



# The Impact of the COVID-19 Pandemic on the Right to Freedom of Peaceful Assembly

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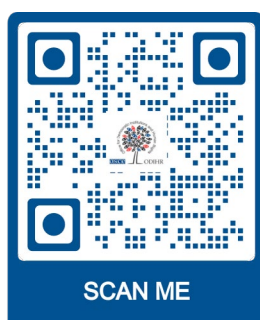
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# Introduction and context

1

Freedom of peaceful assembly is recognized as one of the fundamental human freedoms and is a cornerstone of democratic society. The right to assemble with others in public places to collectively express opinions, to protest, commemorate and celebrate, is central to processes of holding authorities to account, demanding change and expressing identity. The right to freedom of peaceful assembly is particularly valuable for minority and marginalized groups and is a means of giving voice to those with limited access to power.

The right to freedom of peaceful assembly is recognized in all major human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). However, while it is a fundamental right, it may legitimately be restricted in a limited range of circumstances that have been defined and clarified through jurisprudence and soft law. The right to freedom of peaceful assembly is also a dynamic concept. It is one that may require new interpretations in changing circumstances, but which still demands that state actors react and respond to emerging contexts within the framework and spirit of the right. This ensures that the right to freedom of peaceful assembly is not unduly restricted and that the fundamental principles of democratic societies are sustained and protected.

The COVID-19 pandemic initially affected the implementation of human rights in all OSCE participating States, including the right to freedom of peaceful assembly. In July 2020, ODIHR published a report entitled “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic”, which looked at the initial responses of participating States to the pandemic in light of the OSCE human dimension commitments.<sup>1</sup> Since then, the region has faced several waves of this coronavirus and subsequent restrictions, but also the easing of limitations as infection rates decreased. The unpredictability of the pandemic has required States to be increasingly flexible in their responses and measures and to strike a balance between competing human rights, such as the rights to life and health and the right to freedom of peaceful assembly.

As governments became increasingly aware of the contagiousness and impact of Covid-19 in the early months of 2020, they began to impose public health restrictions to limit its spread<sup>2</sup>. On 11 March 2020, the World Health Organization (WHO)

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1 “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic”, ODIHR, 17 July 2020, <<https://www.osce.org/odihr/human-rights-States-of-emergency-COVID-1919>>.

2 Italy was one of the first countries in Europe to identify significant cases of COVID-19 and the government introduced a state of emergency on 31 January 2020 and imposed the first lockdown in selected municipalities on 23 February 2020, see <<https://www.tandfonline.com/doi/full/10.1080/23248823.2021.1914453>>.

declared a pandemic and governments around the world quickly responded by imposing extensive restrictions on people's movement, both internally and across international borders. Many States imposed lockdowns which required people to remain in their homes and encouraged all but workers in essential services to work from home. They also limited people's freedom to move around in public spaces. The right to gather in public places, including the right to assemble peacefully, was severely restricted. In some countries the right to freedom of peaceful assembly was completely prohibited, albeit generally for a specified and limited period of time<sup>3</sup>.

This report explores the nature, scope and scale of the restrictions that have been imposed on the right to freedom of peaceful assembly in OSCE participating States and analyses them in light of the established standards related to the right to peacefully assemble. These have been developed and refined over many years by bodies such as the United Nations, ODIHR and the Council of Europe through the jurisprudence of the European Court of Human Rights.

# Legitimate grounds to restrict the right to freedom of peaceful assembly

Although the right to freedom of peaceful assembly is a fundamental right, it may legitimately be restricted in certain, limited circumstances. The grounds for restrictions are set out in Article 21 of the ICCPR and in Article 11.2 of the ECHR. Article 21 of the ICCPR states:

**“ The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law**

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3 “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic”, ODIHR, 17 July 2020, page 107, <<https://www.osce.org/odihr/human-rights-States-of-emergency-COVID-1919>>.

and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”<sup>4</sup>

Pursuant to Articles 2 and 26 of the ICCPR, such a right must be enjoyed without discrimination. Restrictions imposed on the right to peaceful assembly must have a formal basis in law, be considered necessary in a democratic society and be imposed in a proportionate manner.

According to the OSCE/Venice Commission “Guidelines on Freedom of Peaceful Assembly”<sup>5</sup> (hereafter the FoPA Guidelines) this means that: “The least intrusive means of achieving a legitimate aim should always be given preference”, while “banning or prohibiting an assembly should always be a measure of last resort and should only be considered when a less restrictive response would not achieve the objective.”<sup>6</sup>

Such was the severity of the COVID-19 pandemic that the two grounds widely invoked by participating States as justification for restricting the right to freedom of peaceful assembly during this period — the interests of national security and the protection of public health — have rarely been evoked before as a legitimate reason for restricting this right. Therefore, they have faced limited critical review, particularly in relation to issues of proportionality. The United Nations Human Rights Committee’s “General Comment no. 37 on Article 21 of the ICCPR”,<sup>7</sup> which only completed its formal process through the UN on 17 September 2020, says little about the scope of invoking national security to restrict the right to freedom of peaceful assembly:

“42. The ‘interests of national security’ may serve as a ground for restrictions if such restrictions are necessary to preserve the State’s capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force.”

4 The ECHR permits the right to assemble to be restricted on a similar range of grounds.

5 The Second Edition of the OSCE-ODIHR/Venice Commission “Guidelines on Freedom of Peaceful Assembly” (FoPA Guidelines) were published in 2010 and are available on the OSCE website <<https://www.osce.org/odihr/73405>>; an unedited Third Edition, still subject to changes, has been published on the Venice Commission website <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)> and the text of this version is used in this report.

6 “FoPA Guidelines”, para. 29, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

7 United Nations General comment no. 37 (2020) on the right of peaceful assembly (article 21), (UN GC37), Human Rights Committee, <<https://digitallibrary.un.org/record/3884725?ln=en>>.



Nor does it say much about invoking public health as a ground for restrictions:

“45. The protection of ‘public health’ may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous. This may in extreme cases also be applicable where the sanitary situation during an assembly presents a substantial health risk to the general public or to the participants themselves.”

The FoPA Guidelines are similarly brief on the potential use either of national security or public health as a ground for restricting the right to freedom of peaceful assembly and noted only one case of the European Court of Human Rights<sup>8</sup> (*Cisse v France*, 2002) that has addressed the public health ground in this context.<sup>9</sup> The COVID-19 pandemic thus created a novel scenario with limited existing guidance on the legitimate extent of any restrictions that might be imposed on the right to freedom of peaceful assembly within the framework of necessity, legality, proportionality and non-discrimination.

The widespread restrictions on the right to freedom of peaceful assembly that were imposed by OSCE participating States were introduced in a specific public health context where there is limited formal guidance about the legitimate scope for such restrictions. However, both “General Comment no. 37” and the *FoPA Guidelines* strongly emphasize the importance of ensuring that any restrictions should be imposed in a lawful manner, be necessary in the particular context and be proportionate; i.e., that they represent the least intrusive way to achieve the desired outcome.

Notably, both documents stress that any restrictions should always be considered as a last resort and be imposed on a case-by-case basis. As the “General Comment” notes: “Blanket restrictions on peaceful assemblies are presumptively disproportionate.”<sup>10</sup>

Thus, while there may have been limited formal experience of dealing with human rights during a global health pandemic, the core principles of legality, necessity, proportionality and non-discrimination have been well established in relation to the scope and scale of any restrictions that might legitimately be imposed on the right to freedom of peaceful assembly.

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8 A decision related to the COVID-19 pandemic and peaceful assembly was adopted in March 2022.

9 “FoPA Guidelines”, para. 137 on national security and para. 141 on public health, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

10 UN GR 37, para. 38; and “FoPA Guidelines”, para. 133.

# The option of derogation

Both the UN “General Comment no. 37” and the FoPA Guidelines acknowledge that states may choose to derogate from certain of their international human rights obligations in response to a state of emergency by invoking Article 4 of the ICCPR or Article 15 of the ECHR.<sup>11</sup> The European Court of Human Rights updated its guidance on the use of Article 15 in December 2021 and the document now notes that derogation “affords to Contracting States, in exceptional circumstances, the possibility of derogating, in a limited and supervised manner, from their obligations to secure certain rights and freedoms under the Convention”.<sup>12</sup>

However, the guidance also notes that derogating does not mean that States need not apply established human rights standards, rather:

“22. As the Court has clarified, the existence of a ‘public emergency threatening the life of the nation’ must not serve as a pretext for limiting freedom of political debate. Even in a state of emergency the States must bear in mind that any measures taken should seek to protect democratic order from the threats to it, and every effort should be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness.”<sup>13</sup>

Derogation thus allows states the possibility of temporary departure from certain of their international human rights obligations, in a proportional and legally clear manner, and beyond the normally acceptable standard, but only in exceptional circumstances. However, overall respect for rule of law principles and fundamental safeguards of the rule of law must be maintained even during a state of emergency.<sup>14</sup>

11 UN GR 37, paras. 96-97; and “FoPA Guidelines”, para. 92.

12 “Guide on Article 15 of the European Convention on Human Rights. Derogation in time of emergency”, European Court of Human Rights, updated 31 December 2021, p. 6, para. 1. It does not bind the Court. <[https://www.echr.coe.int/documents/Guide\\_Art\\_15\\_ENG.pdf](https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf)>.

