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Written Submission for a General Comment on Right to Peaceful Assembly

Submission from the NGOs «Human rights Center Memorial» and «OVD-Info» for a half-day general discussion in preparation for a General Comment on article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights.

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INFORMATION ABOUT ORGANISATIONS SUBMITTING THIS REPORT

Human Rights Centre «Memorial» (HRC «Memorial»), <https://memohrc.org>, is Moscow-based NGO, founded in 1992. Human Rights Centre «Memorial» works, among

others, in partnership with the London-based European Human Rights Advocacy Centre (EHRAC) in a project aimed at taking cases to the European Court of Human Rights. More than 250 applications concerning human rights violations in the Russian Federation have been lodged with the Court within the framework of this joint project. A number of these cases concern an interference with the right to freedom of assembly, including *Frumkin v. Russia* (application no. 74568/12), *Sozayev and Others v. Russia* (application no. 67685/14), *Ilupin v. Russia* (application no. 57141/12), *Ilupin and Others v. Russia* (application no. 76797/13), *Aleksandrov v. Russia* (application no. 45733/13) and others. E-mail: coordinator@memohrc.org

OVD-Info, www.ovdinfo.org, is an independent human rights media project aimed at monitoring cases of political persecution in Russia and providing legal assistance to victims of such persecution. OVD-Info was founded during mass protests of December 2011 as a volunteer project with the purpose of giving publicity to information on arrests of protests' participants. Today OVD-Info operates a 24-hour federal hotline to collect information on all types of political persecution and coordinate legal assistance to its victims, provides legal education to activists and researches different types of political persecution in Russia. E-mail: info@ovdinfo.org

REPLIES TO THE QUESTIONS OF THE HUMAN RIGHTS COMMITTEE

Questions directly related to article 21

1. What are the unique features of the right to peaceful assembly, which distinguishes it from other related rights such as freedom of expression and political participation? What is the function, added value and rationale for this right in a social system based on democracy and human rights? Does the scope of the right differ depending on the context (for example, is it the same during political transitions)?

The main feature is that this right concerns the situations when a gathering takes place in public or in private. There is a presence of individuals in the some places for particular goals. For this reason there is a need to assure the balance of rights between those who participate in the gathering and those who do not participate to it. This balance may be different in different countries but should correspond to international standards. The realisation of the freedom of assembly is one of the legetime ways of the utilisation of the public spaces.

The right to peaceful assembly is also a channel of interaction between civil society and the authorities. During peaceful assemblies citizens form their opinions and requirements regarding the various functions of the State. The authorities should respond to questions raised at peaceful assemblies.

The functions and the added values of this right are that: 1. the gathering makes a political or social opinion more visible in comparison with an opinion expressed only during a political debate or on the Internet. It is often pursued as a more strong action than just a statement; 2. A gathering can show how many people support an opinion expressed during it; 3. A gathering gives an opportunity for a collective action to the persons with the same views or interests; 4. A gathering helps civil society to advise the authorities on its functions; 5. A gathering informs the authorities about problematic issues; 6. A gathering gives an opportunity for citizens to influence the functioning of State bodies to solve

existing problems; 7. A gathering is a way for citizens to control the actions of the State; 8. A gathering helps the State to determine whether its policy is in line with public expectations.

During political transition the scope of this right may be more important than in the stable democracies. The authorities can give a particular attention to the protest in the street as they see that the protestors are ready to act. For the protestors a gathering can be the main way to achieve their goals as other rights such as freedom of election and freedom of speech can be impeded by the authorities.

2. How should the term ‘peaceful assembly’ be understood? When is one dealing with an ‘assembly’? Does it require the expression of an idea through a gathering, and if so, what is the hallmark of such an expression of an idea (e.g. does it necessarily entail an appeal to the public opinion)? Does it cover strikes? Or do all gatherings (e.g., also sporting, religious, cultural events, or) qualify as ‘assemblies’? Does it matter whether the organisers pursue a commercial interest? In order to qualify as an assembly, are there requirements about where should the gathering should take place — in public, private or on-line? Can one person form an assembly? When is an assembly not ‘peaceful’, and fall outside the scope of the protection of the particular right? What level of violence (or mere disruption?) is required not to consider it peaceful? To what extent can the violent conduct of certain individuals participating in the assembly be attributed to the group as a whole and render an assembly as a whole not peaceful?

The term «Peaceful assembly» should include: 1. All gatherings with the participation of two or more persons which take place in public or in private; 2. A gathering with a participation of one person if it takes place in public and entails an appeal to the public opinion.

We consider as important criteria for defining a «peaceful assembly» its purpose, including the expression of an idea through a gathering, its positioning by the organisers and participants as a utterance in the context of public debate, as well as its connection with current socially significant events.

