



Supplementary Human Dimension Meeting

On the Right to Freedom of Peaceful Assembly

21-22 November 2019

Hofburg, Vienna

ANNOTATED AGENDA

BACKGROUND

The freedom of every person to assemble in a peaceful manner is intrinsic to democratic societies and expressly recognized in OSCE human dimension commitments¹ as well as all major international human rights instruments.² However, the implementation of such commitments remains a challenge throughout the OSCE region, often due to unduly restrictive legislation or practice. More recently, the rapid development of modern Internet based communication technologies (new technologies) has greatly changed the organization and functioning of public assemblies.

The OSCE Chair-in-Office will hold a Supplementary Human Dimension Meeting (SHDM) on 21-22 November 2019 in Vienna. It will seek to address how the full implementation of the right to freedom of peaceful assembly can be advanced and protected to promote an inclusive and diverse democratic society. It will identify the main challenges faced by the OSCE participating States and discuss how they can be met, in order to ensure the full enjoyment of this freedom. The SHDM will devote particular attention to the current trends, both positive and negative, the challenges and opportunities linked to new technologies and freedom of peaceful assembly and the role of independent monitoring of assemblies. The SHDM will also provide a forum for discussion of the limitations of the right to peacefully assemble, in particular the limits of legitimate restrictions in accordance with relevant international standards and commitments.

The working sessions at the SHDM will be opened by previously selected experts in the relevant areas. The recommendations formulated at the working sessions will also be presented at the closing session.

¹ A compilation of OSCE commitments relevant to the freedom of assembly and association can be found on the OSCE/ODIHR website under: <http://www.osce.org/odihr/43546>

² See e.g. the Universal Declaration of Human Rights, Article 20 (freedom of peaceful assembly and association); International Covenant on Civil and Political Rights, Article 21 (freedom of assembly) and Article 22 (freedom of association); the European Convention on Human Rights and Fundamental Freedoms, Article 11 (freedom of assembly and association), the American Convention on Human Rights, Article 15 (right of assembly) and Article 16 (freedom of association), the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted unanimously by the United Nations General Assembly (A/RES/53/144), Article 5.

DAY 1, 21 NOVEMBER 2019

15.00 – 16.00

OPENING SESSION

Opening remarks
Introductory addresses
Technical information

16.00 – 18.00

SESSION I: Facilitating the right to freedom of peaceful assembly for all: positive trends and challenges in legislation and practice³

The right to freedom of peaceful assembly not only places a negative duty on the state not to intervene in the exercise of this right but importantly, also a positive duty to facilitate it. Due to the significant role that the right to freedom of peaceful assembly holds in a democratic society States are “*under a stronger obligation to ensure the right with positive measures*”⁴.

The right to freedom of peaceful assembly must be provided to all members of the society without discrimination.⁵ As stated by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and further underlined in his 2014 thematic report, “peaceful assemblies are an important tool for allowing the voices of otherwise excluded groups to be heard,” and specific measures should be taken to protect groups that are particularly at risk of discrimination or other violations of their rights, including women, youth, persons with disabilities, members of minority groups, non-nationals and other groups.⁶

Yet full and equal enjoyment of the freedom of peaceful assembly by all members of society remains a challenge in a number of OSCE participating States, often due to lack of awareness and unduly restrictive legislation or practice.

Among the challenges noted in the OSCE region, there are various restrictions on time, place and manner, imposed by authorities, which often unduly limit the exercise of the right to freedom of peaceful assembly. In case law it has been emphasized that “When a State party imposes restrictions with the aim of reconciling an individual’s right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it.”⁷ During monitoring visits, ODIHR has observed restrictions varying in scope and range that limit the ability of protesters to be within sight and sound of their intended audience. Some events were directly or indirectly affected by time, place and manner restrictions; others by more general

³ See for instance Copenhagen Document paragraph 9 (2).

⁴ M Nowak, “U.N. Convention on Civil and Political Rights, CCPR Commentary” 2nd revised edition, N.P.Engel, Publisher 2005, page 482

⁵ OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, (2d ed. 2010), para 2.5

⁶ “Report of the Special Rapporteur on the rights to freedom of assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/26/29, 14 April 2014, para. 25;

⁷ *Sekerko v Belarus* Communication No. 1851/2008 Views adopted by the United Nations Human Rights Committee at its 109th session (14 October – 1 November 2013), CCPR/C/109/D/1851/2008, para 9.6 and *Bakur v Belarus* Communication No. 1902/2009, Views adopted by the United Nations Human Rights Committee at its 114th session (29 June-24 July 2015), CCPR/C/114/D/1902/2009, para 7.8

restrictions on access to particular areas based on security considerations. It should be stressed that restrictions on assemblies should only be imposed where there are compelling arguments to do so, based on grounds that are permissible under OSCE commitments and international human rights standards. Authorities must choose the least restrictive of the available options and only insofar as it is proportionate to the legitimate objective.

