

**OSCE/ODIHR Comments on draft of General Comment 37, Article 21 ICCPR.**

ODIHR presents its compliments to the Human Rights Committee and appreciates the opportunity to comment on the draft general comment 37 (Draft GC37) on Article 21 of the ICCPR.

The Draft GC37 is a comprehensive document, which covers important aspects of the Right to Freedom of Assembly, and provides guidance on important guarantees for the full enjoyment of this fundamental right on a global scale.

ODIHR has focused mainly on paragraphs and issues, which from our point of view would benefit from further clarification.

ODIHR’s comments generally follow the structure of the Draft General Comment 37 (Draft GC37), but certain comments, such as those linked to the scope of the right to freedom of peaceful assembly, new technologies and assemblies that may occur online, and the notion of “violent assemblies”, have been grouped together.

**Scope of the right of peaceful assembly**

**Paras. 2, 4 and 13**

Para. 2 of the Draft GC 37 links the legitimate right of peaceful assembly to a *“public space”* without offering its definition and thus may be interpreted too restrictively. The right to freedom of peaceful assembly protects the many ways in which people gather together in public and in private space, including, sites generally accessible to everyone, independently of possible private ownership.[[1]](#footnote-1) (Please also see discussion with respect to para. 4 below on the need for protection of the assemblies which may occur online. Para. 4, and partially para. 6.)

Furthermore, the language of the several key paras. of the Draft GC37, define the scope of application of the Article 21 exclusively confining the right to assemblies to public or publicly accessible privately-owned property. Thus, para. 2 speaks only about “the legitimate use of the public space” for assemblies. Paras. 4 and 13 contain bracketed language, which may also narrow guarantees for the right to peaceful assembly. It remains uncontested that Article 21 does not guarantee the right to assemble on a private property, which is not generally accessible to public, without the consent of a property owner. It seems however that the wording of the paras. unintentionally removes the protective scope from private meetings/assemblies organized on private property (either

indoors or outdoors).[[2]](#footnote-2)

1. Namely, the first sentence of para 13. qualifies as an “assembly” a gathering of persons with the purpose of expressing themselves collectively, while the bracketed language of the second sentence states that “assemblies can be held on publicly or privately-owned property [provided the property is publicly accessible]”. The bracketed language thus suggests that in order for the right to freedom of assembly to be protected on private property it must be publicly accessible. Such wording may altogether exclude from the scope of Article 21 assemblies held with the permission of the owner on private property which is not accessible to the public. While discretion of the state to regulate such private meetings is strictly limited, it nevertheless has an obligation to protect such assemblies.

Although para. 67 specifically states that assemblies “held on privately owned property with the consent of the owners enjoy the same protection as other assemblies, wording of earlier paras. appear to be contradictory and it is advisable to revisit it. It is advisable to clarify that the right of individuals to assemble peacefully in public and publicly accessible private space as well as on private property not accessible to public may qualify as assembly and thus enjoy protection of the Article 21, although modalities and scope of State’s obligation to facilitate and regulate such assemblies would differ.

**Para. 14**

Para. 14 defines that while commercial gatherings would not generally fall within the scope of what is protected by Article 21, they are covered to the extent that they have an expressive purpose.

As a rule, gatherings held primarily for purposes other than expressing emotions, ideas or opinions on matters of public interest or concern (e.g. gatherings held purely for entertainment purposes and/or to make profit, such as for-profit sporting events or for-profit concerts) may fall outside of protective scope of Article 21. However, there may be examples of assemblies with a common expressive purpose having some aspects of commercial activity.[[3]](#footnote-3)

**Notion of “Violent Assemblies”**

**Paras. 10 and 19**

According to para. 10 of the Draft GC37, if assemblies “become violent” individuals involved in violence lose protection under Article 21, but continue to enjoy other rights under the Covenant. Indeed, only peaceful assemblies fall within the scope of Article 11(1) ECHR and Article 21 ICCPR, and the concept of a peaceful assembly does not cover gatherings where the organizers and participants have violent intentions or incite violence.[[4]](#footnote-4) It would be beneficial however, to revisit the above wording, clarifying in what circumstances an assembly may be considered “violent” (in other words, when does the violence committed by individuals turn entire assembly violent, how widespread the violence needs to be?) and whether individuals who remain peaceful in assembly turning violent lose the protection of the Article 21.