At the same time we recognize the fact that it is not easy to determine in practice which public meetings are connected to the questions of general interest and which ones are not. The notion of the general interest itself is not susceptible of an exhaustive definition. As the result all the peaceful meetings and gatherings should be treated with considerable degree of tolerance from the government.

We are aware of the cases when sports-related, cultural and religious assemblies are restricted in the same way, as events organised in order to discuss questions of general interest. For instance, since 2012 Russian laws consider «a mass simultaneous gathering and (or) moving of citizens in public places that caused violations of «public order» a legal offense. The punishment is a fine max 300k rub (around 4 000 euros by the 18.02.2019 exchange rate) for persons or max 1 million rub (around 13 333 euros by the 18.02.2019 exchange rate) for organisations, or up till 200 hours of public service, or up till 30 days of open arrest (paragraph 20.2.2 of the administrative code of Russian Federation). According to the statistics of the Supreme Court of Russian Federation Russian courts have processed 47 cases based on this paragraph during the first half of 2018. 40 out of those 47 ended in convictions: in one case the court issued a written warning, twice the public service option was used, the rest of the cases were ended in a fine. The fines averaged 7700 rub (around 103 euros by the 18.02.2018 exchange rate).

We believe, for the reasons we set out below, that individual public demonstrations, intended at public discussion

of questions of general interest are also a form of realisation of the right to the freedom of expression and the freedom of assembly.

Firstly, an individual public demonstration could attract public attention and turn into a collective assembly, so it is not possible to draw a clear line between the two.

Secondly, some demonstrations are difficult to classify as either individual or collective. For instance, when the participant of a formally individual public demonstration is exchanging places with other participants, or in situations that involve multiple simultaneous individual demonstrations in different places, but united by the same theme. In the latter case Russian experience is especially important.

Since 2012 Russian laws allow the courts to consider multiple simultaneous demonstrations as one single public assembly with all the consequences for legal responsibilities and the possibility of conviction (part 1.1. paragraph 7 of the Federal Law of 19.06.2004 N 54-FL «On meetings, demonstrations, marches and picketing»). Meanwhile the minimal possible distance between two distinct individual demonstrations is defined by the regional authority. For instance, in May 2017 in two thirds of Russian regions, including Moscow and St. Petersburg, this distance was 50 meters. In other regions this distance is shorter, and in Moscow and Novgorod Oblasts and in Chuvashia it is 10 meters. Since 2016 Russian laws concerning the authorisation of public assemblies by local authorities include individual picketing in case it involves «fastly erectable temporary constructions» (part 1, paragraph 7 of the Federal Law of 19.06.2004 N 54-FL «On meetings, demonstrations, marches and picketing»).

Meanwhile CCPR's case law considers restrictions on individual demonstrations only in the context of the violation of the freedom of expression (see, for example, communication No. 2082/2011, [Levinov v. Belarus](#), Views

adopted on 19 July 2012, para. 8.2). European Court of Human Rights developed a similar case law ([see](#) Novikov and others v. Russia (nos. 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, § 91, 26 April 2016).

We consider this approach unreasonably restrictive and ineffective for promotion of the right to assembly in national laws.

Accordingly, if the term «Peaceful assembly» is understood in the way we suggest it would cover several needs of individuals including: 1. An opportunity to take a collective action in favor of some views and opinions; 2. An opportunity to take an individual action in favor of some views and opinions; 3. An opportunity to take a collective action in support of some common interests, for example participation in a strike; 4. An opportunity to participate together in different kind of activities such are sporting, religious, cultural events and to promote through it some ideas of public interest.

Peaceful public meetings, raising and forming discussion and opinion on the questions of the general interest, require high value of tolerance from the government. Apart from that, any other kind of public meetings should be treated with tolerance, since this is another form of using the public space, and it is in practice not easily distinguishable from the meetings that raise the questions of the general interest.

The on-line petitions are covered by the right to freedom of opinion and expression so there is no need to include it in the right to freedom of assembly. It should also not create an impression on the authorities that the right to on-line petitions can substitute the right to a gathering.

As the right to assembly is, inter alia, an individual's right the authorities should first of all evaluate how peaceful is the behavior of each person separately. If a person acts peacefully the authorities should by all possible means guarantee him

the right to assembly, for instance, by separating and protecting him from those who act not peacefully. The whole gathering can be stopped only in very rare situations when it is the only possibility to protect the rights to life and health of individuals. Even in these situations the responsibility of each person should be strictly individual.

Similar view has also been adopted in ECHR's case-law (see *Frumkin v. Russia*, (App. 74568/12), 5 January 2016, § 99)).

