**Written Submission of OSCE Office for Democratic Institutions and Human Rights to the Human Rights Committee for Thematic Report of the High Commissioner for Human Rights on new technologies, and their impact on the promotion and protection of human rights in the context of assemblies**

17 October 2019

***1) Laws, policies and programmes that have been developed to address the impact of new technologies, including information and communications, technology on human rights in the context of assemblies, including peaceful protests.***

**OSCE ODIHR’s work on New Technologies and Assemblies:**

1. Freedom of peaceful assembly (FoPA) is a fundamental freedom that has been recognized as one of the foundations of a functioning democracy. OSCE participating States have committed to guaranteeing the right to freedom of assembly to every individual without discrimination (Copenhagen Document 1990, para (9.2) Paris 1990 Charter for a New Europe (preamble) and the Helsinki Statement from the OSCE Ministerial Meeting 2008). Within its mandate to support OSCE participating States in implementing their human dimension commitments, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) has developed a range of tools to assist efforts of governments and civil society towards the full enjoyment of the freedom of peaceful assembly.
2. Together with the Council of Europe’s European Commission for Democracy through Law (Venice Commission), ODIHR issued *Guidelines on Freedom of Peaceful Assembly* (Guidelines).[[1]](#footnote-1) The Guidelines refer to relevant jurisprudence, particularly the case law of the European Court of Human Rights and of national constitutional courts and examples of good national legislation and state practices. The work on third edition of the Guidelines is ongoing and is planned to be issued by the end of 2019. The upcoming edition of the guidelines will address some of the issues and questions concerning new technologies and assemblies.
3. ODIHR also provides legal reviews of draft and existing legislation of OSCE participating States upon their request. The reviews are often published in co-operation with the Venice Commission of the Council of Europe,[[2]](#footnote-2) and supported by the ODIHR Panel of Experts on Freedom of Peaceful Assembly, officially established in 2006.[[3]](#footnote-3)
4. In line with its mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been monitoring public assemblies across the OSCE space. Since 2011, ODIHR has monitored public assemblies in thirty OSCE participating States and published key findings and recommendations in regular thematic reports. Some of the findings refer to the manner in which new technologies are used to assist in the organisation of protest through the conduit of social media not only by the organisers but also by authorities.[[4]](#footnote-4)
5. Moreover, ODIHR has developed tools and offered training programmes for law enforcement officials on the human rights compliant policing of assemblies and, for civil society and OSCE field operations, on the monitoring of public assemblies.[[5]](#footnote-5) Already in 2011, the Handbook on Monitoring Assemblies (currently under revision) recognised the importance of social media stating that; *"* ***Monitoring social media:*** *It is useful to continue to monitor social networks and other forms of media in the aftermath of an assembly, to gauge people’s responses to the event and also to keep track of any follow-up activities by state bodies or other organizations.*”[[6]](#footnote-6)

***2) Effective uses of such technologies as enablers of the exercise of human rights, including peaceful protests.***

1. The Internet and social media have greatly facilitated the exercise of fundamental rights, including that of the right to freedom of peaceful assembly by stressing the right to freedom of expression, which is inextricably linked with freedom of peaceful assembly. The Internet and social media can be used to discuss, prepare, organize and publicize assemblies, as well as to jointly exercise this right.
2. Internet-based technologies play an increasingly instrumental part in the exercise of the right to FoPA and it is hard to imagine an assembly that does not involve some form of reliance on the Internet.[[7]](#footnote-7) In many areas, the Internet is accessible, cheap, fast, and borderless and has reduced the cost of communicating with others.[[8]](#footnote-8) However, the so-called ‘digital divide’ continues to exist and States are under increasing obligations to reduce it, given the importance of the Internet to everyday life[[9]](#footnote-9) and to political participation in particular.
3. The role social media in mobilisation of assemblies is increasingly pivotal to the exercise of the right to assemble. In particular, this raises the issue of the ease of organising assemblies horizontally without the need for formal organisations or organisers; and which in turn makes it easier to mobilise on short notice and without formal notification. Social media is also increasingly used during an assembly via forms of visual recording or live streaming of and from assemblies.
4. Additionally, there is increased evidence of not only organisers but also authorities using social media to co-ordinate efforts, and exchange information between authorities and organisers, in particular during large scale assemblies, such as the example already referred to above in footnote 4, (Québec G7 summit).
5. The planning and publicizing of an assembly are integral parts of the exercise of the rights to freedom of speech and assembly and should be facilitated and protected accordingly. Given the presumption in favour of peaceful assembly, organizers have the right to publicize the holding of an assembly ahead of time, both on and offline.[[10]](#footnote-10) Because of their importance in people’s everyday lives,[[11]](#footnote-11) the Internet and social media are often used to discuss, prepare, organize and publicize assemblies.[[12]](#footnote-12) Legal requirements to notify of an assembly should not impede activities remain entirely online or the planning process of assemblies taking place offline.

