difficulties associated with the fight against terrorism.⁵⁴ In its ruling, it stated that the Government had failed to *explain* any threat of disorder, and therefore found that ÖZDEP’s dissolution was disproportionate to the aim pursued and consequently unnecessary in a democratic society.

In several cases (including *Incal v Turkey*, (1998); and the *United Communist Party of Turkey and Others v Turkey* (1998)), while noting that the *actual* objectives or intentions of a group may differ from those stated in its constitution or notified to the authorities, unless there is concrete evidence which casts doubt on the sincerity of the aim declared by the organiser, the ECtHR is likely to accept the organiser’s declared intention. These cases have particular resonance with demonstrations organized to promote opposition candidates in elections. The ECtHR will certainly be sympathetic

⁵³ See, for example, *Wingrove v. the United Kingdom*, judgment of 25 November 1996, para.58, *Stankov and United Macedonian Organisation v Bulgaria*, judgment of 2 October 2001, para.88.

⁵⁴ See, for example, the *United Communist Party of Turkey and Others* judgment, at para.59.

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towards those who seek to encourage others (by, for example, campaigning during an election process or by calling for new elections) to use the democratic process by casting their vote. Unless there is clear evidence that the organizers of opposition rallies have violent intentions, it will likely be difficult to show that any restrictions imposed for the purpose of preventing disorder have been proportionate.

Furthermore, ‘national authorities must display particular vigilance to ensure that national public opinion is not protected at the expense of the assertion of minority views, no matter how unpopular they may be.’⁵⁵ The ECtHR has stated, for example, that:

*One of the principal characteristics of democracy is the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when those problems are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a group solely because it seeks to debate in public the situation of part of the State’s population and to find, according to democratic rules, solutions capable of satisfying everyone concerned.*⁵⁶

In relation to rallies urging non-violent reform of the law or constitution, the OSCE ODIHR / Venice Commission Guidelines further provide that:

*There are two essential conditions under which such change may legitimately be promoted: “firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles”⁵⁷. Calls for the imminent and violent overthrow of the constitutional order might provide a sufficient ground for restricting an event, whereas an assembly where non-violent change of the constitutional order is advocated would be deserving of protection.*⁵⁸

As highlighted above in relation to Article 7(1) and the interpretation of ‘national security’ as a legitimate ground for the imposition of restrictions:

‘...the restriction of assemblies that promote views considered to be unconstitutional is a form of content regulation and thus an unjustifiable incursion on freedom of peaceful assembly. Concerns relating to territorial integrity must pass a high threshold in order to justify restrictions on national-security grounds....’⁵⁹

IV. Holding a peaceful assembly of political content can be prohibited by the decision of the relevant body of executive power on the eve and during the period

⁵⁵ *Stankov and the United Macedonian Organisation (ILINDEN) v Bulgaria* (2001), at para.107.

⁵⁶ See, for example, *United Communist Party of Turkey and Others v Turkey*, para.57.

⁵⁷ See *Refah Partisi and Others v. Turkey* (2003), para. 98. Note that, in *Tsonev v. Bulgaria* (2006), the European Court of Human Rights found that there was no evidence that merely by using the word “revolutionary”, the Bulgarian Revolutionary Youth Party represented a threat to Bulgarian society or to Bulgarian state. Nor was there anything in the party’s constitution that suggested that it intended to use violence in pursuit of its goals.

⁵⁸ OSCE ODIHR / Venice Commission Guidelines, at para.135.

⁵⁹ OSCE ODIHR / Venice Commission Guidelines, at para.74.

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of carrying out international events of state importance on the territories of cities and regions where they are conducted, in accordance with the requirements of Article 7 of this Law.

The commentary in relation to Article 8(III) (above) is equally relevant to the interpretation of Article 8(IV).

In addition, of particular importance here is the interpretation of the phrase ‘international events of state importance.’ The power in Article 8(IV) could, if misused, grant the authorities an excessively broad discretion. We would suggest that ‘international events of state importance’ be narrowly construed to include only those events that take place during the official visits of heads of state.

Even in the case of events involving a visiting head of state it is important to recognise that the right to assemble, demonstrate and protest still exists. In a recent case in the United Kingdom, the London Metropolitan Police acknowledged that its officers had acted unlawfully when they removed flags and banners and blocked ‘Free Tibet’ protesters with police vehicles during the visit to London of the Chinese President in October 1999.

As stated in the EU *Handbook for Police and Security Authorities Concerning Cooperation at Major Events with an International Dimension*:

*The enforcement of law and order should be guided by the principles of legality and proportionality and moderation, giving preference to the less intrusive approach. Whenever possible, a de-escalating police approach should be chosen based on dialogue, negotiated management of public space and partnership.*⁶⁰

V. An assembly can be prohibited by an order of the relevant body of executive power in important cases in a democratic society, in accordance with the requirements of Article 7 of the present Law.

Like Article 8(IV) above, this sub-section appears on its face to grant a broader discretion in relation to what are termed ‘important cases’. It is vital, as the sub-section itself states, that this phrase be construed in conjunction with Article 7 of the present law. No greater restrictions should be permitted in ‘important cases’ than would otherwise be consistent with the interpretation of the legitimate grounds for restriction listed in Article 7(1).

VI. If necessary an assembly can be suspended by an order of the relevant body of executive power, in accordance with the requirements of Article 7 of the present Law.

⁶⁰ *Handbook for Police and Security Authorities Concerning Cooperation at Major Events with an International Dimension* (incorporating the earlier draft *Security Handbook for the use of Police Authorities and Services at international events*, EU doc no: 15226/1/06, 22.12.06). Available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:314:0004:0021:EN:PDF>

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The same considerations discussed above (regarding Articles 7(II) and 7(III)) in relation to necessity and proportionality should apply in relation to any consideration of suspending an assembly.

VII. In accordance with parts IV, V and VI of the present Article prohibition or suspension of an assembly shall be considered as a measure of last resort and shall be applied only when restrictions provided for in Article 7 of the present Law are not sufficient.

VIII. Holding of assemblies can be restricted or prohibited, in order provided by the Law of the Republic of Azerbaijan ‘On State of Emergency’, during the state of emergency on the territory of its application.

It is vital that efforts to tackle terrorism or to enhance security are not used to justify arbitrary action that interferes with fundamental Convention rights, including the right to freedom of peaceful assembly.⁶¹ This is emphasized in the OSCE ODIHR / Venice Commission Guidelines in the following terms:

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

79. A public emergency must be both proclaimed to the citizens in the state concerned_ and notified to other states parties to the ICCPR through the intermediary of the UN Secretary General (Article 4(3) of the ICCPR), the Secretary General of the Council of Europe (Article 15(3) of the ECHR) and the OSCE (para. 28.10, Document of the Moscow Meeting of the Conference on the Human Dimension, 1991). Derogations should have a time limit.

⁶¹ See OSCE ODIHR / Venice Commission Guidelines, para.75, citing the *Berlin Declaration of the International Commission of Jurists on Upholding Human Rights and the Rule of Law in Combating Terrorism* (2004), available from <http://www.icj.org>

ARTICLE 9

Article 9. Restriction or prohibition of place and time of conducting a peaceful assembly

- I. Any restriction or prohibition of place of conducting a peaceful assembly shall be made in accordance with the criteria determined in Article 7 of the present Law.**

The commentary in relation to restrictions on ‘place’ in Article 7(IV) above is also applicable here. As the OSCE ODIHR / Venice Commission Guidelines state:

Participants in public assemblies have as much a claim to use such sites for a reasonable period as everyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used (such as pedestrian and vehicular traffic).⁶²

Given that there are often a limited number of ways to effectively communicate a particular message, the scope of any restrictions must be precisely defined. Where ‘place’ restrictions are imposed on an assembly, they must be proportionate. This means (as stated in the OSCE ODIHR / Venice Commission Guidelines) that any such restrictions ‘should always aim to facilitate the assembly *within sight and sound* of its object/target audience.’⁶³ The concept of sight and sound is important because most public assemblies aim to convey a message to a particular individual, group or body. Therefore permitting an assembly, but preventing it from conveying its message to its target audience, is effectively denying the right to assemble and protest. This is especially relevant to a number of the sub-clauses listed in Article 9(III) below.

- II. If another event is arranged at the venue and time stipulated in a written notification of organizers of an assembly and there are sufficient grounds for assumption of a conflict between parties caused by counter-assembly, a relevant body of executive power shall propose the organizers of the counter-assembly to determine another venue and time. A written notification about the changed time and place shall be submitted to the relevant body of executive power no later than 3 days prior to a new date of an event. In the case of holding counter-assembly police authorities shall undertake relevant measures in order to provide security for participants of both assembly and counter-assembly.**

It should not be assumed that there will always be a conflict between an assembly and a simultaneous counter-assembly. Even if the potential for conflict exists, the deployment of adequate police resources may well be able to facilitate both assemblies in their notified locations/routes, and thus uphold the State’s positive obligation to protect freedom of assembly.

⁶² OSCE ODIHR / Venice Commission Guidelines, at para.18.

⁶³ OSCE ODIHR / Venice Commission Guidelines, at para.82.

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In the case of *Ollinger v. Austria* (2006), for example, the ECtHR found that the Austrian authorities had violated the applicant's right to freedom of assembly by imposing restrictions on the basis of the potential for conflict between the applicant's assembly and another simultaneous assembly. The Court noted that 'while the authorities feared that, as in previous years, heated debates might arise, it was not alleged that any incidents of violence had occurred on previous occasions.' Other factors considered by the Court included the number of participants in the assemblies, and the means of protest (in this case, 'peaceful and silent means of expressing their opinion, namely the carrying of commemorative messages'). The Court's judgment stated as follows:

*2. 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.*⁶⁴

In relation to simultaneous assemblies, the OSCE ODIHR / Venice Commission Guidelines state that:

*Where notification is given for two or more assemblies at the same place and time, they should be facilitated as much as possible. Emphasis should be placed on the state's duty to prevent disruption of the main event where counter-demonstrations are organized.*⁶⁵

*100. **Simultaneous assemblies.** All persons and groups have an equal right to be present in public places to express their views. Thus, persons have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at another public assembly. On such occasions, the coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly. Related simultaneous assemblies should be facilitated so that they occur within sight and sound of their target insofar as this does not physically interfere with the other assembly.*

101. As clearly stated in the ECHR case of Plattform "Ärzte für das Leben" v. Austria (1988), "the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate". Thus, because each person or group has a right to express their views undisturbed by others, counter-demonstrators may not disrupt the activities of those who do not share their views. Emphasis should be placed on the state's duty to prevent disruption of the main event where counterdemonstrations are organized. Furthermore, an evidential question is raised where the intention of the organizer of a counter-demonstration is specifically to prevent the other assembly from taking place — effectively, to destroy the rights of the other. In such cases, Article 5 of the ICCPR and Article

⁶⁴ *Ollinger v. Austria* (Application no. 76900/01, judgment of 29 June 2006, final on 29 September 2006) at para.48.