99. In any event, 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 (see Ezelin, cited above, § 53; Ziliberg v. Moldova (dec.), no. 61821/00, 4 May 2004; and Primov and Others v. Russia, no. 17391/06, § 155, 12 June 2014). Even if there is a real risk of a public demonstration resulting in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of Article 11 § 1 of the Convention, but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that Article (see Schwabe and M.G. v. Germany, nos. 8080/08 and 8577/08, § 92, ECHR 2011).

When assessing the peaceful character of a given public assembly, one should also take into consideration certain actions of the police and other government officials, which may cause responsive reaction from the public and escalate the conflict. In such situations the participants of the assembly should be protected by the right to the freedom of peaceful demonstration.

In this respect ECHR examined the detention of the participants of the May 6 demonstration of 2012 on Bolotnaya Square in Moscow, having held in the above-cited *Frumkin v Russia* as follows:

129. <...> The Court considers that from any point of view the authorities in this case did not comply with even the minimum requirements in their duty to communicate with the assembly leaders, which was an essential part of their positive obligation to ensure the peaceful conduct of the assembly, to prevent disorder and to secure the safety of all the citizens involved.

130. The authorities have thus failed to discharge their positive obligation in respect of the conduct of the assembly at Bolotnaya Square. There has accordingly been a violation of Article 11 of the Convention on that account.

3. Is freedom of assembly an individual or a collective right, or both? Who is the bearer of the right? The participants — individually or collectively? The organisers? Does the right cover planning/publication/advertisement of the event, and if so when does this start — before notification or other similar requirements have been met? Does the right cover protection of participants on their way to and from an assembly?

The freedom of assembly is both individual and collective right. Individuals take their own decisions to participate or not in a gathering. After a community of participants is created it becomes also a collective right. So the bearers of the right are both participants (individually and collectively) and the organisers.

The right should cover planning, publication and advertisement of the event because the authorities can create difficulties to the organisers at each stage of the preparation of the event. The right should start before the notification. In some countries the formal notification according to the law should be made within a short time-limit before the event. However the organisers and the participants may wish to invite other people to the event

before the formal notification. They should have the right to do it.

If the participants are attacked on their way to and from an assembly and the attack is related to their participation in the event this situation should also be covered by the right to freedom of assembly.

The situations when the State's agents detain the activists on formal grounds (checks of the IDs, arrests for previous offenses etc.) should be considered as a specific case of interference in the right to freedom of assembly. In these situations the harm done by the detention should be compared with the consequences of the alternative decisions, for example, the postponing of the necessary legal procedures until the end of the demonstration. It is necessary to keep the balance in order to avoid the abuse of power.

4. Article 2 (1) of the ICCPR requires States to 'respect and ensure' the rights in the ICCPR. Article 21 provides that the right of peaceful assembly 'shall be recognised'. Does this in general terms mean that there is a duty on the State to 'facilitate' peaceful assembly, and what does such a duty to 'facilitate' entail? Does it mean that, while people exercise this right, the focus of law enforcement officials should be primarily on protecting the rights of all concerned rather than upholding law and order? (Are States thus required to show a certain level of tolerance to conduct when engaged in as part of peaceful assembly, and not meet it with the same force of the law as it would otherwise do?) How should the obligation to allow assemblies to take place within 'sight and sound' of its target audience be interpreted?

The duty to facilitate means that the authorities should do all the possible in order that an assembly occurs at the place and time chosen by the organisers. The authorities should also ensure that the law, including human rights norms, are

protected during the assembly and during the preparation to it.

The national law should be drafted in a way to avoid contradictions between the upholding of public order and the protection of the freedom of assembly. For example, the law should not prohibit a peaceful assembly which takes place without notification if it does not seriously disturb the life of the community. However, the law should prohibit the actions of the participants which violate the rights of other individuals. So the focus should be on protection of the rights of the individuals both participating and not participating in the assembly.

Meanwhile the authorities should be tolerant to potential problems, caused by public assemblies. In particular, they should not prevent the organisation of public assemblies in the central parts of the cities, where the organisers have a chance to attract more public attention to the problems raised during the gatherings. The decision to legally restrict public demonstrations to specifically predetermined areas and places in the national law should not be acceptable. An important aspect of the freedom of assembly is the free choice of the place.

States should not put indirect restrictions on public demonstrations, which may result in impossibility to organise a public assembly in the center of the city.

For instance, Russian law allows local authorities to list places, near which a public assembly is not permitted. Due to the infrastructure of certain cities this results in the impossibility to organise a public demonstration in any place near the city center.

The government should react to problems raised at public assemblies or demonstrations. The freedom of assembly is a democratically guaranteed instrument of communicating the opinions and demands of civil society to the authorities.