***3) The human rights challenges posed by interferences with the availability and use of such technologies in the context of assemblies, including peaceful protests (e.g. through network disruptions, blocking of internet services or restrictions on secure and confidential information.***

1. First and foremost, it should be re-emphasized that with reference to freedom of assembly States are *“under a stronger obligation to ensure the right with positive measures”* precisely as a result of the democratic function of the right, which is in literature, jurisprudence and practice, and indisputable fact.[[13]](#footnote-13) Indeed the Human Rights Committee (HRC) in its case law, has emphasized that “*When a State party imposes restrictions with the aim of reconciling an individual’s right to assembly and the aforementioned interests of general concern, it should be guided by the objective* ***of facilitating the right****, rather than seeking unnecessary or disproportionate limitations to it.”*[[14]](#footnote-14) Importantly, General Comment 31 [80][[15]](#footnote-15) states that the obligations of the State extend not only to the operation of its agents, but also in offering protection against acts committed by private agents and private parties. In the case of “online assemblies”, collective online actions of individuals, this may include privately-owned Internet platforms and social media networks.
2. Following this interpretation of the right under international law, it can be said that since a plethora of documents have recognised that people have “the same rights online as offline”, States shall facilitate the exercise of the right also through online means, and through providing, among others, access to the Internet, which has been recognised as essential to everyday life, and according to the European Court of Human Right – “increasingly recognized as a right”.[[16]](#footnote-16) Therefore, legislation and State policies should ensure that the Internet and social media can be used to prepare, mobilize and organize assemblies,[[17]](#footnote-17) which later take place in the street or another chosen location.
3. Indeed, States should at the very least not interfere with the new technologies used to exercise fundamental rights, through closing down access to the Internet and blocking sites. An Internet shutdown, (already practiced by States[[18]](#footnote-18)), whether whole or partial (for example, filtering) could be considered as a blanket ban, not only with respect to the right to freedom expression but on the right to freedom of assembly (including “online gatherings”) - which would not meet the demands of the permissible limitations set out in Article 19 and Article 21 of the ICCPR. It has been said in the context of the freedom of expression[[19]](#footnote-19) and would thus, equally apply to the freedom of assembly[[20]](#footnote-20) that “*Filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law”* .[[21]](#footnote-21)
4. Owing to the above, States should also bear in mind that the more general the ban (shutdown, filtering), the less likely it is to really respond to a pressing social need[[22]](#footnote-22) for it to be introduced, even for the purposes of national security. It is considered that such a drastic measure would only be available to States under the extremely limited circumstances permitted based on official derogation, and here, the livelihood of the entire country (as opposed to one political group in power) would have to be at stake. States should therefore, ensure that Internet access is maintained at all times, including during times of political unrest.[[23]](#footnote-23)
5. Furthermore, the question posed requires consideration of the role of Internet Service Providers (ISP),[[24]](#footnote-24) which can be described as follows:

States have the ultimate obligation to protect human rights, the obligations to respect, protect and fulfil, extend also to acts committed by third parties,[[25]](#footnote-25) which in this case also means, ISPs,[[26]](#footnote-26) which, while privately owned companies, host the publicly available space for expression and assembly.

1. States should therefore ensure that self-regulation by ISPs does not lead to a censorship of content, which would not ordinarily be permissible and acceptable in a democratic society. This also applies to assemblies expressing views that may ‘offend, shock or disturb’ the State or any sector of the population[[27]](#footnote-27) for as long as they do not incite violence.[[28]](#footnote-28) As well as ensure that these ISPs do not interfere with the message sought to be conveyed by the expression and/or assembly, through catch-all algorithms or unwarranted take down of content. On the other hand, ISPs may, in some jurisdictions, be held accountable when they do not react to or remove content or expression, which amounts to an incitement to violence or hate speech.[[29]](#footnote-29) States’ authorities regularly request information on the online activity of persons and groups from social media platforms, for example, Facebook received 322,923 such requests in 2018 alone.[[30]](#footnote-30) In this regard, ISPs should also respect and protect the privacy of users, and should not be compelled by the State to divulge information thereon without a court order.
2. Last but not least, States should themselves refrain from interfering with content of the message of the assembly through laws which affect online content. For instance, approximately, 52 nations including France, Russia, Denmark, Singapore, Egypt, and Brazil have laws against fake news. Some of these laws could serve to limit dissent and encourage support for controversial government policies, while others will serve to preserve truth in media.[[31]](#footnote-31) Indeed, it can be easily seen how the content of the message conveyed by an assembly, which is at the core of the right, could be affected. Furthermore, as illustrated by the Special Rapporteur on Freedom of Peaceful Assembly and Association, in his recent report,[[32]](#footnote-32) cybercrime laws, anti-terrorism laws, surveillance laws (in addition to ‘fake news’ laws and freedom of assembly laws) could impinge on the right to exercise freedom of assembly online.

