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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMPILATION

OF VENICE COMMISSION OPINIONS

CONCERNING FREEDOM OF ASSEMBLY[1]

(revised July 2014)

[1] *This document will be updated regularly. This version contains all opinions and reports/studies adopted up to and including the Venice Commission's 99th Plenary Session (13-14 June 2014)*

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1. INTRODUCTION

The present document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning the Freedom of Assembly. The aim of this compilation is to give an overview of the doctrine of the Venice Commission in this field.

This compilation is intended to serve as a source of reference for drafters of constitutions and of legislation relating to freedom of peaceful assembly, researchers as well as Venice Commission members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. It merely provides a frame of reference.

This compilation is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.

The compilation is not a static document and will continue to be regularly updated with extracts of newly adopted opinions or reports/studies by the Venice Commission.

Each opinion referred to in the present document relate to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

Venice Commission reports and studies quoted in this Compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the wider text adopted by the Venice Commission from which it was taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the opinion or report/study from which it was taken. In order to shorten the text, most of further references and footnotes are omitted in the text of citations; only the essential part of the relevant paragraph is reproduced.

Venice Commission opinions may change or develop over time as new opinions are given and new experiences acquired. Therefore, to have a full understanding of the Venice Commission's position, it would be important to read the entire Compilation under a particular theme.

Please kindly inform the Venice Commission's Secretariat if you think that a citation is missing, superfluous or filed under an incorrect heading (Venice@coe.int).

2. DEFINITION OF ASSEMBLY – PEACEFUL ASSEMBLY

"Freedom of assembly – as elaborated in human rights case law – is viewed as a fundamental democratic right, which should not be interpreted restrictively and which covers all types of peaceful expressive gathering, whether public or private."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §22
> See also
> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the right of citizens to assemble peaceably, without Weapons, to freely hold rallies and demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §8;
> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6;
> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §7;
> CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §8;
> CDL-AD(2004)039, Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §8;
> CDL-AD(2006)03,3 Joint Opinion on the Draft Law on Peaceful Assemblies in Ukraine by the Venice Commission and OSCE/ODIHR, §10

"To be consistent with international standards, the law would need to provide for a general definition of an assembly, supplementing it by definitions of individual types of public events only insofar as these require differential regulatory treatment (such as may be the case with static events, such as a rally or a picket, and dynamic ones, such as a procession)."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §17
> See also
> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §12;
> CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine , by the Venice Commission and OSCE/ODIHR, §15-17;
> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §§18 et seq.

"Article 11 of the ECHR protects freedom of assembly, however, only freedom of peaceful assembly is guaranteed. Although the state is given a wide margin of appreciation in order to deal with disorder or crime or to protect the rights and freedoms of others, this freedom is fundamental and presents such an essential element of a democracy that it cannot be restricted unless the persons exercising it have committed a reprehensible act. It is a positive obligation of the state to guarantee the effective exercise of the freedom of assembly."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §28.

"A definition of the term "public assembly" should thus usefully focus on traditional criteria such as a certain number of individuals with a local connection and a common expressive purpose."

> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §30.

"The scope of the act should cover public assemblies which take place on public space that being, space that is generally freely accessible to the public."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, Q

"The Venice Commission and OSCE/ODIHR wish to recall that the right to peaceful assembly should not be interpreted restrictively and any restrictions should be construed narrowly, and that in general, rights must be "practical and effective" not "theoretical or illusory."

CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §10

"The scope of protection afforded by the Belarusian Constitution in the above provision is relatively narrow. The right to freedom of assembly in the Constitution is not formulated in such manner as to guarantee first and foremost this right as an essential cornerstone of a democratic society, but rather as recognizing assemblies and other forms of public gatherings within strict legal limits. Such a restrictive formulation of a fundamental right amounts to a limitation if measured by international standards."

CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §48; see also §54

"The right of assembly covers all types of gathering including assemblies and meetings, demonstrations, marches and processions whether public or private provided they are 'peaceful'. Furthermore, 'an assembly' can be a less formal grouping and for a less defined purpose than is contained in these basic definitions and 'it is also an essential part of the activities of political parties in the conduct of elections'."

CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §18
See also
CDL-AD(2004)039, Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §9

"The most important type of public assemblies are those called peaceful assemblies and public protests."

CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §26

"[…] It is recommended that events organized by public authorities (government agencies or self-government bodies) be removed from the scope of the Draft Law. It should be noted in this respect that executive or local self-government bodies as entities cannot be participants of public assemblies covered by this law."

CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §23

"The […] Law shall not apply to cultural and sport events, weddings, family and friendly celebrations, funeral rites, religious ceremonies […]. These exceptions are consistent with the idea of assemblies under Article 11 ECHR that does not include assemblies for social purposes."

CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §14

"It is also important that a common understanding of what constitutes a 'non-public' assembly is established between the authorities and the public so that the events not subject to regulation are precisely defined, and that the potential for conflicting interpretations is reduced. This provision should not be viewed as exclusion of celebrations, rites or cultural events: the Draft Law should cover them in those cases when these activities are held for expressive purposes. For instance, this Draft Law should be applicable to a religious mass held in a public park to celebrate Christmas, where participation was open to all even though it is a rite."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §22

"Commercial and other activities which are not covered by freedom of expression should not be included in the Act but rather be subject of greater regulation than public assemblies."

> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §15

"A specific law should not be necessary to regulate assemblies in an election period. On the contrary, the general law on assemblies should cover assemblies associated with election campaigns, an integral part of which is the organization of public events. Indeed, the exercise of the freedom to peacefully assemble typically increases in the context of elections when opposing political parties, as well as other groups and organizations, wish to publicize their views."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §20
> See also
> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §41;
> CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §20

"According to the OSCE/ODIHR-Venice Commission Guidelines, not only citizens, but also foreign nationals and stateless persons may be participants in, and organizers of an assembly. International human rights law requires that non-nationals have the right to peaceful assembly. Thus, the reference to 'the limits of their rights and freedoms provided for in the legislation of the Republic of Belarus' must be clarified and aligned with international and European standards on the matter".

> CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §57

2.1. Spontaneous assemblies

"[…] The Venice Commission and OSCE/ODIHR wish to stress that the ability to respond peacefully and immediately (spontaneously) to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. Spontaneous events should be regarded as an expectable feature of a healthy democracy. As such the authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature."

> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §36

"Spontaneous assemblies by definition are not notified in advance since they generally arise in response to some occurrence which could not have been reasonably anticipated."

CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §36
See also
CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §23;
CDL-AD(2006)033, Joint Opinion on the Draft Law on Peaceful Assemblies in Ukraine by the Venice Commission and OSCE/ODIHR, §32;
CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §72

"In relation in particular to the possibility of *announcing* a spontaneous assembly, the Venice Commission and ODIHR recall that, in order for an assembly to be genuinely a 'spontaneous' one, there must be a close temporal relationship between the event ('phenomenon or happening') which stimulates the assembly and the assembly itself."

CDL-AD(2008)020, Joint Opinion on the Draft Law Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §17

"Such assemblies are required to be permitted and are to be regarded as an expectable, rather than an exceptional, feature of a healthy democracy. Whether an assembly is 'spontaneous' or 'urgent' will depend on its own facts. In principle, so long as an assembly is peaceful in nature it should be permitted."

CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on assemblies of the Republic Armenia by the Venice Commission and OSCE/ODIHR, §62

"The definition would benefit from stating the essence of a spontaneous assembly as being one which cannot be notified and which would not achieve its aim if it were to adhere to notification requirements."

CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §26

"It should be made clear that spontaneous assemblies do not require an organiser."

CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §38

"The inclusion of definitions for, and the explicit protection of, simultaneous, counter- and spontaneous assemblies, has already been welcomed. The protection of these types of assembly is essential for the functioning of modern democracies. If there is, however, an evidenced risk of imminent unlawful conduct, the courts and/or law enforcement officials must be entitled to find ways to minimize such risk."

CDL-AD(2011)031, Joint opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR, §71

"The Venice Commission agrees, in general, that provision for a timeframe for the notification of public events may be helpful as it enables the authorities to take reasonable and appropriate measures in order to guarantee their smooth conduct. It recalls however that there may be cases in which a public event is organised as an urgent or spontaneous response to an

unpredicted event, in which case it may not be possible to respect the ordinary timeframe for notification. Spontaneous and urgent assemblies are protected by Article 11 ECHR."

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §37

2.2. Counter-demonstrations

"[…] Counter-demonstrations […] is when persons exercise their right to assemble to express their disagreement with the views expressed in another assembly."

> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §22

"The necessity for counter-demonstrators to find an alternative location should however only be limited to 'exceptional cases', when the risk of violence is 'serious' and the police authorities cannot handle the situation."

> CDL-AD(2007)042, Opinion on the Draft Amendments to the Law on Freedom of Assembly of Azerbaijan, §22

"The right to counter-demonstrate should only be limited in connection with genuine security or public order consideration."

> CDL-AD(2005)007, Opinion on the Draft Law making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §20

"[…] Thus, persons have a right to assemble as counterdemonstrators to express their disagreement with the views expressed by another public assembly. Indeed, in such a case, there is a possibility of disruption of an assembly by a counter-demonstration, and it is the state's positive obligation to prevent disruption of the event, against which counter-demonstrations are organized. Where possible, the authorities should take measures to ensure all assemblies can take place, rather than use the notification of simultaneous events as a justification of imposing automatic restrictions and prohibitions. Furthermore, the state has a positive obligation to provide adequate policing to facilitate counter-demonstrations within sight and sound of one another."

> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §53

"[…] It should be noted that the installation of temporary fences, currently prohibited by Article 22 para. 4, is a widely used police tactic to help manage and control crowds, and indeed, such tools can actually assist in the facilitation and protection of the right to freedom of assembly (for example, when used to separate potentially violent counter-demonstrators from a controversial assembly, whilst still enabling the two demonstrations to take place in close proximity). This provision may thus be reconsidered."

> CDL-AD(2011)031, Joint opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR, §71

2.3. Simultaneous assemblies

"The Guidelines explicitly provide that where notification is given for two or more assemblies at the same place and time, they should all be permitted and facilitated as much as possible, notwithstanding who submitted the notification first and how close to each other they plan to gather. This owes also to the fact that all persons and groups have an equal right to be present in public places to express their views."

> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §53

"Concerning simultaneous assemblies, it is the 'first come, first served' rule that is used in the Draft Law. This is consistent with international human rights standards and the OSCE/ODIHR-Venice Commission Guidelines, provided however that there is a lack of sufficient policing resources to manage both meetings, given that, as the OSCE/ODIHR – Venice Commission Guidelines point out, '*related simultaneous assemblies should be facilitated so that they occur within sight and sound of their target insofar as this does not physically interfere with the other assembly'*. A prohibition on conducting public events in the place and time of another public event would be a disproportionate response, unless there is a clear and objective indication that both events cannot be managed in an appropriate manner through the exercise of policing powers. This condition should therefore be added.

The authority shall propose that, in case of a conflict, the organizers who submitted their notification at a later date are required to choose another venue or time for their event (Article 15 paragraph 3). […]

In case of disagreement between the competent authority and the organizers on the change, it is important to provide the organizers the possibility to challenge this decision or to clarify the issue before the appropriate authorities, including in court."

> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §§36-38

"The inclusion of definitions for, and the explicit protection of, simultaneous, counter- and spontaneous assemblies, has already been welcomed. The protection of these types of assembly is essential for the functioning of modern democracies. If there is, however, an evidenced risk of imminent unlawful conduct, the courts and/or law enforcement officials must be entitled to find ways to minimize such risk."

> CDL-AD(2011)031, Joint opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR, §71

"The Commission underlines in this respect that where notification is given for more than one assembly at the same place and time, they should be facilitated as far as possible. It is a disproportionate response not to allow more than one assembly at a time as a blanket rule. It is only where it would be impossible to manage both events together using adequate policing and stewarding that it would be permissible to restrict or even move one of them. A policy described as 'separate and divide' where the same place is sought by several organisers is not permissible. Similar considerations apply for counter demonstrations."

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §39

3. REGULATION OF ASSEMBLIES

"The freedom of assembly constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment."

> CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §10
> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §5

3.1. Reference to international and European standards

"The reference to 'international treaties' is also welcomed. Concrete references to the international and European instruments on the matter (ICCPR, European Convention on Human Rights (ECHR), the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Framework Convention on the Protection of National Minorities) would be useful. Alternatively, they could be mentioned in a Preamble of the Law. Including a specific reference to article 11 of the ECHR would be particularly beneficial, either in Article 1 or in Article 5 (in the latter, a reference to §2 of article 11 ECHR would be welcomed). Such modification would help ensure that the exercise of the freedom of assembly is brought in conformity with the relevant international standards and the Constitution as interpreted in the light of article 11(2) ECHR."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §15
> See also
> CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §52

"[…] It is positive that the Draft Law clearly states the supremacy of universally recognized principles and international law, the Draft Law should also state that any restrictions to this fundamental freedom may only be imposed in accordance with the law and in pursuit of legitimate aims, and may not exceed the limits defined by international agreements."

> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §14

"As the European Court of Human Rights has reiterated in the Barankevich v. Russia judgment, '*the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of thought, conscience and religion, one of the foundations of such a society* […]. *As has been stated many times in the Court's judgments, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11* […], t*he only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a 'democratic society'* [...]. *The right to freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals participants of the assembly and by those organising it* […]. *States must refrain from applying arbitrary measures capable of interfering with the right to assemble peacefully*. […]'."

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §7

3.2. Constitutional level

"The exercise of fundamental rights and freedoms is a constitutional matter *par excellence* and, as such, should be governed in principle primarily by the Constitution."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §8
> See also
> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6;
> CDL-AD(2004)039, Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §14;
> CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §8

"Further, freedom of assembly, if regulated, shall be governed only by constitutional provisions and laws enacted by Parliament, which should be clear and accessible so that those involved are fully aware of their rights and duties. Article 1 of this Law refers to 'other' laws applicable without specifying them. However, it would be essential for this provision to be more explicit in order to safeguard the requirement of foreseeability of laws and elimination of any room for potential abuse and violation of freedom to assembly through other legislative acts."

> CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §49

"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 relevant regulation, in other words, should focus on what is forbidden rather than on what is allowed: it should be clear that all that is not forbidden is permissible, and not vice-versa."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §8
> See also:
> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6;
> CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §8;
> CDL-AD(2004)039, Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §14

"Accordingly, [in the Commission's opinion], it is not indispensable for a State to enact a specific law on public events and assemblies, as control of such evens may be left to general policing and the rights in relation to them may be subject to the general administrative law."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic, by the Venice Commission and OSCE/ODIHR, §8
> See also:
> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §7;
> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6;
> CDL-AD(2004)039, Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §16

3.3. Legislative level

"Laws specifically devoted to the right of freedom of assembly, if they are enacted, should be limited to setting out the legislative bases for permissible interferences by State authorities and regulating the system of permits without unnecessary details."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §8
> See also
> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6;
> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §7

"Since the Draft Law is supposed to be a general law governing freedom of assembly, the possibility of assemblies being governed by other unspecified laws might create the potential for abuse. Besides this, the provision might appear to undermine the requirement of foreseeability of the law."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §18

"The prohibition on the adoption of sub-statutory normative legal acts to limit the right to peaceful assembly is also positive in that this means that laws on assembly must be passed by parliament. Any further guidelines or implementing regulations should be fully in line with the law on freedom of assembly and the guarantees contained therein."

> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §20

"Any restrictions imposed must have a formal basis in the primary legislation at the national level. This legislation should also state the mandate and powers of the restricting authority. The Act itself must be sufficiently precise to enable an individual to assess their anticipated conduct in view of its compliance [or non-compliance] with the Act in question and realise possible consequences of their conduct."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §29

3.3. Title of the Law

"At the outset, the Venice Commission wishes to emphasise, as it has done on previous occasions, that this law should guarantee freedom of assembly and not merely regulate the conduct of public events. Therefore, after due amendment of the law as indicated in the present opinion, its title should include the words 'freedom of assembly'".

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §9

"The title of the Law, currently 'Public Assembly Act', should be reformulated as 'Law on the *freedom* of assembly' or 'Law on freedom of *peaceful* assembly'. An assembly must be 'peaceful' if it is to be afforded the protection guaranteed in international instruments."

> CDL-AD (2010)031, OSCE/ODIHR - Venice Commission joint Opinion on the Public Assembly Act of the Republic of Serbia, §15

"The OSCE/ODIHR and the Venice Commission, would like to note, that since that time, in their assessment of legislation on freedom of assembly, they have recommended, in relation to laws relating to assembly that they have examined, that the title be 'law on freedom of assembly'. By removing the term 'peaceful', legislation acknowledges and covers not only peaceful assemblies, but also addresses the cases where assemblies are not peaceful, or degenerate into non-peaceful assemblies. Ideally therefore, the title of the law should be amended to 'Law on Freedom of Assembly'".

> CDL-AD (2010)050, OSCE/ODIHR - Venice Commission Joint Opinion on Draft Law on Peaceful Assemblies of the Kyrgyz Republic, §19

"It is welcomed that the title of the Draft Law now correctly stands as "Law on the *freedom* of assembly."

> CDL-AD (2010)049, OSCE/ODIHR - Venice Commission Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia, §13

"The title of the Law should be modified to read 'Law on *Freedom of Assembly*' or 'Law on *Peaceful Assemblies'*. Indeed, even if the denomination of this right is 'freedom of assembly' (as in Article 11 of ECHR), only freedom of peaceful assembly (as stressed in Article 21 of the ICCPR and in accordance with the OSCE/ODIHR-Venice Commission Guidelines) is guaranteed and protected."

> CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §45

"GUIDING PRINCIPLES

National legislation governing freedom of assembly should thus clearly articulate three main principles:

- the presumption in favour of holding assemblies,
- the state's duty to protect peaceful assembly and
- proportionality."

> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §11

3.4. Presumption in favour of holding assemblies

"The Venice Commission underlines that the presumption in favour of holding assemblies is a very important notion; it is expressed in the First Guiding Principles of the OSCE/ODIHR-Venice Commission Guidelines. A corollary of this principle is that 'a broad spectrum of possible restrictions that do not interfere with the message communicated are available to the regulatory authority. As a general rule, assemblies should be facilitated within sight and sound of their targeted audiences'. This means that the Georgian regulatory authorities should not have only two options, either to accept or to refuse the holding of an assembly: when there are public order problems, they should be able to accommodate them and suggest appropriate alternatives (guided by the principle now stated in subparagraph h of Article 3) which would allow the demonstration to take place."

> CDL-AD(2010)009, Interim Opinion on the Draft Amendments to the Law on Assembly and Manifestations of Georgia by the Venice Commission and OSCE/ODIHR, §23

"The right to proceed in the absence of a well-founded objection by the authorities is a corollary of the presumption in favour of holding assemblies and is indeed central to the enjoyment of freedom of assembly."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §34

"It is indeed important that assemblies can be held with a presumption of legality so as to avoid any chilling effect on organisers and participants."