The steps of the authorities's reaction to public assemblies or demonstrations may be as follows:

- To find and formulate the questions raised at a public assembly;
- To collect and receive information about the questions raised at a public assembly;
- To consider and evaluate those problems during the work of the public service and the government which have become clear due to the questions raised at a public assembly;
- To inform the public about the actions taken to overcome the problems that have come to light due to a public assembly.

5. More specifically, what are the (negative and positive) obligations placed by the right of peaceful assembly on the State? How should the right be respected by the State (e.g. through the adoption of laws providing for and regulating its exercise in accordance with international law)? How should it be protected? To what extent does the State have an obligation to protect those engaged in peaceful assembly from interference by other members of the public? And should counter-demonstrations be protected to the same extent? How should the obligation on States to take precautionary measures to prevent violations of rights be understood in this context (for example in the context of preventing and reducing violence)? Is there an obligation on the part of the authorities to attempt to engage with assembly organisers and participants prior to the holding of the assembly? Are organisers required to engage with the authorities? Is there a special role for NHRIs in this regard? And other stakeholders (such as local governments)?

We submit that positive obligations are as follows:

- to adopt national laws in accordance with the international standards describing the right to freedom of assembly (Article 2 (2) of the ICCPR);

- to ensure consistency of national laws on freedom of assembly (e.g. see ECHR's Judgment: *Mkrtchyan v. Armenia*, no. 6562/03, 11 January 2007, § 43);

- national law should clearly determine not only the obligations of the organisers and of the participants to a public assembly, but also the obligations of the government's representatives. These laws should be clear and they should not allow any freedom of interpretation that might cause decisions, which are unfavorable to the organisers or the participants to a public assembly;

- to undertake all the possible steps in order that an assembly takes place in the place and at the time chosen by the organisers;

- to protect those engaged in peaceful assembly from interference by other members of the public if others use violence or disturb the assembly;

- to protect peaceful counter-demonstrations in the streets at the same extent as demonstrations as their participants also enjoy the right to freedom of assembly. To take measures that the participants to demonstrations and counter-demonstrations do not use violence against each other and do not disturb the manifestations of each others. For instance the police should defend the protesters from the violence of the counter-protesters and of other aggressive opponents. In case when an assembly is taking place in a building, the participants may ask for special government protection against counter-demonstrations. Similar position is reflected in ECHR's practice (see *Identoba and Others v. Georgia*, no.

73 235/12, 12 May 2015, § 94 — 95; see also Plattform «Ärzte für das Leben» v. Austria, 21 June 1988, § 32, 34).

— to create an obligation for the authorities to engage with assembly organisers on the issues related to the preparation of the assembly including the discussion on the precautionary measures aimed to prevent violence and violations of the human rights. The organisers should also be required to engage with the authorities if they know that an assembly will create serious changes in the life of the city;

— national governments should guarantee at least equal rights and conditions for those who organise public demonstrations and those who organise cultural, sport related or religious events (in Russia the organisers of public demonstrations are often forced to choose the date and time of the gathering after the cultural events have been already scheduled);

— if a NHRI wishes to discuss with the authorities the issue of the preparation of an assembly the authorities should have an obligation to engage with an NHRI;

— to tolerate the spontaneous gatherings even if there is no formal authorisation from the authorities.

We submit that negative obligations are as follows:

- the authorities should not change the place and the time of a gathering without compelling reasons. If there is a serious reason to make such changes the authorities should provide an alternative place and time. The authorities should provide detailed explanations as to why such changes have been made;
- the authorities should not censor the posters and slogans of the participants to a gathering if it does not incite to violence and if it does not violate laws. They should not censor posters and slogans arguing that it does not correspond to the formal subject of the gathering;
- the authorities should not interrupt the full gathering because of violations of laws committed by particular individuals if these violations do not represent serious danger for the public security;
- the authorities should not expose an individual to criminal prosecution for the only fact of participation in a non-authorized gathering.

6. When and how may the right of peaceful assembly be limited? Are the limitations affected by the modalities of the assembly (e.g. whether they take place in the open or within a building, whether they are stationary gatherings or marches)? Is it correct to say there is a 'presumption' under the Covenant in favour of allowing peaceful assemblies, and the onus is on those wishing to restrict such assemblies to justify such limitations? How should the procedural requirement for limitations on the right in sentence two of article 21 (that limitations can only be imposed 'by law') and the substantive requirements (this can be done only where it is necessary to protect national security, etc.) be understood? What is their relationship to other articles of the Covenant, including article 22? In what way are the limits on article 21 different from the limits of article 19? How should such limitations be enforced — is there e.g. a role for criminal sanctions, and if so when? What are the alternatives? Who can be held criminally responsible for violent conduct of individuals or groups that participate? What are the safeguards that should be in place to establish whether limitations on peaceful assemblies are permissible (e.g. judicial review)? What does an 'effective remedy' mean in time sensitive contexts? How can transparency of decision-making in relation to assemblies be ensured?