⁶⁵ OSCE ODIHR / Venice Commission Guidelines, p.16, 'Procedural Issues', para.3.

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17 of the ECHR will be engaged, and the counter-demonstration will not enjoy the protection afforded to the right to peaceful assembly.

102. Where notification is given for two or more assemblies at the same place and time, each should be facilitated as best possible. A prohibition on conducting public events in the same place and at the same time of another public event is likely to be a disproportionate response. In some jurisdictions, a “first come, first served” rule operates. Such a rule is permissible so long as it does not discriminate between different groups, and an alternative venue and/or time for the other assemblies is provided to the satisfaction of the organizers. The authorities might even hold a ballot to determine which assembly should be facilitated in the notified location.

III. Conducting of gatherings, meetings, demonstrations and street processions in the following places can be prohibited:

- 1. in a radius of 200 meters around buildings of Milli Madjlis of the Republic of Azerbaijan, Ali Madjlis of the Nakhchivan Autonomous Republic; Presidential Palace, Presidential residence, Cabinet of Ministers of the Republic of Azerbaijan, Cabinet of Ministers of the Nakhchivan Autonomous Republic, bodies of central, city and regional executive power, the list of which shall be defined by the relevant executive authority; the Constitutional Court, the Supreme Court, Courts of Appeal of the Republic of Azerbaijan, and the Supreme Court of the Nakhchivan Autonomous Republic;**
- 2. on bridges, in tunnels, at construction areas, hazardous production facilities and other enterprises the operation of which requires observance of special safety rules, strictly protected environmental areas, and protection zones of trunk pipelines, electric wires of a tension more than 1000 V, airports, subway, railway constrictions, defence units, technical constrictions of water supply and sewerage systems, oil wells, water conservation zones;**

The breadth of Articles 9(III)(1) and 9(III)(2) is such that they could have the effect of preventing any public assemblies from taking place within sight and sound of their target audience. Such blanket provisions can have a highly detrimental impact on the enjoyment of the right to freedom of peaceful assembly. We would also note that the OSCE Opinion on the draft Amendments to the Law of the Republic of Azerbaijan on Freedom of Assembly (AZE/088/2007) was critical of this article and recommended that it ‘be removed from the text as neither reasonable nor necessary’. These sections should therefore be relied upon only very exceptionally. They should not be relied upon unless there are demonstrable grounds for imposing these specific restrictions, and that such restrictions accord with both the doctrine of proportionality, and the proper interpretation of the legitimate aims (see Article 7(1) above).

By way of example in another jurisdiction, the British Government introduced restrictions on the right to assemble and protest in the vicinity of the Houses of Parliament under the Serious Organised Crime and Police Act 2005, but due to human

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rights concerns about this law, the government has now agreed to repeal the relevant sections that curtail the right to protest and assemble.

3. in places allocated by relevant body of executive power for conducting special state events;

This sub-section potentially allows any area to be allocated for conducting special state events. If used in this way, it would effectively prohibit any other notified assembly from taking place and would represent an unjustifiable incursion upon the right to freedom of peaceful assembly. Again, the relevant body of executive power should use this power only very exceptionally, and ensure that key sites where assembly organizers are likely to want to protest or demonstrate remain open for them to do so.

4. on the territory used for military purposes and in places located closer than on the territory used for military purposes and in places located closer than 150 meters to the boundaries of these territories, or, where necessary, within the security distance;

5. at the territory of penitentiaries, pre-trial detention and psychiatric medical institutions as well as in places located closer than 150 meters to the boundaries of these territories.

The OSCE ODIHR / Venice Commission Guidelines state that:

83. ...blanket legislative provisions that ban assemblies at specific times or in particular locations require much greater justification than restrictions on individual assemblies. Given the impossibility of having regard to the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation (and their application) may be found to be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated, “Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles — however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be — do a disservice to democracy and often even endanger it.”⁶⁶

We would further note that the perimeter walls of such institutions are designed for security purposes and therefore there is no need to prevent assemblies from the close proximity to such structures. Indeed in the UK there have been numerous longstanding anti-nuclear or anti-war protests in the close proximity of military bases in many parts of the country and over many years and which have been allowed to continue without threat or disruption to the security of such places.

6. Holding of assemblies of political content can be restricted in places of worship, chapels and cemeteries.

⁶⁶ OSCE ODIHR / Venice Commission Guidelines at para.83, citing *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), at para.97.

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We would note the point made earlier in relation to article 4(II) that funerals, and thus by extension cemeteries, may well be appropriate occasions for political protests.

- 7. The number of picketers shall not be more than 50 persons and they shall not be located closer than 10 meters to the entrance of a picketed object, shall not make obstacles for entry and exit into the picketed object and shall not use amplifiers above 10 watt.**

The general principle in many countries is that pickets should be allowed close enough to the site of their protest to make their case. In most situations there is no reason why pickets cannot protest closer than 10 meters from the picketed object, providing they are in a public place and do not create any unreasonable disruption to movement and access.

- 8. Relevant bodies of executive power shall provide a special area for conducting gatherings, meetings and demonstrations in each city and region. A list of places proposed for gatherings, meetings and demonstrations shall be published in a press and shall be brought to the population by other means. Organizers can choose one of the places proposed for gatherings, meetings and demonstrations. Upon petitions a relevant body of executive power can change the list of proposed venue of gatherings, meetings and demonstrations.**

As stated in relation to Article 9(I) above, ‘freedom of assembly in general, should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used (such as pedestrian and vehicular traffic).’ Moreover, restrictions ‘should always aim to facilitate the assembly *within sight and sound* of its object/target audience.’⁶⁷ As such, assemblies should not routinely be relocated to designated special places, but rather should be facilitated at the location, or along the route, notified by the organizer.⁶⁸

- 9. The time of holding of an assembly can be restricted by the relevant body of executive power, in accordance with the requirements of Article 7 of this Law.**

Some assemblies are ‘time specific’ (scheduled, for example, to coincide with another specific event, or to commemorate a particular anniversary) and time restrictions would therefore have a particularly detrimental impact on their capacity to communicate their message. The imposition of time restrictions could therefore be tantamount to prohibition. In the case of *Zeleni Balkani v Bulgaria* (2007), the ECtHR dismissed the Bulgarian government’s claim that the applicant organisation could have organised a similar public rally on another day because the event in question was planned to coincide with the clearing of the banks and riverbed of the local river. Similarly, in *Bączkowski and Others v. Poland* (2007), the Court stated that:

⁶⁷ OSCE ODIHR / Venice Commission Guidelines, at para.82.

⁶⁸ See, for example, *Ivanov and Others v. Bulgaria*, (Application no. 46336/99, judgment of 24/11/05, final on 24/2/06) at paras.43-44.

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*'...such is the nature of democratic debate that the timing of public meetings held in order to voice certain opinions may be crucial for the political and social weight of such a meeting ... 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. The freedom of assembly – if prevented from being exercised at a propitious time – can well be rendered meaningless.'*⁶⁹

⁶⁹ *Bączkowski and Others v. Poland* (2007) at para.82.

ARTICLE 10

Article 10. Bringing the decision of the relevant body of executive power on assembly to organizers of an assembly

Decisions of the relevant bodies of executive power about assemblies must be brought to organizers of the event in written no later than 3 working days prior to the intended date of the event and these decisions shall be clear and grounded.

A number of points raised above with regard to Article 7(I) of the present law (in relation to the transparency of the decision-making process) are also relevant here. Furthermore, as also previously discussed, any interference with the right to freedom of peaceful assembly must be “proportionate to the legitimate aims pursued”, and the reasons adduced by the national authorities to justify it must also be “relevant and sufficient”. The OSCE ODIHR / Venice Commission Guidelines state:

106. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer with a brief explanation of the reason for each restriction (noting that such explanation must correspond with the permissible grounds enshrined in human rights law and as interpreted by the relevant courts). Such decisions should be communicated to the organizer within a reasonable time frame, i.e., sufficiently far in advance of the date of a proposed event to allow the decision to be appealed to an independent tribunal or court before the notified date of the event ...

107. The regulatory authority should also publish its decisions so that the public has access to reliable information about events taking place in the public domain. This might be done, for example, by posting decisions on a dedicated website.

For further commentary upon the procedural implications of this Article, see the discussion in relation to Article 5(I) above.

ARTICLE 11

Article 11. The Right to Appeal

Decisions can be appealed against in a relevant court. A complaint shall be considered by court within 2 days. Court decisions on these complaints can be appealed before superior courts.

As highlighted in the commentary relating to Article 9(III)(9) above, the timing of a public assembly may be absolutely critical to the relevancy of its message. This therefore bears upon the adequacy of the expedited appeal procedure provided for in this section of the present law. As highlighted in the case of *Bączkowski and Others v. Poland* (2007), the notion of an effective remedy under Article 13 ECHR implies the possibility to obtain a ruling before the time of the planned events.⁷⁰ Any scenario in which the proceedings could last for several months or more, and thus an outcome would only result long after the date of a planned meeting or manifestation, would likely constitute a breach of Article 13 ECHR. Therefore, in considering any complaint within 2 days, the Courts should also provide a final reasoned judgment prior to the notified date of the assembly.

The OSCE ODIHR / Venice Commission Guidelines similarly highlight the importance of the organizer being able to appeal any restrictions prior to the notified start-time of the assembly:

108. If restrictions are imposed on an assembly, the organizer should have recourse to an effective remedy through a combination of administrative and judicial review. The reviewing body should have access to the evidence on which the regulatory authority based its initial decision (including, for example, relevant police reports), as only then can it assess the proportionality of the restrictions imposed. The burden of proof should be on the regulatory authority to show that the restrictions imposed are reasonable in the circumstances.

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

110. The assembly organizers should also be able to appeal the decision of the regulatory authority to an independent court or tribunal. This should be a de novo review, empowered to quash the contested decision and to remit the case for a new ruling. Any such review must also be prompt so that the case is heard and the court ruling published before the planned assembly date (in order to make it possible to still hold the assembly if the court invalidates the

⁷⁰ *Bączkowski and Others v. Poland* (2007) at para.81; See also *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (nos. 29221/95 and 29225/95, Commission decision of 29 June 1998, unreported.

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restrictions). One option to expedite this process would be to require the courts to give priority to appeals against restrictions on assemblies so as to permit the completion of judicial review prior to the date of the assembly.

ARTICLE 12

CHAPTER IV. AN ORDER OF CONVENING ASSEMBLIES

Article 12. Rights and duties of organizers of a peaceful assembly

I. Preparatory work on conducting peaceful assembly cannot be restricted except cases stipulated in article 7 of the present Law.

Given that the law emphasises that there is a right to freedom of assembly in Azerbaijan (Article 1), and that event organisers are required to ‘notify’ the authorities of their plans (Article 5), rather than seek ‘authorisation’ for an event, there is no reason why the organisers should be restricted in any way in making preparations in advance of an event.

