

## **Benchmarks for Laws related to Freedom of Assembly and List of International Standards**

1. This list is prepared in order to provide a list of international standards which should be adhered to in order for any OSCE participating State to comply with the right to freedom of assembly. Firstly, this right is usually guaranteed in the Constitutions of the participating States.
2. Secondly, there are international standards which include Article 20 of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights (hereafter International Covenant), Article 5(d)(ix) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 15 of the Convention on the Rights of the Child, Article 11 of the European Convention on Human Rights (hereafter European Convention) and Paragraph 9.2 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990.
3. However, it is important to bear in mind that freedom of assembly can be a particular manifestation of freedom of expression<sup>1</sup> and of religion<sup>2</sup> which are also guaranteed by the foregoing instruments so that any draft law must also be in compliance with them. Furthermore interference with freedom of assembly is likely to have particular implications for rights such as those to liberty and security of the person<sup>3</sup> and to respect for private life<sup>4</sup> so that these may also be relevant for an examination of a draft law.
4. In addition the regime governing freedom of assembly such as is found in the draft law, or a related body of law, also needs to make provision for securing effective remedies in respect of violations that are alleged to have occurred and which have in fact occurred<sup>5</sup>.
5. The formulation of the constitutional and international guarantee of freedom of assembly in the previously cited instruments is generally in similar broad terms, all of which underline the fundamental contribution made by freedom of assembly towards the maintenance of a democratic society. However, only the European Convention and the International Covenant give any real indication of the legitimate considerations that might be invoked to restrict the exercise of this freedom. Moreover it is the case law of the European Court of Human Rights and the United Human Rights Committee, the two bodies respectively charged with interpreting these two instruments<sup>6</sup>, that affords a

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<sup>1</sup> Article 19 of the International Covenant and Article 10 of the European Convention.

<sup>2</sup> Article 18 of the International Covenant and Article 9 of the European Convention

<sup>3</sup> Article 9 of the International Covenant and Article 5 of the European Convention

<sup>4</sup> Article 17 of the International Covenant and Article 8 of the European Convention

<sup>5</sup> Article 2(3) of the International Covenant and Article 13 of the European Convention

<sup>6</sup> As well as the case law of the former European Commission of Human Rights as regards the European Convention.

real guide to the substantive requirements of freedom of assembly and which must be taken into account in evaluating the provisions of the draft law.

6. It is clear from the rulings of these two bodies that the international guarantee of freedom of assembly covers a wide range of gatherings, whether static or in motion and whether held on private or public property, including in the case of the latter streets and highways<sup>7</sup>.
7. Moreover the rights of the participants and the organisers should be recognised as distinct ones<sup>8</sup>. There is no right to hold assemblies in a particular place but it can be expected, subject to legitimate regulatory concerns being observed, that public places are available for this purpose and - although this is likely to be very exceptional - it cannot be entirely excluded that it should be possible for persons to assemble on private property where this performs some form of public function<sup>9</sup>.
8. Certainly there can be no limitation on the holding of an assembly that is not consistent with prescribed objectives<sup>10</sup> and where regulatory concerns prevent it from being held in a particular place a suitable alternative should be available<sup>11</sup>.
9. The means of communicating the message at an assembly should be peaceful as the guarantee does not cover a violent activity<sup>12</sup> but inconvenience to others should not be equated with a demonstration ceasing to be peaceful and some such inconvenience must be expected<sup>13</sup> although this should not be excessive<sup>14</sup> and persistent obstruction of others is also not acceptable<sup>15</sup>.
10. There is a duty to protect demonstrators from being disrupted by others but the expression of a contrary view does not of itself amount to disruption and should not be suppressed on that account. The extent of the protection that must be provided may be affected by the policing resources available, so that

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<sup>7</sup> See Appl 8191/78, *Rassemblement Jurassien Unité Jurassienne v Switzerland*, 17 DR 93 (1979) and Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980) and Appl 33689/96, *Anderson v United Kingdom*, 91 DR 79 (1997).

<sup>8</sup> Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980).

<sup>9</sup> *Appleby v United Kingdom*, Judgment of the Court, 6 May 2003 and Appl 33689/96, *Anderson v United Kingdom*, 91 DR 79 (1997).

<sup>10</sup> National security, public order, (*ordre public*), public safety, the protection of public health and morals and the protection of the rights and freedoms of others in the case of both the European Convention and the International Covenant. The European Convention also cites the prevention of crime and expressly authorises restrictions on the exercise of this freedom by members of the armed forces, the police and the administration of the State but these are probably implied in those expressly found in the International Covenant.

<sup>11</sup> Appl 25522/94, *Rai, Almond and "Negotiate Now" v United Kingdom*, 81 DR 146 (1995).

<sup>12</sup> Appl 19601/92, *Çiraklar v Turkey*, 80 DR 46 (1995).

<sup>13</sup> Appl 13079/87, *G v Federal Republic of Germany*, (1989) 60 DR 256.

<sup>14</sup> *The Gypsy Council v United Kingdom*, Judgment of the Court, 14 May 2002 (Admissibility)

<sup>15</sup> *Nicol and Selvanayagam v United Kingdom*, Judgment of the Court, 11 January 2001 (Admissibility).

on occasion it may not be possible to demand that an unpopular meeting be allowed to proceed<sup>16</sup> and it may be reasonable to remove the focus for particular disorder<sup>17</sup>.