The use of violence by a small number of participants in an assembly (including the use of language inciting hatred, violence or discrimination) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly. Moreover, ‘the possibility of extremists with violent intentions who are not members of the organising group joining a demonstration cannot as such take away [the right to freedom of peaceful assembly]’ from those who remain peaceful. Instead, international standards provide that even if there is a real risk of an assembly resulting in disorder as a result of developments outside the control of those organising it, this by itself does not remove it from the scope of Article 21 of ICCPR or Article 11(1) ECHR. Furthermore, as stated by the European Court of Human Rights, ‘an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence.[[5]](#footnote-5)

1. The first sentence of para. 19 contains bracketed language defining a violent assembly as one that is characterized by [widespread and serious] violence [, and is sometimes referred to as a riot]. “As mentioned, defining an assembly as non-peaceful is not always straight forward” (see also comment on para 10). It is suggested to retain the bracketed language which requires cumulative condition for individual violent acts to be “widespread and serious” to turn the assembly violent.

**Issues related to new technologies and protection of assemblies which may occuronline**

**Para 4.**

This para. contains bracketed language offering two alternatives confining the right to peaceful assembly to “a publicly accessible” or “the same” place. Both alternatives are broad enough to cover public and private property, however, “the same” would potentially exclude the application of Article 21 to some forms of online interaction which may serve functions that are equivalent to those of physical assemblies and thus may fall under the scope of Article 21.[[6]](#footnote-6)

1. The ECHR, the ICCPR and other international instruments apply both offline and online. The Internet and social media have greatly facilitated the exercise of fundamental rights including that of the right to freedom of peaceful assembly.[[7]](#footnote-7)

Access to the Internet and social media has become an important aspect of an assembly for organizers, participants, monitors and human rights defenders. This is clearly an area where the rights to freedom of expression and freedom of peaceful assembly intersect, and some forms of online interaction may serve functions that are equivalent to those of physical assemblies. In this evolving sphere, the possibility that assemblies may occur wholly online cannot therefore be excluded.[[8]](#footnote-8)

According to the 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]lthough an assembly has generally been understood as a physical gathering of people, it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.” [[9]](#footnote-9) Therefore, it is proposed to consider revising the last sentence of para. 6.

Furthermore, Recommendation of the Committee of Ministers to member States on a Guide to human rights for Internet users provides following advice: “… You have the freedom to choose any website, application or other service in order to form, join, mobilise and participate in social groups and assemblies whether or not they are formally recognised by public authorities…You have the right to protest peacefully online. However, you should be aware that, if your online protest leads to blockages, the disruption of services and/or damage to the property of others, you may face legal consequences.[[10]](#footnote-10)

**Para. 6**

1. Para. 6 of the Draft GC37 speaks about various forms of asemblies and in the last sentence of the para. specifies that they can take place “outdoors or indoors”. The proposed wording, while being correct with respect to assemblies taking place “offline”, may exclude some of the online interactions that may fall under the protection of Article 21.

**Para. 11**

1. An essential part of the exercise of the right to freedom of assembly is the right to choose the form in which ideas are conveyed and so, in this evolving sphere, this may include the Internet and social media outlets, even where such platforms are privately owned but are considered a space which is available for public use. Para. 11 of the Draft GC37 acknowledges that the way in which assemblies are conducted changes over time and that emerging technologies present new spaces and opportunities as well as challenges for the exercise of the right of peaceful assembly. It also emphasizes that to the *“communication technologies often play an integral role in organizing and monitoring”,* while the last sentence of the paragraph reminds of the “*increased private ownership of public spaces*”. While emphasizing on ability to organize, mobilize as well as monitor assemblies, it is also suggested to mention private ownership of online spaces as it may certainly effect the exercise of the right to Freedom of Peaceful Assembly and that may also “affect the way in which the right is to be approached by the authorities”.