***4) The human rights challenges posed by the new technologies, including information and communications technology, in the context of assemblies, including peaceful protests (surveillance and monitoring tools by the authorities, including biometrics-based recognition technology to identify protestors).***

1. While the benefits of amplifying the message of assemblies through technology are numerous, the same technology can also be used against protesters who use it to co-ordinate their efforts. Traditional assemblies, allow participants if they so desire, a certain level of anonymity or at least a smaller likelihood of being ‘singled out’ or identified – due to the presence of other people. However, the use of new technologies does not always offer the same due to the availability of surveillance and tracking tools by the State or third parties.
2. The use and abuse of surveillance tools has been an area of growing concern for human rights, since the technologies themselves appeared. In May 2019, the UN Special Rapporteur on Freedom of Opinion and Expression, issued a special Report on “Surveillance and Human Rights”,[[33]](#footnote-33) which while focusing on the individual freedom of expression, calls for a moratorium on the sale of surveillance tools to States, until such time as adequate legal safeguards can be put in place. The Special Rapporteur expressed grave concerns at the uncontrolled nature of the surveillance tools industry, and given that the freedom of expression in inextricably linked with the right to peaceful assembly, consideration should be given to this report, in the context of assemblies, in general, as States should refrain from using surveillance tools to track (or less still, persecute) persons taking part in assemblies and protest actions. Such technologies include facial recognition tools, surveillance of Internet portals and social media sites used by activists and identification of a person’s whereabouts through location tracking (to establish attendance at a demonstration or rally). Such tools should only be employed where such interference can be justified based on strictly proven and proportional grounds of national security or public order and should be subject to judicial review.
3. In general, intrusive overt or covert surveillance methods should only be applied where there is clear evidence that imminent unlawful activities, such as violence or use of firearms are planned to take place during an assembly.[[34]](#footnote-34)
4. Digital images of organizers and participants in an assembly should not be recorded except where specifically authorized by law and necessary in cases where there is probable cause to believe that the planners, organizers or participants will engage in serious unlawful activity. The use of image recording for the purpose of identification (including facial recognition software)[[35]](#footnote-35) should be confined to those circumstances where criminal offences are actually taking place, or where there is a reasonable suspicion of imminent criminal behaviour. In all situations, there should be adequate safeguards against abuse.[[36]](#footnote-36) The taking and retention of digital imagery for purposes of identifying persons engaged in lawful activities, or the retention of data extracted from such images (such as details of an individual’s presence at an assembly) in a permanent or systematic record may give rise to violations of the right to privacy.[[37]](#footnote-37)
5. Moreover, the use of digital image recording devices by law enforcement officers during a public assembly may have a ‘chilling effect’ on freedom of peaceful assembly and curtail the exercise of this right.[[38]](#footnote-38) Laws, and policies of law enforcement agencies should codify operating procedures relating to digital recording at public assemblies, including a description of the (lawful and legitimate) purposes for and the circumstances in which such activities may take place, and procedures and policies for the retention and processing of resulting data.[[39]](#footnote-39) The information obtained in this manner should be destroyed after a reasonable period set out in law.[[40]](#footnote-40)

***5) The impact on human rights of the use of new less-lethal weapons and ammunition technology in the context of assemblies including peaceful protest***