11. All restrictions on the exercise of freedom of assembly must pass the test of proportionality<sup>18</sup> – meaning that the least intrusive means of achieving an objective should always be preferred - and that includes the penalties that are imposed for breaching rules that regulate the holding of assemblies<sup>19</sup>.
12. The process of regulation can involve a requirement of advance notification of an event occurring<sup>20</sup>, a requirement of permission for it to take place<sup>21</sup> and the imposition of conditions as to the manner, time or place but the acceptability of these techniques will depend on them not being such that their design or actual operation leads to the holding of an assembly being unjustifiably frustrated<sup>22</sup>.
13. Appropriate regulation is only going to be regarded as occurring where decision-making is based on the individual circumstances of the case so that a blanket application of rules and reliance on mere supposition is unlikely to be acceptable<sup>23</sup>. The application of restrictions should not entail differential treatment between similar activities without a rational and objective justification<sup>24</sup>.
14. A complete ban on an assembly or assemblies taking place may be justified in particular circumstances but substantial evidence of the need for this – which should be based on the inability to prevent serious disorder by less stringent measures - will be required<sup>25</sup>.
15. Although arrest or dispersal of an assembly may sometimes be a proportionate response to a breach of the law<sup>26</sup> and the risk to public order<sup>27</sup>, this must

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<sup>16</sup> *Plattform 'Ärzte für das Leben v Austria*, Judgment of the Court, 21 June 1988.

<sup>17</sup> *Chorherr v Austria*, Judgment of the Court 25 August 1993.

<sup>18</sup> Appl 8191/78, *Rassemblement Jurassien Unité Jurassienne v Switzerland*, 17 DR 93 (1979).

<sup>19</sup> *Ezelin v France*, Judgment of the Court, 26 April 1991, Appl 9278/81 and 9415/81, *G and E v Norway*, 35 DR 30 (1983) and Appl 13079/87, *G v Federal Republic of Germany*, (1989) 60 DR 256.

<sup>20</sup> Comm No 412.1990, *Kivenmaa v Finland*, Views of 31 March 1994 (six hours' notice).

<sup>21</sup> Appl 19601/92, *Çiraklar v Turkey*, 80 DR 46 (1995).

<sup>22</sup> Appl 25522/94, *Rai, Almond and "Negotiate Now" v United Kingdom*, 81 DR 146 (1995).

<sup>23</sup> *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, Judgment of the Court, 2 October 2001 and Comm 628/1995, *Park v Korea*, Views 20 October 1998.

<sup>24</sup> Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980).

<sup>25</sup> See Appl 8191/78, *Rassemblement Jurassien Unité Jurassienne v Switzerland*, 17 DR 93 (1979) and Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980) and *Selvanayagam v United Kingdom*, Judgment of the Court, 12 December 2002 (Admissibility).

<sup>26</sup> Appl 19601/92, *Çiraklar v Turkey*, 80 DR 46 (1995) and *Selvanayagam v United Kingdom*, Judgment of the Court, 12 December 2002 (Admissibility).

<sup>27</sup> *Cisse v France*, Judgment of the Court, 9 April 2002, *Steel v United Kingdom*, Judgment of the Court, 23 September 1998 Appl 9415/81, *G and E v Norway*, 35 DR 30 (1983) and *Nicol and Selvanayagam v United Kingdom*, Judgment of the Court, 11 January 2001 (Admissibility).

always respect international standards governing use of force, including the need to investigate deaths and injuries that may occur<sup>28</sup>. All decision-making must be subject to effective and prompt judicial control to ensure that freedom of assembly is not improperly obstructed<sup>29</sup>.

16. However, it needs to be emphasised that the existence of a legitimate purpose is not a sufficient basis for interfering with freedom of assembly. It is also essential that the interference be prescribed by law<sup>30</sup> and this not only means that they must have a formal basis but that the scope of the restriction must be sufficiently precise so that it is possible for those potentially affected to foresee whether or not its requirements are likely to be breached by a particular course of conduct<sup>31</sup>, although this not preclude the use of discretionary powers and indeed this – if sufficiently structured – are likely to facilitate decision-making based on the individual circumstances of a case.<sup>32</sup> This is considerable significance for both the language used in legislation and the way in which the legislation is organised; if individual terms are too vague or the framework as a whole suffers from a lack of coherence it will not be possible to regard the restrictions which it is supposed to authorise as being sufficiently prescribed by law as to justify their imposition. It is, therefore, in the interest of achieving effective and appropriate regulation of assemblies that the laws concerned are drafted so as to meet these requirements.
17. The enjoyment of freedom of assembly and the safeguarding of the legitimate interests with which that freedom's exercise can often collide undoubtedly both depend upon the law being framed in a way that respects the considerations discussed in the preceding two paragraphs. However, the manner in which a law is applied is generally going to be much more significant for the realisation of these goals in practice.
18. Although it is essential to concentrate first on getting the law right, it is even more important to ensure that those responsible for its implementation fully appreciate the significance of freedom of assembly for a democratic society and are properly trained and equipped to give effect to the law in an appropriate manner. In the absence of these it is unlikely that the requirements of international standards will actually be fulfilled.

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<sup>28</sup> *Güleç v Turkey*, Judgment of the Court, 27 July 1998.

<sup>29</sup> Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980).

<sup>30</sup> Comm No 412.1990, *Kivenmaa v Finland*, Views of 31 March 1994.

<sup>31</sup> *Steel v United Kingdom*, Judgment of the Court, 23 September 1998 and *Hashman and Harrup v United Kingdom*, Judgment of the Court, 25 November 1999.

<sup>32</sup> App 25522/94, *Rai, Almond and "Negotiate Now" v United Kingdom*, 81 DR 146 (1995).