**Para. 35**

Internet Service Providers could be mentioned specifically, as they are very important for assemblies. While States have the ultimate obligation to protect human rights, the obligations to respect, protect and fulfil, extend also to third parties, including Internet Service Providers (ISPs) which, while privately owned companies, host the publicly available space for expression and assembly. In co-operation with the ISPs, States should ensure that self-regulation does not lead to censorship of content that would ordinarily be permissible and acceptable in a democratic society.[[11]](#footnote-11) This also applies to assemblies expressing views that may ‘offend, shock or disturb’ the State or any sector of the population[[12]](#footnote-12) for as long as they do not incite violence.[[13]](#footnote-13)

**Further issues on the scope of the scope of the right to freedom of peaceful assembly**

**Para. 7**

Suggestion to change “and” to “or” in: *However, peaceful assemblies are sometimes used to pursue ideas or goals that are somehow contentious, ~~and~~ or their scale or nature can cause disruption.* This provides two alternative situations, the “and” could indicate

cumulative requirements.

**Para. 16**

1. In para. 16 it is advisable to make reference to additional sources and case law of the ECtHR, such as:

*For counter demonstrations:* European Court of Human Rights: Plattform ‘Ärzte für das Leben’ v. Austria (Application no. 10126/82, judgment of 21 June 1988), para 32.

*Spontaneous assemblies:* Bukta and Others v. Hungary, Application No 25691/04, (2007), para 36; Eva Molnár v. Hungary Application No 10346/05 (2008), para. 38.

**Para. 18**

1. According to the last sentence of the para. 18, non-violent actions of civil disobedience or direct-action campaigns are “*in principle”* covered by Article 21. It is advised to delete “in principle”. Such assemblies are covered as per the cited case: European Court of Human Rights, in *Frumkin v. Russia* (application No. 74568/12), judgment of 5 January 2016, para. 97.

**Para. 22**

Para. 22 contains two alternatives. Although Option 1 may be in line with the requirments of the Article 20 of the ICCPR, it is sometimes difficult to draw the lines, as international law and good practices allow shocking and disturbing content. It can be dangerous to open the door for content based restrictions.[[14]](#footnote-14) Furthermore, mere act of resorting to such speech by participants in an assembly would not justify the dispersal of the event. In such cases, law enforcement officials should take measures only against the particular individuals involved.[[15]](#footnote-15) Therefore, it is suggested to choose Option 2. This option does not preclude the possibility to prohibit an assembly (see below on para. 57), but it then also allows for intermediate solutions such as restrictions on manner (prohibiting certain banners or signs) or dealing with individuals who might make calls falling under Article 20, while letting other proceed with the assembly. It also reduces the possibility for authorities to abuse Article 20 when repressing protests.

**The obligation of States parties in respect of the right of peaceful assembly**

**Para. 24**

Last sentence of the para. seems to be misplaced and weakens the understanding of the importance of the right to Freedom of Peaceful Assembly. Stating the fact that right to Freedom of Peaceful Assembly is not an absolute right, dilutes the state’s general obligation to respect and ensure this right as well as all the rights in the Covenant as

stated in the preceding sentences of the para.

**Para. 26**

1. The obligation of the state not to interfere unduly is relevant for activities of participants *and* organizers. Only participants are mentioned and it is suggested to include organizers as well.

**Para. 27**

The relocation part seems a bit out of place. Relocating an assembly would constitute a restriction as it interferes with the right to choose the location of the assembly, while listing it in this para, which deals with the State’s the positive duty to facilitate peaceful assemblies displays it as part of the facilitation obligations in which case it would not be subject to the same assessment as restrictions require. It should also be mentioned that in case of relocation of assembly the principle of “sight and sound” should be respected to the extent possible.

The bracketed section on private security companies should be included, as they could, for instance, be hired by counter demonstrators to disrupt the assembly.

**Para. 28.**

Para. 28 lists “nationality” among the non-discrimination grounds. It is suggested to clarify that the right should be guaranteed to individuals regardless of their citizenship as well as stateless persons.

International human rights law does not link the guarantee of the right to Freedom of Peaceful Assembly to citizenship. It is therefore essential that relevant legislation provides Freedom of Peaceful Assembly not only to citizens, but that it also foresees the same right for stateless persons, refugees, foreign nationals, asylum seekers, and migrants.[[16]](#footnote-16)

**Para. 29**

The para. would benefit from clarification with regard to its purpose and content. It may have been an intention of drafters to spell out and clarify that no measures should be taken that have a chilling effect but, as mentioned, it will be beneficial to revisit this para.

