



Supplementary Human Dimension Meeting

ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

**21–22 November 2019
Hofburg, Vienna**

FINAL REPORT



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I. EXECUTIVE SUMMARY

The third and last Supplementary Human Dimension Meeting of 2019, organized by the Slovak OSCE Chair-in-Office with the support of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), was “On the Right to Freedom of Peaceful Assembly.” The meeting served as a platform to recall human rights obligations and OSCE commitments pertaining to the right to freedom of peaceful assembly and discuss the challenges and opportunities to ensure stronger respect and more effective implementation of this fundamental right. During the event, the participants shared their experiences from across the OSCE region, discussing the trends and challenges in legislation and in practice, the impact of new technologies on the exercise of this right and the role of independent assembly monitoring as a human rights advocacy tool. The meeting brought together 133 participants (70 men, 63 women), including 67 representatives from 38 participating States, 60 representatives of 37 civil society organizations, 3 participants from international organizations, 1 representative from a National Human Rights Institution (NHRI) as well as 8 participants from OSCE institutions (OSCE Parliamentary Assembly, ODIHR).

II. SYNOPSIS OF THE SESSIONS AND RECOMMENDATIONS

OPENING SESSION



Ms. Ingibjörg Sólrún Gísladóttir, Director, ODIHR, taking the floor during the opening session of the Supplementary Human Dimension Meeting on the Right to Freedom of Peaceful Assembly in Vienna, 21 November 2019. Next to her, Ambassador Radomír Boháč, Chairperson of the OSCE Permanent Council (on the left) and Mr. Alexandru Tănase, Member of the Venice Commission, former President of the Constitutional Court and former Justice Minister of the Republic of Moldova (on the right) (OSCE/Micky Kroell)

Opening remarks:

Ambassador Radomír Boháč, Chairperson of the OSCE Permanent Council

Ms. Ingibjörg Sólrún Gísladóttir, Director, ODIHR

Key-note address:

Mr. Alexandru Tănase, Member of the Venice Commission, former President of the Constitutional Court and former Justice Minister of the Republic of Moldova

During the opening session, the speakers emphasised that peaceful demonstrations are a way for ordinary people, especially the most vulnerable, to make their concerns and ideas heard. Peaceful assembly is a form of public discourse that allows people to communicate with their leaders and with each other. It enables broad participation in the political affairs of a country. As such, it is essential to a functioning democratic system. Freedom of assembly can also be a driver of political and societal change, a way to prevent or redress violations of other rights.

It was recalled that the freedom to assemble peacefully is firmly expressed in many human rights treaties and documents, and in OSCE commitments going back thirty years to Sofia in 1989; Bonn, Copenhagen and Vienna in 1990; and Helsinki in 2008. It was stressed that 180 of the 193 UN Member States, including almost all OSCE participating States, recognize this right in their constitutions. However, speakers noted that implementation of the OSCE commitments and respect for the right to peaceful assembly remains a challenge.

Among the challenges mentioned were cases when states enact prohibitions of assemblies, citing the need to maintain security or public order. Speakers emphasized that over-restrictive legislation and prohibitions may breed clandestine movements, mass dissatisfaction, and possibly ultimately violence, because people will feel ignored and powerless.

Indiscriminate use of force, illegitimate restrictions on freedom of assembly, and threats and risks facing those who organize or participate in protests were other issues of concern raised by the speakers. The impact of new technologies was also considered. The internet, and particularly social media, is now an integral part of efforts to organize, participate in, raise awareness of and monitor assemblies. Technology is also used to disrupt and thwart legitimate assemblies and discourage people from speaking out.

The speakers emphasised that states have the duty to facilitate this right, rather than seeking unnecessary or disproportionate limitations to it. OSCE participating States' laws must reflect these principles. The speakers recognized the need to work together to address challenges to the exercise of freedom of peaceful assembly and to ensure full respect for this right.

SESSION I: FACILITATING THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY FOR ALL: POSITIVE TRENDS AND CHALLENGES IN LEGISLATION AND PRACTICE



Introducer Ms. Katerina Hadzi-Miceva Evans, Executive Director, European Center for Not-for-Profit Law (ECNL), listens to the participants of the first session of the Supplementary Human Dimension Meeting on the Right to Freedom of Peaceful Assembly in Vienna, 22 November 2019 (OSCE/Micky Kroell)

Moderator: Mr. Konstantine Vardzelashvili, Chief, Legislative Support Unit, Democratization Department, ODIHR

Introducer: Ms. Katerina Hadzi-Miceva Evans, Executive Director, European Center for Not-for-Profit Law (ECNL)

During the first session the discussions focused on current trends and challenges to the right to freedom of peaceful assembly.

