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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

ON THE VENICE COMMISSION-OSCE/ODIHR GUIDELINES

ON FREEDOM OF PEACEFUL ASSEMBLY

(2ND EDITION)

by

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OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly
(2nd edition)

1. OSCE/ODIHR produced the first edition of these Guidelines in 2007. This edition updates them but retains the original format. Section A is a short chapter containing the Guidelines themselves. Section B contains Interpretative Notes which contains the key provisions in international treaties, an elaboration of the seven Guiding Principles contained in Section A and a comprehensive up-to-date statement, together with examples of good practice, of all aspects of the freedom. Part I of the Interpretative Notes focuses on the parameters of the freedom and the drafting of legislation which is consistent with international human rights standards. Part II deals with the implementation of the freedom which must also meet exacting standards.¹ There are extensive *Endnotes* which have been updated referencing case law, international conventions, commentary and other relevant material. The Guidelines and Interpretative Notes will therefore be of practical use to legislators, governments, practitioners, law-enforcement officials, organisers and others with an interest in the area. In fact, the Guidelines are frequently referred to in Venice Commission opinions.
2. I attended the Expert Panel's meeting in Warsaw in February 2010 on behalf of the Venice Commission and contributed to an examination of the text.
3. Much of the material in the revised Guidelines is the same as that in the first edition. The revised Guidelines update and expand it in the light of new case law, newly described principles and comments received by the Expert Panel. Examples of additions to the text in Section A are paragraphs 4.4 and 4.5 which add text on *Counter-demonstrations* and *Decision-making and Review* and paragraph 5.5 of the Guidelines which sets out the requirement for regulatory authorities to comply with their legal obligations and to be accountable for their failure to do so and paragraph 50 which refers to the recently formulated *Yogyakarta Principles* on the application of human rights law to sexual orientation and gender identity.
4. A new principle has been added to the six *Guiding Principles* in the 2007 edition². This is that there should be a right to review and appeal the substance of any restrictions or prohibitions on an assembly. This is an important addition to the Guiding Principles and will assist in ensuring the inclusion to these rights in national legislation.
5. The Guidelines have been revised in places to introduce increased emphasis in relation to certain matters. An example is to be found in Chapter 4 of the revised Interpretative Notes entitled *Restrictions on Freedom of Assembly*. Paragraphs 96-100 introduce new material on *Content-based restrictions* and the rule that in general regulation of public assemblies should not be based upon the content of the message they seek to communicate. Other indirect interferences which might undermine the right of assembly are addressed – restrictions on the right to freedom of association (paragraph 107) or freedom of movement (paragraph 108). Under *Procedural Issues* – Chapter 5, *Counter-demonstrations* are addressed (paragraphs 124-125) under a new heading separate from *Simultaneous assemblies*

¹ Paragraph 142.

² The other Guiding Principles are: 1) Presumption in favour of holding assemblies; 1) The State's positive obligation to facilitate and protect peaceful assembly; 3) Legality; 4) Proportionality; 5) Non-discrimination; 6) Good administration.

(paragraph 123) and the material on *Spontaneous assemblies* (paragraphs 127-132) is expanded.

6. In Part II which deals with *Implementing, the Rights and responsibilities of Law Enforcement Officials* retains its original format and has been updated with new material. This is welcome particularly since several Venice Commission opinions have emphasised the importance of the role of the police and their approach of facilitating exercise of the freedom and the need for training. New material on *Strategies of crowd control that rely on containment* (paragraph 157) is introduced and on the limits on law enforcement officials' power to stop, search and detain protesters *en route* to an assembly (paragraph 154). The importance of monitoring and the freedom on the part of the media and others in civil society to do so is addressed in an expanded way in Chapter 8.

7. The revised version of the *Guidelines on freedom of Peaceful Assembly* is to be welcomed. The *Guidelines* are widely used as a reference in practice and in commentary and, indeed, in case law for the standards applicable in relation to freedom of assembly. It is important that they be regularly revised and updated.