**Para. 30**

1. It is suggested to say “as far as possible” instead of “where possible” to strengthen the language.

**Para. 31**

The last sentence of the para. 31 provides that counter-assemblies should also be treated in a content-neutral way, and be allowed to take place, where possible, within sight and sound of the assemblies against which they are directed. It is suggested to replace “where possible” with “as far as possible” as stronger requirement, emphasising stronger on the state’s duty to protect and facilitate assemblies and counter-demonstrations in particular.[[17]](#footnote-17)

**Par. 34**

In penultimate sentence of para. 34 it is suggested to replace “attendance” with “presence”. Journalists or monitors are not attending the assembly but are rather present exercising their professional functions.

**Para. 36**

Para. 36 emphasizes that “political speech enjoys particular protection as a form of expression” and that “assemblies with a political message should likewise enjoy a heightened level of accommodation and protection”. While political speech (as well as assemblies with political message) are more frequently and more severely targeted by authorities, at times it may be complicated to define whether or not assembly aims to deliver political messages or whether the message is political in nature. Alternatively, para. 36 could use the language from the General Comment 34, which states that “... the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”

**Para. 37**

ODIHR suggest to add sources in the current footnote 33, which currently cites. *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008), para. 9.3. Several Communications of the Human Rights Committee can be added to strengthen this position: No 1784/2008, *Schumilin v Belarus*, Views adopted 23 July 2012, CCPR/C/105/D/1784/2008, paras 2.1 and 4.4,

No. 1790/2008 *Govsha, Syritsa and Mezyak v Belarus*, Views adopted 27 July 2012, CCPR/C/105/D/1790/2008, para 2.4(c) and 2.5(c),

No. 1836/2008, *Katsora v Belarus*, Views adopted 24 October 2012, CCPR/C/106/D1836/2008, paras 2.1 and 7.5, and

No. 2156/2012, *Nepomnyaschkih v Belarus*, Views adopted 10 October 2014, CCPR/C/112/D/2156/2012, paras 2.1, 2.4 and 9.4

**Restrictions on the right of peaceful assembly**

**Para. 41**

1. This para suggest the preference of “intermediate or partial restrictions” over “intervention and prohibition” It is suggested to clearly spell out that prohibition of assemblies is a measure of last resort and should only be considered when any less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant rights and freedoms. Any ban or prohibition of an assembly should be decided upon only on a case by case basis, with the legitimacy, necessity and proportionality test to be carried out for each individual assembly. In order to justify a prohibition, the State must provide evidence that it has first attempted to facilitate an assembly, or to impose less onerous restrictions. For example, where the State argues that it has inadequate resources to protect peaceful assembly, prohibition may represent a failure of the State to meet its positive obligations.[[18]](#footnote-18)

**Para. 52**

According to Article 21, ICCPR the protection of morals may be invoked by States as a ground for imposing restrictions on the right to Freedom of Peaceful Assembly. In practice, however, the protection of morals should rarely, if ever, be regarded as an appropriate basis for imposing restrictions on Freedom of Peaceful Assembly.[[19]](#footnote-19) As the UN Human Rights Committee has noted, ‘the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations [...] for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition […] Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.’ Although draft para. 52 states that “restrictions on peaceful assemblies should only exceptionally be imposed for “the protection of morals”, it would be helpful to offer some examples of potential instances when morality might be invoked. In case if appropriate examples cannot be identified, it is suggested to use a stronger statement to the effect that in practice morality should not be invoked as a ground for restriction as this would hardly satisfy requirements of the Covenant.

**Para. 54.**

It is suggested to delete “in principle” in the second sentence of the para, as it allows too wide a discretion for the state. It also seems to undermine the important message in the last sentence of this para, which underscores the important aim to allow for advancement

of ideas.

**Para. 57**

It is suggested to maintain the bracketed language in the second sentence of para. 57 and thus provide that only assemblies which in their entirety fall under Article 20 ICCPR, should be prohibited.