13 Ibid. See e.g., ECtHR, *Hasan Altan v. Turkey* (Application no. 13237/17, judgment of 20 March 2018), para. 210; *Şahin Alpay v. Turkey* (Application no. 16538/17, judgment of 20 March 2018), para. 180.

14 Document of the Moscow Meeting of the Conference on the Human Dimension of the OSCE, (Moscow Document), 3 October 1991, para. 28.1, <<https://www.osce.org/odihr/elections/14310>>; Resolution 2209 (2018) “State of emergency: proportionality issues concerning derogations under Art. 15 of the European Convention on Human Rights”, Parliamentary Assembly of the Council of Europe (PACE), para. 3, <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24680&lang=en>>.

# Approach and methodology

This report on “The Impact of the COVID-19 pandemic on the Right to Freedom of Peaceful Assembly” reflects on the developments that have emerged since March 2020 in relation to restrictions on assembly rights and the proportionality of state responses in light of the fluctuating health situation. The report also identifies the extent to which OSCE participating States have adopted rigid restrictions or have been flexible and even found ways to facilitate the right to freedom of peaceful assembly, despite the challenging circumstances.

This report is based primarily on desk research but also involved a consultation process with civil society organizations that have been engaged in assembly monitoring in different OSCE participating States. The report includes country-specific examples and considers the restrictions introduced due to the public health emergency, their removal and re-introduction, the use of state of emergency legislation to limit the right to assemble, and the facilitation of assemblies that have been held despite formal restrictions. The publication has sought to include a variety of examples from different countries and regions; however, it did not aim to reference all 57 OSCE participating States. While a geographically representative approach was the goal, it may not always have been possible to achieve. The examples given are illustrative rather than exhaustive, and their use intends to share information about the challenges, measures and practices rather than to single out any specific countries.

The report follows on from the initial findings of the ODIHR July 2020 report, “OSCE Human Dimension Commitments and State Responses to the COVID-19 pandemic”. It provides an overview of the developments across the OSCE region and aims to support OSCE participating States to strengthen the respect for, and implementation of the fundamental right to freedom of peaceful assembly.

**Legal restrictions  
imposed on  
assemblies due  
to COVID-19**

**2**

OSCE participating States adopted a variety of legal approaches to restrict people's right to freedom of peaceful assembly in response to the COVID-19 pandemic. Some participating States chose to derogate from the ECHR and/or from the ICCPR; but the majority simply introduced legislation in which prohibitions on gatherings were part of a wider range of legal measures (including declarations of a state of emergency). A small number of participating States did not take any specific legal measures to restrict assemblies in response to the pandemic.<sup>15</sup>

It should be borne in mind that the COVID-19 pandemic was not a single event, but rather a series of waves over a period of two years from March 2020 during which COVID-19 infections surged and declined. It has therefore impacted different countries at different times. Among other factors, these waves were caused by mutations in the virus, by the impact of different public health responses, including, in particular, the recurrent use of lockdowns, as well as the development of vaccines and effective campaigns to vaccinate a significant proportion of the population.

States began to impose legal restrictions on the right to freedom of peaceful assembly from the spring of 2020. In many countries restrictions were relaxed in the early summer of 2020 as infections declined, but were then re-imposed in response to a second wave of COVID-19 (the Delta variant) from October to December 2020 and, again, during the winter of 2021–22 in response to the Omicron variant. As a general rule, the initial responses imposed the most stringent limitations on the right to freedom of peaceful assembly, with more flexibility shown in subsequent waves of COVID-19 infections.

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15 The initial legal responses by States to the COVID-19 pandemic are discussed in depth in “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic”, ODIHR, 17 July 2020, <<https://www.osce.org/odihr/human-rights-States-of-emergency-COVID-1919>>.

# Derogations

Ten OSCE participating States (Albania, Armenia, Estonia, Georgia, Latvia, Moldova, North Macedonia, Romania, San Marino and Serbia) opted to derogate from the ECHR as part of their national response to the COVID-19 pandemic (see Table 1 below), while eight participating States (Armenia, Estonia, Georgia, Kyrgyzstan, Latvia, Moldova, Romania and San Marino) derogated from the ICCPR.<sup>16</sup> Most States specifically noted that they were seeking to derogate from Article 11 of the ECHR, although this was not the case in relation to Armenia, Romania, San Marino and Serbia.

All the initial derogations were declared between 15 March and 10 April 2020. They remained in force for different periods of time, and further extensions to the initial derogation were made in some cases. The FoPA Guidelines highlight that derogations should be limited in duration<sup>17</sup> and this approach does appear to have been followed in most cases, with the majority of States withdrawing their derogation by the end of June 2020 as the first wave receded. However, Armenia and Serbia only withdrew their derogations in September and October 2020 respectively.

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16 “Many States have derogated from the right of assembly due to COVID-19”, Laws on the Right of Peaceful Assembly website (accessed 20 July 2022), <<https://www.rightofassembly.info/news/States-begin-to-derogate-from-the-right-of-assembly-owing-to-the-COVID-19-pandemic>> for a global perspective on derogations on freedom of assembly related to the pandemic.

17 “FoPA Guidelines”, para. 92, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

**Table 1: OSCE Member States that derogated from the ECHR**

	<b>Initial Date of Derogation</b>	<b>Ending of first Derogation</b>
<b>Albania</b>	24 March 2020	23 June 2020
<b>Armenia</b>	16 March 2020	16 September 2020
<b>Estonia</b>	20 March 2020	18 May 2020
<b>Georgia</b>	21 March 2020	January 2022
<b>Latvia</b>	15 March 2020	14 May 2020
<b>Moldova</b>	17 March 2020	20 May 2020
<b>North Macedonia</b>	1 April 2020	30 June 2020
<b>Romania</b>	17 March 2020	15 May 2020
<b>San Marino</b>	10 April 2020	30 June 2020
<b>Serbia</b>	15 March 2020	9 October 2020

Both Latvia and Moldova again derogated from the ECHR in response to subsequent waves of COVID-19; Latvia in November 2020 and October 2021 and Moldova in April 2021. In contrast, Georgia extended its derogation to the ECHR on numerous occasions and, on 31 December 2021, the Georgian authorities informed the Council of Europe that their derogation was being extended until 1 January 2023.<sup>18</sup> Such an extended period of derogation is potentially disproportionate and should be subject to a regular process of assessment and evaluation.

Beyond undertaking a formal process of derogation from the relevant treaty, there is no clear evidence that the right to freedom of peaceful assembly was impacted to a greater extent in countries which derogated from the ECHR than in countries that simply used forms of legislation to limit public gatherings.

18 “Notification of Communication”, Directorate of Legal Advice and Public International Law, Council of Europe, 3 January 2022, < <https://rm.coe.int/0900001680a4fdb0>>.

# Using legislation to restrict the right to freedom of peaceful assembly

In the early stages of the pandemic, from March 2020 onwards, most participating States imposed formal legal restrictions on the right to freedom of peaceful assembly. In some cases, this involved a complete, or blanket prohibition on public gatherings, while some States chose to restrict the number of participants or required participants to meet social distancing guidance, to insist upon the wearing of face masks or other such measures. Across the OSCE region, participating States adopted a range of legal approaches to limit the right to freedom of peaceful assembly. The OSCE report on “State responses to the COVID-19 pandemic”,<sup>19</sup> published in July 2020, provided an assessment of the general approach at this time:

“ In most countries, the response to the pandemic has involved the adoption of numerous pieces of complex legislation, regulations and administrative decisions, at times both at the central and local levels. These acts were often poorly drafted, adopted with little or no public debate, and underwent multiple amendments in very little time. Effectively this resulted in a large degree of uncertainty affecting the implementation of the measures and preventing a clear legal understanding of the relationship between the different measures and their effects. This is not in line with the principle of legal certainty, whereby legal provisions should be clear and precise so that individuals may ascertain unequivocally which rights and obligations apply to them and regulate their conduct accordingly.”

As noted, participating States imposed diverse levels of restrictions on assemblies as illustrated by the selection of examples below. One should also note that throughout the pandemic the nature of restrictions imposed on the right to freedom of peaceful assembly have changed frequently in response to the ebb and flow of the COVID-19 virus and its variants:<sup>20</sup>

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19 “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic”, ODIHR, 17 July 2020, p. 33, <<https://www.osce.org/odihr/human-rights-states-of-emergency-COVID-1919>>.