The introducer stated that a worrying trend is that the organizers of assemblies are often charged for the cost of organising them, which is contrary to the duty of the state to facilitate assemblies. Further challenges include new technologies that can facilitate assemblies, but can also be used to trace and single out assembly participants. Restrictions on venues and timing of assemblies continue to happen in many countries. Such restrictions often violate the of “sight and sound” principle, as assemblies are often a response to specific events. Positive developments include legislation and practices which help to facilitate peaceful assemblies. Legal reviews, guidelines and general comments can contribute to legal advances and good practices. Ombudspersons’ institutions have intervened in many cases of restrictions.

During the discussion, participants raised different aspects of the right to freedom of peaceful assembly. Attention was drawn to assemblies frequently abusing the right to freedom of peaceful assembly even when a country's legislation adheres to its international obligations regarding freedom of peaceful assembly. Furthermore, it was expressed that abuse of the right is not protected, for example in the case of violent demonstrations.

Discussion also focused on the duty of the state to facilitate the right to freedom of peaceful assembly, and to what extent the right can be restricted. The link between freedom of peaceful assembly and other rights such as freedom of association and freedom of religion and belief was highlighted. A number of participants raised concerns about the crackdown on the right to freedom of peaceful assembly in many participating States through direct attacks on assemblies, severe restrictions on time and venue of assemblies, or requirements to give detailed information on the number of participants. Furthermore, some countries place an obligation to maintain order on organisers.

Several participants focused on the issue of legislation on the right to freedom of peaceful assembly appearing compliant with international obligations on paper, while the right is not respected in practice. It was noted that restrictions on the right to freedom of peaceful assembly often violate the principle of proportionality, with minor violations leading to severe punishment. Other challenges mentioned were cases when authorities allow assemblies only by certain groups, when assemblies are not allowed in disputed regions, and when media access to assemblies is blocked.

The introducer, after receiving questions on possible restrictions, stated that states must always look for the least intrusive restriction possible and should refrain from blanket bans as they are never proportionate.

Recommendations for the OSCE participating States:

- To strive for proportional restrictions on the right to freedom of peaceful assembly.
- Never to require permits for peaceful assemblies and never to use force unless the rights of other groups are unreasonably infringed upon.
- To avoid restrictions such as on the number of participants.
- To allow the OSCE institutions to assess the situation of the right to freedom of peaceful assembly and other rights in the participating States.
- To raise public awareness of rights.
- To increase capacity for law enforcement bodies to facilitate assemblies.
- To allow media access and human rights organisations to work freely.

Recommendations for the OSCE institutions and field operation:

- To continue working for increased monitoring of assemblies and the right to freedom of peaceful assembly in general.
- To continue advising the host countries of Field Operations not to crack down on peaceful assemblies and to end practices of detaining assembly participants.

SESSION II: THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN THE AGE OF NEW TECHNOLOGIES AND “ASSEMBLIES ONLINE”: OPPORTUNITIES AND CHALLENGES



ODIHR Head of Human Rights Department Mr. Omer Fisher addresses participants to the second session of the Supplementary Human Dimension Meeting on the Right to Freedom of Peaceful Assembly in Vienna, 22 November 2019. Next to him are Mr. Konstantine Vardzelashvili, Chief, Legislative Support Unit, Democratization Department, ODIHR and introducer Ms. Anja Bienert, Senior Programme Officer, Amnesty International, the Netherlands (OSCE/Micky Kroell)

Moderator: Mr. Omer Fisher, Head, Human Rights Department, ODIHR

Introducer: Ms. Anja Bienert, Senior Programme Officer, Amnesty International, the Netherlands

The introducer stated that new technologies have completely changed the level of political participation and the ease of organizing assemblies, even without a formal organizer. This is important in countries with repressive legislation placing burdens on assembly organisers. New technologies empower people to access information and increase their political participation. Furthermore, the UN Human Rights Committee has recognized assemblies online. New technologies also make it easier to hold authorities accountable for their actions, as information is easier to spread and the public eye is always present. Recording should not be restricted.

