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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS**

**ON THE OSCE/ODIHR GUIDELINES FOR DRAFTING LAWS  
PERTAINING TO FREEDOM OF ASSEMBLY**

**by**

**Ms Finola FLANAGAN (Member, Ireland)**

1. These Guidelines are for use of practitioners in the preparation of legislation pertaining to freedom of assembly. In that regard they are useful checklist and a description of the law in the OSCE region on this fundamental right. It sets out in some detail the issues that typically arise in relation to such legislation and the application of the law having regard to the European Convention on Human Rights and its jurisprudence and the International Covenant on Economic, Social and Cultural Rights and the jurisprudence of the UN Human Rights Committee. The detail of the Guidelines illustrate that whilst it is easy to state the fundamental principle – “everyone has the right to freedom of peaceful assembly” - it is much less easy to create a proper balance of restrictions or limitations on the exercise of the right, whilst at the same time respecting the basic right. This presents particular difficulty for both lawmakers and law-enforcers. For this reason the Guidelines are to be welcomed.
2. I refer to the comments of Professor Malinverni and agree fully with these. I would make the following additional comments.
3. At paragraph 1 the Guidelines correctly state that parties to the ECHR undertake to secure the fundamental rights and freedoms set out in the Convention to everyone within their jurisdiction. The Guidelines acknowledge at paragraph 2 that “[the] approach to the form of the regulation of the right to freedom of assembly varies greatly across the OSCE space”. The Guidelines state and that there exists “a variety of models from adopting a specific law to govern the exercise of this fundamental right to introducing provisions concerning public assemblies across a diverse array of relevant legislation, most importantly, acts pertaining to the police in general administrative law.”
4. The Guidelines expressly recommend at paragraph 2 that the state adopt a specific law regulating the exercise of the right of freedom of assembly. They comment that this approach is better suited to ensure overall consistency and transparency of the legislative framework “...since it establishes a clear hierarchy of legislation. Following the *lex specialis* rule, norms contained in the specific act would step in to replace the norms established elsewhere in the case of conflict.”
5. Whilst very many States do indeed enact specific legislation governing assemblies, it is perhaps excessively prescriptive to recommend that this be done. It is a very interesting question to ask whether it is necessary or desirable to regulate the exercise of the freedom of assembly through a specific law, and if so, to what extent the exercise of fundamental rights and freedoms, including the right of assembly, should be governed in principle primarily by the Constitution. These fundamental rights should, insofar as possible, be allowed to be exercised without regulation except where their exercise would pose a threat to public order and where necessity would demand state intervention. A legislative basis for any interference with fundamental rights, such as the right of peaceful assembly, is required by the Convention. The requirement that the restrictions must be “prescribed by law” means that they must be enunciated with sufficient precision that a person can regulate his or her conduct in order to obviate arbitrary prohibition.

6. It is not essential for a State to enact a specific law on public events and assemblies. Control of such events may be left to general policing and the rights in relation to them may be subject to the general administrative law. This approach can be adopted perfectly satisfactorily. In Ireland, for example, no system requiring prior notification or consent from the police or anyone else to hold public meetings exists, although organisers will generally notify the appropriate local police station. The general criminal and civil law is applied. Nonetheless, States may decide to enact laws specifically regulating freedom of assembly.
7. A danger that exists when enacting legislation in relation to fundamental rights is that an excessively regulatory, bureaucratic system is designed which seeks to prescribe for all matters and which may operate to inhibit the right. Such laws sometimes seek to create an extensive range of restrictions which are not linked to the list of permissible reasons set out in the conventions. Using the general law may in appropriate circumstances provide a suitable means for meeting the requirements of the international conventions.