Furthermore, the last two sentences of the para. require clarification as they seem to contradict each other. It is unclear how and what type of “action should be taken … against the individual perpetrators in case the assembly falls within the scope of Article 20 (first sentence). Presumably it is suggested that statements or actions of individual participants that fall under Article 20 should not be attributed to the entire assembly and appropriate measures should be taken against individual perpetrators rather than against entire assembly.

**Para. 58**

This para. employs the terms “restrictions” and “prohibition” in an unclear manner, sometimes interchangeably and might even be understood as if restrictions are equal to prohibition, which should not be the case.

*Blanket legal restrictions*

**Paras. 63, 64 and 66**

1. Blanket legal restrictions – for example, banning all assemblies during certain times, or from particular locations or public places which are suitable for holding assemblies –constitute excessive restrictions violating the right to Freedom of Assembly. Such restrictions imposing bans on the time or location of assemblies as a rule and then allowing exceptions to this rule invert the relationship between freedom and restrictions by turning the right to Freedom of Peaceful Assembly into a privilege.[[20]](#footnote-20) Blanket bans fail the proportionality test because they fail to differentiate between different ways of exercising the right to Freedom of Assembly and preclude any consideration of the specific circumstances of each case.[[21]](#footnote-21) Blanket bans may interfere significantly with the ability to hold assemblies within sight and sound of the intended audience. In it suggested to revisit and clarify paras. 63, 64 and 66 that time specific restrictions should be considered on a case by case basis, emphasising that general restrictions or prohibitions should not exist.[[22]](#footnote-22) Blanket bans, including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration on a case by case basis.[[23]](#footnote-23)

**Para. 70**

According to the last sentence of para. 70, regarding face coverings, “blanket bans can only be justified on an exceptional basis”. The wearing of masks and face coverings at assemblies for expressive purposes is indeed a form of communication protected by the rights to freedom of speech and assembly. It may occur in order to express particular viewpoints or religious beliefs or to protect an assembly participant from retaliation. The wearing of masks or other face coverings at a peaceful assembly should not be prohibited where there is no clear and convincing evidence of imminent violence. An individual should not be required to remove a mask unless his/her conduct creates probable cause for arrest and the face covering prevents his/her identification.[[24]](#footnote-24) Thus, blanket bans on masks and face cover, even on exceptional basis, will be intrinsically disproportionate as it does not allow case by case assessment. Therefore, it is advisable to revise the last sentence, deleting reference to the blanket bans and instead specifying that face cover restrictions may be justified in case of clear and convincing evidence of imminent violence on restrictions without giving sufficient guidance.

**Para. 71**

1. This para. should in the beginning clarify that collection of information and data by authorities can be both useful to facilitate the assembly, but also a possible means of oppression. Therefore, information gathering must strictly conform to the applicable international standards, including on the right to privacy. Furthermore, it should be made clear that this applies to the collection of data before, during and after assemblies, not only during assemblies.

**Para. 74**

1. It is suggested to mention “organizers” together with “participants” who should never bear the costs of policing or security of assembly

**Paras. 75 and 76**

This para. mixes civil/criminal responsibility and organizers/participants. It is suggested to clarify that:

*Criminal responsibility:* can only be imposed for personal behavior and not for anything committed by others if there was no personal involvement through action or incitement. Responsibility for incitement can be invoked, but not for actions others have committed due to this incitement).

*Civil responsibility:* Participants per se do not have a responsibility for damage caused by others and they do not have an obligation to make any efforts to stop others.

Organizers might be responsible for reasonable efforts in the organization of the assembly, but even here the threshold should be obvious negligence; otherwise such potential liability would have a chilling effect and make people refrain from organizing assemblies.

1. It is suggested that both participants and organizers should be mentioned specifically in para 76.

**Para. 77**

1. ODIHR suggest to amend the last sentence of the para, mentioning organizers together with participants: *“*The procedural guarantees of the Covenant apply in all such cases, and also to issues such as deprivation of liberty and the imposition of sanctions, such as fines, in connection with participation in peaceful assemblies participation in *or organization of* peaceful assemblies*”.*

**Duties and powers of law enforcement agencies**

**Para. 85.**

1. “Respect and ensure” could be replaced with or expanded to “facilitate”.