As stated above in relation to Article 5, the relevant body of executive power should act promptly upon receipt of notification so as to give as much time as possible to plan and proceed with any preparatory work necessary.

II. During an assembly, organizers shall enjoy the right to freedom of speech in accordance with the Constitution of the Republic of Azerbaijan and the international treaties to which the Republic of Azerbaijan is a party. Realization of this freedom can be restricted in accordance with the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party.

The right to freedom of expression is closely linked to the right to freedom of assembly. In the recent case of *Vajnai v Hungary* (2008) the ECtHR stated:

51. In the Court's view, when freedom of expression is exercised as political speech – as in the present case – limitations are justified only in so far as there exists a clear, pressing and specific social need. Consequently, utmost care must be observed in applying any restrictions, especially when the case involves symbols which have multiple meanings. In such situations, the Court perceives a risk that a blanket ban on such symbols may also restrict their use in contexts in which no restriction would be justified.

In the USA, assemblies and protests are regarded as a form of speech, and thus any restrictions imposed on freedom of speech must be subjected to the same tests of legality, necessity and proportionality as are used for assemblies.

In principle, any restrictions that are imposed on an assembly or an assembly organiser should be ‘content neutral’, that is they should be imposed because of actions the organisers takes rather than what the organiser says or might be feared to say. In the case of *Guner and Others v Turkey* (2005) the European Court of Human Rights found that it was not lawful to ban an assembly simply because the authorities feared that the rallying cries and slogans might stir people up and lead to unruly incidents.

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Assemblies provide a fundamental opportunity for people to voice their opinions, no matter how radical, strange or unusual, to express their views of the government, and to voice their opposition to majority viewpoints. This principle extends to the opportunity to cause offence and to challenge people's fundamental views and opinions. In the case of *Piermont v France* (1995), the European Court stated:

*76. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society' (see the *Castells v. Spain* judgment of 23 April 1992, Series A no. 236, p. 22, para. 42). A person opposed to official ideas and positions must be able to find a place in the political arena. 'While freedom of expression is important for everybody, it is especially so for an elected representative of the people ... Accordingly, interferences with [his] freedom of expression ... call for the closest scrutiny on the part of the Court' (ibid., pp. 22-23, para. 42).*

Freedom of political debate is undoubtedly not absolute in nature. A Contracting State may make it subject to certain 'restrictions' or 'penalties', but it is for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in Article 10 (art. 10) (ibid., p. 23, para. 46).

The OSCE ODIHR / Venice Commission Guidelines state:

67. Any limitations imposed on freedom of assembly should not undermine the very essence of the freedom. Adherence to the principles of a particular political ideology or religious creed cannot warrant the imposition of preventive or penal sanctions on freedom of assembly. Furthermore, not only are the main human rights treaties (the ICCPR and ECHR) 'living instruments' and thus attuned to changing moral values, but the moral views of the holders of political power are not synonymous with 'public morals' as intended in this context as a premise for limiting freedom of assembly.

68. As stated above under Legality (at paras.30-33 above), any restrictions must have a basis in domestic law, and this must be sufficiently clear and precise to enable individuals to foresee the consequences of their actions. It is not sufficient for behaviour merely to offend morality, but it must be behaviour which is deemed criminal and has been defined in law as such. This requirement of legal certainty applies equally to all types of restriction (prior, during and retrospective) including, for example, legislative provisions which purport to allow restrictions on assemblies deemed 'injurious to public morals', and administrative offences which penalize the use of 'vulgar expressions in public.'

The Guidelines go on to discuss the limits to any restrictions that might be imposed in relation to an imputed threat to national security and states:

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74. *The issue of national security is often given too wide an interpretation in relation to freedom of assembly. Drawing on Principles 7, 8 and 9 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the following examples of expression should not be regarded as constituting a threat to national security:*

- *Mere advocacy of change of government policy, or the government itself, where that advocacy does not incite immediate and substantial violation of the law or create a serious and imminent threat that substantial law violation will actually occur. A similar point has been made by the European Court of Human Rights – ‘[i]t is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is currently organised.’*
- *Criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials. Similarly, the restriction of assemblies that promote views considered to be ‘unconstitutional’ is a form of content regulation and thus an unjustifiable incursion on freedom of peaceful assembly. Concerns relating to territorial integrity must pass a high threshold in order to justify restrictions on national security grounds. In the case of *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* (2001), which concerned the actions of a Macedonian separatist group in Bulgaria, the European Court of Human Rights found that the Bulgarian government had unduly restricted the applicants’ right to freedom of assembly. The Court ruled that even though the issues at stake touched on national symbols and national identity, that was not sufficient reason for the national authorities to be granted broad discretion.*
- *Objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes.*
- *The transmission of information issued by or about an organisation that a government has declared threatens national security or a related interest, or the expression of views in a particular language, especially the language of a national minority.*

However, whilst freedom of expression may extend to the causing of offence, it does have limits. It does not extend to the right to harass, threaten or intimidate other individuals or sections of society, or to threaten or encourage acts of violence. In the case of *Osmani and Others v the FYR of Macedonia* (2001), where a local politician had been convicted of provoking violence by his rhetoric the court stated:

In such circumstances, the applicant’s message at the meeting of 24 May 1997 and his active involvement in the organisation of the regional crisis headquarters,

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shelters for the injured, etc, had encouraged the use of violence against the police to a decisive extent. As a result casualties and material damage had occurred.

The Government stated that a fair balance had been struck between the rights of the applicant and the pressing social need to protect the national security, public safety, the rights of others and to prevent disorder, regard being had to the fact that the public riots provoked by the applicant had caused a serious danger to the general public.

Moreover, the applicant had overstepped the normal limits of a public and political debate. He had succeeded by his words and actions to encourage the citizens to armed resistance against the police action, thereby putting at peril the lives and physical integrity of many citizens.

The States have a certain margin of appreciation in the choice of the reasonable and appropriate measures to be used by the authorities to protect the legal and public order of the country. In this particular case, the State had had the right to protect national security, public safety, the rights of others and to prevent disorder by undertaking criminal law measures against the applicant. The domestic courts had adduced sufficient and relevant reasons for the applicant's conviction and sentencing.

The OSCE ODIHR / Venice Commission Guidelines note (see also above, regarding Article 7(I) of the present law) that:

64. Restrictions should only be imposed on public order grounds when participants in the assembly incite imminent lawless action and such action is likely to occur. This principle is based on the doctrine of a clear and present danger drawn from US jurisprudence, and is very similar to Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. This requires that there be an intention to incite violence, a likelihood of imminent violence, and a causal connection between that violence and the expression in question. This approach is designed to extend protection to controversial speech and political criticism as long as it does not present a real and imminent threat of violence. The application of the 'clear and present danger' test in freedom of assembly and expression cases therefore ensures consistency of the outcome with the right to political participation.

Thus, there is a clear need for the state to establish an imminent threat of violence from any speech act. As the ECtHR stated in *Vajnai v Hungary* (2008), 'the containment of a mere speculative danger, as a preventative measure for the protection of democracy, cannot be seen as 'pressing social need''.⁷¹

III. Organizers of an assembly shall use all available means for ensuring that an event is conducted peacefully and in accordance with the law, pursuant to conditions stipulated in a written notification and applicable to an assembly.

⁷¹ *Vajnai v. Hungary* (2008) at para. 55.

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It is important that the organisers of an assembly are aware of, and acknowledge, their responsibilities to ensure that events pass off peacefully and adhere to any legal constraints or agreed restrictions on an assembly. The OSCE ODIHR / Venice Commission Guidelines states:

150. Those who organise assemblies should co-operate with police to ensure that participants in their assemblies comply with the law and the terms of the submitted notification. There should be clarity as to who precisely is involved in the organisation of any assembly, and it can be assumed that the official organiser is the person or persons in whose name prior notification is submitted. This need not be a legal entity, and could, for example, be a committee of individuals or informal organisation.

South Africa provides an example of good practice in this regard as the organisers of an assembly are required to meet in advance of the event with the police and the local authorities to agree the framework for each assembly. At the end of the meeting they each sign a document setting out the parameters of the assembly and the agreed actions of each party. Furthermore, the organisers are expected to inform all participants of the agreed plans for the assembly at the outset of the event, to liaise with the police throughout the duration of the assembly, in order to manage any emergent problems, and to encourage people to disperse at the agreed time at the end of the assembly.

Similarly in France, the event organisers are expected to be accessible to the police commander during an assembly, in the case of a procession or similar mobile event the organiser is expected to be at the head of the event to facilitate access to and communication with the police.

There is also a general expectation that event organisers will take some responsibility for managing the overall atmosphere of the assembly including the general behaviour of participants through the provision of stewards (or marshals). These are volunteers who work with the organiser to try to ensure the event remains peaceful and activities occur according to the organiser's wishes. Stewards thus may have responsibility for controlling the movement of a procession, for managing the boundaries of a crowd participating in an assembly, and for controlling unruly behaviour. However, stewards will only have responsibility for the participants in an event, while the police will retain overall responsibility for public order, traffic management and controlling the actions of the general public and any people opposing an assembly.

The OSCE ODIHR / Venice Commission Guidelines describes the role of stewards as follows:

156. Stewards and marshals (these terms are often used interchangeably) are individuals who assist an assembly organiser in managing the event. Laws governing freedom of assembly may provide for the possibility of organisers being assisted by volunteer stewards. While the police have overall responsibility for public order, organisers of assemblies are encouraged to deploy stewards during the course of a large or controversial assembly. Stewards are persons, working in cooperation with the assembly organiser(s), with a responsibility to facilitate the

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event and help ensure compliance with any lawfully imposed restrictions. Stewards do not have the powers of law enforcement officials and cannot use force, but they should rather aim to persuade assembly participants to co-operate. Their presence can provide reassurance to the public, and help set the mood of an event. The primary role of stewards is to orient, explain, and give information to the public and to identify potential risks and hazards before and during an assembly. In cases of public disorder, the stewards (and organiser) should have a responsibility to promptly inform the police. Police should work in partnership with event stewards, and each must have a clear understanding of their respective roles.

There is no formal guide to indicate the number of stewards that the organisers should be expected to deploy, rather the number will vary depending on the scale of the event, or if the event is perceived as controversial in any way. In South Africa there is a rule of thumb that the police expect organisers to provide one steward for every fifty expected participants in an assembly.

In most cases stewards will receive a briefing before the event to outline their responsibilities and to highlight any particular problems or difficulties that might be expected.

In Northern Ireland, where a small number of bodies are responsible for organising a large number of processions each year, a steward training programme has been running for a number of years. The programme was developed in conjunction with the local police but is delivered through the adult education system and has resulted in more than 2,000 people being trained as stewards. At some of the larger events the stewards liaise closely with the police in trying to ensure that the processions pass without any disorder.