1. As emphasized above, new technology of any kind can be used both to enhance and limit the right to peaceful assembly. Law enforcement officials must at all times respect human rights in their professional capacity.[[41]](#footnote-41) It is recognized that the use of force may be warranted during assemblies depending on the situation.[[42]](#footnote-42) Furthermore, there is an absolute ban (*jus cogens*) on torture, cruel and degrading treatment.[[43]](#footnote-43)
2. It can be an advantage that the increasing availability of various less lethal weapons can lead to greater restraint in the use of firearms and allow for graduated use of force, even if this depends on the context and the specific weapon. On the other hand less lethal weapons may by definition be lethal or may lead to serious injuries. Such risks will vary in the context of its use, and the vulnerabilities of the persons against whom they are used; bystanders may also be affected if the weapons are hard to direct at one person at the time.[[44]](#footnote-44)
3. Law enforcement officials should only resort to the use of force in line with the principles of exceptionality, proportionality and necessity, and they should differentiate between individuals engaged in violence and those who wish to assemble peacefully. These principles also apply to less-lethal weapons. Use of forceful methods of crowd control, including attenuated energy projectiles (AEPs), baton rounds or plastic/rubber bullets must be strictly regulated.[[45]](#footnote-45) ODIHR recommends to participating States to ensure that law enforcement officials are adequately trained, resourced and equipped (including with less lethal technologies) so as to best enable differentiated and proportionate use of force in the context of policing assemblies.[[46]](#footnote-46)

1. OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition (2010), available here: <http://www.osce.org/odihr/73405> [↑](#footnote-ref-1)
2. All reviews can be found here: <http://www.legislationline.org/topics/topic/15> [↑](#footnote-ref-2)
3. Factsheet: <https://www.osce.org/odihr/41784?download=true> [↑](#footnote-ref-3)
4. For example OSCE ODIHR Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2017–June 2018) ; Para 187 states that in Quebec, Canada, *“Police services from the so-called Integrated Security Unit (formed for the purposes of the facilitation of the G7 Summit) shared information on* ***social media*** *before the planned protests and formed partnerships with conventional media to ensure that relevant messages could be conveyed*” and para 346 stating that “ *The Integrated Security Unit in Canada supported the work of journalists by holding information and technical briefings, establishing special telephone lines and* ***social media accounts*** *to facilitate media inquiries and granting accreditation to provide access to designated Summit sites”* https://www.osce.org/odihr/430793?download=true [↑](#footnote-ref-4)
5. Handbook on Monitoring Freedom of Peaceful Assembly in 2011, <http://www.osce.org/odihr/82979?download=true>. [↑](#footnote-ref-5)
6. Ibid, page 54 [↑](#footnote-ref-6)
7. W L Youmans, J C York, “Social Media and the Activist Toolkit: User Agreements, Corporate Interests and the Information Infrastructure of Modern Social Movements”, *Journal of Communication* Vol. 62, 2012, p 315. In *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017), the US Supreme Court analogized the internet to the “essential venues for public gatherings.” [↑](#footnote-ref-7)
8. Jonathon Zittrain, “Ubiquitous human computing”, *Philosophical Transactions of the Royal Society A* Vol. 366 No.188, 2008 pp. 3813-3821. [↑](#footnote-ref-8)
9. *Kalda v. Estonia* (2016), Application No 17429/10, 19 January 2016, para. 52, where the Court explicitly recognized the importance of the Internet for the enjoyment of a range of human rights. “The Court cannot overlook the fact that in a number of Council of Europe and other international instruments the public-service value of the Internet and its importance for the enjoyment of a range of human rights has been recognised. Internet access has increasingly been understood as a right, and calls have been made to develop effective policies to attain universal access to the Internet and to overcome the “digital divide”…The Court considers that these developments reflect the important role the Internet plays in people’s everyday lives.” [↑](#footnote-ref-9)
10. UN Human Rights Committee Views (on the merits): *Tulzhenkova v. Belarus* (1226/03) 26 October 2011, CCPR/C/103/D/1838/2008, para. 9.3. The Committee stated its view 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-10)
11. *Op. cit* note 9(*Kalda v. Estonia)*, para. 52. See also *Jankovskis v. Lithuania* Application No 21575/08, 17 January 2017), para.62. [↑](#footnote-ref-11)
12. Recommendation CM/Rec (2016) 5 of the Committee of Ministers to member States on Internet freedom (13 April 2016), para. 3.3: “Individuals are free to use Internet platforms, such as social media and other ICTs in order to organise themselves for purposes of peaceful assembly.”  [↑](#footnote-ref-12)
13. M Nowak, *“U.N. Convention on Civil and Political Rights, CCPR Commentary”* 2nd revised edition, N.P.Engel, Publisher 2005, page 482 [↑](#footnote-ref-13)
14. *Sekerko v Belarus* Communication No. 1851/2008 Views adopted by the United Nations Human Rights Committee at its 109th session (14 October – 1 November 2013), CCPR/C/109/D/1851/2008, para 9.6 and *Bakur v Belarus* Communication No. 1902/2009, Views adopted by the United Nations Human Rights Committee at its 114th session (29 June-24 July 2015), CCPR/C/114/D/1902/2009, para 7.8 [↑](#footnote-ref-14)
15. General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th meeting) CCPR/C/21/Rev.1/Add. 13, para 8 [↑](#footnote-ref-15)
16. Op. cit. footnote 9 (*Kalda v. Estonia* (2016), para. 52. [↑](#footnote-ref-16)
17. Recommendation CM/Rec (2016) 5 of the Committee of Ministers to member States on Internet freedom (13 April 2016), para. 3.3: “Individuals are free to use Internet platforms, such as social media and other ICTs in order to organise themselves for purposes of peaceful assembly.”  [↑](#footnote-ref-17)
18. Egypt, January 28 to February 2, 2011, in response to the then ongoing protest the government in Tahir square, President Hosni Mubarak ordered a shutdown of all Internet access for five whole days. Source: E Galperin, *“Egypt's Internet Blackout Highlights Danger of Weak Links, Usefulness of Quick Links”* 8 February, 2011, [https://www.eff.org/deeplinks/2011/02/egypts-Internet-blackout-highlights-danger-weak](https://www.eff.org/deeplinks/2011/02/egypts-internet-blackout-highlights-danger-weak). Also, in the run up to the early presidential elections in Kazakhstan, 2019, the OSCE ODIHR long term observation mission found that, “legally prescribed sanctions, blocking of specific websites, and limited access to social networks on a daily basis, led to self-censorship and limited online political discourse.”: OSCE ODIHR International Election Observation Mission, Republic of Kazakhstan, Early Presidential Election, 9 June 2019 Statement of Preliminary Findings and Conclusions, page 2. [↑](#footnote-ref-18)
19. Please see: Joint Declaration on Freedom of Expression and responses to conflict situations  
    The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, of 4 May, 2015, in which provision 4 c. states as follows: **“*Filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law”*** [↑](#footnote-ref-19)
20. The draft General Comment Number 37 on Article 21 of the ICCPR states in draft para 38 *“In the digital age, many of these associated activities happen online or rely upon digital services. Such activities are also protected under article 21. States parties should, for example, refrain from unduly blocking Internet connectivity in relation to demonstrations. The same applies to geo-targeted or technology-specific interference or hindering of connectivity.*” [↑](#footnote-ref-20)
21. *Ibid.* [↑](#footnote-ref-21)
22. Van Dijk, Van Hoof , Van Rijn et.al.,(eds) *“Theory and Practice of the European Convention on Human Rights”* Fourth Edition, Intersentia, 2006, page 824 and C Grabenwarter, “European Convention on Human Rights Commentary”, C.H Beck, Hart, Nomos, Helbing Lichtenhan Verlag, pg 823 [↑](#footnote-ref-22)