**Para. 93**

It is suggested to complement the last sentence of para. 93 with the words “and thus unlawful" The sentence would read as follows: “Practices of indiscriminate mass arrest prior to, during or following an assembly, are arbitrary “*and thus unlawful*”.[[25]](#footnote-25)

**Para. 95**

Containment should not be used as a precautionary measure in case of a mere possibility of violence erupting. It should only be used if the outbreak of violence is either imminent, or to contain violent individuals in order to prevent violence from spreading.

It is therefore suggested to reformulated the first sentence of para 95 emphasizing that to “containment may only be employed to prevent violence from spreading.”

**Para. 97**

1. Dispersal must be announced to give the participants the opportunity to leave voluntarily. The inherent nature to area-weapons requires a higher threshold in terms of necessity and proportionality: As a rule, others (peaceful protesters, bystanders, and people living in the neighbourhood) should not be exposed to any harmful substances at all. To accept that risk which might have serious health consequences for the individual, a particularly high threshold is required, i.e. when violence is so widespread that it is not possible for authorities to deal with violent individuals alone. Particular caution is advised when there in confined spaces as indicated or when there are few or no escape routes.

**Para. 98**

It is important to avoid confusion between the rubber bullets and rubber-coated metal bullets. Rubber-coated metal bullets should not be treated the same as plastic bullets. United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, para. 7.5.8. refers to rubber-coated metal bullets which are extremely dangerous and should not be considered as less-lethal munition. If used at all, they should indeed only be used in situations that meet the threshold for the use of a firearm.

Plastic bullets (as well as rubber bullets), on the other hand, can serve as a less-lethal alternative to a firearm and can fulfil a legitimate law enforcement purpose, in stopping an individual engaged in violence against another person (Thus, their indiscriminate firing into the crowd should also be prohibited.) In order to enable police to intervene in situations in which harm is caused to a person but that are not (yet) serious enough to meet the threshold for the use of a firearm, plastic and rubber bullets should not be subject to the same threshold as lethal force.

**Assembly during states of emergency and armed conflict**

**Para. 110**

1. It is suggested to revisit the first sentence of the para 110, which reads that*“[c]ivilians participating in an assembly during an armed conflict are not protected from being targeted with lethal force, for such time as they are participating directly in hostilities”.* This wording suggests that it is possible to target civilians, with the caveat only in the second part.

Civilians are protected from being targeted unless they are directly participating in hostilities. The sentence should be clarified to assert that civilians should be protected from being targeted with lethal force, except in circumstances where they are participating in hostilities.

**Para. 113**

The value of this para. is limited, while being formulated in a way that it opens the door to prioritizing the rights mentioned herein and consequently to excessive restrictions and prohibitions of the right to Freedom of Assembly. It is suggested to delete or, at least, clarify that although the rights of others should be considered, they do not *per se* override the right to Freedom of Assembly.

1. *Primov v. Russia*, Application No. 17391/06, 12 June 2014, para. 135: ‘public events related to political life in the country or at the local level must enjoy strong protection …’, OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly (which is subject to editorial revisions), 3rd edition 2019, para. 12, also refers to the “public space”, however does so with an aim to confine application of the Guidelines. [↑](#footnote-ref-1)
2. *Barankevich v. Russia* (Application No 10519/03), 26 July 2007, para. 25: “The right to freedom of assembly covers both private meetings and meetings in public thoroughfares …” [↑](#footnote-ref-2)
3. Hannah Jane Parkinson, Manchester Pride is charging £71 a ticket this year, 4 February 2019, The Guardian: <https://www.theguardian.com/commentisfree/2019/feb/04/manchester-pride-2019-ticket-prices-inclusivity>.