> CDL-AD(2007)042, Opinion on the Draft Amendments to the Law on Freedom of Assembly of Azerbaijan, §15

"In the opinion of the Commission, however, the Assembly Law confers too broad discretion and fails to indicate in clear terms that interferences by the executive authorities with the organisers' right to determine the format of the public even must always comply with the fundamental principles of 'presumption in favour of holding assemblies', 'proportionality' and 'non-discrimination'. Under the current law, for example, the executive authorities are empowered to transform a moving event into a static event in order to prevent mere traffic perturbations, which is not in conformity with Article 11 ECHR. As the Assembly Law itself confers on the executive authorities too broad a discretion and fails to set out the essential principles within which such discretion must be exercised, there is a high risk that judicial review may not lead to a reversal of decisions even if they are based on grounds not justified by Article 11.2 ECHR."

> CDL-AD(2012)007, Opinion on the federal law no. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing of the Russian Federation, §25

3.5. State's duty to protect peaceful assemblies

"It is the primary responsibility of the State to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §16

"The state has a positive obligation to actively protect peaceful and lawful assemblies. It may be required to intervene to secure conditions permitting the exercise of the freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. This involves arriving at a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community."

> CDL-AD(2006)033, Joint Opinion on the Draft Law on Peaceful Assemblies in Ukraine by the Venice Commission and OSCE/ODIHR, §10

3.6. Proportionality

"Proportionality is one of the key criteria that should guide the State when imposing restrictions, and which is sometimes not taken properly into account. Proportionality requires the State to adopt the least intrusive means for achieving set objectives. The legitimate interest of the State is to guarantee general interests of the community and public order on the one hand, and to

ensure the proper exercise of freedom of assembly on the other. To this effect, some positive measures are permissible in order to enable lawful demonstrations to proceed peacefully."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §29
> See also:
> CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §33

"The state may be required to intervene to secure conditions permitting the exercise of the freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. This involves arriving at a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community i.e. by applying the principle of proportionality."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §8
> See also:
> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6;
> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §7;
> CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §8

"It is recommended that a provision be included stressing the importance of the effective application of the principle of proportionality in the implementation of the law. This would ensure that any restrictions imposed on freedom of assembly would need to pass the proportionality test, that is, be considered as the least intrusive means of achieving the legitimate purpose, in order to remain permissible."

> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic, by the Venice Commission and OSCE/ODIHR, §15

"Regarding the limitation of peaceful assemblies in the interests of national security […] it is recommended to insert the term "proportionate" or "reasonable." […] This serves to underscore that the principle of proportionality continues to apply when questions of national security are raised […]."

> CDL-AD(2011)031, Joint Opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR, §38

3.7. Non-discrimination

"Freedom of peaceful assembly is to be enjoyed equally by everyone."

> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §18

"Discrimination between nationals and non-nationals should be abandoned."

> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §5

"It is important to note that the freedom to organize and participate in public assemblies must be guaranteed to nationals and non-nationals as well as stateless persons, refugees, foreign nationals, asylum seekers, people with disabilities and migrants. Illegal migrants must also have the right to exercise their freedom of peaceful assembly. It would therefore be recommended to amend this provision by using the language of the ICCPR and referring to "everyone" in this regard."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §24
> See also
> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §5;
> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §30;
> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §26

"The law does not distinguish between persons that are subject to administrative detention, persons in custody, or persons in prison by a judgment of court. It is recognized that a conviction might be combined with the deprivation of several civil rights in some legal systems, but such a deprivation of rights has to be proportionate. It cannot be qualified as proportionate at all to exclude prisoners, persons in detention or in custody from organising any event irrespective of the negative impact of a criminal offence. These persons do also have legitimate claims and interests and should also have the possibility to express their views. For sure, peaceful events organized by arrested persons might sometimes offer higher risks concerning the public order, than peaceful events organized by persons who are not arrested. However, the imprisonment itself cannot be seen as a reason to ban these persons from organising peaceful events in general. A peaceful event can be organized by several persons. It cannot be considered problematic if one of these organisers is arrested and cannot make use of his rights and duties to the full extent, because the other organisers might replace him in this regard. Therefore, it is recommended to withdraw this provision and instead [decide] upon a restriction of assemblies organized by prisoners on a case by case basis".

> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §30
> See also:
> CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §§22

"It is recommended to add a statement concerning the ability of children and other persons without full legal capacity to hold peaceful assemblies under this Draft Law."

> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §18
> See also:
> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §29

"The Venice Commission and the OSCE/ODIHR wish to recall that children also have legitimate claims and interests that may sometimes differ from those of their parents or caregivers. Since children at the age of fourteen are likely to already have a certain extent of legal capacity and intellectual maturity, obtaining a written consent of parents or caregivers should not be mandatory in all cases to enable them to act as organizers. In this light, it is recommended to delete the phrase that requires assemblies organised by juveniles under 14 years to be 'with a view of protecting his/her rights'. This potentially imposes content-based restrictions on the right to peacefully assemble, and young people should be able to organise assemblies for all manner of lawful purposes."

CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §28

"Legally incapable people should never be denied this right altogether, since in many cases the issue that they would wish to raise is not likely to be raised by any other group and they should be appropriately facilitated."

CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §29

"[…] [E]xecutive or local self-government bodies as entities cannot be participants of public assemblies covered by this law. This is distinct from individual civil servants working in the executive or in local self-government bodies, who should benefit from the right to freedom of assembly in their personal capacity."

CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §23

"Article 10.3 prohibits individuals working for internal affairs agencies to participate in peaceful assemblies. This provision is *prima facie* too broad and lends itself to the interpretation that for instance, police officers are barred from participation in an assembly even when they are off-duty. […]. If the purpose of the prohibition is to prevent improper and/or undercover surveillance of the assembly by law-enforcement officials, this should be expressly stated. Otherwise there is no reason to exclude such individuals from taking part in public assemblies in their personal capacities when such participation is not connected with the fulfilment of their professional duties."

CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §48

4. RESTRICTIONS ON FREEDOM OF ASSEMLBY

"Article 11 of the ECHR protects freedom of assembly, however, only freedom of peaceful assembly is guaranteed. Although the state is given a wide margin of appreciation in order to deal with disorder or crime or to protect the rights and freedoms of others, this freedom is fundamental and presents such an essential element of a democracy that it cannot be restricted unless the persons exercising it have committed a reprehensible act. It is a positive obligation of the state to guarantee the effective exercise of the freedom of assembly."

CDL-AD(2010)031, Joint Opinion on the Public Assembly Act of the Republic of Serbia by the Venice Commission and OSCE/ODIHR, §28
See also
CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6;
CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §8;
CDL-AD(2008)018, Joint Opinion on the Amendments of 17 March 2008 to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §17;
CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §8;
CDL-AD(2004)039, Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §10

"The state may be required to intervene to secure conditions permitting the exercise of the freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. This necessarily means that laws regulating assemblies must not in any circumstances create unjustifiable restrictions in relation to holding peaceful assemblies. Rather, the state must act in a manner calculated to allow the exercise of the freedom."

> CDL-AD(2004)039, Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §12

"Any restrictions imposed must have a formal basis in the primary legislation at the national level. This legislation should also state the mandate and powers of the restricting authority. The Act itself must be sufficiently precise to enable an individual to assess their anticipated conduct in view of its compliance [or non-compliance] with the Act in question and realise possible consequences of their conduct. The incorporation of clear definitions in domestic legislation is vital to ensuring that the Act remains easy to understand and apply."

> CDL-AD(2010)031, Joint Opinion on the Public Assembly Act of the Republic of Serbia by the Venice Commission and OSCE/ODIHR, §29

"The Venice Commission recalls that the legitimate aims as provided for in the international and European instruments, the State Constitution and the relevant legislation, are not a licence to impose restrictions, and the onus rests squarely on the authorities to substantiate any justifications for the imposing of restrictions. Reasons to justify restrictions should be relevant and sufficient as well as convincing and compelling and always based on assessment of the relevant facts."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §26

4.1. Legitimate grounds for restrictions - Content-based restrictions

"[…] Restrictions on public assemblies should not be based upon the content of the message they seek to communicate. It is especially unacceptable if the interference with the right to freedom of assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest. Any restrictions on the message of any content expressed should face heightened scrutiny and must only be imposed if there is an imminent threat of violence. Therefore, speeches and demonstrations which call for territorial changes or constitutional changes do not automatically amount to a threat to the country's territorial integrity and national security, unless the element of incitement to hatred or violence is included."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §45

"[…] It is important to mention that events aimed to make public calls to war, to incite hatred towards racial, ethnic, religious or other groups, or for other manifestly bellicose purposes would be deemed unlawful and their prohibition would be justified in the light of the requirement to balance the freedom of assembly against other human rights, including the prohibition on discrimination.

There is, however, a fine line between the degree of restriction necessary to safeguard other human rights, and an encroachment on the freedom of assembly and expression. The test is the presence of the element of violence. […] In order for the Draft Law to be consistent with the Guidelines, the text should include the reference to the 'element of violence' requirement."

CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia, by the Venice Commission and OSCE/ODIHR §§29-30
See also
CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §43;
CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §102

"It is positive that only courts are empowered to impose restrictions on assemblies and only on specific grounds listed in the law; the latter however must be interpreted in accordance with the case-law of the ECtHR. In particular, any such restriction must be based on factual, concrete and objective grounds."

CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §43

"Finally, Article 7 para. 6 suggests that the mere existence of a threat to protected interests is a sufficient ground to prohibit a peaceful assembly. However, prohibition should be a measure of last resort (as recognised in Article 22 para. 5 of the Draft Law), and a wide range of other less intrusive restrictions should first be considered. Moreover, the goal of limitations should not necessarily be to eliminate ('liquidate') the threat to protected interests, but rather to reduce them and thereby achieve a proportionate balance effected through parallel scrutiny of the different rights engaged (similarly, in Article 9 para. 2). Article 7 para. 6 could thus be reformulated to state that the court may prohibit a peaceful assembly only when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant interests."