20 Unless otherwise noted, data has been gathered by ODIHR staff.



- Andorra suspended all public events from 13 March 2020;
- Bosnia and Herzegovina imposed an absolute ban on assemblies on 23 March 2020;<sup>21</sup>
- Denmark restricted gatherings to fewer than 10 people from 18 March 2020, but no restrictions were imposed on ‘opinion-shaping assemblies’ or those with a political purpose;<sup>22</sup>
- Georgia banned assemblies of more than 10 people on 23 March 2020 and this was tightened to assemblies of three people from 31 March;<sup>23</sup>
- Italy imposed a “suspension of events or initiatives of any kind, events and all forms of meetings in public or private places, including those of a cultural, recreational, sporting or religious nature, even if held in places that are closed or open to the public” from 23 February 2020;<sup>24</sup>
- Kyrgyzstan imposed a ban on all outdoor assemblies under a state of emergency that was imposed on 25 March 2020;
- Mongolia imposed restrictions on freedom of assembly “for much of 2020 under COVID-19-related measures”;<sup>25</sup>
- Poland imposed a total ban on assemblies from 31 March 2020, but from 31 May assemblies of up to 150 people were permitted;<sup>26</sup>
- In the Russian Federation most restrictions were introduced by local government rather than the federal authorities. In Moscow, for example, decree No. 12-UM, introduced on 5 March 2020, imposed a blanket prohibition of all “public and other mass events”,<sup>27</sup> while the different regions each introduced specific localised restrictions;<sup>28</sup>

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21 “Human Rights in times of Covid-19”, OSCE, Banja Luka – Sarajevo, 2020, <<https://www.osce.org/files/f/documents/7/7/470667.pdf>>, and “Human Rights during COVID-19 Pandemic in Bosnia and Herzegovina”, Visio Institut, 31 August 2021, <<http://4liberty.eu/human-rights-during-COVID-19-pandemic-in-bosnia-and-herzegovina/>>.

22 “Call For Submissions: Covid-19 and the Increase of Domestic Violence against Women”, The Danish Institute for Human Rights, 9 June 2020, <<https://www.ohchr.org/sites/default/files/2022-01/denmark-danish-insti-for-hr.pdf>>.

23 <<https://georgia.un.org/en/133785-human-rights-restriction-georgia-during-COVID-19-pandemic-lessons-learned-and>>.

24 “Emergency Covid - 19: The Right of Assembly and Protest in Italy under the Lockdown”, Osservatorio Repressione, no date, <<https://civicspacewatch.eu/wp-content/uploads/2020/06/Emergency-COVID-19-the-right-of-assembly-and-protest-in-italy-under-the-lockdown-.pdf>>.

25 Freedom in the World 2021, Freedom House website, <<https://freedomhouse.org/country/mongolia/freedom-world/2021>>.

26 “Poland: COVID-19 is no excuse to crack down on protests”, Amnesty International website, EUR 37/2421/2020, 29 May 2020, <<https://www.amnesty.org/en/documents/eur37/2421/2020/en/>>.

27 “Russia: No place for protest”, Amnesty International website, EUR 46/4328/2021, p. 11 <<https://www.amnesty.org/en/documents/eur46/4328/2021/en/>>.

28 “Freedom of assembly in Russia during the pandemic”, OVD-Info website, 2020, <https://reports.ovdinfo.org/freedom-assembly-russia-during-pandemic#2>>.

- Sweden initially recommended a voluntary restraint on assemblies, then banned assemblies of more than 500 people on 12 March 2020, then tightening this to 50 people on 27 March;<sup>29</sup>
- Ukraine initially banned assemblies of more than 200 people on 12 March 2020, and then cut the number of permitted participants to 10 from 17 March;<sup>30</sup>
- The United Kingdom imposed lockdown restrictions from 26 March 2020 under which “no person was permitted to participate in a gathering in a public place of more than two people”.<sup>31</sup>

State responses thus varied from imposing an absolute ban on all assemblies, to permitting smaller gatherings, albeit with some considerable variation in the number of people permitted to participate at any one time. An early review of restrictions, published by the European Centre for Not-for-Profit Law (ECNL), highlights some of the range of early restrictions:

“The law restricts two or more people for gathering in Bosnia and Herzegovina and Serbia; more than two in Bulgaria and the UK; and three or more in the Netherlands (...) in Armenia up to twenty people are still permitted to gather in public, and Russia and Sweden permit gatherings of up to fifty people. While Denmark has imposed a limit on more than ten people gathering, notably the new law and the restrictions do not apply to gatherings for a political or other purpose, including demonstrations or political meetings.”<sup>32</sup>

In some cases, the restrictions introduced were very vague. For example, the law in Cyprus restricted “a large number” from gathering, while the law in Ireland pertained

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29 “Sweden and the COVID-19 Crisis 2021”, The Quality of Government Institute, University of Gothenburg, October 2021, <[https://www.gu.se/sites/default/files/2021-10/2021\\_9\\_Dahlstrom\\_Lindvall.pdf](https://www.gu.se/sites/default/files/2021-10/2021_9_Dahlstrom_Lindvall.pdf)> and <<https://blogs.loc.gov/law/2020/10/falqs-the-swedish-legal-response-to-the-COVID19-pandemic/>>.

30 “Human rights impact assessment of the COVID-19 response on the territory of Ukraine”, International Partnership for Human Rights (IPHHR), 28 July 2020, <<https://www.iphronline.org/human-rights-impact-assessment-of-the-COVID-19-response-on-the-territory-of-ukraine-2.html>>.

31 “The Government response to Covid-19: freedom of assembly and the right to protest”, House of Commons and House of Lords Joint Committee on Human Rights, 19 March 2021, <<https://committees.parliament.uk/publications/5153/documents/50935/default/>>; see also Jamie Grierson, “Ever-changing Covid rules on protest set up conflict with the police”, *The Guardian*, 30 March 2021, <<https://www.theguardian.com/world/2021/mar/30/ever-changing-COVID-19-rules-on-protest-set-up-conflict-with-the-police>>.

32 “Protest in a time of panic”, European Center for Not-for-Profit Law, no date, <<https://ecnl.org/sites/default/files/2020-08/Protest-in-a-Time-of-Pandemic.pdf>>.

to situations “where the level of proposed attendance at the event could reasonably be considered to pose a risk of infection with COVID-19 to persons attending the event”. Elsewhere, the law specified that the provisions restricting gatherings applied to both public and/or private spaces (e.g., Portugal, Malta) or to indoor and/or outdoor gatherings (e.g., Austria). Such vague language inevitably left a considerable degree of uncertainty as to what exactly might be permitted and what might suddenly be against the law.

In addition, as already mentioned, the legal limitations on assemblies were often subject to frequent change. In Montenegro, for example, the restrictions imposed on the right to assembly were changed eight times between March 2020 and May 2021.<sup>33</sup> This process has been documented in some detail in the case of England, where the legal regulation pertaining to public assemblies changed five times between March and November 2020.<sup>34</sup> A review of law and practice relating to the regulation of freedom of assembly in England during the pandemic, conducted by the Joint Committee on Human Rights of the UK Parliament, highlighted some of these issues and noted that:

“ Throughout the pandemic the law has used regulations to impose restrictions, to a lesser or greater extent, on gatherings. Frequent changes in the law have made it hard for the public to be sure of the legality of protest, as has the fact that the regulations have generally been silent on protest.”

The frequency of changes and the nuanced approach to what was permissible in many countries made it a challenge simply to understand what was legally allowed and what punishments one might be liable to face. Frequent changes in the law relating to areas of fundamental freedoms, even if arguably necessary in response to the changing nature of the coronavirus, nevertheless raise issues of legal certainty and foreseeability.

The FoPA Guidelines note that any restrictions should always have an explicit basis in domestic law to ensure that individuals are able to foresee, to a reasonable degree, the consequences which may result from their actions.

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33 “Monitoring Report on the Freedom of Assembly in Montenegro”, institut alternativa, 1 July 2021, a page 16 <<https://institut-alternativa.org/en/monitoring-report-on-the-freedom-of-assembly-in-montenegro/>>.

34 “Protest policing in a pandemic”, Protest Matters blog, 13 March 2021, <<https://protestmatters.files.wordpress.com/2021/03/mead-protest-policing-in-a-pandemic-2021.pdf>> and “The Government response to Covid-19: freedom of assembly and the right to protest”, House of Commons and House of Lords Joint Committee on Human Rights, 19 March 2021, <<https://committees.parliament.uk/publications/5153/documents/50935/default/>>.

The requirement for foreseeability thus requires consistency.<sup>35</sup> However, as already noted by the OSCE in its July 2020 report,<sup>36</sup> many laws pertaining to COVID-19 regulations were poorly drafted and underwent multiple amendments in very little time, which effectively led to a large degree of uncertainty about their scope and impact on people's right to organize or participate in an assembly.

# States not imposing legal restrictions on assemblies

A small number of participating States did not impose restrictions on the right to assemble in response to the COVID-19 pandemic. One example was Belarus, where the government decided not to impose any specific measures in response to the pandemic, despite the recommendations from the WHO.<sup>37</sup> Similarly, the authorities in Uzbekistan did not impose any specific restrictions on assemblies due to COVID-19. In Turkmenistan the authorities did not acknowledge the existence of the COVID-19 pandemic in its territories.<sup>38</sup> Activists who claimed to the contrary were persecuted by the authorities.<sup>39</sup> However, the authorities did formally impose some restrictions in response to a visit from the WHO in July 2020.

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35 "Human Rights Handbook on Policing Assemblies", OSCE, 11 March 2016, para 98, <<https://www.osce.org/odihr/226981>>.

36 "OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic", 17 July 2020, p.33, <<https://www.osce.org/odihr/human-rights-States-of-emergency-COVID-1919>>.

37 Technical mission of the World Health Organization to conduct an expert assessment of the situation with COVID-19 in the Republic of Belarus: April 8-11, 2020, World Health Organization, Executive Summary, <[https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0005/440609/Belarus-Mission-Report-Executive-Summary-rus.pdf](https://www.euro.who.int/__data/assets/pdf_file/0005/440609/Belarus-Mission-Report-Executive-Summary-rus.pdf)>.