The introducer emphasized that challenges include the criminalization of the use of social media, internet shutdowns and restrictions on certain websites. This is a breach of freedom of expression and restricts freedom of peaceful assembly. Artificial intelligence is used for surveillance and to single out certain groups, often without proper legal regulation. This often has a chilling effect on organizing assemblies and is a breach of freedom of expression and

the right to privacy. Surveillance measures should only be used after legal scrutiny and only to investigate serious crimes. The speaker noted that virtual sit-ins and hologram assemblies should be protected as physical assemblies, concluding that new technologies should be a positive element in states' duty to facilitate assemblies and should not be used to restrict this right.

In the discussion, several participants focused on the need for new technologies to be free or inexpensive so as to extend the right to freedom of peaceful assembly to as many people as possible. Others focused on the problem of internet shutdowns being employed on the basis of national security concerns, including in disputed regions. Furthermore, participants noted that new technologies are also used to crack down on assemblies both offline and online. Participants highlighted the need for media freedom, and the need to allow the free use of new technologies and to facilitate recording and streaming of assemblies in areas with limited independent media. Concerns were raised about legal restrictions and severe punishments in some countries for social media users who inform about assemblies. Participants discussed how new technologies could be used to promote respect for the right to freedom of peaceful assembly. Challenges in protection of online and hologram assemblies were also discussed.

Recommendations for the OSCE participating States:

- To strive to protect the possibility to live stream on social networks, in particular in areas where media presence is absent or limited.
- To refrain from blocking websites of civil society organisations and imposing internet shutdowns.
- Not to cite the disputed status of regions as a reason for restricting freedom of peaceful assembly in these regions.

Recommendations for the OSCE institutions and field operations:

- To address the situation in countries where civil society websites are blocked.
- To develop an action plan for the right of indigenous people to express their opinions.

SESSION III: ROLE OF INDEPENDENT ASSEMBLY MONITORING IN FACILITATING THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Moderator: **Mr. Omer Fisher**, Head, Human Rights Department, ODIHR

Introducer: **Ms. Anita Danka**, Independent Human Rights Law Expert, former ODIHR Human Rights Adviser/Monitoring and Response Co-ordinator

The participants focused on independent monitoring of the right to freedom of peaceful assembly as a tool to promote stronger respect and implementation of this fundamental right. The session explored how reports and recommendations developed as a result of independent observation of public assemblies by various actors, such as ODIHR, NHRIs and civil society organizations, can provide a valuable source of information to the OSCE participating States on how they can meet OSCE commitments in this area.

The introducer stressed that independent assembly monitoring contributes to the exercise of this important right. Regulation and exercise of peaceful assembly can be seen as a litmus test for participating States' overall respect for human rights. The introducer emphasised that the task of monitors is to provide independent and reliable information that can be used for further constructive engagement. The monitors can thus play a preventive, facilitating, trust-building and watchdog role. Communication and information exchange on monitoring methodology and policing is key to ensuring trust between the police, state authorities and monitors.

Participants provided examples of experience in independent assembly monitoring, noting the importance of ensuring that all observers are adequately trained and independent when performing their role. An example was provided of monitoring large public assemblies with the help of drones, which helped to more accurately identify the number of participants. Overall, it was recommended that the status of monitors should be better recognized across the OSCE region.

Restrictions on the exercise of the right to freedom of peaceful assembly and on independent monitoring were another subject of discussion. Concerns were raised regarding the inability to effectively and safely engage in the monitoring task across the OSCE region. In this regard, a question was raised on how to approach participating States that see monitoring as a challenge, rather than a positive practice. Some of the positive results of assembly monitoring were noted, including improved performance of law enforcement officials and stronger accountability.

Further discussion elaborated on the right of children to organize and participate in peaceful assemblies. Participants shared the view that more and more children across the OSCE region are engaging in assemblies. A question was raised as to whether special regulations and policies should be developed on this topic or if the current laws and policies related to freedom of peaceful assembly are sufficient. Some participants stressed that the right of children not to be forced to participate in assemblies should be equally acknowledged.

Addressing inquiries from participants, the introducer affirmed that participation in assemblies is often the only way children can express their views and participate in decision-making, and that schools and other institutions should be given more guidance on how to facilitate children's right to freedom of peaceful assembly.

Some participants expressed gratitude for ODIHR's assembly monitoring missions and constructive recommendations, several of which have already been implemented in practice.

The following specific recommendations were made in Session III:

Recommendations for the OSCE participating States:

- To continue taking the lead in developing normative standards around the right to freedom of peaceful assembly;
- To commit to creating an enabling environment for independent monitoring of the right to freedom of peaceful assembly by international and local monitors;
- To give due consideration to the recommendations provided as a result of the monitoring.