CDL-AD(2011)031, Joint opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR, §42

4.2. Restrictions on Place, Time and Manner of holding Assemblies

"Location is therefore one of the key aspects of freedom of assembly. The privilege of the organiser to decide which location fits best for the purpose of the assembly is part of the very essence of freedom of assembly. Assemblies in public spaces should not have to give way to more routine uses of the space, as it has long been recognised that use of public space for an assembly is just as much a legitimate use as any other. Moreover, the purpose of an assembly is often closely linked to a certain location and the freedom of assembly includes the right of the assembly to take place within 'sight and sound' of its target object."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §32
See also
CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §35

"In relation to the place of an assembly, the Venice Commission and the OSCE/ODIHR also welcome the explicit reference to '*buildings*' as it recognizes that public spaces are not necessarily 'open air'. It is assumed that such buildings also include publicly owned auditoriums and stadiums often used for assembly purposes.

The possibility for an organiser to use a privately-owned or privately-rented space which is potentially accessible to everyone (a private park, for example) for an assembly is also welcomed."

CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §19-20
See also:
CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §34

"Article 4.I provides *inter alia* that peaceful assemblies 'in places which are in private ownership' shall not be regulated by the Law. Bearing in mind that the ECHR applies to all types of assembly and the OSCE/ODHIR Guidelines do not exclude that private property can be used as a venue for a public assembly, it is positive that assemblies on private property are exempted from any notification requirement as well as from all other requirements provided for in the Law. This provision shall therefore not be interpreted as prohibiting such kind of spontaneous assemblies on private property. If the assembly is peaceful it should be allowed."

CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §21

"The definition of the location appears to overlap with the definition of a public assembly *via* the criterion '*persons whose number and identity are not determined in advance'*. The location of an assembly does not necessarily go hand in hand with its private or public character. Public assemblies can be held in private properties, too."

CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §34

"Regarding the limitation of the notion of 'assembly' to gatherings of persons 'in a public place', the Venice Commission refers to its earlier comments on the need to interpret the legislation so as not to prohibit (peaceful) spontaneous assemblies held on private property."

CDL-AD(2007)042, Opinion on the Draft Amendments to the Law on Freedom of Assembly of Azerbaijan, §11

"Blanket restrictions such as a ban on assemblies in specified locations are in principle problematic since they are not in line with the principle of proportionality which requires that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference."

CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §22

"Proper restrictions on the use of public places are based on whether the assembly will actually interfere with or disrupt the designated use of a location. […] The mere possibility of an assembly causing inconvenience does not provide a justification for prohibiting it."

CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §23
See also
CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §84

"The only legitimate restriction on location of an assembly is on site of hazardous areas and facilities which are closed to the public."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, E, §36
See also:
CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §11,d;
CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §36

"It is therefore recommended that the blanket ban on assemblies in the vicinity of government institutions and courts be deleted, and the management of security risks be left to the relevant law enforcement bodies."

CDL-AD (2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §11, e
See also
CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §94;

"It is therefore recommended that the blanket restriction on assemblies close to educational or public health institutions be removed. However, due to legitimate fears of disturbance of medical care and educational process, reasonable regulation of time, place and manner is permissible so as to prevent assemblies and other speech activities that materially [interfere] with the activities in such buildings. It is recommended that such regulation be permitted on a case by case basis."

CDL-AD (2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §28

"However, mere inconvenience to the institutions mentioned in the Draft Law (schools, hospitals, prisons, courts) should not be a reason for prohibition. Using 'devices that are sources of noise etc.' should not necessarily be ground for prohibition. The assembly must genuinely interfere with the activities at such sites. In order to make one's point, some noise will almost inevitably be essential and temporary disturbance should not result in prohibition. This applies equally to state buildings and diplomatic missions as to other buildings."

CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §51

"Rather than listing premises on which public events are always prohibited or are dependent on a procedure determined by the President of the Russian [Federation] (see Article 8.4 Assembly Act), general criteria in the Assembly Act should set out in what circumstances and to what extent an assembly might pose a threat to the listed buildings or to the function carried out in them. Such criteria could then be applied to specific cases when an assembly is proposed. These criteria should be laid down in the Assembly Act itself in order to give adequate guidelines for implementing decrees. The same suggestions must be made in relation to Article 8.2.3.1 [of the] Assembly Act (concerning regulations on the procedure for holding public events at transport infrastructure sites)."

CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §34

"In conclusion, the Venice Commission stresses that it is the privilege of the organiser to decide which location fits best, as in order to have a meaningful impact, demonstrations often need to be conducted in certain specific areas in order to attract attention ('Apellwirkung', as it is called in German). Respect for the autonomy of the organizer in deciding on the place of the event should be the norm. The State has a duty to facilitate and protect peaceful assembly. The judgment of the Constitutional Court finds the law unconstitutional (CDL-REF(2013)012, page 15) […] in relation to the powers of the Russian Federation constituent entities' to establish specially designated sites but only insofar as it does not set clear statutory criteria for the executive authorities which adequately guarantee equal legal conditions for all citizens to exercise their right of assembly when deciding upon such sites. The judgment confirms that such sites are, in principle, permissible. The Venice Commission does not agree with this position.

The Venice Commission has already expressed the view that the Russian Assembly Law confers too broad discretion on the executive authorities to restrict assemblies, for instance by giving them the power to alter the format of the public event for aims (in particular the need to preserve the normal and smooth circulation of traffic and people) which go beyond the legitimate aims contained in Article 11 ECHR. The Assembly Law fails to indicate explicitly that such discretion must be exercised with due respect for the essential principles of 'presumption in favour of holding assemblies', 'proportionality' and 'non-discrimination'.

In conclusion, the Commission finds that the provision in the June 2012 amendments of specially designated places as the venues to be used as a rule for all public events will hinder rather than facilitate the exercise of the right to freedom of assembly and is therefore incompatible with international standards."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, §§42- 44

"A blanket ban on assemblies after certain hours is a disproportionate response to the risk of interference with the legitimate enjoyment of the rights of others, and it would be indeed preferable to deal with it through restrictions on the manner in which an assembly is conducted (such as the use of sound amplifiers or lighting)."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §29
> See also
> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §35

"Whilst the right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate, an 'imminent danger of a clash' should not necessarily be a reason for prohibiting one of the assemblies from taking place at the same time and in the same vicinity. Emphasis should be placed on the state's duty to protect and facilitate each event and the state should make available adequate policing resources to facilitate both to the extent possible within sight and sound of one another."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §25

"[…] All persons and groups have an equal right to be present in public places to express their views. Thus, persons have a right to assemble as counterdemonstrators to express their disagreement with the views expressed by another public assembly. Indeed, in such a case, there is a possibility of disruption of an assembly by a counter-demonstration, and it is the

state's positive obligation to prevent disruption of the event, against which counter-demonstrations are organized. Where possible, the authorities should take measures to ensure all assemblies can take place, rather than use the notification of simultaneous events as a justification of imposing automatic restrictions and prohibitions. Furthermore, the state has a positive obligation to provide adequate policing to facilitate counter-demonstrations within sight and sound of one another."

> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §53

"[…] Any restrictions placed on time and location of holding a particular assembly should pass the test of proportionality in each individual case."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, F

"It must be highlighted, that blanket legislative provisions, which ban assemblies at specific times or in particular locations, require much greater justification than restrictions on individual assemblies."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §31

"[…] Local authorities are authorised to change the time, place and route of peaceful spontaneous assemblies only in case a real threat is posed to its conduct or the safety of its participants or those in the neighbourhood. They can do this only after notifying the organizers of the reasons for such a decision. However, it is recommended that the authorities also notify the participants of the reasons why such decision was made. It is also important to provide the organizers the possibility to challenge the decision of the local authorities before the appropriate authorities, including in court."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §39

"Article 26(2) implies that candidates/parties wishing to organize a campaign event in places/venues belonging to state or municipal government, first need to receive a permission from the authorities. The Venice Commission and OSCE/ODIHR recommend that this provision be amended so that it is worded as a 'notification' rather than 'permission'."

> CDL-AD(2011)025, Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic adopted by the Council for Democratic Elections, §79

"At the outset it should be noted, that the OSCE/ODIHR and Venice Commission have consistently maintained and continue to maintain, that prisoners should not be precluded from enjoying the right to freedom of assembly. Further, while a conviction might be combined with the deprivation of several civil rights in some legal systems, such a deprivation of rights has to be proportionate. The OSCE/ODIHR and Venice Commission remain of the stance that it cannot be qualified as proportionate at all to exclude prisoners, persons in detention or in custody from organizing any event irrespective of the negative impact of a criminal offence. However, it should be acknowledged that such assemblies generate a series of special security considerations that should be taken into account and that penitentiary institutions are not places open to the public, therefore, assemblies taking

place thereon, ought be addressed in separate regulations relating to penal institutions and rights of convicted."