38 Riza Khasanov, «Бойня имени Бердымухамедова В Туркменистане до сих пор не зарегистрировано ни одного заражения коронавирусом. А как на самом деле?» (Bedimuhamedov massacre. So far, no coronavirus infection has been registered in Turkmenistan. How about really?), *Novaya Gazeta*, 18 March 2022, <<https://novayagazeta.ru/articles/2022/03/18/boinia-imeni-berdymukhamedova>>.

39 «Всё О Коронавирусе В Туркменистане. которого в стране официально нет» (Statement by Members of the European Parliament, Human Rights Defenders and Independent Journalists, Turkmen.news website, 14 July 2022, <<https://turkmen.news/COVID-19/>>.

It is notable that, in each of these cases, the right to freedom of peaceful assembly was already subject to severe restrictions by the authorities. The Belarusian authorities imposed further extensive restrictions on the right to assemble in response to the mass protests following the contested presidential elections in August 2020,<sup>40</sup> but the COVID-19 pandemic was not invoked as the reason. The Uzbek authorities did eventually introduce a law ‘On the State of Emergency’<sup>41</sup> in November 2021 which prohibited “holding meetings, rallies, street marches or demonstrations, as well as other mass events” as it was noted the existing legislation did not allow for declaring a state of emergency due to situations such as the COVID-19 pandemic.

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40 Monitoring the Right to Free Assembly: Belarus 2020, European Center for Not-for-Profit Law, 8 February 2021, <<https://ecnl.org/publications/monitoring-right-free-assembly-belarus-2020>>.

41 «Конституционный Закон Республики Узбекистан О Чрезвычайном Положении» (Constitutional Law of the Republic of Uzbekistan On The State Of Emergency), 4 July 2020, <<https://lex.uz/ru/docs/5774847?query=%D%0BC%D%0B%8D%82%1D%0B%8D%0BD%D%0B#3sr1->>>.

**Challenges  
to legal restrictions  
in the courts**

**3**

Several OSCE participating States have seen public opposition to the restrictions imposed on the right to hold public assemblies which have led to lawsuits challenging the legislation and its implementation. In some cases, the relevant courts upheld the complaints and ruled that the restrictions were disproportionate, while in others the courts rejected the complaints and upheld the restrictions; in others still, the authorities contested the court rulings and sought to maintain restrictions on the right to protest. This report also discusses a judgement issued by the European Court of Human Rights in March 2022 (*Communauté genevoise d'action syndicale (CGAS) v. Switzerland*) which outlined some of its views regarding the imposition of blanket bans on the freedom of assembly in response to the COVID-19 pandemic (see below).

## Blanket bans as a disproportionate response

Where COVID-19 regulations initially imposed restrictions on assemblies, they often involved a blanket restriction on all assemblies, or all assemblies above a certain number of participants. The laws did not generally allow for any form of negotiation to discuss what sort of mitigating actions the organizer might be able to take to enable the assembly to go ahead. The FoPA Guidelines state that blanket restrictions constitute an excessive restriction on the right and “may fail the proportionality test because they fail to differentiate between different ways of exercising the right to freedom of assembly and preclude any consideration of the specific circumstances of each case.”<sup>42</sup>

One of the earliest challenges to a blanket ban on assemblies was made in Kosovo,<sup>43</sup> where the Constitutional Court declared that the government’s decision of 23 March 2020, to place restrictions on movement and public gatherings, was unconstitutional. The matter had been referred to the Court by the President of Kosovo after the government had argued that the Law on the Prevention of Spreading Infectious Disease permitted the Ministry of Health to take “special emergency measures” to protect the population, including a ban on public assemblies. However the Court

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42 “Human Rights Handbook on Policing Assemblies”, OSCE, 11 March 2016, para 133, <<https://www.osce.org/odihr/226981>>.

43 Any reference to Kosovo, whether to the territory, its institutions, or population, is to be understood in full compliance with United Nations Security Council Resolution 1244.

found that the measures set out in the Government Decision exceeded the emergency measures provided in the law and infringed upon the freedom of movement, association and assembly of all citizens across the “entire Republic of Kosovo” and “without exception”, thus rendering the decision unconstitutional.<sup>44</sup>

In April 2020 a number of challenges to bans on assemblies were brought by assembly organizers in Germany and, while the lower courts initially upheld the restrictions, the German Federal Constitutional Court ruled that a blanket ban on assemblies was incompatible with the Basic Law (*Grundgesetz*) and that the authorities should make decisions on a case-by-case basis in accordance with the principle of proportionality. In one early case in Giessen, near Frankfurt (reported on 15 April 2020) the court called on the local authorities to reconsider the ban on a protest against COVID-19 restrictions. The authorities then lifted the ban but instead imposed a number of restrictions including limiting the event to 15 participants (rather than the 30 that the organizers had applied for) and requiring participants to wear face masks and keep at least 1.5 meters away from each other. The duration of the protest was also limited to one hour.<sup>45</sup>

In a second case, brought by the organizer of a planned 50-person assembly in Stuttgart, (reported on 18 April 2020) the court stated that the authorities should have entered into negotiations with the applicant to discuss matters such as lowering the number of participants and using social distancing, as well as considering the location and timing of the protest which could enable the assembly to take place.<sup>46</sup>

A third case was heard in relation to a ban on a proposed assembly in Berlin in August 2020. The authorities cited previous demonstrations where participants had flouted rules on social distancing and mask-wearing as a justification for the ban. While the court ruled that the assemblies did not create an immediate threat to public safety, it did state that the organizers should ensure social distancing of participants.<sup>47</sup>

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44 Jack Robinson and Eve-anne Travers, “Government decision restricting movement ruled unconstitutional”, Prishtina Insight website, 31 March 2020, <<https://prishtinainsight.com/government-decision-restricting-movement-ruled-unconstitutional/>>.

45 Kate Martyr, “Top German court: Coronavirus restrictions not grounds to ban all protests”, Deutsche Welle website, 16 April 2020, <<https://www.dw.com/en/top-german-court-coronavirus-restrictions-not-grounds-to-ban-all-protests/a-53153858>>.

46 “Germany’s top court overturns Stuttgart’s protest ban”, Deutsche Welle website, 18 April 2020, <<https://www.dw.com/en/germanys-top-court-overturns-stuttgarts-protest-ban/a-53175992>>.

47 “Berlin police brace for virus protest as court overturns ban”, *Associated Press*, 28 August 2020, <<https://abcnews.go.com/Health/wireStory/berlin-police-brace-virus-protest-court-overturns-ban-72680221>>.



# Retaining restrictions

In some countries, the political authorities appeared not to agree with decisions made by the courts and adopted measures to circumvent or effectively ignore them.

On 16 March 2020 the French government imposed a range of restrictions in response to the pandemic, including on the right to assembly. On 11 May, restrictions on freedom of movement were lifted and some types of gatherings, such as on public transport or in venues open to the public, were permitted provided that people respected social distancing or wore face coverings. However, public assemblies attended by more than ten people remained prohibited everywhere in France. On 13 June 2020, the Council of State suspended these restrictions, stating that they were disproportionate and noting that such restrictions did not apply to gatherings other than public assemblies.<sup>48</sup> In response, on 14 June, the Prime Minister issued a decree that required prefects to issue formal authorization for public assemblies during which either physical distance could be respected or the use of face coverings could be ensured. On 6 July, the Council of State suspended the authorization requirement that the government had introduced on 14 June.

In Slovenia, in March 2020, restrictions were imposed on any public gathering and on movement between municipalities, but no specific time limit was placed on them. In April 2020, the Constitutional Court of Slovenia issued a decision which stated that restrictions on public gatherings and movements must be limited in time and reviewed at regular intervals. However, for much of the remainder of 2020, assemblies for the purpose of protesting were not permitted. In February 2021, when a small protest involving 10 people with participants wearing masks and respecting social distancing was prohibited (despite gatherings of up to 10 people being allowed at the time), a group of NGOs filed a constitutional challenge. In response, the Minister of Interior modified the language of the ordinance to make no distinction between protests and other forms of gatherings. Restrictions on assemblies continued. However, in April 2021, the Slovenian Constitutional Court suspended the ordinance imposing a blanket ban on peaceful assemblies.<sup>49</sup>

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48 "France: Arrested for protest: Weaponizing the law to crackdown on peaceful protesters in France", Amnesty International, EUR 21/1791/2020, 29 September 2020, <<https://www.amnesty.org/en/documents/eur21/1791/2020/en/>>.

49 "Memorandum on freedom of expression and media freedom in Slovenia", Council of Europe Country Memorandum, Strasbourg, 4 June 2021, <<https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-slovenia/1680a2ae85>>.