23. see: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27, para. 79) [↑](#footnote-ref-23)
24. Para 4 of the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association states that “dominant online platforms such as Facebook, Twitter and YouTube have become the gatekeepers to people’s ability to enjoy the rights of peaceful assembly and of association, wielding enormous power over whether individuals and civil society actors can access and participate in the democratic space” A/HRC/41/41, 17 May 2019. [↑](#footnote-ref-24)
25. The UN Guiding Principles on Business and Human Rights (UN Office of the High Commissioner on Human Rights, New York and Geneva, HR/PUB/11/04, 2011), Section II, Available here: <https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf>. See also Report of the Special Rapporteur on Assembly and Association (A/HRC/41/41, 17 May 2019), section III. B . [↑](#footnote-ref-25)
26. Appendix to Recommendation CM/Rec(2018)2 Guidelines for States on actions to be taken vis-à-vis internet intermediaries with due regard to their roles and responsibilities 1. Obligations of States with respect to the protection and promotion of human rights and fundamental freedoms in the digital environment, which states that “1.1.3. States have the ultimate obligation to protect human rights and fundamental freedoms in the digital environment. All regulatory frameworks, including self- or co-regulatory approaches, should include effective oversight mechanisms to comply with that obligation and be accompanied by appropriate redress opportunities” [↑](#footnote-ref-26)
27. *Handyside v. The United Kingdom* (*The United Kingdom*, Application no. 5493/72, 7 December 1976, para. 49. [↑](#footnote-ref-27)
28. 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-28)
29. *Ibid. (Delfi AS v. Estonia* Application No 64569/09, 16 June 2015; *Smajić v. Bosnia and Herzegovina*, Application No 48657/16, January 2018.) [↑](#footnote-ref-29)
30. Please see: <https://transparency.facebook.com/government-data-requests/country/> , where information is disaggregated by country, nature of request, and for the US the legal basis for the request (subpoena, court order, etc.) [↑](#footnote-ref-30)
31. T J. Gordon, M Todorova “Future Studies and Counterfactual Analysis”, Springer, 2019 [↑](#footnote-ref-31)
32. A/HRC/41/41, 17 May 2019 paras 33-37 [↑](#footnote-ref-32)
33. Report of the Special Rapporteur on Freedom of Opinion and Expression, A/HRC/41/35, 28 May, 2019 [↑](#footnote-ref-33)
34. Joint Report of UN Special Rapporteurs (2016), A/HRC/31/66, para. 30: “To this end, blanket bans, including bans on the exercise of the right in specific places […], are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.” [↑](#footnote-ref-34)
35. Concerns regarding the use of facial recognition software (specifically ‘Vedemo 360’) have, for example, been raised by the Hamburg Commissioner for Data Protection and Freedom of Information in relation to investigations into public order offenses during the 2017 G20 summit in Hamburg. See, for example, ‘The Hamburg Committee objects to the use of facial scans by the police’, 3 September 2018 <<http://techn4all.com/the-hamburg-committee-objects-to-the-use-of-facial-scans-by-the-police/>>; ‘Grote hält an “Videmo 360” fest’, 2 October 2018, <https://www.welt.de/print/welt\_kompakt/hamburg/article181735976/Grote-haelt-an-Videmo-360-fest.html> [↑](#footnote-ref-35)
36. See for example, Report of the UN Special Rapporteur (2011), A/HRC/17/27, paras. 61-66; [↑](#footnote-ref-36)
37. The existence of a reasonable expectation of privacy is a significant, though not conclusive, factor in determining whether the right to private and family life protected by Article 8 ECHR is, in fact, engaged. See *P.G and J.H. v. United Kingdo*m, Application no. 44787/98, 25 September 2001, para. 57. At the same time, a person’s private life *may* be engaged in circumstances outside their home or private premises. See, for example, *Herbecq and Another v. Belgium*, Application nos. 32200/96 and 32201, Commission decision of 14 January 1998. In the case of *Friedl v. Austria*, Application no. 15225/89, 26 January 1995, the police photographed a participant in a public demonstration in a public place, confirmed his identity, and retained a record of his details. They did so only after requesting that the demonstrators disperse, and the European Commission held that the photographing did not constitute an infringement of Article 8. On the other hand, warrantless electronic monitoring of genuinely private activities violates the right not to be subjected to arbitrary searches and seizures; see *United States v. Jones*, \_\_U.S. \_\_, 132 S.Ct. 935 (2012) (stating that the GPS monitoring of an individual’s movement constitutes search and seizure governed by guarantees against unreasonable searches and seizures). In the case of *Amann v. Switzerland,* Application No 27798/95, 16 February 2000), paras.65-67, the compilation of data by security services was held to constitute an interference with the applicants’ private lives despite the fact that covert surveillance methods were not used. See also the UK case of *Wood v. MPC* [2009] EWCA Civ 414. See also the European Commission on Human Rights in *Friedl v. Austria* , Application No 15225/89, Commission decision of 31 January 1995, cited in the judgment (see above) regarding the *use* of photographs. [↑](#footnote-ref-37)
38. Joint report of the UN Special Rapporteurs (2016), UN Doc. A/HRC/31/66, para. 76. [↑](#footnote-ref-38)
39. *Ibid*, para. 78. [↑](#footnote-ref-39)
40. *Ibid*. [↑](#footnote-ref-40)
41. Article 2, United Nations General Assembly - Code of Conduct for Law Enforcement Officials. [↑](#footnote-ref-41)
42. Principle 4, Basic Principles on the use of Force and Firearms by Law Enforcement Officials [↑](#footnote-ref-42)
43. See e.g. International Court of Justice, Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgment of 30 November 2010, para. 87. [↑](#footnote-ref-43)
44. Report to the UN General Assembly of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/69/265, Section IV. [↑](#footnote-ref-44)
45. *Op. cit.* footnote 1 para. 176, and Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2017–June 2018), paras. 243-245). [↑](#footnote-ref-45)
46. *Ibid. (*Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States), p. 15. [↑](#footnote-ref-46)