> CDL-AD(2011)031, Joint opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR, §19

"Article 11 further provides that people may not protect their identity by wearing masks. Such prohibition is in violation of the right to freedom of expression and also the right to personal identity, a person's manner of appearance under Article 17 of the ICCPR and Article 8 of the ECHR respectively. As stated by the OSCE/ODIHR-Venice Commission Guidelines, *'The wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited, so long as the mask or costume is not worn for the purpose of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct'."*

> CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §108

"The prohibition of the use of masks and other means of disguise, which is part of Assembly Laws of several other countries, can, in principle, be justified. However, the test of proportionality has to be applied in this field as well. The Venice Commission and OSCE/ODIHR have previously expressed the view that 'the wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited so long as the mask or costume is not worn for the purposes of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct'. In the Commission's view, a blanket ban on wearing any kind of mask at a peaceful assembly represents a disproportionate restriction of freedom of assembly."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, §28

"Participants may not carry weapons etc. (Art. 6 para. 4.2). This is adequate in order to guarantee the peaceful nature of assemblies. The prohibition against bringing or consuming alcohol (Article 6 para. 4.2 of the Assembly Act as amended) should instead be restricted to cases where there are objective and reasonable grounds for believing that the person in question has consumed alcohol and that the consumption may lead to risks of concrete violations of public order or where people, being in a state of inebriation, want to participate. In addition and importantly, the prohibition of alcohol should not be used as a justification for routine controls of all participants."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, § 29

"Pickets by one single person under the Assembly Act are exempt from notification (indeed an assembly is made up of more than two persons). New Article 7 para. 1 specifies that there must be a distance to be determined but of no more than 50 metres between single picketers. The possibility is given to the courts to declare (retrospectively) that the sum of the single picketers 'united by a single concept and overall organisation' constituted a public event. The consequences of such a decision would be that the public event has not met the applicable legal regulations, and the organisers and the participants are exposed to administrative liability.

"The Venice Commission notes in the first place that this provision makes the administrative offence dependent on the subjective assessment carried out a posteriori by a court of the unity of the concept and the common arrangement. This makes it impossible for a picketer to

anticipate whether his or her a priori lawful conduct – picketing without prior notice – will lead to an administrative offence, which is incompatible with the requirement of legality of any interference with the right to freedom of free expression as well as of assembly."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, §§ 30-31

"The Commission stresses its conviction that sanctioning as an offence – with rather heavy minimum and maximum penalties - not only the organisation of, but also 'public calls for' and 'participation in a mass simultaneous presence or movement of citizens' which have caused the almost inevitable consequences of a mass presence of people, that is any 'damage to green spaces or hindrance the movement of pedestrians or traffic or to citizens' access to dwellings or transport or social infrastructure facilities', amounts to a disproportionate interference with the right to freedom of assembly. As it stands, this provision will have deterrent effects on many events, notably creative activities using new forms of public activities and of participation in matters of public interest, including flash mobs. The freedom of assembly is not restricted to traditional forms of assemblies; the guarantee is open to new ones."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, § 57

4.3. Designation by the State authorities of assembly locations

"All public spaces should be open and available for the purpose of holding assemblies and so, official designation of sites suitable for assemblies inevitably limits the number of public places that may be used for an assembly as it excludes locations that are suitable for assemblies, simply because they have not been designated."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia, by the Venice Commission and OSCE/ODIHR, §37
> See also:
> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §36;
> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §42

"It is positive that the Draft Law does not allow the State authorities to designate certain locations for holding assemblies, which also falls in line with the OSCE/ODIHR and Venice Commission recommendations."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §42

"Paragraphs 2 and 5 of Article 2 of the Act allow the local authorities to designate certain locations for holding assemblies. Designation by the authorities of assembly locations raises concerns as it is incompatible with the very concept of the right to peaceful assemble as a fundamental freedom. As already mentioned above, all public spaces should be open and available for the purpose of holding assemblies and so, official designation of sites suitable for assemblies inevitably limits the number of public places that may be used for an assembly as it excludes locations that are suitable for assemblies, simply because they have not been designated. The only legitimate restriction on location of an assembly is on site of hazardous areas and facilities which are closed to the public. It is therefore recommended to amend these provisions so as to include streets, sidewalks, and parks and to ensure that the

list of possible locations in not exhaustive or better to delete from the legislation any attempt to designate areas."

CDL-AD(2010)031, Joint opinion on the public Assembly Act of the Republic on Serbia by the Venice Commission and OSCE/ODIHR, § 38

5. NOTIFICATION OF ASSEMBLIES

"A regime of prior authorisation of peaceful assemblies is not necessarily an infringement of the right but this must not affect the right as such."

CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6
See also
CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §70

"The recommendations outlined […] emphasize that the notification procedure is for the purpose of providing information to the authorities to enable the facilitation of the right to assemble, rather than creating a system where permission must be sought to conduct an assembly. This emphasizes that the freedom to assemble should be enjoyed by all, and anything not expressly forbidden in law should be presumed to be permissible."

CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §35

"Any regime of prior notification must not be such as to frustrate the intention of the organisers to hold a peaceful assembly, and thus indirectly restrict their rights (for instance, by providing for too detailed and complicated requirements, and/or too onerous procedural conditions)."

CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §38

"It is therefore strongly recommended to the authorities to make it clear in the Act that only a prior notification and not an application requiring permission is needed."

"The Venice Commission stresses that, while the Assembly Law formally does not empower the executive authorities not to accept a notification or to prohibit a public event, it does empower them to alter the format originally envisaged by the organiser for aims which go far beyond the legitimate aims required by the ECHR. One of these aims is the 'need to maintain a normal and smooth operation of vital utilities and transport infrastructures', which is practically impossible in case of large or moving demonstrations. It has further been conceded and is indeed explicitly set out in Article 5.5 of the Assembly Law that if the organisers disagree with the local authorities' motivated proposal to change the format of the public event, the latter is de facto prohibited. Therefore, in the Venice Commission's view, since the permission is rarely given, the notification or notice, in substance, amounts to a substitute for a request of a previous permission, to an "authorization procedure de facto'."

CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §21
CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §39

"It is recommended that the length and conditions for the notification procedure be reasonable in relation to both the authorities and organizers and participants. The draft Law should also allow for adequate time in order that judicial review may take place, if needed before the scheduled assembly date."

> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §8, F

"Any notification process established by the Act should not be onerous and must not frustrate the intention of the organisers to hold a peaceful assembly, and thus indirectly restrict their rights."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §16

"It is recommended that the organizers of a public assembly be required to provide written notification of an assembly within a clearly articulated timeframe so as to facilitate the arrangements to be made by the state bodies. The form used to notify the authorities should also ensure that relevant details of the proposed event are set out in a clear manner; consequently, oral notification should be allowed solely in exceptional cases."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §15, F
> See also
> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §5, h

"The Venice Commission recalls in this context that the subjection of public assemblies to an authorisation or notification procedure should not encroach upon the essence of the right as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering, be it political, cultural or of another nature."

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §10

"The alteration of the place of the assembly by the authorities means that events cannot be held in places chosen by the organizer within sight and sound of their targeted audiences or at a place with a special meaning for the purpose of the assembly. The Venice Commission recalls that respect for the autonomy of the organizer in deciding on the place of the event should be the norm. The Constitutional Court has rightly specified that the newly proposed time and place must correspond to the social and political objectives of the event, and this requirement provides some safeguard against depriving the proposed public event of any impact. But even assuming that the alternative proposals do comply with this principle, it must be underlined that in principle the organisers should be permitted to choose the venue and the format of the assembly without interference."

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §23

"In conclusion as regards the procedure for notification of public events as set out in the Assembly Law, the Venice Commission considers that this procedure is in substance a request for permission. Furthermore, the Assembly Law confers too broad discretion on the executive authorities to restrict assemblies, for instance by giving them the power to alter the format of the

public event for aims (in particular the need to preserve the normal and smooth circulation of traffic and people) which go beyond the legitimate aims contained in Article 11 ECHR."

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §30

"The right to discuss the intention to organise a political demonstration falls under the category of political speech which renders Article 8 of the Law an unjustifiable interference with the freedom of expression and of speech. This ban on advance announcement of the assembly appears to be censorship. An advance announcement of an assembly that the government blocks can be remedied by an announcement by the organizers that there has been a cancellation or change, while the impact of a political demonstration is enhanced by the coverage it gets in the media, restrictions thereon, would have a negative effect on the full exercise of this right."

> CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §88

5.1. Length of the notification period

"[…] Although there are no clearly established standards as to the length of the notification period, the deadlines for organizers to submit a notification 12 days prior to the event and for the regulatory authority to consider the notification within 6 days appear to be unnecessarily long and difficult to justify. It is recommended that the legislator consider reducing the notification as well as the decision making period."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §36

"It is recommended that if a notification period is established in the Act, the time limits set down for the application to be made should be more flexible, in the sense that they should be set forth 'as a rule'."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §17

"The notification of holding the peaceful assembly shall be considered as filed on the day it is received by the responsible body of executive power or a body of local self-government. It is recommended to focus on the day of submission of the notification and/or the day of sending the notification instead of focusing on the arrival of the notification, because unintentional delays might occur due to post services."

> CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §29

"The requirement that organizers notify of cancellation no less than 24 hours prior to event may be impractical as well as creates a potential for subsequent punishment for anyone who fails to do so. It is recommended that the requirement of 24 hours' notice be removed or changed to a requirement to notify of cancellation as early as possible."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §37

"Time limits should be so set that the decision of the executive body and the decision of the court at first instance can be delivered in time to allow the assembly to take place on the original intended date should the court find in favour of the organisers."

CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §39

"In the event that a notification period remains in place, its length and conditions should be reasonable not only in relation to the authorities but also allowing for a judicial review to take place before the scheduled assembly date. Omissions in the notification should be easily rectifiable without causing unnecessary delay of the assembly."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13,C

"Art 5.5 of the Assembly Law states in terms that the promoter shall not have a right to hold an event when notice was not filed in due time. This rule is disproportionate: as a blanket rule, it does not permit any exceptional circumstances of a particular case to be taken into consideration."

CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §33

"From a procedural point of view, the duty to submit a notification 'no later than 15 days prior to the anticipated date' of the assembly, provided for in Article 5 par 4, is onerous. It should be changed to 3-5 days and should apply only "as a rule", in order to be more flexible. An assembly cannot be forbidden only because a certain deadline to notify the intent to hold it was not met. As a matter of fact, according to the OSCE/ODIHR-Venice Commission Guidelines, '*it is not necessary under international human rights law for domestic legislation to require advance notification about an assembly'*."

CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §78;

5.2. Notification requirements

"The notification also requires the approximate number of participants [...]. This may sometimes be possible but equally an organiser, despite providing a best estimate, may prove to be significantly wrong in the numbers that participate. This should not lead to any consequences for the demonstration unless they are linked to legitimate reasons for restriction detailed in Article 11(2) ECHR."

CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §30

"As for the threshold of 100 participants in order for a demonstration to require prior notification and authorisation, it seems arbitrary and, at any rate, useless: […] a demonstration with less than 100 participants may well constitute a more serious threat to public order than a more crowded one."

CDL-AD(2004)039, Opinion on the Law on conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, §30

"It is highly appreciated that neither assemblies of up to 100 participants nor spontaneous assemblies are subject to the notification regime (Article 9). It is good practice to require notification only when a substantial number of participants are expected, or not to require prior notification at all for certain types of assembly. It is recommended to enhance Article 24, which permits an organizer to proceed without a notice if s/he '*is of the opinion*' that there will be no more than 100 participants by adding '*believes in good faith*' as this indicates that the organiser is objective in his or her anticipated estimations."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §44

"The requirement of a written '*decision of the competent body*' of an entity that organizes an assembly to be presented with the notice (Article 14 §2) may amount to an unnecessary burden: the entity may be an ad hoc unincorporated association, formed solely for the purpose of holding the assembly. Furthermore, the decision to hold the assembly may have been made by an informal consensus reached at a meeting without formal records. So long as an individual organizer has complied with the Draft Law and s/he can be held legally responsible for the activity [the filing] of the notice should be sufficient."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §51

"[…] [N]either public authorities nor local self-government are vested with a right to prohibit or restrict an assembly due to a lack of notification. Potentially, written notification would better facilitate the administration of all required procedures by the relevant state bodies, and would also ensure that the details of the proposed event are clearly set out in a way that avoids the potential for later misunderstanding though the requirements imposed on the authorities in relation to the 'action plan' will ensure that all necessary details are committed to writing."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §32

"The right to proceed in the absence of a well-founded objection by the authorities is a corollary of the presumption in favour of holding assemblies and is indeed central to the enjoyment of freedom of assembly. […] It is strongly recommended that the Amendments include an express provision allowing for the organizers, in the absence of timely presented objections by the authorities to the notification, to proceed with the planned assembly in accordance with the terms notified and without restriction."

> CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §§34-35
> See also:
> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, N

5.3. Regulatory authority and decision-making

"It is recommended to establish one authorized body from state and/or local self-government agencies to deal with assemblies, with whom organizers would be able to effectively coordinate their plans."

> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §80
> See also

CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §49

" *- The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in law. The regulatory authority should ensure that the general public has adequate access to reliable information relating to public assemblies, and also about its procedures and operation.*

- *The regulatory authorities must comply with their legal obligations, and should be accountable for any failure – procedural or substantive – to do so. Liability should be gauged according to the relevant the relevant principles of administrative law and judicial review concerning the misuse of public power."*

CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §7

"It is recommended in addition that a co-operative process between the organizer and the authority be established in order to give the organizer the possibility to improve the framework of the assembly."

CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §41

"It is necessary that the decision-making and review process is fair and transparent."

CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §39

"According to Article 6 of the Law, authorities appear to be granted unfettered discretion in prohibiting events based on date, time, number of participants, weather conditions, payment for services to uphold public order provided by internal affairs authorities and expenses linked to medical services and the cleaning up of the area following the mass event. The provision is in fact so wide, that the discretion of the authorities in deciding the prohibition of an assembly is almost beyond the capacity of the organizers to take measures to comply with the respective provision."

CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §81

"In relation to this process the Venice Commission and the OSCE-ODIHR recall that the competent bodies are required to act promptly and the organiser has full rights to participate in any hearings that take place which are required if any limitations or a prohibition are being proposed […].

There should also be an express requirement that organisers may be legally represented, be informed of all evidence and call witnesses at the hearing. Where the Authorized Body decides to impose conditions or prohibit an assembly, its reasons should be provided promptly in writing. Finally, such a procedure should not be limited to an administrative body. It is recommended that the law provides for a judicial procedure, too."

CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §§56-57

"The organizer may request the executive and local self-government authorities to issue a written confirmation of receipt of such notice on the same day. This confirmation should contain the title of this body, full name and signature of an official who received the notice as well as the date and time of receiving the notice."

> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §37
> See also
> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §15, h

"The Act is also recommended to require the authorities to issue a written confirmation to the organisers immediately upon receipt of the notification. The act should also stipulate that any failure to provide confirmation by the authorities is tantamount to such a confirmation being issued."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §22
> See also
> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine, §5, J;
> CDL-AD(2010)049, Interim joint opinion on the draft law on assemblies of the Republic of Armenia by the Venice commission and OSCE/ODIHR, §40

"In case of prohibition, the organizer has to be informed about this decision by way of a substantiated order by the competent authority within 48 hours. It is recommended to add the requirement that the decision shall be published in written form and additionally, shall be made public in an appropriate way (for instance, on a dedicated website). This guarantees that the public has access to reliable information about events taking place in the public domain."

> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §53
> See also
> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §53

"The focus in Article 21 para. 4 upon promoting co-operation between assembly organisers and the authorities is warmly welcomed. Nonetheless, the autonomy of the assembly must be respected. The organizer must be free to deviate from suggestions made by the authorities if they believe that they undermine the purpose of the assembly. While the organiser's rejection of any proposed measures could in the end lead to the imposition of further restrictions (and even the termination of the entire assembly, if this is proportionate in the circumstances), it is worth drawing attention to the *ODIHR-Venice Commission Guidelines* which state, in this regard, that: *'The organizer of an assembly should not be compelled or coerced either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.'*"

> CDL-AD(2011)031, Joint opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR, §67

6. REVIEW AND APPEAL

"It is necessary that the decision-making and review process is fair and transparent.

The OSCE/ODIHR – Venice Commission Guidelines recommend an effective remedy through a combination of administrative and judicial reviews and not just before the administrative court. Furthermore, an organizer shall be given the opportunity to take legal actions not only against the prohibition of a public event, but also against restrictions that affect the event."

> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §39,55

"[…] The Venice Commission recalls that the right to an effective remedy entails a right to appeal the substance of any restrictions or prohibitions on an assembly. Appeals should be decided by courts in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. In addition, the Draft Law should establish clearly the remedies available to organisers in cases of improperly prohibited or dispersed assemblies. The prompt and thorough investigation of any suspected unlawful use of force by the police during assemblies, including dispersal of the assemblies, should also be ensured.

The subsequent prosecution, if required, must also be safeguarded. The organisers must be entitled to be represented at the appeal if they so wish. They must also be entitled to be aware of and see all evidence to be adduced by the other side and to challenge it. The court should be expressly required to give a written judgment of its decision promptly and before the planned assembly (relief by way of injunction should otherwise be possible, that is to say including the possibility of lifting restrictions imposed by the Authorised Body). Any restrictions imposed must be in accordance with the jurisprudence of the European Court of Human Rights and must be based on factual, concrete and objective grounds".

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §61
> See also:
> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §51
> See also
> CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §40; see also §85

"Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §51
> See also
> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia, §61

"It is recommended to ensure that both the organiser and the involved state agency have a right to address the court, and the burden of proof lies with the restricting body, not the party submitting the appeal/being restricted."

> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §8, P

"[…] It would be beneficial if the Act explicitly provided that the burden of proof for establishing the grounds upon which an assembly may be banned lies with the body which seeks for the assembly to be banned, both in administrative proceedings and as part of the judicial proceedings."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §53

"[…] It is to be stressed that the organizer should always be heard by the court before it decides on the ban, and the court review should be 'prompt so that the case is heard and the court ruling published before the planned assembly date'."

CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §43

"The procedure of review of decisions to ban an assembly should be established in such manner so as to ensure that a decision on the legality of the ban on the assembly is made available to organisers before the planned date of the assembly. Considering the narrow schedule this can be achieved best by allowing for temporary injunctions."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, J, and §52

"In addition, the Venice Commission underlines that it is crucial not only that the court may genuinely review the decision of the public authorities, but also that it may do so before the assembly takes place, or else that a system of relief via court injunctions be available."

CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation §52
See also
CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, § 37

7. ASSEMBLY TERMINATION AND DISPERSAL

"The OSCE/ODIHR – Venice Commission Guidelines emphasize that the termination and dispersal of assemblies should be a measure of last resort."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §44
See also
CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §47
CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §112

"The reasons for suspension, ban or termination of an assembly should be narrowed down to a threat to public safety or danger of imminent violence. Furthermore, dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate and to protect the assembly from harm and unless there is an imminent threat of violence."

CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §58;
See also
CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, G;
CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §5;

CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §5, u

"Not all violations of the law should lead to the suspension and termination of the public event, which should be measures of last resort. Reasons for suspension and termination should be narrowed to public safety or a danger of imminent violence (see Article 16.1 of the Assembly Law)."

CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §44

"The provisions concerning termination of assemblies should be brought in line with the legality and proportionality principle."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, t

"[…] [It] is recommended to reflect the necessity to differentiate between [the assembly] and the behaviour of one individual or several individuals in an assembly. That is, the assembly should not be prohibited or dispersed simply because an individual or group commit acts of violence and any such measures should only be taken against those particular individuals who violate public order or commit or instigate unlawful actions."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §50
See also
CDL-AD(2008)025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §48;
CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §60

"An isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution and not by termination of the assembly or dispersal of the crowd."

CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §67

"[…] While expression should normally be protected even if it is hostile or insulting to other individuals, groups or particular sections of society, there are specific instances of hate speech that may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the ECHR to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the ECHR or their limitation to a greater extent than provided therein. Even then, the resort to such speech by participants in an assembly does not of itself justify the dispersal of the event, and law enforcement officials shall take measures only against the particular individuals involved (either during or after the event)."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §46

"Therefore it is recommended to add a provision that the participants of an event shall have a reasonable and adequate amount of time to disperse, and shall be provided with a clear and safe route for dispersal."

CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §62

"Prohibiting an assembly is the *ultima ratio*. Basing such a decision only on the content of the message communicated, poses a most severe threat to democracy. It should therefore be avoided unless it is indispensable for ensuring the continuity of the democratic state […]. Otherwise the assembly must be tolerated despite its aims. It may only be restricted or prohibited for other reasons."

CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §51

8. USE OF FORCE

"International standards require that law enforcement officials should use force only as a last resort, in proportion to the aim pursued, and in a way that minimizes damage and injury. While it is not indispensable for the provision, a reference to liability for unlawful or excessive use of force by law enforcement bodies might be beneficial, though such liability is necessarily already contained in laws governing conduct of officials."

CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §71
See also:
CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §50;
CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §41;
CDL-AD(2006)033, Joint Opinion on the Draft Law on Peaceful Assemblies in Ukraine by the Venice Commission and OSCE/ODIHR, §39;
CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §40

"Measures taken by the police to ensure order, safety and security, including access to buildings etc. and removing people that '*rudely disturb the ordinary course of the assembly*' should be proportionate. Removal should be limited to those situations, in which the disturbance is genuinely disruptive (and where removal will be less disruptive than leaving the disruptive person on the scene)."

CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §66

9. RESPONSIBILITIES OF THE ORGANISER

"The Guidelines stipulate that the organization and holding of assemblies shall be exercised both by individuals and by corporate bodies."

CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §19

"The prohibition for juveniles under the age of eighteen to be organisers is too restrictive. Such a restriction can be imposed only if it is evident that a juvenile will not be capable of fulfilling the requirements that the law imposes on an organizer. According to OSCE/ODIHR-Venice Commission Guidelines '*in light of the important responsibilities of the organizers of public assemblies* […], *the law may set a minimum age for organizers, having due regard of the*

evolving capacity of the child […]. *The law may also provide that minors may organize a public event only if their parents or legal guardians consent to their doing so'*."

> CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §60

"Second, the condition 'eligible to vote' may imply that persons without legal capacity cannot be organizers. This is not compatible with international standards on freedom of assembly, which provide that '*all individuals should* […] *be facilitated in the enjoyment of their freedom to peacefully assembly, irrespective of their legal capacity'*. It may also infer that stateless persons, juveniles and foreign citizens may not be organizers."

> CDL-AD (2012)006. OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §61; see also §63

"The organiser is the person or persons with primary responsibility for the assembly and this should not be compulsorily limited to a single individual. It may be practical to use the name of one organiser as a point of contact with the authorities. However, it is not essential for all of the responsibilities set out in the Draft Law of the organiser and leader to reside in a single individual. In principle, it should be a matter for the organisers themselves as to who and how many they should be. If there are several organisers they need not be a legal entity, and could be a committee of individuals provided there is clarity as to who is involved in the organisation.."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §40

"A peaceful event can be organized by several persons. It cannot be considered problematic if one of these organisers is arrested and cannot make use of his rights and duties to the full extent, because the other organisers might replace him in this regard."

> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §30

"The Venice Commission and the OSCE/ODIHR believe that the government should not decide (by way of this Article) upon how the internal decision-making process of the organisers and participants should proceed. The organisers of the assembly should be responsible for the decision-making process."

> CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §27

"The law should therefore provide for a certain flexibility, for example by allowing the assembly to be held with at least half of the organizers being present at the event, or by giving the organisers the possibility to be replaced by representatives in case of necessity. If there is adequate organising presence and sufficient control and communication with the police or other authorities so as to allow for a peaceful assembly, then the failure of all organisers to attend should not result in prohibition of the event."

> CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §31

"It is also to be pointed out that organisers of assemblies should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organisers should not be liable for the actions of individual participants nor for the actions of non-participants or *agents*

provocateurs. Instead, individual liability should arise for any individual if he or she personally commits an offence or fails to carry out the lawful directions of law enforcement officials"

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §41

"However, as concerns the holding capacity of the premises of the public event and an estimate of how many people will turn up to the assembly, the Venice Commission considers it unrealistic to assume that an organiser could foresee the number of participants or that he or she could count them at the time of the event, or that he or she could always be able to prevent participants from staying if the number has been exceeded. An organiser is entitled to encourage as many participants as possible to attend and persons who wish to attend have the right in principle to do so as part of their freedom of assembly. The Venice Commission therefore considers it disproportionate to require the organiser to take measures (what measures is unclear) to contain the number of participants and to make the organiser responsible if he or she does not succeed. The organizer should only be liable, if he/she intentionally provided false information relevant to estimating the possible number of participants or tried to impede measures taken by the authorities in order to keep the number of participants within the holding capacity of the place of the assembly during the event and that this caused a threat to public order."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, § 24

"It is recommended to expand this provision in accordance with the OSCE/ODIHR - Venice Commission Guidelines to the effect that the organizers shall not be held liable for actions of individual participants or stewards who fail to adhere to the terms of their briefing, and that under no circumstances the organizer of a lawful and peaceful assembly should be held liable for disruption caused by others."

> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §21
> See also
> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §§41-43;
> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §36

"The obligation to submit a list of intended measures to be taken by the organiser in order to ensure the maintaining of public order is incongruent with the scope of obligations of the organisers. Organisers bear a certain responsibility to prevent disorder, however, this responsibility should only extend as far as exercising due care to prevent interference with public order by the assembly participants."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §16

"Whereas the organiser is indeed responsible for exercising due care to prevent disorder, he/she cannot revert to the exercise of police power and cannot be required to do so. Moreover, the citizen's right of peaceful assembly mirrors the state's duty to facilitate and protect such events. This leads to the conclusion that the overall responsibility to ensure public order must lie with the law enforcement bodies, not with the organiser of an assembly. The obligations of organisers should be reduced to the exercise of due care, taking into account the limited powers

of the organiser, the more so since the responsibility of the authorities to provide public security, medical aid etc. is already set out in Article 18.3 of the Assembly Law. "

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §41

"The Venice Commission stresses again that an important part of the right to assemble peacefully includes the right to become involved in all aspects of the organisation of an assembly including playing the role of "organiser" as provided for in the 2004 Law on Assemblies. The right to organise should not therefore be limited in the blanket fashion prescribed in the Law and merely allowing an individual to participate but not organise is not a legitimate restriction under the terms of article 11(2) ECHR.

"The June 2012 amendments […] give the organisers the right to demand that an authorized representative of the internal affairs authorities remove from the site of the public event those participants who do not comply with their lawful requests. The Venice Commission considers that this provision should specifically indicate that failure to do so will not entail any negative consequences for the organiser. It must be stressed that the authorities are entitled (and may even be obliged) to act even without such a demand from the organiser."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, §§19-20

"The obligations of organizers and stewards should be reduced, and the responsibility of the authorities, especially to provide public security and medical services clearly set up. The organizers should not be liable for damage and violations inflicted by others."

> CDL-AD(2010)016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §5
> See also:
> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §43
> CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §103; see also §106 and §107

"According to Article 4 par 3, the person responsible for organizing an assembly on behalf of a party, a trade union or an organization has to "enter into a written undertaking that the event will be organized and held in accordance with the present Law." This is, on one hand, useless, if the "undertaking" has the purpose only to mention the intention of the organizers to follow, inasmuch as possible, the provisions of the Law on assemblies: the presumption is that the legal provisions in force in a certain country will be obeyed. On the other hand, if the "undertaking" has the purpose to attract the legal responsibility/liability of the organizers should *any* provision of the Law be breached, then this is likely to impose an excessive burden upon the organizers. In practice, this will not only discourage but also prove an insurmountable obstacle to the exercise of the freedom to assembly […]."

> CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §66; see also §68

"Organisers cannot be held liable if they made reasonable efforts to prevent spontaneous violence but the situation went out of their control (they exercised due care to prevent interference with public order by the assembly participants). They cannot be held liable for actions by third parties and they should not be held responsible for sporadic acts of violence by either participants or non-participants. Holding organisers liable would be a disproportionate

response since this would imply that they are imputed responsibility for acts by individuals which were not part of the plan of the event and could not have been reasonably foreseen."

> CDL-AD(2009)035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §65

"The obligation to differentiate between peaceful and non-peaceful (violent) participants, however, should always rest on the state."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §43

"Likewise, organizers should not be liable for the actions of individual participants. Instead, individual liability should arise for any participant for committing an offence or failing to carry out the lawful directions of law enforcement officials."

> CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §114

"Article 15 para. 2 contains a serious threat of liquidation for political parties, trade unions and 'other organizations' in case their authorized representatives failed to secure 'the proper order of organization and (or) holding of the gathering, meeting, street rally, demonstration and picketing, that have caused damage of big amount or substantial harm to rights and legal interests of citizens, organizations or state or public interests […]'. A single violation of this Law – even a minor or a 'technical one' – will thus place an organization on the edge of dissolution. Such a provision is excessive, disproportionate and thus, in conflict with international law and standards."

> CDL-AD (2012)006 OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §117

"Article 16 of this Law provides that harm 'caused by organizers and participants of the mass action to the state, citizens and organizations at the course of mass action, is subject to compensation in order established by legislation of the Republic of Belarus'. This provision is too broad and prone to potential abuse, as the requirement for compensation here does not appear to be limited to damage intentionally or negligently inflicted, nor is it imposed on the individual who actually inflicted that damage."