The authorities should not consider mere participation or organisation of a public assembly as a criminal offense, even if this assembly was not approved by the authorities (or if the authorities were not even notified about it). The governments should properly evaluate specific negative consequences (for instance, the character and the level of potential violence). The compensation of damage caused to personal or public property as the result of a public demonstration can be decided under the civil law, rather than under the criminal law.

States should guarantee the principle of individual responsibility and not charge the organisers for the actions of the participants to a public assembly (nor should they charge for that the people who shared information about a public demonstration).

It is correct to say there is a 'presumption' under the Covenant in favour of allowing peaceful assemblies. If a State restricts the freedom of assembly, it should justify its actions by particular circumstances and explanations. The restrictions must be based on the law and must not contradict the international standards. It is possible to restrict the actions which advocate violence, the destruction of democracy, and the violations of the human rights. The authorities shall not restrict the gatherings for the reasons of the disagreement with the opinions of the demonstrators or negative attitude toward the organisers.

States should guarantee a clear decision-making procedure on matters related to the freedom of assembly. To this end a State may keep open statistics of the notification procedures results, give public justification for any interference or restriction of the freedom of assembly and publish exact data about arrests and detainings of the organisers, as well as subsequent court proceedings.

If the authorities had not allowed a gathering for the reason that other event would occur on this place, the authorities should later provide evidence that this event has really occurred. For instance, in Russia the authorities often refuse to allow a gathering in a particular place arguing that another event will take place here. However, in practice often there is no other event. The authorities are just using this formal reason for not allowing a gathering.

7. What is the position as far as organiser accountability is concerned? Can the organisers be required to cover police costs, provide assurances in advance as far as reparations for damages are concerned, cleaning up services, medical services, etc.? Do particular obligations arise for organisers where participants in an assembly (including counter-demonstrations) intentionally advocate hatred, seek to intimidate others or call for or use force? How should concealment of their faces by participants be dealt with?

It is not acceptable to prohibit individuals to organise assembly for the repeated violation of the formal rules for organising and holding public events (as it is provided in Russia). Such a restriction adversely affects civic activity.

Extra requirements for organisers, such as solvency, introduce overly superfluous barriers to the freedom of assembly.

The organisation of a public meeting or demonstration, as we have noted above, is one of the legal and legitimate forms of the utilisation of the public space. Thus, the organisers and participants thereof should not be charged compensation reimbursement for the public service (police, medical care etc.)

The organisers should be ready to participate in the necessary dialogue with government representatives in order to keep the balance of interest between the participants and other citizens. At the same time, the organisers should not be held responsible, e.g. fined, for the actions of the participants, provocateurs or other offenders.

8. Should those wishing to exercise this right be required to apply for authorisation; or merely be required to notify the authorities; and if the latter, what form should the notification take (how onerous can expectations of notification be: how long in advance; does this apply to spontaneous assemblies (and how are they to be defined); etc.)? Is a system of voluntary notification workable? Are there international standards for establishing which assemblies need to be free from all requirements of notification and authorization; which the former and which the latter?

A crucial part of the freedom of assembly is the ability to organise a spontaneous meeting, public action or demonstration. Similar guarantees are given by the governing principles of OSCE (paragraph 4.2, §126 -131).

4.2 spontaneous assemblies.

Where legislation requires advance notification, the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable. Such an exception would only apply in circumstances where the legally established deadline cannot be met. The authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.

ECHR dealt with this matter as follows (see Lashmankin and Others v. Russia, no. [57818/09](#) and 14 others, 7 February 2017, §92):

92. The notification process should not be onerous or bureaucratic, as this would undermine the freedom of assembly by discouraging those who might wish to hold an assembly. Furthermore, individual demonstrators should not be required to provide advance notification to the authorities of their intention to demonstrate. Where a lone demonstrator is joined by another or others, then the event should be treated as a spontaneous assembly...

The Report of the Special Rapporteur on the right to freedom of peaceful assembly and freedom of association of 21 May 2012 (A/HRC/20/27) describes best practices that promote and protect, in particular, the right to freedom of peaceful assembly. It reads as follows:

29. Should the organisers fail to notify the authorities, the assembly should not be dissolved automatically... and the organisers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. This is all the more relevant in the case of spontaneous assemblies where the organisers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organiser. In this context, the Special Rapporteur holds as best practice legislation allowing the holding of spontaneous assemblies, which should be exempted from prior notification...