The OSCE ODIHR / Venice Commission Guidelines make two important final points relating to stewards: that the provision of stewards does not reduce the responsibilities of the state to provide adequate policing; and that there should never be a legal requirement on the organisers to pay for stewards, rather stewarding is a way for the organisers to take greater responsibility for their event:

159. Requirement to steward certain assemblies: Under some circumstances, it may be legitimate to impose on organisers a condition that they arrange a certain level of stewarding for their gathering. However, such a condition should only be imposed as result of a specific assessment and never by default. Otherwise, it would violate the proportionality principle. Any requirement to provide stewarding in no way detracts from the positive obligation of the state to provide adequately resourced policing arrangements. Stewards are not a substitute for the police and the police still bear overall responsibility for public order. However, efficient stewarding can help reduce the need for a heavy police presence at public assemblies. This ultimately facilitates any negotiation process where the authorities may have concerns about public safety, and reduces the likelihood that an assembly be restricted on public order or safety grounds.

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

IV. Organisers of an assembly must have clearly visible signs distinguishing them, except for the case provided in Article 5 paragraph IV of this Law.

This may be a useful requirement although there are no clear standards or guidance in this regard from other jurisdictions. In most jurisdictions the organiser has an informal responsibility to make contact with the police, and often this has already occurred through pre-event planning meetings, or because the organiser has been involved organising other assemblies.

In relation to this specific requirement, it would be useful for the authorities to issue some form of guidance as to the nature of any ‘visible signs’ that might be expected of an organiser. This might involve nothing more than wearing a coloured armband, or perhaps a tee-shirt in a particular colour. Thus any requirements on this point should be informal means of identification, it should involve minimal costs and should be able to be improvised where necessary.

In a similar regard the OSCE ODIHR / Venice Commission Guidelines highlight that it is important that stewards are clearly visible:

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

In South Africa the stewards are often made distinctive by wearing a brightly coloured tee shirt, and in Northern Ireland some groups identify their stewards by simple armbands, while others use high visibility jackets with the word ‘Steward’ or ‘Marshal’ written across the back. The chief stewards also have walkie-talkie radios to enable them to communicate with each other.

V. It shall be prohibited for organizers of an assembly to carry on them spitfire and cold steel, pieces of stone, glass, wood and metal, bludgeons that can create a danger for live and health of people or damage the property, as well as articles particularly designed for making body injury, explosives or pyrotechnic articles, potent, toxic, inflammable or corroding articles and radioactive materials.

In principle this is an unproblematic requirement in so far as Article 11 of the ECHR (as well as this legislation) only covers peaceful assemblies and as such there is no right or need to provide for people to carry any forms of defensive items.

However, two of the named items could prove to be more problematic if the prohibitions were to be interpreted in an overly restrictive manner. The first is in relation to items made of glass. People still use glass bottles to contain water or other

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drinks and thus some level of discretion therefore needs to be maintained in reacting to the presence of glass bottles at public assemblies. However, equally the organisers should be made aware of the potential for bottles to be used as missiles and should in general encourage participants to be willing to dispose of them if requested by the police. In the first instance it is suggested that the authorities should ask people to dispose of any glass bottles in an appropriate manner rather than prohibiting them from participating in the assembly or detaining them for possession of such items.

The second item is 'wood'. Many people carry wooden poles at assemblies to hold placards displaying slogans, or to suspend banners of some kind. Again there is therefore the potential for an overly restrictive interpretation of the carrying of wooden poles at assemblies and any extensive restriction of the carrying of wooden poles as part of a banner or placard could be viewed as a disproportionate restriction on freedom of expression (see above). Sticks for placards or poles for banners should therefore be excluded from this category of prohibited items.

VI. The organizer of an assembly which was banned under part V of Article 8 of the present Law must use all available means to inform its participants about prohibition of the assembly.

This is a potential onerous requirement as the term 'all available means' is seemingly open ended. It might be more reasonable to require the organiser to make 'reasonable efforts' to inform people of any prohibition. This would be in line with the terminology and expectations set out in the OSCE ODIHR / Venice Commission Guidelines:

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

In the interests of public order some responsibility should also fall on the authorities for publicising the fact that an assembly has been banned and thus informing potential participants in advance of the event not to attend.

VII. The organizer of an assembly which was suspended by the order under part VI of Article 8 of the present Law must use all available means for the implementation of this order.

Similarly to the previous clause, the organisers should be expected to take 'reasonable efforts' to ensure that any suspended event passes off peacefully. Furthermore, the OSCE ODIHR / Venice Commission Guidelines note that the responsibilities of the organisers towards other actors in the public arena are also limited:

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

VIII. The government shall have the responsibility for ensuring the security of an assembly. However, with an aim to ensure the security of an assembly that went beyond security limits ensured by the government, organizers can request to attract additional police forces.

As emphasized above in relation to Article 1 of the present law, the OSCE ODIHR / Venice Commission Guidelines highlight the responsibility of the state to protect the right to freedom of peaceful assembly both in principle and in practice. The first two of the six Guiding Principles state:

Principle 1. Presumption in favour of holding assemblies. As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden in law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of the freedom should be clearly and explicitly established in law.

Principle 2. The State's duty to protect peaceful assembly. It is the responsibility of the State to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to unduly bureaucratic regulation.

These principles are in line with the decisions of the European Court of Human Rights in the cases of *Plattform 'Ärzte für da Leben' v Austria* (1988) and *Ouranio Toxo and Others v Greece* (2005) where the court noted the positive responsibility of the state to take 'reasonable and appropriate measures' to protect participants in public assemblies.

The specific responsibilities of the state with regard to policing are addressed in more detail in the OSCE ODIHR / Venice Commission Guidelines:

115. The State has a positive duty to take reasonable and appropriate measures to enable lawful demonstrations to take place without participants fearing physical violence (see paras.26-29). The role of law enforcement officials goes beyond recognizing the existence of fundamental rights and includes positively safeguarding those rights. In particular, the State has a positive obligation to protect the right to life (Article 2 of the ECHR), and an applicant complaining of a breach of Article 2 need only show that the authorities did not do all that could reasonably be expected in the circumstances to avoid the risk.

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There is a need to clarify how exactly the organisers might request ‘additional police resources’ and when they might do so. It is assumed that any request for additional policing would need to be made in advance of the event and thus highlights the need for a channel of communication to be established between the police and the organisers. There are a number of positive examples of this:

- In South Africa such a channel is established through a pre-event meeting where the local authorities, the police and organisers discuss all aspects of the proposed event.
- A similar model of pre-event meetings involving the police and organisers has been established in Northern Ireland, particularly in situations where an assembly is contentious.
- The Slovenian Act on Public Assembly (2004) provides for the police and the event organiser to work together to determine the number of police officers required for an assembly and also specifies that the organiser should work with the police in planning measure to ensure that public order is maintained.
- More recently, greater engagement and dialogue between assembly organisers and the authorities has become the norm in Moldova, particularly since the introduction of the new law on assemblies in April 2008.

ARTICLE 13

Article 13. Rights and duties of participants of a peaceful assembly

I. Any person participating in a peaceful assembly must observe restrictions and conditions specified in accordance with Articles 7-9 of the present Law.

Anyone participating in a public event is bound to obey the laws of that society, any lawful requests of police officers, and to work with event organisers and law enforcement officials to ensure that assemblies remain peaceful at all times. The OSCE ODIHR / Venice Commission Guidelines highlight this:

155. Responsibility to obey the lawful directions of law enforcement officials: The law on assemblies might legitimately require that organisers (as well as participants) obey the lawful orders of law enforcement officials. Refusal to do so may entail liability (see Liability at paras.160-161 below).

It should also be noted that there are other groups of people who are likely to be present at public assemblies, whilst not falling into the categories of organiser, participant or police officer (see further the commentary in relation to the definition of participant in Article 3 of the present law above). Such people include in particular, members of the media and human rights defenders, as well as casual by-standers and passers-by. The OSCE ODIHR / Venice Commission Guidelines states in relation to human rights defenders:

163. The monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. Monitoring might, for example, be carried out by local civic society organisations or human rights NGOs. Domestic Ombudsman offices and Human Rights Commissions may also undertake monitoring roles, as can international human rights organisations (such as Human Rights Watch or Amnesty International) or intergovernmental networks (such as the Council of Europe or OSCE).

164. While the primary responsibility to promote and protect freedom of assembly lies with the State, non-governmental organisations play an important role in furthering the cause of human rights. Human rights defenders should therefore be permitted to operate freely in the context of freedom of assembly.

Similarly in relation to members of the media, the OSCE ODIHR / Venice Commission Guidelines state:

168. Members of the press and media have an important role to play in providing independent coverage of public assemblies. As such they must be distinguished from participants in the event, and be given as much access as is possible by the authorities. In order to avoid confusion and facilitate such access, it may be necessary to require journalists and media personnel to be clearly identifiable (by, for example, wearing fluorescent bibs).

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The OSCE has recently issued a more extended commentary on handling of the media during political demonstrations and the full text of this document is included as an appendix to this commentary.

II. Persons shall participate in assemblies voluntarily. Those who force someone to participate in assemblies shall bear responsibility in accordance with the legislation of the Republic of Azerbaijan.

In the consultation process that informed the drafting of the OSCE ODIHR / Venice Commission Guidelines the issue of enforced participation in an assembly was raised, although it did not seem to be a prevalent or common issue. In fact on those occasions when it has been suggested that crowds have been mobilised in an involuntary manner it has been the government or other state bodies that have been accused of ‘encouraging’ participation, rather than members of civil society or opposition groups.

III. Participants shall enjoy the right of freedom of thought and speech orally and in written during assemblies in accordance with the Constitution of the Republic of Azerbaijan. Realization of this freedom can be restricted in accordance with the Constitution of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party.

This issue is covered by the discussion of freedom of expression in relation to Article 12(II).

IV. During assemblies its participants must assist in protection of public order and use all available means for observing lawful requirements of organizers as well as representatives of the relevant bodies of executive power.

The OSCE/ODIHR Panel of Freedom of Assembly addressed this issue in its opinion of 1 October 2007 on the draft amendments to the law of the Republic of Azerbaijan on Freedom of Assembly (FOA – AZE/088/20007), which stated:

4.17 Participants’ duties

45. Article 13(4) requires participants to assist in protection of public order. It is not clear what this requirement means. If it should be interpreted as requiring that participants must themselves obey the law, it is legitimate. However, if it requires them to police others, then it cannot be justified. It is therefore recommended that Article 13(4) be revised to make it clear that the participants are required to obey the law, and not to police others.

Beyond this, participants might reasonably be expected to convey information either to an official steward or to a law enforcement official about unlawful or disorderly behaviour of other participants.

V. A participant of an assembly being held in compliance with this Law cannot be later brought to responsibility for participation in such an assembly. Only the participants of an assembly being held in compliance with this Law who violate the law can be brought to responsibility. If a peaceful assembly turned into violent

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assembly a participant of an assembly, who has not committed an offence, as well as who did not know beforehand about it not being peaceful, shall not be brought to responsibility only for his attendance at the assembly.