# Rejecting challenges to COVID-19 legislation

Finally, in some countries, the Courts refused to pass formal decisions on the constitutional legitimacy of restrictions on the right to freedom of peaceful assembly that were imposed in response to the COVID-19 pandemic. In Croatia, for example, the Constitutional Court rejected a proposal for amendments to COVID-19 restrictions that included a ban on freedom of assembly. In their decision the Court stated:

“ (1) It is not up to the CCRC<sup>50</sup>, but exclusively to the Parliament (*Hrvatski sabor*) to assess whether the general restrictions on the rights and freedoms set out in the Article 16 of the Constitution should be applied, or the Article 17 of the Constitution should be activated (meaning a two-thirds majority). This refers also to the question whether the COVID-19 epidemic is a major natural disaster in the sense of the Article 17.3.”<sup>51</sup>

And it went on to note that the “necessity and proportionality” (of the restrictions) “cannot be assessed by the CCRC at the principle level”.<sup>52</sup>

In Albania, the Republican Party of Albania appealed to the Albanian Constitutional Court to repeal Order 633/2020 “On the prohibition of gatherings in open and closed places” as unconstitutional. The Party noted that the country was entering an electoral campaign in spring 2021 and the law would prohibit all public political activity and thus limit public debate during this period. However the Court found that the complaint was unfounded because the Order applied equally to all political parties, had been applied in accordance with the law and was only a temporary restriction on the right to assembly.<sup>53</sup>

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50 Constitutional Court of the Republic of Croatia.

51 “Memorandum on freedom of expression and media freedom in Slovenia”, Council of Europe, Country Memorandum, 2021, <[https://www.fricore.eu/sites/default/files/croatia\\_constitutional\\_court\\_14.09.2020\\_summary\\_by\\_judge\\_rajko.pdf](https://www.fricore.eu/sites/default/files/croatia_constitutional_court_14.09.2020_summary_by_judge_rajko.pdf)>.

52 “Covid-19 related decisions”, The Constitutional Court of the Republic of Croatia (CCRC), 14 September 2020, <[https://www.fricore.eu/sites/default/files/croatia\\_constitutional\\_court\\_14.09.2020\\_summary\\_by\\_judge\\_rajko.pdf](https://www.fricore.eu/sites/default/files/croatia_constitutional_court_14.09.2020_summary_by_judge_rajko.pdf)>.

53 Gentjan Skara and Bojana Hajdini, “The Right to Freedom of Peaceful Assembly during the COVID-19 pandemic in the light of the Albanian Constitutional Court’s Decision 11/2021 and the ECHR”, Jean-Monnet-Saar website, 27 September 2021, <[https://jean-monnet-saar.eu/?page\\_id=102519](https://jean-monnet-saar.eu/?page_id=102519)>.

In Montenegro, COVID-19 restrictions were eased in May 2020 in relation to many areas of life and people were now permitted to gather in shopping centres and other public places. However:

“...organized or spontaneous public assemblies involving more than 20 people still constituted the criminal offence of ‘non-compliance with the health regulations on suppression of a dangerous infectious disease’ under Article 287 of the Criminal Code of Montenegro, which entails steep punishment”.<sup>54</sup>

The ongoing restrictions on assemblies were challenged by two local human rights groups, Human Rights Action and Institut Alternativa, who appealed to the Constitutional Court of Montenegro to consider the constitutionality of the ongoing ban on the right to assemble on 30 June 2020. The Court formally replied more than eight months later, on 17 March 2021, noting that the Order that had been challenged was no longer in force. However, the NGOs noted that the original Order had merely been replaced by an identical one that differed only in its formal reference number.<sup>55</sup>

In the Russian Federation a number of applications were brought in many regions for judicial review of gubernatorial decrees, which included a total ban on ‘mass events’, including concerts and demonstrations, but all the applicants’ submissions were dismissed. The decisions included a court in Astrakhan which, on 16 April 2020, **declared** that requirements did not contradict Federal legislation, while on 17 April, **Briansk regional court** reached the same decision.<sup>56</sup> In most cases the judges referenced the amended 1994 Emergency Situations Act, asserting that if enacting restrictions on rights was allowed, all restrictions were legitimate. In the final days of 2020 the Constitutional Court upheld the regional restrictions on the freedom of movement.

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54 “Freedom of Assembly Monitoring Report”, institut alternativa, 27 November 2020, p. 11, <<https://institut-alternativa.org/en/freedom-of-assembly-monitoring-report/>>.

55 “Monitoring Report on the Freedom of Assembly in Montenegro”, institut alternativa, 1 July 2021, <<https://institut-alternativa.org/en/monitoring-report-on-the-freedom-of-assembly-in-montenegro/>>.

56 “Freedom of assembly in Russia during the pandemic”, OVD-Info website, no date, <<https://reports.ovdinfo.org/freedom-assembly-russia-during-pandemic#4>>. Accessed 21 July 2022.

# The views of the European Court of Human Rights

The European Court of Human Rights has highlighted that States have a narrow margin of appreciation with regard to imposing a blanket ban on assemblies.<sup>57</sup> Prior to the COVID-19 pandemic, the European Court of Human Rights had focused on threats to public order as a potential ground for imposing a generalized ban on assemblies, and had not cited the possibility of public health concerns. This highlights the emergent challenges raised by the COVID-19 pandemic to established human rights standards.<sup>58</sup>

As mentioned above, in March 2022, the European Court of Human Rights issued a judgement in relation to a case against Switzerland, brought by the *Communauté genevoise d'action syndicale (CGAS)*, in which the applicants complained about being forced to cancel a rally that had been planned for 1 May 2020, due to the restrictions — including a ban on all public assemblies — imposed to counter the COVID-19 pandemic.

The Court noted the serious threat to public health posed by the pandemic, the lack of knowledge of the nature and danger of the virus and thus the need to “react swiftly”. However, it also stated that any blanket restriction of the kind imposed “required strong reasons to justify it and called for particularly thorough scrutiny by the courts empowered to weigh up the interests at stake”. This need was enhanced by the fact that the restrictions had remained in force from 17 March to 30 May 2020 and which the Court described as “a significant length of time”.

In finding in favour of the applicant, the Court cited three primary reasons why they believed that there had been a breach of Article 11 of the ECHR:

1. The lack of any independent and effective judicial review of the measures introduced to restrict the fundamental right and freedoms in response to COVID-19 and to assess their proportionality;

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57 “Guide on Article 11 of the European Convention on Human Rights. Freedom of assembly and association”, European Court of Human Rights, last update 30 April 2022, <[https://www.echr.coe.int/Documents/Guide\\_Art\\_11\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf)>.

58 “The Functioning of Courts in the COVID-19 Pandemic: A Primer”, OSCE, 2 November 2020, <<https://www.osce.org/odihr/469170>>.

2. The high level of potential penalties (up to three years in prison or a fine) that anyone ignoring the restrictions would be liable for, and which would impose a chilling effect on potential participants; and
3. The fact that the Swiss government had chosen not to invoke Article 15 and derogate from the European Convention, which meant that they had to adhere fully to the requirements of Article 11.

The decision of the European Court of Human Rights found that a blanket ban on assemblies was disproportionate in this particular case. However, it should be noted that the Court was divided 4-3 in their decision. Their judgement also highlighted the limitations of the approach taken by the Swiss government, which suggests that there may be contexts where a blanket ban on the right to freedom of peaceful assembly in response to a serious and urgent public health crisis may not be considered to be disproportionate by the European Court of Human Rights.

# Responses to COVID-19 restrictions

# 4

The earlier sections of this report focused on the generalized range of restrictions imposed on the right to freedom of peaceful assembly in response to the pandemic. However, the report also highlighted how a number of national courts had deemed the blanket restrictions on the right to be disproportionate and instead called for the authorities to facilitate the right to freedom of peaceful assembly whenever possible.

This approach is in line with international human rights standards which emphasize the central importance of freedom of peaceful assembly for democratic societies. They insist that authorities should avoid prohibiting an assembly, although they may legitimately discuss possible limitations based on the proposed time, place and manner. Furthermore, if people assemble in a public place, whether the assembly is formally notified or not, the police should always aim to facilitate any such gathering, as long as the participants remain peaceful, albeit while reserving the right to bring charges at a later date (see discussion in Section 6, below). The FoPA Guidelines, for example, state that “As a rule, peaceful assemblies should be facilitated without restriction” and that the duty to facilitate peaceful assemblies applies equally to those without an identified organizer and to those where the authorities have not been notified in advance, or in the case of spontaneous assemblies.<sup>59</sup>

## Facilitating the right to freedom of peaceful assembly

The widespread imposition of restrictions on the right to freedom of assembly in the spring of 2020 in turn led to expressions of concern about respect for human rights and a fear that the COVID-19 pandemic and States’ responses “raised an unprecedented collective challenge to the fundamental and human rights of everyone”.<sup>60</sup>

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59 “FoPA Guidelines”, paras 127, 170 and 171, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

60 “The coronavirus pandemic and fundamental rights. A year in Review”, European Union Agency for Fundamental Rights, 10 June 2021, <<https://op.europa.eu/en/publication-detail/-/publication/c203efef-c995-11eb-84ce-01aa75ed71a1/language-en>> and “The Impact of Covid-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU”, Think Tank European Parliament, 23 April 2020, <[https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL\\_BRI\(2020\)651343](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_BRI(2020)651343)>.