We also believe that informing the local authorities should be the right, not the responsibility of the organisers of peaceful demonstrations. The goals of informing the authorities may be various, for instance, to coordinate the construction of a podium or a temporary blocking of the public traffic. Besides the organisers may inform the authorities in order to guarantee the safety of the future participants of the demonstration.

In our opinion, the organisers should not be required to inform the authorities at least about those assemblies that do not cause any significant change to the everyday city life (including traffic or walking).

The lack of official coordination from the local authorities by itself cannot be the reason to prevent a public demonstration. In ECHR's practice such cases have been considered (Oya Ataman v. Turkey, No. 74 552/01, 12.05.2006, § 39).

The government should use means allowing for prompt communication (telephone, Internet) in order to give the organisers the opportunity to effectively inform the authorities about the future demonstration, especially given the clear inequality in resources between the government and the organisers. For instance, in Russia the organisers cannot inform the authorities about the future demonstration on the weekend (see also the report of OVD-Info: <https://ovdinfo.org/reports/iskusstvo-zapreta#5>).

Cultural events should not have a pre-defined priority over other peaceful demonstrations. For instance, in modern Russia cultural events (markets, fests, festivals) are coordinated with the authorities much more in advance, than peaceful demonstrations (sometimes a month in advance: <https://ovdinfo.org/reports/iskusstvo-zapreta#3-2-2>). The organisers of public demonstrations are forced to choose the time and the place after those events have already been scheduled.

It is necessary to give the demonstrators the right to conduct a preliminary campaign for the participation in a gathering prior to filing notices of meetings. The authorities in Russia sometimes restrict persons who invite others to a gathering which had not been yet formally authorised by the authorities. However, according to the Russian law the organisers can not submit a formal notification about a gathering before 15 days of the day of the gathering. At the same time the organisers may wish to start to invite people to a gathering before. We consider that they should have this right. At the same time, it is possible to provide for the obligation of the organisers and authorities to inform potential participants of the change in time and (or) place of the meeting or on its cancellation.

9. What sort of limitations may be placed on assemblies as far as their form (e.g. place, manner and time) or their contents (e.g. promotion of violence) is concerned? Are there circumstances under which all peaceful assemblies may be prohibited for a certain period in connection with states of emergencies, or independently of states of emergency? Can all assemblies in particular places (e.g. 'neutral zones' around parliaments, courts or monuments) or during a specific time be prohibited?

Peaceful demonstration is another way of using the public space. The participants of a demonstration are free to determine their actions by themselves, usual laws applying to behavior in a public space should be sufficient.

If public demonstrations are to be restricted in certain areas, the reasons for this should be clearly articulated and the areas themselves clearly described.

Sports-related, cultural or religious events, regardless of their scope, cannot restrict the freedom of peaceful assembly, they should not lead to a prohibition to organise a public meeting or significant complications in the organisational process.

For instance, in Russia opportunities for peaceful assemblies were significantly restricted during the Olympic Games in Sochi 2014 and the World Cup FIFA 2018 (for more detail see the OVD-Info report:

<https://ovdinfo.org/reports/iskusstvo-zapreta#10-3-6>).

10. To what extent have general rules and good practices emerged on the facilitation of assemblies, to prevent an escalation of the situation, for example by not taking measures that might increase tensions, requiring law enforcement officials to be identifiable, etc.? How should the division of labour between the police and marshals be determined? What is the role of undercover policing?

The police should guarantee a free pass through the area where a public demonstration takes place, in particular it should guarantee that there be no panic or violence in the crowd.

The police should not use violence against the participants of a peaceful demonstration or prevent peaceful assembly.

The policemen should be personally responsible for their actions. This is possible only if every serviceman carries a badge which allows personal identification.

The police should individually inform the demonstrators before placing them under arrest or using violence against them. A general warning (into a speaker) is not enough, because the participants might not hear it or not understand that it concerns their individual actions, rather than someone else.

The police and other government representatives should guarantee constant and effective communication between themselves and the demonstrators (see e.g. the study of OVD-Info:

<https://ovdinfo.org/interviews/2015/02/04/zaderzhaniya-po-nemecki-berlinskaya-policiya-o-svobode-sobraniy>).

11. What are the rules as far as the use of coercive measures against those engaged in assemblies is concerned, also if they turn violent? This includes detention, arrest and the use of force (articles 6, 7 and 9 of the ICCPR). How should the requirements of legality, precaution, necessity and proportionality in the context of the use of force be understood? What is the role of the various forms less-lethal weapons and equipment that are available, and how should they be regulated? May some such weapons never be used, or only under certain circumstances? Horses and dogs? Firearms? Private security providers? Can dispersal ever be justified where an assembly is entirely peaceful/non-coercive? What are the alternatives to dispersal?