   Another example may be a charitable events organized publicly / on public space. The European Court of Human Rights has also acknowledged that Article 11 covers assemblies ‘of an essentially social character: *Friend and Others v. UK*, (Application Nos 16072/06) and (27809/08), 24 November 2009 (admissibility), para. 50; *Huseynov v. Azerbaijan*, (Application No 59135/09), 7 May 2015, para. 91. [↑](#footnote-ref-3)
4. See, for example, *Lashmankin and Others v. Russia* (2017), para 402. Earlier statements by the Court to similar effect can be found in Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (2001), para. 77; Fáber v. Hungary, Application No 40721/08, 24 July 2012, para. 37; *Cisse v. France* (Application No. 51346/99), 9 April 2002, para. 37: “In practice, the only type of events that do not qualify as “peaceful assemblies” were those in which the organisers and participants intended to use violence.” 56 See, for example, Saghatelyan v. Armenia, Application No 23086/08, 20 September 2018, paras. 230-233; *Karpyuk and others v. Ukraine*, (Applications Nos 30582/04 and 32152/04), 6 October 2015, paras. 198-207, 224 and 234. See Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (Funding of associations and holding of peaceful assemblies), A/HRC/23/39, 24 April 2013, para. 50. See also Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (Best practices that promote and protect the rights to freedom of peaceful assembly and of association), A/HRC/20/27, 21 May 2012, para. 25. [↑](#footnote-ref-4)
5. *Countryside Alliance and Others v. United Kingdom* para. 50. See also- New York Times v. United States 403 US 413 (1971): “Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." See also, Report of the UN Special Rapporteur (2012), A/HRC/20/27, para. 16: “[the] freedom [of peaceful assembly] is to be considered the rule and its restriction the exception." This principle is reaffirmed in *ibid.* (Report of the Special Rapporteur A/HRC/23/39, para. 47. Furthermore, the European Court on Human Rights has stated in *ibid.* (*Cisse v. France*), para 37: only assemblies where the organizers and participants had violent intentions are considered non-peaceful. See also *Op. cit.* footnote 1 (OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 3rd edition)), para. 50. [↑](#footnote-ref-5)
6. *Ibid.* (OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 3rd edition), para 20 [↑](#footnote-ref-6)
7. Recommendation CM/Rec (2016) 5 of the Committee of Ministers to member States on Internet freedom (3 April 2016) para. 3 of the Annex reads (Internet freedom indicators):“3. The right to freedom of peaceful assembly and association; 3.1.  Individuals are free to use Internet platforms, such as social media and other ICTs in order to associate with each other and to establish associations, to determine the objectives of such associations, to form trade unions, and to carry out activities within the limits provided for by laws that comply with international standards. 3.2. Associations are free to use the Internet in order to exercise their right to freedom of expression and to participate in matters of political and public debate. 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. 3.4. State measures applied in the context of the exercise of the right to peaceful assembly which amount to a blocking or restriction of Internet platforms, such as social media and other ICTs, comply with Article 11 of the Convention. 3.5. Any restriction on the exercise of the right to freedom of peaceful assembly and right to freedom of association with regard to the Internet is in compliance with Article 11 of the Convention, namely it: is prescribed by a law, which is accessible, clear, unambiguous and sufficiently precise to enable individuals to regulate their conduct; pursues a legitimate aim as exhaustively enumerated in Article 11 of the Convention; is necessary in a democratic society and proportionate to the legitimate aim pursued. There is a pressing social need for the restriction. There is a fair balance between the exercise of the right to freedom of assembly and freedom of association and the interests of the society as a whole. If a less intrusive measure achieves the same goal, it is applied. The restriction is narrowly construed and applied, and does not encroach on the essence of the right to freedom of assembly and association.” [↑](#footnote-ref-7)
8. Op. cit. footnote 1 (OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 3rd edition) See also *ibid.* para. 3.3: “Individuals are free to use Internet platforms, such as social media and other information and communication technology (ICTs) in order to organise themselves for purposes of peaceful assembly.” See also: Human Rights Committee Communication No. 1838/2008, *Tulzhenkova v Belarus*, Views adopted 26 October 2011, CCPR/C/103/D/1838/2008, para. 9.3: The Human Rights Committee has stated that the circulation of publicity for an upcoming assembly cannot legitimately be penalized in the absence of a ‘specific indication of what dangers would have been created by the early distribution of the information.’ (). [↑](#footnote-ref-8)
9. 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, of 4 February 2016, para. 10: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>, See also Human Rights Council, Resolution 21/16, (October 2012), UN Doc. A/HRC/RES/21/16, and Resolution 24/5 (October 2013), UN Doc. A/HRC/RES/25/5, both entitled *The rights to freedom of peaceful assembly and of association.* [↑](#footnote-ref-9)
10. Recommendation CM/Rec (2014) 6 of the Committee of Ministers to member States on a Guide to human rights for Internet users: everyone has “the right to peacefully assemble and associate with others using the internet.” [↑](#footnote-ref-10)
11. As the ECtHR stated in *Ozgur Gundem v. Turkey* (Application No. 23144/93, 16 Mars 2000, para. 43): Genuine, effective exercise of the freedom of expression does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. [↑](#footnote-ref-11)
12. *Handyside v. the United Kingdom,* (Application no. 5493/72) 7 December 1976*,* para. 49. [↑](#footnote-ref-12)
13. See *Delfi AS v. Estonia* (Application No 64569/09), 16 June 2015; *Smajić v. Bosnia and Herzegovina*, (Application No 48657/16), January 2018. [↑](#footnote-ref-13)
14. ECtHR case of the *Christian Democratic People’s Party v. Moldova* (No.2) (2010), para. 27, the Court rejected the Moldovan government’s assertion that that the slogans, “Down with Voronin’s totalitarian regime, ‘”Down with Putin’s occupation regime)”, even when accompanied by the burning of a picture of the President of the Russian Federation and a Russian flag, amounted to calls to violently overthrow the constitutional regime, to hatred towards the Russian people, or to an instigation to a war of aggression against Russia. The Court noted that these slogans should rather “be understood as an expression of dissatisfaction and protest” – “a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova.” See also *op. cit.* 4 footnote (*Fáber v. Hungary*), para. 56 where the Court stated that: “even assuming that some demonstrators may have considered the flag as offensive, shocking, or even ‘fascist’, for the Court, its mere display was not capable of disturbing public order or hampering the exercise of the demonstrators’ right to assemble as it was neither intimidating, nor capable of inciting to violence by instilling a deep-seated and irrational hatred against identifiable persons.” [↑](#footnote-ref-14)
15. *Op. cit.* footnote 1 (OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 3rd edition), para. 230. [↑](#footnote-ref-15)
16. ICCPR, Article 26, see also: OHCHR, The rights of non-citizens (2006): <https://www.ohchr.org/Documents/Publications/noncitizensen.pdf> [↑](#footnote-ref-16)
17. 2nd and 3rd editions of the OSCE/ODIHR-Venice Commission Guidelines may serve as useful examples.