Positively, a number of OSCE participating States are having their (draft) legislation reviewed by ODIHR, which provides an opportunity for expert input on legislation. A positive aspect is that countries introduce direct references to international obligations. Several countries also have proper consultations with relevant stakeholders: authorities (such as law enforcement and National Human Rights Institutions), civil society groups and associations and the general population. Legal reviews and consultations provide possibilities to adjust restrictive regulations and ensure that the legislation is regarded as fair by the people who use the right to freedom of peaceful assembly. On the other hand, the implementation of the laws may not always follow the expressed intentions.

Points to consider include:

- What are the current challenges for both participating States and assembly organisers and participants in facilitating the right to Freedom of Peaceful Assembly?
- Restrictions on time, place, and manner of assemblies: how to find a proper balance?
- How can effective consultation regarding legislation on freedom of peaceful assembly legislation be conducted?

18.00

Reception hosted by the Slovak Chairmanship

DAY 2, 22 NOVEMBER 2019

10.30 – 12.30

SESSION II: The right to freedom of peaceful assembly in the age of new technologies and “assemblies online”: opportunities and challenges⁸

New Technologies play an increasingly instrumental role in the exercise of the right to freedom of peaceful assembly and it is hard to imagine an assembly that does not involve some form of reliance on the Internet. The Internet and social media can be used to discuss, prepare, organize and publicize assemblies, as well as to jointly exercise this right online. At the same time, the role of social media in mobilization of assemblies is increasingly pivotal to the exercise of the right to assemble. It increases the ease of organizing assemblies horizontally without the need for formal organizations or organizers; this, in turn, makes it easier to mobilize on short notice and without a formal notification. Social media platforms are also increasingly used during an assembly for visual recording or live streaming of and from assemblies.

⁸ Moscow 1991 Document, para 24.

In light of these developments, a number of documents have recognised that people have “the same rights online as offline”.⁹ It is also debated that in addition to the established forms of assembly, various forms of online actions involving a number of individuals may constitute assemblies and warrant protection under international law and particularly under the right to freedom of peaceful assembly.

In many areas, the Internet is accessible, cheap, fast and borderless and has reduced the cost of communicating with others. However, the so-called ‘digital divide’ (the possibility to access the Internet or not) continues to exist and States are under increasing obligations to reduce it, given the importance of the Internet in everyday life and in the political participation. On this note, States should facilitate the exercise of the right also through online means, and through facilitating, among others, access to the Internet, which, according to the European Court of Human Right is “increasingly recognized as a right”.¹⁰ In addition, legislation and state policies should ensure that the Internet can be used to prepare, mobilize and organize assemblies, for instance through social media,¹¹ which later take place in the street or another chosen location.

While the benefits of amplifying the message of assemblies through new technologies are numerous, the same technology can also be used against protesters who use it to co-ordinate their efforts. Traditional assemblies allow participants, if they so desire, a certain level of anonymity or at least a smaller likelihood of being ‘singled out’ or identified – due to the presence of other people. However, the use of new technologies does not always offer the same, due to the availability of surveillance and tracking tools by the state or third parties.

The use and abuse of surveillance tools has been an area of growing concern for human rights, since the technologies themselves appeared. In May 2019, the UN Special Rapporteur on Freedom of Opinion and Expression, issued a special Report on “Surveillance and Human Rights”,¹² which calls for a moratorium on the sale of surveillance tools to states until such time as adequate legal safeguards can be put in place.

In general, intrusive overt or covert surveillance methods should only be applied where there is clear evidence that imminent unlawful activities, such as violence or use of firearms are planned to take place during an assembly.¹³

Furthermore, the obligations of the state to protect the right to freedom of peaceful assembly extends not only to the operation of its agents, but also in offering protection against acts committed by private agents and private parties. In the case of “online assemblies”, collective

⁹ In 2014, the Human Rights Council’s Resolution on ‘the promotion, protection and enjoyment of human rights on the internet’ further noted that: ‘the same rights that people have offline must also be protected online.’ UN Human Rights Council, Resolution 26/13 on the promotion, protection and enjoyment of human rights on the internet, 14 July 2014, A/HRC/RES/26/13, para. 1.

¹⁰ Op. cit. footnote 9 (*Kalda v. Estonia* (2016), para. 52.