The police should act against individual offenders, not against the whole demonstration.

Consequently the techniques used by the police should allow to target individuals, rather than the whole group. The actions of the police must be proportionate to the threat created. The policemen should not use violence against demonstrators who had been already neutralized, and against demonstrators who themselves agreed to comply with the police's orders, even if they had used violence before.

The arrest of the participants or organisers should be an exceptional measure when there are no other means to keep the public order or to prevent physical harm.

The government should give more attention to the uniform and the protection of the police, but not to their weapons. If the policemen are well protected, they will not be aggressive towards the demonstrators.

Private security providers should respect the International Code of Conduct for Private Security Service Providers:

https://icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf

For instance the par. 21 of this Code states the following:

«Signatory Companies will comply, and will require their Personnel to comply, with applicable law which may include international humanitarian law, and human rights law as imposed upon them by applicable national law, as well as all other applicable international and national law. Signatory Companies will exercise due diligence to ensure compliance with the law and with the principles contained in this Code, and will respect the human rights of persons they come into contact with, including, the rights to freedom of expression, association, and peaceful assembly and against arbitrary or unlawful interference with privacy or deprivation of property.»

The same approach to the topic is formulated in 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, §44 — 46):

»Business enterprises have a responsibility to respect human rights in the context of assemblies».

12. What are the rights of those who wish to observe and record assemblies and how they are policed, including participants, bystanders and the media?

The public service (the police and the courts) should make a distinction between passers by, watchers, journalists, the participants and the organisers of a public demonstration. The mere presence on the spot does not make a person a participant of the demonstration. The motives for being there are important. Furthermore, spreading and sharing the information about a public assembly does not make a person one of its organisers and should not be considered as an enough justification for legal charges.

Journalists perform an important public duty. This should be considered, when the balance of rights and interests

is evaluated.

Meanwhile in Russia the journalists often become the first victims of unprovoked arrests during public demonstrations (see in detail the special English report of OVD-Info for the UN: <https://ovdinfo.org/reports/freedom-of-assembly-in-the-digital-age-en#3>).

We also believe that in the modern world every person can have a blog and share the information about public assemblies and the actions of the police, which informs the public debate. While evaluating the motives and the role of an individual at a public demonstration the authorities should not examine only the formal criteria, such is an official task from the editor or even association with any media. The authorities should carefully consider the goals and the circumstances of a person's presence at the place of a public demonstration.

For instance, ECHR has considered the case of restrictions of the rights of journalists detained at a public demonstration: *Pentikäinen v. Finland* (no. 11882/10, 10 October 2015). Concerning the legitimacy of the arrest and further charges ECHR took notice of the following:

- the police's opportunity to identify a journalist (a badge or clothing) (see *Pentikäinen*, § 99);
- the journalist's opportunity to achieve their goal of informing the public about the demonstration, while being at a significant distance from it (*ibid.*, §§ 97, 101);
- the circumstances concerning and casting doubt on the peaceful character of the assembly (*ibid.*, § 96);

Even though ECHR decided that this was not a violation of the freedom of expression, we believe it possible to use these developed criteria to keep the balance of the rights and the interests.

13. How should accountability for violations or abuses of rights by all parties concerned during assemblies be approached?

While evaluating the legal responsibility for violence of participants or organisers of a public demonstration the authorities should take into account the fact, that certain situations might be provoked by previous violence directed against the activists or by threats.

An assessment of the general situation by the courts (for example, recognition of the fact of mass riots) should not lead to a stricter punishment of non-dangerous actions of the demonstrators only on the basis of their qualification as «participation in mass riots».

For instance, authoritative experts criticise widespread Russian practice of charging public activists for harm done to police officers. In many such cases the charges are based only on the personal testimony of the police officer in question and solely as a response to similar charges against the police.

14. To what extent are private actors (including the owners of shopping centres) required to allow or facilitate peaceful assemblies? How should the responsibility of States in such situations be approached? How should public places (partly) owned by a State company (e.g. airports) be treated?

If a demonstration takes place on a private territory both the authorities and the organisers should respect the wishes of the owner.

If the public space where a demonstration takes place belongs to the government, then the regular law concerning peaceful assembly should apply. The same rules should apply to the territories or buildings that are partially owned by the government. The degree to which the property is associated

with the State should also play an important role. This degree can be evaluated on the basis of the exact share of the government in the property and the particularities of the place in question.

While coordinating a public demonstration with the owner of a private territory or of a building the issue of the free access to the territory or to the building should be taken into account: there will be different rules for the private space (covered under the law protecting private property and family life) and for the public space (parking, mall etc.). In the latter case the owners should be tolerant to the peaceful assembly that does not cause problems for the public use of the territory or of a building.

