

## HDIM 2013

### Working Session 8: Freedom of Assembly and Association (specifically selected topic)

#### Freedom of Assembly

*Rapporteur: Viktoria Wagner, Human Rights Officer, Legal Department, Austrian Federal Ministry for European and International Affairs*

Working Session 8 discussed challenges and progress of the realization of freedom of assembly in OSCE participating States, although some interventions also touched upon the freedom of association. After a welcoming address by Ambassador Janez Lenarčič, Director of the OSCE/ODIHR, who highlighted the important work of ODIHR in the area of freedom of assembly, the Session was introduced by Dr. Michael Hamilton, senior expert in public protest law and Secretary of the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly. Dr. Hamilton highlighted the qualitative difference between the right to peaceful assembly and the right to free expression. While in a networked society, Dr. Hamilton pointed out, there are today numerous channels and opportunities to voice opinions and messages, free assembly is more than that: individuals physically present are constituting “the people”, an essential element of thriving democracies. He also stressed that the law and practise of OSCE participating States should not treat assemblies as a ‘public order problem’ but should facilitate peaceful assemblies as a fundamental human right. This means, he explained, providing access to public space, and protecting peaceful protesters especially when conveying controversial messages (positive obligation). It also means that States refrain from interfering with peaceful assemblies unless absolutely necessary and based on law (negative obligation). The imposition of burdensome and extensively interpreted notification procedures which do not allow for spontaneous or untraditional forms of assemblies today presents one of the main challenges to free assembly in the OSCE region, according to Dr. Hamilton.

42 interventions were made after the introducer, of which 31 by non-governmental organisations. In addition, 6 OSCE participating States made use of their right of reply to prior interventions.

Many delegations and non-governmental organisations (NGOs) referred to specific instances in some OSCE participating States where the right to free assembly was restricted or denied. Some speakers reported of cases where protesters were arrested or even sentenced to prison terms, thereby discouraging other citizens to make use of their right to peaceful assembly. Striking a balance between the facilitation of the right to peaceful assembly, while at the same time having due regard for the rights of others, was identified as a major challenge for authorities in OSCE participating States. It was explained that often lengthy or overly burdensome procedures for notification of assemblies would discourage assemblies or prevent more spontaneous gatherings. Authorities would also often cite public order or safety for denying assemblies, particularly those with controversial messages, in highly frequented and thus prominent spaces. Moreover, authorities would often judge the purpose or message of an assembly, and deny or restrict its taking place, by openly referring to the protection of ‘traditional or moral values’ to be protected, or giving more opaque reasons. Some speakers also highlighted the important role of local authorities in facilitating the right to free assembly, and called for better regulation of that role.

Some speakers pointed out the need to pay particular attention to the protection of the right to free assembly of marginalized groups. While it was welcomed that in many OSCE participating States, the right to free assembly of LGBT persons organizing so-called “Gay Pride” parades was fully protected, the denial of these assemblies by authorities in some OSCE participating States, based on

the protection of ‘traditional or moral values’, or the lack of protection afforded to protesters by the authorities, was met with concern by delegations and NGOs.

The sharing of experience with the enactment of new legislation to facilitate free assembly according to international human rights standards by some OSCE participating States was welcomed. It was pointed out, however, that the key to full realization of the right was effective implementation of such laws. In this context, some delegations underscored the importance of training and awareness-raising among law enforcement officials regarding human rights standards and crowd management techniques, and called for exchange of experience among OSCE participating States.

Finally, OSCE initiatives such as the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, its free assembly monitoring project, or the recommendations emanating from the Supplementary Human Dimension Meeting of November 2012 dedicated to the Freedom of Assembly and Association were commended by delegations and NGOs.

Regarding the right to free association, some speakers pointed out the difficult situation of LGBT persons in some OSCE participating States, where they were denied the right to associate based on ‘traditional or moral values’. The requirement in some OSCE participating States for associations to register as ‘foreign agents’ when receiving funding from abroad was also cited by some speakers as a major obstacle to the right of free association. Finally, some speakers highlighted that the right to free association also included the right not to associate, and criticized strict or inflexible rules in some OSCE participating States in that context.

#### **Recommendations to the OSCE participating States:**

- Respect and fully implement the OSCE commitments relating to freedom of peaceful assembly;
- Follow the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly;
- Ensure that the notification process for the holding of assemblies is not cumbersome; any restrictions on the time, place, or manner of an assembly should be content-neutral and reasonable; the substance of speech or other expressive content should not be restricted or banned without compelling reason;
- Protect peaceful assemblies from counter-assemblies;
- Reaffirm that cultural, traditional or religious values cannot be used as a reason for restricting or denying the right to peaceful assembly or association.

#### **Recommendations to the OSCE and its institutions:**

- Facilitate initiatives by NGOs to monitor assemblies and develop the practice of joint monitoring of assemblies by ODIHR together with human rights defenders;
- Expand the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly so as to include a Special Representative to advocate for the implementation of the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly in the OSCE participating States;
- Foster further co-operation with the Council of Europe Venice Commission and relevant UN bodies to offer legislative support regarding the freedom of peaceful assembly to OSCE participating States;
- Offer technical assistance regarding crowd management for law enforcement officials (including dialogue between police and protesters) in OSCE participating States.