Individuals participating in public assemblies are responsible for their own behaviour, but should not be held liable for the behaviour of others. Furthermore, even if an assembly becomes violent individuals should only be held to account if they actively participate in the violence, simply being present at an assembly that stops being peaceful and become violent is not an offence. This is set out clearly in the OSCE ODIHR / Venice Commission Guidelines and has also been clearly addressed by the ECtHR in the cases of *Ezelin v France* (1991) and *Ziliberberg v Moldova* (2004) as cited:

89. Individual participants who do not themselves commit any violent act cannot be prosecuted solely on the ground of participation in a non-peaceful gathering. As stated in the case of Ezelin v France (1991), '[i]t is not 'necessary' in a democratic society to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights.' Anyone charged with an offence relating to an assembly should enjoy fair trial rights.

The Guidelines further note, in footnote 100, that:

In Ziliberberg v Moldova (2004) (admissibility), at p.10, it was stated that 'an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.'

The importance this matter has been re-affirmed in the recent decisions from the ECtHR in the cases of *Galstyan v Armenia* (2007) and *Ashughyan v Armenia* (17 July 2008). In the judgment in the latter case it states:

*90. The Court further reiterates that the freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected 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 this person does not himself commit any reprehensible act on such an occasion (see Ezelin, cited above, p. 23, § 53). Furthermore, any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic, and where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see Oya Ataman v. Turkey, no. 74552/01, §§ 38-42, ECHR 2006-...).*⁷²

⁷² See also *Galstyan v. Armenia* (2007) at para.115 and 117.

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VI. It shall be prohibited for participants of an assembly to carry on them spitfire and cold steel, pieces of stone, glass and wood, bludgeons that can create a danger for live and health of people or damage the property, as well as articles particularly designed for making body injury, explosives or pyrotechnic articles, potent, toxic, inflammable or corroding articles and radioactive materials.

Issues and concerns related to the text of this clause have been addressed in the discussion on Article 12(V) above.

VII. In cases provided for in part VI of Article 8 and part II of Article 14 of the present Law participants of an assembly must disperse by the decision of the relevant body of executive power, organizers of an assembly or representatives of organizers on suspending an assembly.

We reiterate the comment that were made in relation to Article 13(I), above in relation to the requirements of participants in public assemblies to obey the lawful directions of law enforcement officials, as set out in the OSCE ODIHR / Venice Commission Guidelines:

165. Responsibility to obey the lawful directions of law enforcement officials: The law on assemblies might legitimately require that organisers (as well as participants) obey the lawful orders of law enforcement officials. Refusal to do so may entail liability (see Liability at paras.160-161 below).

However, we would also note that the law enforcement officials have a responsibility to ensure that the dispersal of an assembly is treated as a matter of last resort (as stated by the ECtHR in the cases of *Oya Ataman v Turkey* (2007), *Balcik v Turkey* (2007), *Bukta v Hungary* (2007), and *Nurettin Aldemir v Turkey* (2007)); that attempts are made to address any disorder before an assembly is dispersed; that the organisers and participants are clearly and audibly informed of the requirement to disperse; and that sufficient time is allowed for them to respond to any such request. Finally, any decision to actively disperse people participating in an assembly should involve the minimal and proportionate use of force. These matters are discussed in paragraphs 137 – 145 of the OSCE ODIHR / Venice Commission Guidelines and will be considered in more detail in relation to Article 14(II) below.

ARTICLE 14

Article 14. Powers of bodies of police in connection with convening an assembly

I. Taking into account the requirements of Article 7 of this Law, bodies of police shall have the following rights in connection with holding an assembly:

1) to check the place of convening an assembly a day before the gathering, meeting, demonstration, street procession or picket for security reasons;

The police have the responsibility for ensuring that assemblies can take place in a safe environment, so any pre-event review of the location or route of an assembly should be carried out in order to ensure that the event can take place in a safe and secure environment, rather than be used as an excuse to impose any restrictions or prohibitions on the organisers.

Furthermore the OSCE ODIHR / Venice Commission Guidelines encourage the organisers to work with the police and other relevant agencies to undertake a risk assessment to help ensure that assemblies pass off without risk or trouble.

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

The importance of the police and the organisers working together to ensure a peaceful and secure event is also emphasised in Article 15 of this Act.

2) to suspend an assembly which did not have a written notification except assemblies provided for in part IV of Article 5 of the present Law;

The police and other law enforcement bodies should always be aware of the state's responsibility to protect peaceful assemblies and of the presumption of a fundamental right to organise and participate in a peaceful assembly. These principles are set out clearly in the OSCE ODIHR / Venice Commission Guidelines (see commentary on Articles 1(II) and 12(VIII) above).

Furthermore the police should always look to use their discretion in facilitating peaceful assemblies with lawful objectives whether or not they fully comply with all legal requirements. The police should always prioritise the maintenance of peace and public order over a strict adherence to upholding the law.

132. Powers to intervene should not always be used. The existence of police powers to intervene, disperse an unlawful assembly, or use force does not mean that such powers should always be exercised. Where an assembly occurs in violation of applicable laws, but is otherwise peaceful, non-intervention or active facilitation may sometimes be the best way to ensure a peaceful outcome. In many

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cases, dispersal of an event may create more law enforcement problems than accommodating and facilitating it. Post-event prosecution for violation of the law remains an option.

Police action to disperse unlawful, but otherwise peaceful, assemblies has been addressed in a number of recent cases before the European Court of Human Rights. In the case of *Oya Ataman v Turkey* (2007) the police used force to disperse participants in a non-notified assembly and the Court noted the following in its judgement:

*39. The Court considers, in the absence of notification, the demonstration was unlawful, a fact that the applicant does not contest. However, it points out that an unlawful situation does not justify an infringement of freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III (extracts)). In the instant case, however, 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. In the Court's opinion, it is important that preventive security measures such as, for example, the presence of first-aid services at the site of demonstrations, be taken in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature.*

40. It appears from the evidence before the Court that the group of demonstrators was informed a number of times that their march was unlawful and would disrupt public order at a busy time of day, and had been ordered to disperse. The applicant and other demonstrators did not comply with the security forces' orders and attempted to force their way through.

41. 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 about midday 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, which was organised under the authority of the Human Rights Association.

42. 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.

43. Accordingly, the Court considers that in the instant case the police's forceful intervention was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.

44. There has accordingly been a violation of that provision.

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The findings of this case were restated in three similar recent cases: *Balcik v Turkey* (2007), *Bukta v Hungary* (2007), and *Nurettin Aldemir v Turkey* (2007).

3) to suspend an assembly if venue or time of this assembly, route of a street procession (venue of starting and finishing of a street procession) stipulated in a written notification was changed without justified reason;

The principles outlined in the case of non-notified assemblies (above), also apply in cases in which the actions of the organiser deviates in some way from a written notification. The OSCE ODIHR / Venice Commission Guidelines also note that:

134. Peaceful assemblies which do not comply with the requisite preconditions established by law or which substantially deviate from the terms of notification. If the organiser fails or refuses to comply with any requisite preconditions for the holding of an assembly (including valid notice requirements, and necessary and proportionate restrictions based on legally prescribed grounds), they might face prosecution. However, such assemblies should still be accommodated by law enforcement authorities as far as is possible. If a small assembly is scheduled to take place and, on the day of the event, it turns into a significantly larger assembly because of an unexpectedly high turnout, the assembly should be accommodated by law enforcement authorities and should be treated as being lawful so long as it remains peaceful.

4) to detain individuals who came to an assembly with spitfire and cold steel, pieces of stone, glass and wood, bludgeons that can create a danger for live and health of people or damage the property, as well as articles particularly designed for making body injury, explosives or pyrotechnic articles, potent, toxic, inflammable or corroding articles and radioactive materials and to send them away from the place of holding an event;

Police officers should be aware of the commentary on this issue under Article 12(V) above, and in particular the possibility that some participants may have items of glass or wood with them for fully lawful and peaceful purposes.

Furthermore, rather than ‘send away’ people found with such items, police practice in other jurisdictions provides for offering an opportunity to people to dispose of any inappropriate items, before they are permitted to continue to participate in the assembly.

In both Northern Ireland and the USA police officers will either confiscate an item or ask people to dispose of alcohol or drinks in glass containers and then permit them to remain as participants in an assembly rather than force those found in possession of such items to leave the area.

5) to conduct personal examination of individuals who are seriously suspected in carrying articles or substances stipulated in subparagraph 4 of paragraph I of the present article.

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The OSCE ODIHR / Venice Commission Guidelines set out the acceptable parameters for searching, detaining or arresting people involved in an assembly, which must be born in mind by police officers who may be involved in such actions:

126. Protocols for the stop and search, detention, or arrest of participants should be established. It is of paramount importance that states establish clear and prospective protocols for the lawful stop and search or arrest of participants in assemblies. Such protocols should provide guidance as to when such measures are appropriate and when they are not, how they should be conducted, and how individuals are to be dealt with following arrest. In drafting these protocols, regard should be had to the jurisprudence of Article 9 ICCPR and Article 5 ECHR, which protects the right to liberty. While mass arrests are to be avoided, there may be occasions involving public assemblies when numerous arrests are deemed necessary. However, large numbers of participants should not be deprived of their liberty simply because the police do not have sufficient resources to effect individual arrests – adequate resourcing forms part of the positive obligation of participating states to protect the right to assemble.

127. Restrictions imposed on individuals during an assembly may violate their rights to liberty and freedom of movement. Individuals should not be stopped and searched unless the police have a reasonable suspicion that they have committed, are committing, or are about to commit, an offence, and arrests must not be made simply for the purpose of removing a person from an assembly or preventing their attendance. Indeed, arrests made during an assembly should be limited to persons engaging in conduct that is creating a clear and present danger of imminent violence.

128. Planning by the relevant authorities must be adequate to ensure provisions for first aid, basic necessities (water and food), opportunity to consult with lawyers, and the separation of minor from adult, male from female detainees. Minors, though, should be provided with an opportunity to communicate with a parent. Detainees must not be ill-treated whilst being held in custody. Where detention facilities are inadequate to deal with the number of individuals, arrested individuals must be freed unless doing so would pose a threat to public safety. Procedures must be established to limit the duration of detention to a strict minimum.

II. Bodies of police shall have the following rights with regard to ensuring prohibitions provided for in parts I-III of Article 8 and Article 7 as well as orders provided for in parts V and VI of Article 8 of the present Law:

1) to inform organizers and participants about the suspension of an assembly and its dispersal;

The OSCE ODIHR / Venice Commission Guidelines emphasises that dispersal of an assembly should be a matter of last resort and furthermore:

- assemblies should not be dispersed if an assembly remains peaceful (paragraph 137);

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- dispersal should not take place until law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm (paragraph 138); and
- dispersal should not be a response to the actions of a small number of people or of agents provocateurs (paragraph 139); or
- because an assembly has not complied with the requisite provisions established by law, because it is for a purportedly illegal purpose or because of the presence of proscribed organisations (paragraph 139).