If the owner of a private territory or of a building gives his permission for a public assembly this assembly should not require an additional coordination with the State.

Nevertheless, even in this case the authorities should not deny the organisers of a peaceful demonstration in protection and law enforcement.

Relationship of article 21 with other provisions of the ICCPR

15. When may derogations (article 4) and reservations to article 21 be permitted and what non-derogable or otherwise fixed obligations in relation to assemblies do States retain where that is the case?

The derogations may be permitted during the war and state of emergency. However even in these situations the authorities should give the detailed explanations how a particular gathering may impede the state's security. The authorities must also protect the non-derogable rights (such are prohibition of torture and prohibition of the discrimination) when they deal with the non-authorised gatherings during the war or state of emergency.

16. Is it correct to say that ‘there is no such thing as an unprotected assembly’ because even if the assembly is no longer peaceful, those involved retain their other rights, such as their rights against ill-treatment and the right to life?

We agree with this statement. The non-derogable rights will continue to apply as well as the rule of proportionality. Thus there will not be any «unprotected assemblies».

17. What is the relationship between article 21 and other rights in the ICCPR, such as privacy (article 17); freedom of movement (article 12) freedom of expression and access to information (article 19); advocacy of hatred etc. (article 20); association (article 22); political participation (article 25); and equality and non-discrimination (articles 2 (1); 3; 26) (e.g. people who are frequently targeted, or in positions of vulnerability).

The right to freedom of assembly helps individuals to enjoy other rights. A person who participates in a gathering also realises his rights to freedom of movement and freedom of expression. A gathering also facilitates the association and political participation of individuals. The equal right of individuals and groups to freedom of assembly helps to realise the right to non-discrimination. A gathering helps all the society to enjoy its right to information.

The implementation of other rights may also lead to some restrictions of the right to freedom of assembly. For example, the advocacy of violence and discrimination may be prohibited during the gatherings. The authorities can adopt some measures protecting the freedom of movement and right to privacy of the non-participants to a gathering. However these measures should not serve as a pretext for prohibition of a gathering.

General

18. In interpreting article 21 of the ICCPR, should any weight be attached to possible differences between the right of peaceful assembly (droit de réunion); peaceful demonstration (or peaceful protest) (droit de manifestation) and the right of peaceful gathering (droit de rassemblement)?

We argue that the terminological difference between different language versions should be interpreted in a way to allow the widest possible protection for the right (see the well-established case-law of the ECHR on the differences between English and French texts of the European Convention on Human Rights, among others, *Golder v. United Kingdom*, judgment of 21 February 1975, Series A no. 18, § 32). In this respect, as long as Article 21 covers *manifestation*, an act that may be individual as well as collective, solo demonstrations should be protected under this provision.

19. In all of the above please keep in mind the role of gender in assemblies and the role of new technologies: the use of social media to organise and advertise assemblies; the use of mobile phones and other devices (CCTV cameras, satellites) to record assemblies; the use of body-worn cameras; etc. Moreover, to what extent does the right of peaceful assembly apply in the digital space? Can ‘gathering’ online impose obligations on States and other actors to facilitate it? May unmanned weapon or surveillance systems (remote or autonomous) be used by law enforcement officials during demonstrations?

Restrictions in the Internet connection or in any other ways of communications should be considered as a violation of the right for peaceful assembly, if these restrictions had such a goal.

For instance, during the mass demonstrations in the Ingush Republic (Russia), mobile companies (under the order of the authorities) have switched off their Internet services for the

citizens living in certain areas (for more details see the OVD-Info and Human Rights Centre ‘Memorial’ submission for the UN Special Rapporteur:

<https://ovdinfo.org/reports/freedom-of-assembly-in-the-digital-age-en#4>).

The surveillance systems may be used by law enforcement officials during the demonstrations. However the information recorded during the demonstrations should not be used for the violations of the human rights.

20. Please identify ‘soft-law’ instruments that may be of relevance to the right of peaceful assembly. References to regional standards are also welcome.

Guidelines on Freedom of Peaceful Assembly, prepared by the Osce/odihr Panel of Experts on the Freedom of Assembly (Warsaw/Strasbourg 2010):

<https://www.osce.org/odihr/73405?download=true>

Comparative study on national legislation on freedom of peaceful assembly endorsed by the Venice Commission at its 99th plenary session (Venice, 13–14 June 2014):

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)024-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)024-e)

More to read



Limitations on and restrictions to the right to the freedom of peaceful assembly in the digital age

Русская версия: The present submission is based on information documented by the human rights project OVD-Info as well as other human rights and analytical organizations...