    2nd edition: … the state should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within “sight and sound” of one another;

    3rd edition: … the authorities should still seek to accommodate the different assemblies, ensuring, insofar as possible, that any alternative locations remain within sight and sound of the target audiences. [↑](#footnote-ref-17)
18. See, for example, *op. cit.* footnote 2, para. 33: “there is no indication that an evaluation of the resources necessary for neutralising the threat was part of the domestic authorities' decision-making process. Instead of considering measures which could have allowed the applicant's religious assembly to proceed peacefully, the authorities imposed a ban on it. They resorted to the most radical measure, denying the applicant the possibility of exercising his rights to freedom of religion and assembly.” [↑](#footnote-ref-18)
19. For criticism of a legislative provision relating to morality, see <<http://www.bahrainrights.org/node/208>> and <<http://hrw.org/english/docs/2006/06/08/bahrai13529.htm>>. Manfred Nowak’s *UN Covenant on Civil and Political Rights: CCPR Commentary (2nd edition),* - assemblies near or passing ‘holy locations or cemeteries’ (in relation to morality) as a particular example, p. 493. [↑](#footnote-ref-19)
20. See *Op. cit.* footnote 9 (Joint Report of the UN Special Rapporteur, A/HRC/31/66), para. 21. [↑](#footnote-ref-20)
21. See *Op. cit.* footnote 4 (Report of the UN Special Rapporteur, A/HRC/23/39)*,* para. 63: “…blanket bans, are intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peacefully assembly”. [↑](#footnote-ref-21)
22. See *Op. cit.* footnote (Joint report A/HRC/31/66), para. 30. [↑](#footnote-ref-22)
23. *Ibid*, para. 30 [↑](#footnote-ref-23)
24. *Op. cit.* footnote 1 (OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 3rd edition) para. 153. [↑](#footnote-ref-24)
25. *Op .cit.* footnote 16 (ICCPR), Article 9 [↑](#footnote-ref-25)