¹¹ Recommendation CM/Rec (2016) 5 of the Committee of Ministers to member States on Internet freedom (13 April 2016), para. 3.3: “Individuals are free to use Internet platforms, such as social media and other ICTs in order to organise themselves for purposes of peaceful assembly.”

¹² Report of the Special Rapporteur on Freedom of Opinion and Expression, A/HRC/41/35, 28 May, 2019

¹³ Joint Report of UN Special Rapporteurs (2016), A/HRC/31/66, para. 30: “To this end, blanket bans, including bans on the exercise of the right in specific places [...], are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.”

online actions of individuals, this may include privately-owned Internet platforms and social media networks.¹⁴

Questions for discussion include:

- How do new technologies, including social media, change the organization and format of assemblies? What opportunities and challenges do new technologies pose in relation to the exercise of freedom of assembly?
- How can participating States respond to the challenges and opportunities offered by new technologies to promote the full implementation of freedom of assembly in line with OSCE commitments? What obligations do States have in this respect?
- How should participating States ensure that the right to freedom of assembly is not limited by surveillance and other tools made easier by new technology?

14.30 – 16.30	<u>SESSION III:</u> Role of Independent Assembly Monitoring in Facilitating the Right to Freedom of Peaceful Assembly
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Independent monitoring of the right to freedom of peaceful assembly has an important role in ensuring a stronger respect for the implementation of this fundamental right. Presence of national or international monitors during assemblies can contribute to a more human rights compliant response from law enforcement structures and other public authorities. Reports and recommendations developed as a result of independent observation of public assemblies by various actors, such as civil society organizations, National Human Rights Institutions (NHRIs) and ODIHR, can provide a valuable source of information to the OSCE participating States on how they can meet OSCE commitments in this area. The monitoring activities can serve as an important tool not only to identify the challenges and difficulties but also good practices across the OSCE region. Finally, the positive duty of the States to facilitate the monitoring of public assemblies is an instructive part of the right itself. The UN Special Rapporteur has noted that the right to freedom of peaceful assembly does not protect only organizers and participants, but those monitoring peaceful assemblies as well, and states have an obligation to protect the rights of assembly monitors, which includes respecting and facilitating the right to observe and monitor all aspects of an assembly.¹⁵

Independent monitoring of public of assemblies includes various stakeholders. OSCE commitments recognize the important role that NHRIs and civil society organizations have in helping to ensure full respect for human rights, fundamental freedoms and democracy, including with respect to the right to freedom of peaceful assembly. Seeking, receiving and disseminating information on the protection and promotion of freedom of peaceful assembly is a valuable contribution to improving the effective exercise of this right. Providing space for civil society organizations, NHRIs and international monitors to observe various types of public assemblies, and acknowledging the reports resulting from the monitoring, with identified gaps, challenges and good practice examples, can help participating States take concrete steps in guaranteeing this right to every individual without discrimination.

¹⁴ General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th meeting) CCPR/C/21/Rev.1/Add. 13, para 8

¹⁵ “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, A/HRC/31/66, para. 70.

ODIHR recognizes the important role of independent monitoring of the implementation of human dimension commitments in the area of freedom of peaceful assembly.¹⁶ To assist with these efforts, ODIHR has been conducting assembly monitoring activities since 2011 and has concluded four assembly monitoring cycles in 30 OSCE participating States. In every monitoring cycle, ODIHR's monitoring sample included events that, due to their nature, size or complexity, posed particular difficulties for the authorities and the organizers. These difficulties can be related to the expression of views or positions that challenge prevailing opinions, presence of counterdemonstrations and a potential of a resulting conflict between opposing groups, and the need to ensure a proper balance between respect for freedom of peaceful assembly and public order or national security. The findings from ODIHR monitoring visits have been compiled in four reports to help raise awareness among the OSCE participating States about the gaps, trends and positive practices in the region.

Participants could consider:

- How can OSCE participating States benefit from independent assembly monitoring?
- What are the challenges independent assembly monitors are facing in the OSCE region and what can participating States do to better facilitate the work of assembly monitors?
- How can relevant authorities more effectively implement recommendations put forward by independent assembly monitors?

16.30 – 17.30

CLOSING SESSION

Rapports from the working sessions

Comments from the floor

Closing remarks

17.30

Closing of the meeting

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¹⁶ Human dimension commitments of the right to freedom of assembly and speech (Helsinki 1992, Budapest 1994, Oslo 1998, Maastricht 2003), special role of ODIHR as a point of contact for information provided by participating States (Rome 1993), expression of determination by participating States to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999)