A number of recent decisions by the European Court of Human Rights (*Oya Ataman v Turkey* (2007), *Balcik v Turkey* (2007), *Bukta v Hungary* (2007) and *Nurettin Aldemir v Turkey* (2007)) have emphasised the point that where participants in an assembly do not engage in acts of violence the authorities should show tolerance towards the assembly, whether it is fully compliant with the law or not.

The OSCE ODIHR / Venice Commission Guidelines continue by emphasising that:

140. If dispersal is deemed necessary, the assembly organiser and participants should be clearly and audibly informed prior to any police intervention. Participants should also be given reasonable time to disperse prior to such intervention. 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.

In the USA police officers are expected to use amplified equipment when informing people of the need to disperse from an assembly and they will also place officers at the extremes of any crowd in order to confirm that any such requests are audible to all participants.

2) to order organizers and participants of an assembly to use all available means for suspension of an assembly and for participants to disperse;

We refer to the commentary on Articles 12(III); 12(VI); 12(VII); 13(IV) and 13(VII) and would simply reiterate that the organisers and participants have a responsibility to obey the law and make reasonable efforts to comply with the lawful directions of police officers.

However, neither the event organisers nor individual participants should be considered liable for the actions of other individuals who may be involved in some way in creating disorder or acts of violence.

3) to warn organizer and participants that a physical force or special means will be used against them in case of refusal to observe the order on suspension of an assembly and for participants to disperse;

The commentary on Article 14(II)(1) outlines the expectations of the police in relation to providing a warning to participants of any intended action to disperse an assembly. The same principle applies to any intent to use force in dispersing people.

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4) to use physical force or special means in compliance with the legislation of the Republic of Azerbaijan for the suspension of an assembly and dispersal of its participants.

The OSCE ODIHR / Venice Commission Guidelines highlight the importance of ensuring that any use of force by police officers is necessary and proportionate, is regulated by domestic law and is also compliant with international standards regarding the use of force.

141. The inappropriate, excessive or unlawful use of force by law enforcement authorities can violate fundamental freedoms and protected rights, undermine police-community relationships, and itself cause widespread tension and unrest. The use of force should therefore be regulated by domestic law. Such provisions should set out the circumstances that justify the use of force (including the need to provide adequate prior warnings) as well as the level of force acceptable to deal with various threats. Governments should develop a range of means of response, and equip law enforcement officials with various types of weapons and ammunition so as to enable a differentiated use of force. These should include the development of non-lethal incapacitating weapons for use in appropriate situations. Moreover, law enforcement officials ought to be provided with self-defence equipment such as shields, helmets, fire-retardant clothing, bullet-proof vests and bullet-proof transport in order to decrease the need to use weapons of any kind. This again emphasizes the requirement that the state adequately resource its law enforcement agencies in satisfaction of its positive duty to protect freedom of peaceful assembly.

142. Police owe a duty of care (to prevent death or physical injury) to members of any assembly that they are, or should be, managing. This implies that the police must have the necessary legal powers and competencies to enable them to fulfil these duties, including the power to use reasonable force to ensure that members of a crowd stay where the police reasonably require them to stay for as long as is necessary to allow them to disperse safely.

143. International standards give detailed guidance regarding the use of force in the context of dispersal of both unlawful non-violent and unlawful violent assemblies. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that '[i]n the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.' The UN Basic Principles also stipulate that '[i]n the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Principle 9 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

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

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

- *where pepper spray or other irritant chemical may be used, decontamination procedures must be set out;*
- *the use of energy attenuating projectiles (also known as baton rounds or plastic/rubber bullets), water cannon, and other forceful methods of crowd control must be strictly regulated. Under no circumstances should force be used against people who are unable to leave the scene; and*
- *the use of force should trigger an automatic and prompt review process after the event. It is good practice for law enforcement officials to maintain a written and detailed record of force used (including weapons deployed).*

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

5) to detain individuals who refuse to follow the order on the suspension of an assembly and dispersal.

The European Court of Human Rights has noted (in *Steel and Others v United Kingdom* (1998) and *Lucas v United Kingdom* (2003)) that it is lawful to arrest or detain individuals who are involved in public protests providing:

*(i) the applicable national law must meet the standard of “lawfulness” set by the Convention, which requires that all law be sufficiently precise to allow the citizen – 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 (according, inter alia, to *S.W. v the United Kingdom*, judgment of 22 November 1995, Series A no. 335-B, pp. 41-42, §§ 35-36);*

(ii) there must be full compliance with the procedural and substantive rules of national law;

*(iii) the deprivation of liberty must be consistent with the purpose of Article 5 and not arbitrary (according to *Benham v. the United Kingdom*, judgment of 10 June*

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1996, Reports 1996-III, pp. 752-53, § 40). (Lucas v United Kingdom, admissibility decision page 4)

We have already highlighted the importance of establishing clear protocols regarding the detention of participants in an assembly as set out in the OSCE ODIHR / Venice Commission Guidelines (see commentary of Article 14.I.5, above):

126. Protocols for the stop and search, detention, or arrest of participants should be established: It is of paramount importance that states establish clear and prospective protocols for the lawful stop and search or arrest of participants in assemblies. Such protocols should provide guidance as to when such measures are appropriate and when they are not, how they should be conducted, and how individuals are to be dealt with following arrest. In drafting these protocols, regard should be had to the jurisprudence of Article 9 ICCPR and Article 5 ECHR, which protects the right to liberty. While mass arrests are to be avoided, there may be occasions involving public assemblies when numerous arrests are deemed necessary. However, large numbers of participants should not be deprived of their liberty simply because the police do not have sufficient resources to effect individual arrests – adequate resourcing forms part of the positive obligation of participating states to protect the right to assemble.

The same document also emphasizes the importance of distinguishing between participants and non-participants in an assembly, and between peaceful and non-peaceful participants. Both paragraphs highlight the importance of recognizing that a crowd is always a diverse and heterogeneous body of people and should never be treated as a singular entity:

124. Law enforcement officials should differentiate between participants and non-participants: The policing of public assemblies should be sensitive to the possibility of ‘non-participants’ (such as accidental bystanders or observers) being present in the vicinity of an assembly.

125. Law enforcement officials should differentiate between peaceful and non-peaceful participants: Neither isolated incidents of sporadic violence, nor the violent acts of some participants in the course of a demonstration, are themselves sufficient grounds to impose sweeping restrictions on peaceful participants in an assembly. Law enforcement officials should not therefore treat a crowd as homogenous if detaining participants or (as a last resort) dispersing an assembly (see further below).

III. The bodies of police in cases provided for in this article must use special means that are utterly necessary for the purpose of restoring legal order in compliance with the legislation of the Republic of Azerbaijan.

We refer to our earlier commentary in relation to Articles 7(II), 7(III) and 14(II)(4) above. The commentary in relation to the latter provision notes that the OSCE ODIHR / Venice Commission Guidelines highlight the importance of ensuring that any use of

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force by police officers is necessary and proportionate, is regulated by domestic law and is also compliant with international standards regarding the use of force.

IV. Internal troops can be used for maintaining, restoring public order and ensuring security of people during assemblies.

All law enforcement and related bodies and all individual officers involved in the policing of public assemblies should adhere to the range of principles set out in the preceding commentary. It is worth noting in this regard that the ECtHR has emphasised not only the responsibility of the police maintain public order, but also that they have a responsibility to provide appropriate levels of protection to participants in public assemblies (see further discussion in relation to Article 1(II) above). In the case of *Plattform 'Ärzte für da Leben' v Austria* (1988) the court noted:

32. 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 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). Like Article 8 (art. 8), Article 11 (art. 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be (see, mutatis mutandis, the *X and Y v. the Netherlands* judgment of 26 March 1985, Series A no. 91, p. 11, § 23).*

However the court also went on to note that the responsibility of the state to provide protection could not be guaranteed absolutely:

*34. 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 (see, mutatis mutandis, the *Abdulaziz, Cabales and Balkandali* judgment of 28 May 1985, Series A no. 94, pp. 33-34, § 67, and the *Rees* judgment of 17 October 1986, Series A no. 106, pp. 14-15, §§ 35-37). 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.*

The court reaffirmed this principle in the case of *Ouranio Toxo and Others v Greece* (2005) where the police had failed to provide sufficient protection to the premises of a minority ethnic political party from the activities of a hostile demonstration.

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With regard to general policing of public assemblies, and in particular the policing of contentious assemblies, it is also worth noting the findings of an official enquiry⁷³ into the violence that occurred during the EU summit in Gothenborg, Sweden in June 2001. This highlighted the importance of ensuring that there was effective communication, co-ordination and practical co-operation when more than one police body is involved in the policing of a major event.

In a similar way the recent report of the Special Commission of Experts on the demonstrations, street riots and police measures in September-October 2006 in Budapest, Hungary⁷⁴ recommended that ‘in the case of future riot control missions, which are to be accomplished by means of employing troop force, the Police exclusively deploy units that are trained and prepared for such mission and have field experience in working with one another.’

The OSCE ODIHR / Venice Commission Guidelines also highlight the importance of the provision of appropriate training for officers involved in the policing of public assemblies:

117. Governments must ensure that law enforcement officials receive adequate training in the policing of public assemblies. Training should equip law enforcement agencies to act in a manner that avoids escalation of violence and minimises conflict, and should include ‘soft skills’ such as negotiation and mediation. Training should also include relevant human rights issues, and should cover the control and planning of policing operations, emphasizing the imperative of minimizing recourse to force to the greatest extent possible.

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

119. Public order policies and training programmes should be kept under review to incorporate lessons learnt (through, for example, debriefing sessions or the emergence of new technologies), and regular refresher courses should be provided to law enforcement officials. These standards should be circulated as widely as possible, and monitoring of their implementation should be by an independent overseer, with investigative powers to compel witnesses and documentation, who publishes periodic reports.

V. During dispersal of an assembly with application of force in cases provided for in this article employees of police and internal troops can use handcuffs, shields,

⁷³ Available at: <http://www.regeringen.se/sb/d/108/a/3816>

⁷⁴ Available at: http://www.gonczolbizottsag.gov.hu/jelentes/gonczolbizottsag_jelentes_eng.pdf

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batons, water-jet, gases of special function, rubber bullets and other special means designed for these purposes.

See our commentary on Article 14.II.4, above, but with particular note of paragraph 144 of the OSCE ODIHR / Venice Commission Guidelines, which highlights issues related to the use of some specific forms of weaponry.