> CDL-AD (2012)006, OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §118

10. FINANCING PEACEFUL ASSEMBLIES

"The state must not levy any additional financial charge for providing adequate and appropriate policing. […] Further to the above, it ought to be noted that organisers of public assemblies should also not be required to obtain public-liability insurance for their events. Similarly, the responsibility to clean up after a public assembly should lie with the municipal authorities. This is because, imposing onerous financial requirements on assembly organisers is likely to constitute a disproportionate prior restraint."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §§26-27

"The organisers should not be liable in relation to financing of public services provided during an assembly and their obligations regarding maintaining of public order should be reduced."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, I

"There is no reason to prohibit otherwise peaceful assemblies because of the controversial nature of their funding."

> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §5, o

11. LIABILITY OF PARTICIPANTS

"The freedom to take part in a peaceful assembly is of such importance that a person should not be subjected to a sanction for participation in a demonstration which has not been prohibited so long as this person does not himself or herself intentionally commit any unlawful act."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §41

"[…] Participants in unlawful assemblies should be exempted from liability when they had no prior knowledge that the assembly had not been authorized. Also, […] if an authorized demonstration turns out to be non-peaceful, individual participants who did not commit any violent act cannot be prosecuted solely on the ground of participation in an illegal gathering."

> CDL-AD(2006)034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §43
> See also:
> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §5, n

"Measures should be taken only against those persons who violate public order, use hate speech or instigate violence, whereas not against the whole assembly."

> CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §13, H

"The Venice Commission and the OSCE/ODIHR recommend that liability for failure to adhere to any provision of the law be clearly stated, that a maximum penalty be explicitly provided, and that in all cases the stated penalties be strictly proportionate to the nature of the breach, as the way in which this legislation is applied in practice by the competent authorities might act as a deterrent for the population's readiness to avail itself of the right to freedom of peaceful assembly."

> CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §47

"The Venice Commission did not have access to court decisions or other sources which allow an evaluation of the practice on sanctions on failures to comply with the Assembly Law as described by the Russian authorities and to confront this description with the criticism raised by NGOs. The Venice Commission restricts its comment to raising concern that sanctions following the mere failure by the organiser to meet the time-limits for notification or to "invite the authorities to negotiate" their request for changing the venue and/or time-frames of the public

event or to comply with the alternative proposal of the authorities are likely to be disproportionate and have an unwarranted chilling effect on organisers of public events."

> CDL-AD(2012)007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §47

"In their joint guidelines on freedom of assembly, the OSCE/ODIHR and the Venice Commission have argued that 'the imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to, or during, an assembly'. They have added that 'as with prior restraints, the principle of proportionality also applies to liability arising after the event. Any penalties specified in the law should therefore allow for the imposition of minor sanctions where the offence concerned is of a minor nature'."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, § 50

"Even though their actual implementation depends ultimately on the courts, the June 2012 amendments impose penalties (both pecuniary sanctions and community service) which are excessive for administrative offences with no violence involved and would be disproportionate. These amounts will undoubtedly have a considerable chilling effect on potential organisers and participants in peaceful public events. In addition, the different and more severe treatment which is reserved to violations of the Assembly Act as compared to any other administrative offence does not appear to be prima facie justified.

The Venice Commission therefore recommends that the sanctions be revised and drastically lowered."

> CDL-AD(2013)003, Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences, §§54-55

12. POLICING ASSEMBLIES

12.1. General rules of policing

"The state's positive duty to protect peaceful assembly requires that the police actively facilitate the assembly and protect those participating in it."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §65

"In addition, the Venice Commission and the OSCE/ODIHR have in other opinions on freedom of assembly laws emphasised the need for training of law enforcement officials in the human rights standards relevant to freedom of assembly. The Guidelines also emphasise the need for training, awareness-raising and monitoring in relation to assemblies. A human rights approach to policing assemblies is necessary to protect the freedom fully especially when police may be placed in difficult and dangerous situations."

> CDL-AD(2010)049, Interim Joint Opinion on the Draft Law on Assemblies of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §69

"The role of the law enforcement personnel during an assembly may include, when the situation on the ground deteriorates (e.g. participants might begin using or inciting imminent violence),

imposing restrictions or terminating an assembly. In doing so, the law-enforcing authorities should consider first their duty to facilitate the enjoyment of the right to freedom of peaceful assembly."

> CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §41

"According to the Guidelines, photographing or video recording of participants by law enforcement personnel is permissible. What is not permissible is the recording of such data and the systematic processing or preserving the record, as it might give rise to violations of privacy."

> CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §49
> See also
> CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §99;

"It has been noted in other jurisdictions that an important element of developing a culture in which assemblies are facilitated and respect is developed between those participating in an assembly and the police is the overall quality of the policing operation and the degree of understanding of, and respect for, human rights evidenced by the police on the ground. Consideration should therefore be given to reviewing the training needs of police officers and other officials with responsibility for issues related to freedom of assembly."

> CDL-AD(2008)020, Joint Opinion on the Draft Law Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §26

12.2. Responsibilities of the law enforcement bodies

"[…] If an assembly is prohibited according to the law and the organisers refuse to follow the legal constraints, the law enforcement bodies should manage the assembly in such a way as to ensure the maintenance of public order. If appropriate, the organizers (or other individuals) may be prosecuted at a later stage. This is preferable to requiring the police to attempt to 'terminate' the assembly, with the risk of use of force and violence. It is especially important when an assembly is unlawful but peaceful, i.e. where participants do not engage in acts of violence. In such a case, it is important for the authorities to exercise tolerance as any level of forceful intervention may be disproportionate."

> CDL-AD(2009)034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §38
> See also:
> CDL-AD(2009)052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §62

"In addition, the provisions according to which law enforcement officials can limit the number of participants to an assembly in view of the capacity of the place, which is a rather subjective assessment, are not admissible under international standards. Moreover, carrying out body searches, the inspection of items in their possession and not admitting participants to the place of assembly should not be permitted except where there is evidence that these measures are necessary to prevent serious disorder. The language of the law contains no limit on the power of authorities to engage in such activities. They should only be permissible pursuant to previous notice to organizers plus a court order following a court hearing on the lawful character of such measures given the particular circumstances and a demonstration of the necessity of such action. The burden of proof should be on the authorities."

CDL-AD (2012)006, OSCE/ODIHR - Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus, §109

"[…] The law-enforcement personnel shall remove individuals inciting unlawful acts upon the request of the organizers and participants. […] This removal occurs after efforts to dissuade the misconduct have been unsuccessful, and second, the law-enforcement personnel is also vested with the right to make an independent assessment of the situation. This is necessary in order to prevent removal of, for example, counterdemonstrators whose behaviour might be provocative but lawful. It is also important to ensure that this measure is taken as a measure of last resort."

CDL-AD(2010)050, Joint Opinion on the Draft Law on Peaceful Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §54

"The prompt and thorough investigation of any suspected unlawful use of force by the police during assemblies, including dispersal of the assemblies, should also be ensured."

CDL-AD(2010)031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §51

13. REFERENCE DOCUMENTS

CDL-AD(2002)27 - Opinion on the Law on Assemblies of the Republic of Moldova

CDL-AD(2004)039 - Opinion on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia

CDL-AD(2005)007 - Opinion on the Draft Law making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia

CDL-AD(2005)021 - Joint Opinion on proposed Amendments to the Law "On conducting meetings, assemblies, rallies and demonstrations" and to related provisions of the Criminal Code of the Republic of Armenia (pursuant to discussions in Yerevan on 17 March 2005) by the Venice Commission and OSCE/ODIHR

CDL-AD(2005)035 - Opinion on the Law making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia

CDL-AD(2006)033 - Joint Opinion on the Draft Law on Peaceful Assemblies in Ukraine by the Venice Commission and OSCE/ODIHR

CDL-AD(2006)034 - Opinion on the Law on Freedom of Assembly in Azerbaijan

CDL-AD(2007)042 - Opinion on the Draft Amendments to the Law on Freedom of Assembly of Azerbaijan

CDL-AD(2008)018 - Joint Opinion on the amendments of 17 March 2008 to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia by the Venice Commission and OSCE/ODIHR

CDL-AD(2008)020 - Joint Opinion on the Draft Law amending and supplementing the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia by the Venice Commission and OSCE/ODIHR

CDL-AD(2008)025 - Joint Opinion on the Amendments to the Law on the right of citizens to assemble peaceably, without Weapons, to freely hold rallies and demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR

CDL-AD(2009)034 - Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR

CDL-AD(2009)035 - Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria

CDL-AD(2009)052 - Joint Opinion on the order of organising and conducting peaceful events of Ukraine by the Venice Commission and OSCE/ODIHR

CDL-AD(2010)016 - Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR

CDL-AD(2010)031 - Joint Opinion on the public Assembly Act of the Republic on Serbia by the Venice Commission and OSCE/ODIHR

CDL-AD(2010)033 - Joint Opinion on the law on peaceful assemblies of Ukraine by the Venice Commission and OSCE/ODIHR

CDL-AD(2010)049 - Interim Joint Opinion on the draft law on assemblies of the Republic of Armenia by the Venice commission and OSCE/ODIHR

CDL-AD(2010)050 - Joint Opinion on the draft law on peaceful assemblies of the Kyrgyz Republic by the Venice commission and OSCE/ODIHR

CDL-AD(2011)025 - Joint Opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic adopted by the Council for Democratic Elections

CDL-AD(2011)031 - Joint Opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR

CDL-AD (2012)006 - OSCE/ODIHR-Venice Commission Joint Opinion on Law on Mass Events in the Republic of Belarus

CDL-AD(2012)007 - Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation

CDL-AD(2013)003 - Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation amending Federal Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketing and the Code of Administrative Offences

CDL-AD(2014)010 - Opinion on the Draft Law on the revision of the Constitution of Romania