Recommendations for the OSCE institutions and field operations:

- To ODIHR, to engage more with the media in certain countries to inform about its recommendations and train more civil society members in monitoring.
- To ODIHR, to provide training to the police in various OSCE participating States on human rights compliant policing of assemblies.

CLOSING SESSION

Closing remarks:

Ms. Katarzyna Gardapkhadze, First Deputy Director, ODIHR

Ambassador Robert Kirnag, Head of Task Force, Slovak OSCE Chairmanship 2019

The closing session began with brief reports by the moderators, who summarized the main points from the discussions during the meeting. The meeting was then closed with remarks delivered by representatives of the Slovak Chair-in-Office and by ODIHR.

In their closing remarks, the speakers reiterated that freedom of peaceful assembly is a fundamental good for society. It promotes the public discourse, diversity and progress. It is also an essential tool in achieving change in society. Freedom of peaceful assembly is among the bedrocks of fundamental rights and must be provided to all members of society without discrimination.

The speakers reminded that 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. It was stressed that it falls upon leaders to recall their commitments and to show the courage and political will to implement them.

Finally, the Chair-in-Office referred to the valuable tools and expertise that ODIHR can provide to the participating States in addressing current and specific challenges. There is a need to remain committed to working with governments, communities, and civil society across the OSCE region in building an inclusive, tolerant and prosperous society.

III. ANNEXES

Annex 1: Short agenda

AGENDA

Day 1

[13.00 – 14.45 – side events]

15.00 – 16.00

OPENING SESSION

Opening remarks:

Amb. Radomír Boháč, Chairperson of the OSCE Permanent Council

Ms. Ingibjörg Sólrún Gísladóttir, Director, OSCE/ODIHR

Introductory address:

Mr. Alexandru Tănase, Member of the Venice Commission, former President of the Constitutional Court and former Justice Minister of the Republic of Moldova

Technical information: **Ms. Katarzyna Gardapkhadze**, First Deputy Director, OSCE/ODIHR

16.00 – 18.00

SESSION I: Facilitating the Right to Freedom of Peaceful Assembly for All: Positive Trends and Challenges in Legislation and Practice

Introducer:

Ms. Katerina Hadzi-Miceva Evans, Executive Director, European Center for Not-for-Profit Law (ECNL)

Moderator: **Mr. Konstantine Vardzelashvili**, Chief, Legislative Support Unit, Democratization Department, OSCE/ODIHR

Day 2

10.30 – 12.30

SESSION II: The Right to Freedom of Peaceful Assembly in the Age of New Technologies and “Assemblies Online”: Opportunities and Challenges

Introducer:

Ms. Anja Bienert, Senior Programme Officer, Amnesty International, the Netherlands

Moderator: Mr. Omer Fischer, Head, Human Rights Department, OSCE/ODIHR

[13.00 – 14.30 – side events]

14.30 – 16.30

SESSION III: Role of Independent Assembly Monitoring in Facilitating the Right to Freedom of Peaceful Assembly

Introducer:

Ms. Anita Danka, Independent Human Rights Law Expert, former OSCE/ODIHR Human Rights Adviser/Monitoring and Response Coordinator

Moderator: Mr. Omer Fischer, Head, Human Rights Department, OSCE/ODIHR

16.30 – 17.30

CLOSING SESSION

Rapports from the working sessions

Comments from the floor

Closing remarks:

Ms. Katarzyna Gardapkhadze, First Deputy Director, OSCE/ODIHR

Amb. Robert Kirnag, Head of Task Force

17.30

Closing of the meeting

Annex 2: Biographical information: Keynote Speakers

Day 1: Thursday, 21 November 2019

15.00 – 16.00 **OPENING SESSION**

Mr Alexandru Tănase is a legal expert and Professor of constitutional law in Moldova State University. He is a former Minister of Justice, and former President of the Constitutional Court of the Republic of Moldova. He was a Member of the Parliament of the Republic of Moldova (2009 – 2011). He is a member of International Association of Constitutional Law (IACL) and Individual Member of the Venice Commission

16.00 – 18.00 **SESSION I: Facilitating the Right to Freedom of Peaceful Assembly for All: Positive Trends and Challenges in Legislation and Practice**