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

- *where pepper spray or other irritant chemical may be used, decontamination procedures must be set out;*
- *the use of energy attenuating projectiles (also known as baton rounds or plastic/rubber bullets), water cannon, and other forceful methods of crowd control must be strictly regulated. Under no circumstances should force be used against people who are unable to leave the scene; and*
- *the use of force should trigger an automatic and prompt review process after the event. It is good practice for law enforcement officials to maintain a written and detailed record of force used (including weapons deployed).*

VI. Physical force or special means used by police officers shall be adequate to the danger occurred.

In addition to the various comments in relation to the appropriate and proportionate use of force, the OSCE ODIHR / Venice Commission Guidelines also give some consideration to the importance to the rights of police officers and to the issue of the accountability and liability of police officers for their actions in managing public assemblies.

In relation to the rights of police officers, the OSCE ODIHR / Venice Commission Guidelines state:

116. In the implementation of legislation on freedom of assembly, consideration should also be given to the rights, health, and safety of police officers. In addition, it should be noted that the nature of their job may place police officers in difficult, rapidly evolving and dangerous situations, in which they have to make split-second judgments. What will be judged to be a reasonable action or reaction must therefore depend on an objective and real-time evaluation of the totality of circumstances. Specific defences such as self-defence – subject to important qualifications (such as a reasonableness test, and requirements that an attack was actual or imminent and that there was no other more peaceful response available) – should be contained in domestic law.

While in relation to liability and accountability, the Guidelines state:

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

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for failing to intervene where such intervention may have prevented other officers from using excessive force.

147. Where a complaint is received regarding the conduct of law enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the acts of law enforcement officers, an effective official investigation must be conducted.

148. The core purpose of any investigation should be to secure the effective implementation of domestic laws which protect the right to life and bodily integrity, and in those cases involving state agents or entities, to ensure their accountability for deaths or physical injuries occurring under their responsibility. The particular form of investigation required to achieve those purposes may vary according to the circumstances.

VII. Powers of bodies of police provided for in the legislation of the Republic of Azerbaijan are not limited to the present Law.

Principle 3 of the OSCE ODIHR / Venice Commission Guidelines on Freedom of Peaceful Assembly states:

Principle 3. Legality. Any restrictions imposed must have a formal basis in law. The law itself must be compatible with international human rights law, and be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and what the consequences of such breaches are likely to be.

The Guidelines go on to note:

31. While this foreseeability requirement does not necessarily mean that a single consolidated law on freedom of assembly need be enacted, it does require consistency between the various laws that might be invoked to regulate freedom of assembly. Any law which regulates freedom of peaceful assembly should not duplicate provisions already contained in other legislation in order to help ensure the overall consistency and transparency of the legislative framework.

ARTICLE 15

Article 15. Cooperation between organizers of an assembly and bodies of police

The bodies of police shall cooperate with organizers of an assembly. The bodies of police shall, as far as possible, assist organizers in realization of the right to freedom of assembly and at the same time organizers of an assembly shall assist bodies of police in protection of public order and follow their lawful demands.

The OSCE ODIHR / Venice Commission Guidelines highlight the importance of establishing good lines of communication and working relationships between the police and event organisers, and note that this can work to the benefit of both parties in helping to ensure that events pass peacefully. In relation to the police, the Guidelines note:

121. Police command structures should be clearly established: Command structures enable proper coordination between police officers, between the police and the assembly organiser, and ensure accountability for operational decisions. Such command structures can be role-specific rather than rank-related, and need not compromise operational flexibility.

122. Inter-agency communication should be ensured: It is imperative that law enforcement and other public safety agencies (fire and ambulance services, for example) are able to communicate with one another and exchange data during critical situations. As Chapter 6 states, it is also vital that the assembly organiser does everything within their power to assist these agencies in responding to emergencies or criminal conduct. Thorough inter-agency contingency planning can help ensure that lines of communication are maintained.

While the document also notes the importance of having good relations with the police for the organisers of public assemblies:

150. Those who organise assemblies should cooperate with police to ensure that participants in their assemblies comply with the law and the terms of the submitted notification. There should be clarity as to who precisely is involved in the organisation of any assembly, and it can be assumed that the official organiser is the person or persons in whose name prior notification is submitted. This need not be a legal entity, and could, for example, be a committee of individuals or informal organisation.

152. Pre-event planning with law enforcement officials: Where possible, it is good practice for the organiser(s) to agree with the law enforcement officials about what security measures are being put in place prior to the event. Such discussions can cover the deployment of the police and stewards (see further below), and concerns around the nature of the policing operation. Sometimes, for example, a police presence in a particular location may be perceived as being unnecessarily confrontational or provocative and the organiser might request that the police maintain a low visibility).

ARTICLE 16

CHAPTER V. FINAL PROVISIONS

Article 16. Responsibility for the violation of the present Law

I. Persons who violated parts I-III of Article 8, parts III, V, VI and VII of Article 12 and part VI of Article 13 of the present law shall bear responsibility in accordance with the legislation of the Republic of Azerbaijan.

The OSCE ODIHR / Venice Commission Guidelines makes the following comments in relation to any sanctions imposed as a result of activities during, or related to an assembly:

86. Sanctions and penalties imposed after an assembly: The imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to, or during, an assembly. For example, the European Court of Human Rights has held that prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate. Any isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint. Such measures include prosecution (for example, for participation in an unlawful assembly, or for other public order offences) or other disciplinary action. It is noteworthy, however, that on several occasions, the Human Rights Committee and the European Court of Human Rights have found subsequent sanctions to constitute a disproportionate interference with the right to freedom of assembly or expression.

87. Legislation relating specifically to freedom of assembly should not contain any general provisions regarding criminal or administrative liability, which should instead be adequately covered by the relevant criminal or administrative legislation. Some offences, however, might reasonably be included in legislation dealing specifically with freedom of assembly, such as

- Failure to comply with the requisite notice (or permit) requirements;*
- Participation in an unlawful assembly;*
- Failure to perform the responsibilities of organiser as specified;*
- Carrying prohibited objects or substances in an assembly; or*
- Obstructing a lawful assembly.*

88. All provisions that create criminal or administrative liability must comply with the principle of legality (see above at paras.30-33). Furthermore, organisers and participants should benefit from a 'reasonable excuse' defence. For example, participants in unlawful assemblies should be exempted from liability for the offence of 'participation in an unlawful assembly' when they had no prior knowledge that the assembly was unlawful. Similarly, a participant should not be held liable for anything done under the direction of a police officer.

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89. *Individual participants who do not themselves commit any violent act cannot be prosecuted solely on the ground of participation in a non-peaceful gathering. As stated in the case of Ezelin v France (1991), '[i]t is not 'necessary' in a democratic society to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights.' Anyone charged with an offence relating to an assembly should enjoy fair trial rights.*

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

II. Responsibility of police officers with regard to holding assembly shall be regulated by the Law of the Republic of Azerbaijan "On police".

The OSCE ODIHR / Venice Commission Guidelines makes the following comments in relation to the liability and accountability of police officers:

146. *If the force used is not authorized by law, or more force was used than necessary in the circumstances, police officers should face civil and/or criminal liability as well as disciplinary action. Police officers should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force.*

Paragraph 21.2 of the *Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991* urges (OSCE) participating States to 'ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments.' Similarly, paragraph 7 of the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* states that 'governments shall ensure that the arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.'

147. *Where a complaint is received regarding the conduct of law enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the actions of law enforcement officials, an effective official investigation must be conducted.*

148. *The core purpose of any investigation should be to secure the effective implementation of domestic laws that protect the right to life and bodily integrity, and in those cases involving state agents or entities, to ensure their accountability for deaths or physical injuries occurring under their responsibility. The particular*

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form of investigation required to achieve those purposes may vary according to the circumstances.

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Article 17. Entering of the present Law into force

The present Law shall enter into force since the day of publishing.

Appendix



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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Special Report

Handling of the media during political demonstrations

Observations and Recommendations

This Special Report is the third in a series issued by the Office of the OSCE Representative on Freedom of the Media that seeks to offer clarification about problematic aspects and best practices of the framework for the media in the OSCE area.

The first two reports, issued in October 2006 and March 2007, examined the function of journalists' accreditation and the issue of registration of the print media.

This Special Report examines the treatment of journalists by law enforcement officials during political demonstrations.

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

The OSCE participating States have committed to freedom of expression and freedom of assembly and have guaranteed to create the conditions whereby journalists are able to work without legal or administrative obstacles⁷⁵. Particularly, they “condemn all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.”⁷⁶ In addition, the ODIHR *Guidelines on Freedom of Peaceful Assembly* clarifies the role of the media.⁷⁷

Recent conflicts in connection with public demonstrations touch on both freedom of expression issues and those related to freedom of assembly. But safe reporting on

⁷⁵ Copenhagen Meeting Of The Conference On The Human Dimension Of The CSCE (June 1990) (7.8)

⁷⁶ Towards a Genuine Partnership in a new era (CSCE Summit, Budapest) Chapter VIII, Human Dimension Tolerance and non-discrimination.

⁷⁷ “Journalists have an important role to play in providing independent coverage of public assemblies. As such, they must be distinguished from participants and be given as much access as possible by the authorities.” Section A ‘Implementing legislation on Freedom of Peaceful Assembly’ (9) p17.

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demonstrations is demanded not only by freedom of the media and free flow of information principles: uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech.

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

This report examines some of the issues that have become a recurring problem in the OSCE area and proposes recommendations to improve the handling of the press in similar circumstances in the future.

Responsibilities of the authorities and law enforcement agencies

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

There are of course practical considerations. The police have to distinguish between journalists and demonstrators at a time when the emotions of large crowds are running high. Therefore, there needs to be a mechanism whereby the police can quickly assess who should have access.

The solution found in **Belgium** is linked to the National Press Card. According to the Law of 30 December 1963, journalists recognised by the national union are issued with a press card, which gives the journalists maximum access to any public space, including demonstrations. On the back of the press card, it is stated: "The authorities are requested to give the owner of this card all facilities in as far as they are compatible with the needs of public order and traffic."



Belgium Press Card (front)



Belgium Press Card (back)

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On presentation of the card, journalists can expect to be granted access to the demonstration area in order to cover the event.

However, even on presentation of their credentials, this right of access is not always given to journalists. Disregard for the role of both journalists and law-enforcers at the time of a demonstration has led to overzealous policing and resulted in physical attacks on journalists. For example, this year:

- During the so-called “Marches of the Discontented”, organized by an opposition alliance on 3 March 2007 in St. Petersburg, on 24 March in Nizhny Novgorod, and on 15 April in Moscow, **Russia**, the media reported that several Russian and foreign journalists were detained or beaten in each instance, despite some of them wearing a bright jacket identifying them as journalists.
- On 12-14 April, four cases of journalists being beaten during demonstrations in Bishkek, **Kyrgyzstan** were recorded in a joint statement by four leading media NGOs in Kyrgyzstan.
- On 28 April in Tallinn, **Estonia**, two Russian journalists covering demonstrations against the transfer of a war memorial reported that police beat them about the head with police batons when they resisted seizure of their reporting equipment.
- On 1 May in Istanbul, **Turkey**, journalist groups reported the use of tear gas and other forms of violence by law-enforcers to restrain demonstrators and journalists.
- On 2 May in Los Angeles, **USA**, officers from the Los Angeles Police Department beat several TV journalists with batons during an immigrants’ rally.