The initial introduction of lockdowns appeared to have a significant impact on the number of public assemblies taking place as people conformed to the public health restrictions, avoided public places and remained at home. However, after the initial weeks of the pandemic, many assemblies were organized, even while formal, general, COVID-19-linked restrictions were still in place. It is worth noting that many such assemblies were facilitated by the authorities and passed off peacefully. Perhaps surprisingly, this immediate impact of the COVID-19 lockdowns and associated legal restrictions appears only to have been a temporary response and soon the number of protests across the region increased:

“While demonstrations were initially interrupted as governments around the world implemented lockdowns and movement restrictions, protests ultimately resurged. Initially, this resurgence took the form of direct responses to government (mis)management of the pandemic and the immediate needs of protesters, including better access to personal protective equipment (PPE), or financial support amid the ensuing economic downturn. Soon thereafter demonstrations evolved into a continuation of the social movements that had begun prior to the crisis, with previously held grievances only exacerbated as a result of the pandemic’s economic fallout and government (mis)management. In other cases, new demonstration movements emerged altogether. The combined result is that demonstrations actually *increased* in 2020 relative to the year prior, not just despite — but in part *because of* — the pandemic.”<sup>61</sup>

Various studies show that the resurgence of assemblies from the late spring of 2020 onwards was driven, in part, by opposition to the restrictions imposed by the authorities to counter the spread of the virus and, in part, by the economic impact of the lockdowns. However, people also began to (re)organize and (re)assemble in response to new issues of concern — for example the Black Lives Matter (BLM) protests — and in recognition that the issues they had been protesting about in the early months of 2020 had not gone away (such as the climate crisis), while many new subjects of concern emerged in specific countries.

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61 “A year of COVID-19: The pandemic’s impact on global conflict and demonstration trends”, reliefweb, 1 April 2021, <<https://reliefweb.int/report/world/year-COVID-19-pandemic-s-impact-global-conflict-and-demonstration-trends>>; see also “Freedom of Peaceful Assembly and the Covid-19 Pandemic: A Snapshot of Protests and Restrictions”, Civicus Monitor website, September 2021, <<https://monitor.civicus.org/COVID19September2021/>> and “Worldwide Protests in 2020: A Year in Review”, Carnegie Endowment for International Peace, 21 December 2020, <<https://carnegie-jeendowment.org/2020/12/21/worldwide-protests-in-2020-year-in-review-pub-83445>>.



As a further factor, it is important to remember that the COVID-19 restrictions were generally imposed as temporary measures and, in many countries, began to be relaxed from May 2020 onwards. For example, while all US states had introduced a state of emergency by 16 March 2020 and had all imposed restrictions on the right to assemble, stay at home orders and other restrictions began to be lifted from late April 2020 onwards.<sup>62</sup> Moreover, although restrictions were re-imposed in most countries in response to subsequent waves of COVID-19, resistance to complying with lockdown and other restrictions grew and protests against COVID-19 restrictions increased, as did protests about a wide range of issues.

## Innovation and alternative approaches to assembly and protest

From the earliest days of the lockdowns, people sought to find ways to express their views and opinions collectively even while complying with prohibitions on gathering in public spaces. The ECNL documented some of these early alternative forms of assembly and other activities as part of their ongoing work in relation to freedom of peaceful assembly:

“ In Italy and Germany this included people playing music or singing on their balconies; in Spain and the UK this has involved regular expressions of support for healthcare workers by clapping from balconies or in front of their homes. In early April protests were held in Germany in solidarity with migrants and activists painting their footprints in front of various state institutions. Similarly, Extinction Rebellion in a symbolic act filled with shoes the square of the House of Representatives in The Hague, Netherlands ... In Croatia and Kosovo people protested a general public dissatisfaction with their political leaders during the crisis by banging pots and pans on their balconies.”<sup>63</sup>

62 “U.S. state and local government responses to the COVID-19 pandemic”, Wikipedia, last edited 28 April 2022, accessed 21 July 2022 <[https://en.wikipedia.org/wiki/U.S.\\_state\\_and\\_local\\_government\\_responses\\_to\\_the\\_COVID-19\\_pandemic](https://en.wikipedia.org/wiki/U.S._state_and_local_government_responses_to_the_COVID-19_pandemic)>.

63 “Protest in a Time of Pandemic”, European Center for Not-for-Profit Law, no date, <<https://ecnl.org/sites/default/files/2020-08/Protest-in-a-Time-of-Pandemic.pdf>>.

Other reports noted more unusual forms of protest in response to the restrictions on physical gatherings. These included people remaining in their cars, blocking streets and using their horns in Spain<sup>64</sup> as part of anti-government protests led by the right wing Vox party and, in Poland,<sup>65</sup> as part of the protests for the rights of women and girls against proposed further legal restrictions on access to abortion. In some places, such as the Russian Federation where the right to assemble and to protest remains very limited, people found more creative methods to express their opinions. These included placing cardboard effigies of a protesting human rights activist in public places after an activist himself had been detained, while in Arkhangelsk four snowmen were built and adorned with protest signs.<sup>66</sup>

In the early weeks of the lockdowns, in addition to the use of physical (albeit socially-distanced) gatherings, people also explored the use of online media both as forms of protest but also as part of a wider civic activism.<sup>67</sup> Online resources have increasingly been recognized as an important element of freedom of assembly<sup>68</sup> and, when restrictions were imposed, some of the climate activism work in particular moved online to maintain momentum before resuming physical protests.<sup>69</sup>

Although a number of different and innovative forms of gathering to express views collectively and to protest were used during the early COVID-19 lockdowns, physical protests did not stop even if there were fewer of them. While some campaigns sought

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64 “Coronavirus: Anti-lockdown car protest draws thousands”, BBC News website, 23 May 2020, <<https://www.bbc.co.uk/news/world-europe-52783936>>.

65 Monika Sieradzka, “Poles protest stricter abortion laws amid coronavirus lockdown”, Deutsche Welle website, 16 April 2020, <<https://www.dw.com/en/poles-protest-stricter-abortion-laws-amid-coronavirus-lockdown/a-53142475>>.

66 “Could We Meet Online? Creative Protests During COVID-19”, Global Campus of Human Rights website, 1 April 2021, <<https://gchumanrights.org/preparedness/article-on/could-we-meet-online-creative-protests-during-covid-19.html>>.

67 Jonathan Pinckney, “Amid Coronavirus, Online Activism Confronts Digital Authoritarianism”, United States Institute of Peace, 28 April 2020, <<https://www.usip.org/publications/2020/04/amid-coronavirus-online-activism-confronts-digital-authoritarianism>> and Justine Calma “Activists pick up their phones and move online as coronavirus curbs protests”, The Verge website, 13 March 2020, <<https://www.theverge.com/2020/3/13/21178376/activists-phones-online-coronavirus-protests>>.

68 United Nations General comment no. 37 (2020) on the right of peaceful assembly (article 21), (UN GC37), Human Rights Committee, paras. 6 and 34, <<https://digitallibrary.un.org/record/3884725?ln=en>>.

69 Jessica Murray, “Climate strikes continue online: ‘We want to keep the momentum going’”, *The Guardian*, 22 April 2020, <<https://www.theguardian.com/environment/2020/apr/22/climate-strikes-continue-online-we-want-to-keep-the-momentum-going>> and “Climate activism in the time of COVID-19” webinar, International Institute for Environment and Development (iied) website, 14 May 2020, <<https://www.iied.org/climate-activism-time-COVID-19>>.

ways to continue their activities by moving into the virtual sphere, as lockdown restrictions began to ease physical assemblies were quickly resumed.

## Voluntary restrictions on assemblies

Although some groups and communities sought to assemble and protest throughout the pandemic, others opted to cancel their public events or actively chose not to organize them while the public health restrictions remained in place. It is difficult to identify assemblies that did not happen, or where organizers chose not to hold events, but the impact can be seen by the absence of some of the regular, annual events. In Northern Ireland, for example, the Orange Order cancelled all plans for parades in 2020; the first time this had happened since the Second World War.<sup>70</sup> Whereas in 2019, there were 2,317 Orange Order and related parades recorded, in 2020 this number dropped to just 690.<sup>71</sup> However, the main cycle of parades fully resumed in 2021.

One notable absence in the annual cycle of public assemblies was the cancellation of most Pride parades.<sup>72</sup> Instead of mass gatherings, such as the crowd of up to 150,000 people who assembled for Pride in New York in 2019, events were cancelled, moved online or explored other forms of expression both in 2020<sup>73</sup> and in many cases again in 2021.<sup>74</sup>

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70 Gerry Moriarty and Frey McClements, “Coronavirus: Orange Order cancels Twelfth of July parades”, *The Irish Times*, 6 April 2020, <<https://www.irishtimes.com/news/ireland/irish-news/coronavirus-orange-order-cancels-twelfth-of-july-parades-1.4221989>>.

71 Parades Commission Press release, no date, <<https://www.paradescommission.org/Press-Releases/Parade-Statistics.aspx>>.

72 European Pride Organisers Association website, Campaigns information, accessed 21 July 2022, <<https://www.epoa.eu/campaigns/COVID-19/>>.

73 Katelyn Burns, “What will Pride mean this year?”, Vox website, 29 April 2022, <<https://www.vox.com/2020/4/29/21227999/online-pride-coronavirus-pandemic>>.

74 “A Pandemic Can’t Stop Pride: Celebrating LGBTQ Pride Month During COVID-19”, Insight Into Diversity, 17 May 2021, <<https://www.insightintodiversity.com/a-pandemic-cant-stop-pride-celebrating-lgbtq-pride-month-during-COVID-19/>>.