Ms Katerina Hadzi-Miceva Evans, is a legal expert who for over 18 years works with civil society organizations (CSOs), public authorities, philanthropists to create policy and legal conditions that promote the rights of association and assembly. She has written over 30 papers, helped design innovative tools for monitoring of these rights, provided expertise in developing norms at the UN and EU level. She spoken at different forums e.g., at TEDx Liberdade, launch of Community of Democracies' Democracy and Security Dialogue initiative with former U.S. Secretary of State M. Albright. She is member of the EU Fundamental Rights Agency Advisory Panel, OSCE/OIDHR Panel on Freedom of Assembly and of Association and the Council of Europe Expert Council on NGO Law. Under her leadership - the European Center for Not-for Profit Law broadened its expertise to address new challenges facing the exercise of freedoms of assembly and association. She is currently working with colleagues on research and policy guidance regarding the use of technologies and artificial intelligence that facilitate assemblies and contributes to the drafting of the UN Human Rights Committee General Comment on the right to freedom of assembly.

Mr Konstantine Vardzelashvili (moderator) is the Chief of the Legislative Support Unit, Democratization Department of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), providing assistance to participating States on compliance of legislation within the Human Dimension in relation to international commitments and standards. He joined ODIHR in 2018. Previously, he has held several positions, including serving as the Vice-President of the Constitutional Court of Georgia and as Deputy Minister of Justice of Georgia. Furthermore he has been a substitute member of the Venice Commission of the Council of Europe and a Vice Chair and member of the United Nations Human Rights Committee. Konstantine Vardzelashvili holds degrees in Law and History from the Tbilisi State University, and a degree in History from the Central European University in Budapest.

Day 2: Friday, 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 Challenges

Dr Anja Bienert has completed Law studies in Cologne and Lausanne (1994). She holds a PhD in criminal procedure (1996) and a Master’s degree in humanitarian assistance (1998).

Dr. Bienert has worked in the area of humanitarian assistance and security issues in various countries affected by non-international armed conflicts and other situations of violence: As an expert for the European Commission’s Humanitarian Office (ECHO) from 1998 to 2002, she worked in Mali and Burundi and, as a delegate of the International Committee of the Red Cross (ICRC), in Peru, Myanmar, South-Sudan and Zimbabwe from 2003 to 2008. From 2008-2011, Dr. Bienert acted as a Geneva-based ICRC advisor for headquarters and ICRC delegations worldwide on issues related to police and security forces.

Since March 2011, she is in charge of the Police and Human Rights Programme of the Dutch Section of Amnesty International providing guidance, advice and training within Amnesty International on policing issues. Dr. Bienert regularly participates in international conferences and peer reviews (UN, EUFRA, OSCE) related to human rights and policing and is the author of several publications on these issues. She is also a Member of the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly.

Mr Omer Fisher (moderator, also moderated Session III) is Head of the Human Rights Department of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), managing human rights assistance and monitoring programmes in the OSCE region. He joined ODIHR in 2010 as Human Rights Advisor, working primarily on freedom of peaceful assembly and leading the first series of ODIHR assembly monitoring deployments to 11 countries. Previously, he worked at the International Secretariat of Amnesty International in London as Researcher on the Balkans and as Senior Research Policy Advisor, developing and providing advice on human rights fact-finding standards and methodology. In these capacities, he authored or co-authored a number of human rights reports. Omer Fisher holds a PhD in Politics from the University of Strathclyde, Glasgow, UK and a degree in Economics from Bocconi University, Milan, Italy.

14.30 – 16.30

SESSION III: Role of Independent Assembly Monitoring in Facilitating the Right to Freedom of Peaceful Assembly

Ms Anita Danka, is an Independent Human Rights Expert. She is a Hungarian certified attorney and also holds an MA degree in Human Rights from the Central European University. Between 2008 and 2019 Ms. Danka worked at the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE in various capacities. As a Human Rights Adviser/Monitoring and Response Coordinator she organized and led assembly monitoring exercises to 17 OSCE participating States, was the lead drafter of three ODIHR

thematic assembly monitoring reports and trained police on how to facilitate assemblies in a human rights compliant way in five countries of the OSCE region. As a Staff Attorney of the European Roma Rights Center, an international public interest law organization, she was engaged in strategic litigation to further the enjoyment of human rights of Roma and Sinti communities in Europe and successfully represented Romani applicants before the European Court of Human Rights and the UN CEDAW Committee. She has published on the right of children to be heard through peaceful protests, the role of communication in the human rights-based facilitation of peaceful protests, using digital technologies for human rights monitoring, combating hate crimes and intolerance, school segregation, discrimination in access to employment and reproductive rights.