Examples from earlier years:

- On 2 March 2006 in Minsk, **Belarus**, in the run-up to the presidential elections, domestic and foreign journalists seeking to cover the detention of an opposition candidate, were beaten and detained by riot police; some of them were hospitalized with minor injuries and police also confiscated their cameras.
- On 11 October and 26 November 2005 in Baku, **Azerbaijan**, dozens of journalists fell victim to police assaults during demonstrations. The journalists were wearing bright jackets identifying them as members of the press.

In a letter to the Office of RFoM from the Russian authorities dated 7 June 2007, it is stated that as none of the journalists detained during recent demonstrations have filed official complaints to the police, further investigations cannot be opened. Regrettably then, it appears that Russian law-enforcers will not be held accountable for any acts of violence against journalists during the recent political demonstrations.

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A statement made in April by the Press Office of the Russian Ministry of the Interior pledges to improve the police handling of journalists during such events in the future.

“Unsanctioned” Demonstrations

International standards commit States not to place any restrictions “on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”⁷⁸

So while the very notion of an ‘**unsanctioned demonstration**’ is sometimes viewed as an anomaly, there are legitimate reasons that the authorities can refuse the use of certain locations, either on the grounds of security or disruption to public transport.

However, the very fact that a mass demonstration takes place - whether it be sanctioned or unsanctioned - is certainly newsworthy, is of public interest and therefore, journalists should be protected by the same rights as if they were covering any other public event.

In responding to their treatment of journalists during these public events, governments have sometimes tried to explain away a disproportionate reaction of law-enforcers against journalists and demonstrators by citing the ‘unsanctioned’ nature of the demonstration.

For example, in a recent public statement by the Director of the Department for Public Relations of the Russian Ministry of Interior, commenting on the conduct of the police during demonstrations in Moscow, St Petersburg and Nizhny Novgorod, he referred to the *unauthorised* nature of the wave of recent demonstrations.⁷⁹

The media is impartial to the circumstances under which an event takes place, be it planned or spontaneous. Simply, it is their duty as media professionals to provide coverage and should be afforded the same privileges by the police as if the demonstration were ‘sanctioned’.

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

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

⁷⁸ International Covenant on Civil and Political Rights, article 21. See also ECHR, Article 11 ‘Freedom of assembly and association’.

⁷⁹ Press briefing by the Head of Public Relations of the Ministry of Internal Affairs, 21 April 2007.

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is not repeated in the future and should send a strong signal that such behaviour will not be tolerated.

Accreditation to cover political demonstrations

The issue of journalists' accreditation for public demonstrations has also been raised recently, particularly in the context of unsanctioned demonstrations⁸⁰. The RFoM Special Report on "Accreditation for Journalists in the OSCE area" clarifies the conditions under which it is necessary for journalists to obtain accreditation:

"The accreditation system was designed to allow journalists access to specific venues with limited space as well as access to certain 'closed zones', including war zones and places deemed dangerous, or sealed off by the authorities for safety reasons. It also allows journalists to participate in official events and visits."⁸¹

Accreditation is required therefore only when access is necessarily restricted, such as access to the press gallery in a parliament building. In a public place, such as a town square, space is not limited and therefore there is no requirement for special accreditation.

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

Respect for printed material and equipment

Naturally, the personal equipment of journalists should be respected at all times. Confiscation of the tools of their trade, such as cameras or recording equipment is a criminal offence and is rather like switching off the microphone of the main speaker of a sanctioned demonstration. If police break or smash equipment deliberately, this should be considered a criminal offence and those responsible should be held accountable.

The Office of RFoM has also recorded a number of cases where printed material has been directly confiscated by the authorities immediately prior to a mass demonstration. For example:

- In Bishkek, **Kyrgyzstan**, on 11 April, in accordance with a confiscation warrant from the Prosecutor's Office, the latest editions of four main opposition newspapers were seized, as well as printing plates and electronic files.
- In Samara, **Russia** on 11 May, one week prior to the 'March of the Discontented' demonstration planned for 18 May, media groups reported a

⁸⁰ Ibid

⁸¹ http://www.osce.org/documents/rfm/2006/10/21826_en.pdf

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police raid on the local bureau of the independent newspaper *Novaya Gazeta*, during which computers and financial records were seized. At least two other large seizures of the opposition newspaper ‘March of the Discontented’ reportedly took place prior to similar demonstrations on 20 March and 30 April in Nizhny Novgorod and St Petersburg.

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

Responsibilities of journalists

The ODIHR *Guidelines on Peaceful Assembly* summarise the responsibilities of journalists:

“Journalists have an important role to play in providing independent coverage of public assemblies. As such, they must be distinguished from participants and be given as much access as possible by the authorities. In order to avoid confusion and facilitate such access, it may be necessary to require journalists and other media personnel to be clearly identifiable, by wearing for instance fluorescent bibs.”⁸²

This photograph shows one mechanism by which a journalist can identify themselves. The jacket allows journalists to distinguish him/herself from other demonstrators and allows law-enforcement agencies to respond adequately to journalists’ requests. The Russian-based “Centre for Journalists in Extreme Situations” distributes such jackets to journalists in Russia. When journalists are clearly identified, the likelihood that they will be caught up in the actual demonstration is significantly reduced.



“Press”

⁸² Section B Human Rights Monitors, Media and Other stakeholders, (168, p 75)

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Case Study: Police-run training courses for journalists in France

Starting in 2006, the *Gendarmerie Nationale*, the French police force with a military status, has held special training sessions for journalists. The goal is to introduce journalists to security activities and public order enforcement measures during a demonstration, as well as crowd control mechanisms and crowd behaviour schemes through both theoretical courses and role-playing exercises.

The training courses, which last for four days, are attended by approximately 15 participants representing major French media outlets and TV broadcasters and are held in the National Gendarmerie Training Centre in Saint Astier.

Such training courses help to increase mutual understanding between journalists and public order officers and therefore diminish risks of accident in the course of a demonstration due to lack of discernment or judgement.

Ideally, the form of identification should be negotiated and agreed between journalists associations and law enforcement agencies, in order that both sides know and recognise the agreed emblem.

The role of journalists is to *report* on the event, it is not to become personally *involved* in it. If a journalist is politically active, on the day of a political rally, he or she must choose in what capacity to attend, *either* as a demonstrator *or* as a journalist.

Efforts are underway by the Press Emblem Campaign (<http://www.pressemblem.ch/>) founded in June 2004 by a group of international journalists based in Geneva, to strengthen the legal protection and safety of journalists around the world. One of the aims of the organisation is to gain international recognition for an emblem that identifies media workers, similar in principle to the Red Cross emblem for medical workers.

National level efforts to introduce standards that differentiate journalists from demonstrators, and therefore offer a level of protection to journalists in conflict situations, should be also welcomed.

5. Journalists should identify themselves clearly as such, should restrain from becoming involved in the action of the demonstration and should report objectively on the unfolding events, particularly during a live broadcast or webcast. Journalists' unions should agree on an acceptable method of identification with law enforcement agencies and take the necessary steps to communicate this requirement to media

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workers. Journalists should take adequate steps to inform and educate themselves about police measures that will be taken in case of a riot.

Conclusion

In three earlier Special Reports on conflict coverage, the Office of the RFoM has examined the role and the handling of the media in violent situations in Andijan (2005), Beslan (2004) and Kosovo (2004). The recommendations therein are relevant to the issues raised in this report and should be read in conjunction with the recommendations in this Special Report.⁸³

As was the case in Beslan and Kosovo, reports of direct attacks on journalists by demonstrators themselves are, unfortunately, not uncommon. For example:

- In Paris in November 2005, violent attacks on at least five French and foreign journalists took place during urban riots.
- In Belgrade in March 2006 a camera crew from B92 was physically attacked while reporting on the death of Slobodan Milosovic from outside the Sveti Sava hospital.
- In Novi Pazar, in April 2007 a Glas Javnosti journalist was attacked while trying to photograph a column of mourners carrying the body of Ismail Prentic.
- On 9 October 2005 during an opposition rally in Baku, Azerbaijan, unidentified individuals physically attacked and injured a Zerkalo journalist even though he was clearly identified by a blue Press jacket.

It is the role of the police to ensure that key civil rights such as personal security and freedom of movements are afforded to all citizens, including journalists. In three of the four cases mentioned above, journalists reported that assistance had been offered by the police and that their intervention had prevented an escalation of violence.

Unfortunately, attacks on journalists continue within the OSCE area. RFoM continues to receive reports about journalists who have been physically attacked in connection with their professional duties. One such example is the attack on the Kyrgyz journalist Kairat Birimkulov of the State TeleRadio Company on 16 March, who was severely beaten and hospitalised as result of his injuries.

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

⁸³ http://www.osce.org/documents/rfm/2005/03/15195_en.pdf (Andjian)
http://www.osce.org/documents/rfm/2004/04/2695_en.pdf (Kosovo)
http://www.osce.org/documents/rfm/2004/09/3586_en.pdf (Beslan)

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remaining outside the action of the demonstration and clearly identifying themselves as journalists.

Summary of Recommendations

1. Law-enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations. Journalists have a right to expect fair and restrained treatment by the police.
2. Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behaviour vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an over-reaction is not repeated in the future and should send a strong signal that such behaviour will not be tolerated.
3. There is no need for special accreditation to cover demonstrations except under circumstances where resources, such as time and space at certain events, are limited. Journalists who decide to cover ‘unsanctioned demonstrations’ should be afforded the same respect and protection by the police as those afforded to them during other public events.
4. Wilful attempts to confiscate, damage or break journalists’ equipment in an attempt to silence reporting is a criminal offence and those responsible should be held accountable under the law. Confiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship and as such is a practice prohibited by international standards. The role, function, responsibilities and rights of the media should be integral to the training curriculum for law-enforcers whose duties include crowd management.
5. Journalists should identify themselves clearly as such, should restrain from becoming involved in the action of the demonstration and should report objectively on the unfolding events, particularly during a live broadcast or webcast. Journalists’ unions should agree on an acceptable method of identification with law enforcement agencies and take the necessary steps to communicate this requirement to media workers. Journalists should take adequate steps to inform and educate themselves about police measures that will be taken in case of a riot.
6. Both law enforcement agencies and media workers have the responsibility to act according to a code of conduct, which should be reinforced by police chiefs and chief editors in training. Police chiefs can assist by ensuring that staff officers are informed of the role and function of journalists. They should also take direct action when officers overstep the boundaries of these duties. Media workers can assist by remaining outside the action of the demonstration and clearly identifying themselves as journalists.