# A resurgence of physical protests

A few weeks after the WHO declared a global pandemic in March 2020, assemblies and protests began to be organized and supported again. Some were organized in response to events of international significance, while others included assemblies in relation to national level events and more local issues.

The most notable series of assemblies in the early weeks of the pandemic were those that followed the killing of George Floyd by members of the Minneapolis Police Department on 26 May 2020 and which rapidly led to protests in more than 2000 locations across the United States of America. While the protests were initially focused on the specific killing of George Floyd, the incident also resonated as the latest example of the death of a black person at the hands of the police in the US.

The vast majority of the protests across the US remained peaceful but, because of the scale of the protests and because they took place during the COVID-19 pandemic, there were concerns that the assemblies would lead to an increase in infections. In June 2020, the US Center for Disease Control published a document entitled *Considerations for Events and Gatherings* as guidance for people organizing or participating in public gatherings where it would be difficult to maintain social distancing. However, research has suggested that the protests in the US had no significant impact on increasing the number of COVID-19 infections. This is thought to be, in part, because the events were outdoors and, in part, because many people wore masks.<sup>75</sup>

One distinctive aspect of the BLM protests in 2020 was that they quickly went global, with demonstrations recorded in at least 40 OSCE participating States, from Kazakhstan in the east to Spain to the west; from Norway in the north to Malta in the south.

In many countries people wore masks at the assemblies and there was no intervention by the authorities. In Norway, for example, when a public health official raised concerns about the increased risk of COVID-19 infections, the police responded that both they and the public valued freedom of speech and that they would not intervene to stop the

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75 Dhaval M. Dave et al. "Black Lives Matter Protests and Risk Avoidance: The Case of Civil Unrest During a Pandemic", National Bureau of Economic Research (NBER), revised January 2021, <<https://www.nber.org/papers/w27408>>.

protest. In some places, the police did intervene. In Stockholm, for instance, the Swedish police used tear gas on protesters, while in Kazakhstan protesters in a number of cities were detained by the police.<sup>76</sup>

In some countries, the protests were focused on events in the US and assemblies were held in the vicinity of American embassies. However, in other places, explicit links were made with racism and police violence towards local minority populations. For example, the United Kingdom saw a large number of BLM protests, with events reported in at least 260 locations through May and June 2020, which raised issues about the policing of Black people in the UK as well as showing solidarity with the situation in the US.<sup>77</sup> Many organizers of BLM events in the UK emphasized the importance of public safety issues and encouraged people to wear masks and maintain social distancing. Many reported that the police often took a light-touch approach to the protests, although others noted a more aggressive style of policing in the evenings.

It is noteworthy that wearing face masks was seen as a positive development at assemblies during the pandemic; a sign that participants were taking personal responsibility for public health concerns. In contrast, prior to the onset of the pandemic, wearing a mask at an assembly was usually viewed as a questionable practice and as an indicator of a willingness or preparedness to engage in criminal activity or to confront the police, rather than as a legitimate expressive act.<sup>78</sup>

Besides the BLM protests there were major cycles of protests in a number of OSCE participating States during the pandemic, as well as many smaller assemblies, some of which passed off peacefully, but many of which resulted in an increasing atmosphere of tension and hostility between citizens and the state.

In Belarus, demonstrations were organized in August 2020 in response to the disputed election results. A series of mass protests were organized throughout the country and continued, in spite of increasing violence and repression by the authorities,

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76 List of George Floyd protests outside the United States, last edited 20 July 2022, <[https://en.wikipedia.org/wiki/List\\_of\\_George\\_Floyd\\_protests\\_outside\\_the\\_United\\_States#Central\\_Asia](https://en.wikipedia.org/wiki/List_of_George_Floyd_protests_outside_the_United_States#Central_Asia)>.

77 Dr Adam Elliott-Cooper, "Britain is Not Innocent", Netpol, 2021, <<https://netpol.org/black-lives-matter/>>.

78 "FoPA Guidelines", para 153, <[https://www.venice.coe.int/webforms/documents/default.asp?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.asp?pdffile=CDL-AD(2019)017rev-e)>.

through the rest of the year.<sup>79</sup> Although the Belarusian authorities played down the severity of the COVID-19 virus and did not introduce any legal responses to the pandemic, they nevertheless banned some notified assemblies due to the “epidemiological situation” and also blamed the protests for increasing the incidents of COVID-19 in the country.<sup>80</sup>

In Poland, a series of protests, referred to as the Women’s Strike (*Strajk kobiet*), began on 22 October 2020 after a **Constitutional Tribunal** ruling made almost all cases of abortion illegal. The wave of protests which occurred throughout the country following the decision was the biggest in the country since the **end of the communist regime** during the **revolutions of 1989**. Mass protests continued through October and November despite participants facing instances of use of force and detention by the authorities. Amnesty International noted that on:

“ 11 November 2020, on Independence Day, the march in Warsaw was supposed to take place in cars due to COVID-19 regulations in place. Instead, the assembly turned into an actual march with a number of violent incidents by participants and instances of excessive use of force by the police towards journalists.”<sup>81</sup>

Further protests took place in early 2021 and again in November that year, which reportedly resulted in an increasingly hostile and violent environment for women’s rights activists and their supporters in Poland.<sup>82</sup>

In Russia there were a series of assemblies across the country through the early months of 2021 in protest at the imprisonment of opposition leader Alexei Navalny. The first day of protests, 23 January 2021, led to demonstrations in some 198 Russian cities, as well as in 95 cities in other countries. The authorities responded firmly with

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79 Monitoring the Right to Free Assembly: Belarus 2020, European Center for Not-for-Profit Law, 8 February 2021, <<https://ecnl.org/publications/monitoring-right-free-assembly-belarus-2020>>.

80 «Так есть ли коронавирус? Рассказываем о необычном подходе белорусских властей к «ковидным» ограничениям» (So is there a coronavirus? We talk about the unusual approach of the Belarusian authorities to ‘covid’ restrictions), Zerkalo website, 3 February 2022, <<https://news.zerkalo.io/life/9508.html>>.

81 “Poland: The extraordinary wave of protests across the country should be protected not attacked”, Amnesty International, 20 November 2020, EUR 37/3370/2020, <<https://www.amnesty.org/en/documents/eur37/3370/2020/en/>>.

82 “Poland: Escalating Threats to Women Activists”, Human Rights Watch, 31 March 2021, <<https://www.hrw.org/news/2021/03/31/poland-escalating-threats-women-activists>>.

force and detentions.<sup>83</sup> Although subsequent demonstrations were smaller in number and range of locations, they continued until April, attracting a new generation of participants, despite the continuing repression and detentions.<sup>84</sup>

In Kazakhstan, a series of apparently leaderless protests erupted on 6 January 2022, initially in response to an increase in fuel prices. These soon spread across the country and mobilized around a diverse range of economic issues, corruption and injustice and which became unified by their opposition to the ongoing influence of the former President Nursultan Nazarbaev. The protests and their policing became more violent, with thousands of protesters and journalists detained. Dozens of police and protesters were killed and the government imposed a state of emergency and an internet blackout before order was restored with Russian military assistance.<sup>85</sup>

These examples illustrate something of the diversity of the mass protests that have occurred since May 2020; protests which took place during the pandemic, but not necessarily in response to it. In contrast, the other major global cycle of protests during this time was against restrictions imposed by the authorities to counter the COVID-19 pandemic and reduce its spread.

## Protests against COVID-19 restrictions

Some of the earliest protests in April 2020 focused on challenging restrictions on human rights, such as those in Germany which preceded the Constitutional Court decision that the blanket ban on assemblies was unconstitutional. Other protests focused on the general imposition of lockdown restrictions, for example, in London (UK), Vladikavkaz (Russia) and Naples (Italy). Some protested border closures, for example at Zgorzelec

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83 Michelle E. Berdy, “‘This is no way to Live’: Discontent Spilled Over in Russia. But Will It Matter, *Politico*, 13 June 2021, <<https://www.politico.com/news/magazine/2021/06/13/putin-navalny-russia-protest-dissent-493486>>.

84 Svetlana Erpyleva and Oleg Zhuraviev, “What’s new about Russia’s new protests?”, Open Democracy website, 3 June 2021, <<https://www.opendemocracy.net/en/odr/whats-new-in-russia-protests-2021-navalny/>>.

85 “Behind the Unrest in Kazakhstan”, International Crisis Group, 14 January 2022, <<https://www.crisisgroup.org/europe-central-asia/central-asia/kazakhstan/behind-unrest-kazakhstan>>.



on the Polish-German border where the border closure impacted people's ability to travel to work. Others protested more generally about the socio-economic impacts of the lockdowns, for example in Sofia (Bulgaria) and in some Parisian suburbs (France) where lockdowns had a severe impact on some working class and migrant populations. Some protests were about the poor quality of the government response to the pandemic, for example in Belarus in May 2020. Others protested the re-imposition of lockdown measures, for example in Belgrade (Serbia) in July 2020 when a weekend curfew was imposed to counter rising cases of COVID-19.<sup>86</sup> Many of these protests highlighted issues of lack of trust in the government and general frustration with the ongoing nature of the lockdowns and other restrictions and their impact on people's daily lives.

It is therefore perhaps unsurprising that more protests began to occur in late 2020 and 2021 as governments re-imposed lockdowns to counter secondary and tertiary waves of COVID-19. These protests were also often of a larger scale, sometimes more confrontational and came to be associated with a diverse mix of populist positions including so-called 'anti-vaxxers', conspiracy theorists and right wing libertarians.

In some cases, frustration with the anti-COVID-19 restrictions brought to the fore a more general hostility to the government, for example in Bulgaria, where the protests against COVID-19 restrictions morphed into more general opposition to the government and concerns about endemic corruption and state capture. In July 2020, increasing exchanges between the Prime Minister and the President over corruption resulted in police raids on the Presidency. This led to daily demonstrations throughout the summer in Sofia, with protestors demanding the resignation of the Prime Minister. Although the number of participants decreased during the autumn and winter months, the protests continued until 16 April 2021 when the Prime Minister's term ended.<sup>87</sup>

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86 Ray Furlong, "Russian Police Break Up Anti-Lockdown Protest", *Radio Free Europe Radio Liberty*, 21 April 2020, <<https://www.rferl.org/a/russian-police-break-up-anti-lockdown-protest/30568221.html>>.

87 "2020-2021 Bulgarian protests", Wikipedia, last updated 13 July 2022, <[https://en.wikipedia.org/wiki/2020%E2%80%932021\\_Bulgarian\\_protests](https://en.wikipedia.org/wiki/2020%E2%80%932021_Bulgarian_protests)>.



In the Netherlands there were sometimes violent protests in towns across the country in January 2021 in opposition to a series of curfews and restrictions imposed to reduce the spread of COVID-19:<sup>88</sup> in Rotterdam in November 2021<sup>89</sup> and in Amsterdam in January 2022<sup>90</sup>. The protests drew on and highlighted a diverse range of anti-government feelings, including from conspiracy theorists, virus sceptics and right wingers. It was claimed that this had led to “an increase in polarisation and a threat of heightened extremist behaviour.”<sup>91</sup>

In France, President Macron announced plans on 12 July 2021 to require healthcare workers to show proof of vaccination and for people to show a *pass sanitaire* (sanitary pass) to be able to access certain types of venue, including cafes, restaurants, cinemas, trains and shopping malls. On 14 July (Bastille Day) protests took place against these plans in Paris and in more than 50 other locations across France. Some people clashed with the police; tear gas was fired and arrests were made. On 17 July, an estimated 114,000 people protested across the country, with 160,000 the following week and 200,000 people on 31 July. In August, the numbers continued to grow, with protests in some 200 locations. In Paris and some other major cities police used tear gas and water cannons and made arrests. The *pass sanitaire* requirement came into force on 8 August 2021 and, while the protests continued albeit on a reduced scale, the government held its position.<sup>92</sup>

Although the focus of the protests in France was in response to the COVID-19 suppression measures, they also fed on the existing and often confrontational cycle of protests that had begun with the *gilet jaunes* (yellow jacket) protests in 2018. These protests have prompted increasingly aggressive responses from the police, both in terms of use of force and arrests. The police responses are, in turn, perceived to

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88 “Dutch govt says rioters ‘won’t get away with it’ after third night of unrest”, France 24 website, 26 January 2021, <<https://www.france24.com/en/europe/20210126-another-night-of-riots-in-netherlands-over-COVID-19-curfew>>.

89 “Rotterdam police open fire as Covid protest turns into ‘orgy of violence’”, *The Guardian*, 20 November 2021, <<https://www.theguardian.com/world/2021/nov/19/the-netherlands-rotterdam-police-open-fire-as-COVID-19-protest-turns-violent>>.

90 “Thousands protest against Dutch COVID restrictions”, *Aljazeera*, 16 January 2022, <<https://www.aljazeera.com/news/2022/1/16/thousands-protest-dutch-COVID-19-lockdown-measures>>.

91 “Anti-lockdown activity: Netherlands country profile”, Institute for Strategic Dialogue, 3<sup>rd</sup> February 2022, <<https://www.isdglobal.org/wp-content/uploads/2022/02/ISD-Anti-lockdown-Netherlands-briefing-1.pdf>>.

92 Ray Furlong, “Russian Police Break Up Anti-Lockdown Protest”, *Radio Free Europe Radio Liberty*, 21 April 2020, <<https://www.rferl.org/a/russian-police-break-up-anti-lockdown-protest/30568221.html>>.

have had a chilling effect on freedom of assembly in France.<sup>93</sup>

One of the largest series of anti-COVID-19 protests took place in Canada in January 2022. Canada had seen intermittent protests against COVID-19 restriction since April 2020. However, these were dwarfed in scale and impact by the so-called Freedom Convoy protests that began on 22 January 2022 after the US and Canadian governments removed exemptions for unvaccinated truck drivers to cross the US-Canadian border. Hundreds of vehicles formed convoys that crossed Canada to converge on central Ottawa on 29 January 2022, where they said they would remain until all COVID-19 restrictions were repealed. An estimated 18,000 people attended the initial protest but numbers declined very quickly, with only 400 vehicles involved in the protest by 7 February. The scale of the truck protests caused extensive disruption to all aspects of life in Ottawa, with businesses and services closing down and complaints of violence and racist abuse, while related protests led to the closure also of the main crossing points between Canada and the US.

On 12 February, a state of emergency was declared in the Province of Ontario which launched actions to reopen the border. On 14 February, the Prime Minister of Canada invoked the Emergencies Act, the first time this had been done since it was passed in 1988. This gave the police extraordinary powers to “end border blockades and the occupation of downtown Ottawa by so-called ‘Freedom Convoy’ protesters”.<sup>94</sup> Between 17 and 20 February the police arrested protesters, removed parked vehicles and dismantled blockades from Ottawa’s streets and by 21 February most protesters had been removed.<sup>95</sup>

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93 “France: Arrested for protest: Weaponizing the law to crackdown on peaceful protesters in France”, Amnesty International, EUR 21/1791/2020, 29 September 2020, <<https://www.amnesty.org/en/documents/eur21/1791/2020/en/>>.

94 Tonda MacCharles and Alex Ballingall, “Justin Trudeau lifts Emergencies Act, as debate over its use rages on”, *Toronto Star*, 23 February 2022, <<https://www.thestar.com/politics/2022/02/23/canadian-press-newsalert-trudeau-set-to-revoke-emergencies-act.html>>.

95 “Canada convoy protest”, Wikipedia, last updated 21 July 2022, <[https://en.wikipedia.org/wiki/Canada\\_convoy\\_protest#Ottawa\\_protest](https://en.wikipedia.org/wiki/Canada_convoy_protest#Ottawa_protest)>.

## Summary

These brief examples highlight three main points. Firstly, assemblies and protests were organized throughout the OSCE region after the initial wave of COVID-19 had passed, and continued through subsequent waves. Numerous other examples could be given of assemblies, whether organized or spontaneous, large or small, that took place in OSCE participating States from May 2020 onwards. Many of them were facilitated by the authorities in accordance with international human rights standards.

Secondly, while the initial focus of some of the major protests was very diverse — varying from issues such as political corruption, police violence, attacks on women’s rights, environmental issues and economic inequalities — some of the assemblies coalesced around a generalized opposition to the government, while some developed an increasingly confrontational atmosphere between the authorities and those challenging their actions. Most of the mass protests died down without necessarily achieving their initial objectives but they do appear to have left a legacy of increased suspicion and mistrust between the authorities and their populations.

Thirdly, many of the larger protests, particularly those involving recurring assemblies, often took place in a hostile environment. Although many of the assemblies were largely peaceful, others, particularly those that tended to get reported in the media, were often fraught with tension, and the lack of mutual sympathy and trust between participants and state actors meant that acts of violence occurred all too often, an issue that is addressed in more detail in the next section.

**Responding to public  
assemblies during  
the pandemic**

**5**

In most countries the majority of assemblies remained peaceful even if they caused some degree of disruption to the daily routines of other people. Many assemblies during the pandemic, particularly smaller events, were both peaceful and facilitated by the authorities. However, such assemblies tended not to receive much attention in the media, in human rights reviews or in academic studies, with the focus mainly on assemblies that disrupted public order.

The examples cited above, in relation to some of the larger scale assemblies and extended cycles of protests during the pandemic, noted that, in some cases, the assemblies resulted in some level of disorder or acts of violence. In some instances this was due to aggressive behaviour by some of the assembly participants, but more frequently the police initiated the use of force.

The use of force by the police or other law enforcement officers at an assembly is a legitimate response in some contexts. However, it has been increasingly recognized that the use of force often serves to escalate a situation while approaches that involve patience, dialogue and other forms of de-escalation and policing without surprises are more effective in maintaining public order. The FoPA Guidelines and the “OSCE Human Rights Handbook on Policing Assemblies”<sup>96</sup> outline international human rights standards and contemporary best practice in relation to the facilitation of peaceful assemblies. These include refraining from the use of force if an assembly remains peaceful, using force as a last resort and refraining from dispersing peaceful assemblies. The documents also emphasize the duty of the police to minimize the risk of harm to participants and third party actors and always to police assemblies in accordance with international human rights standards.<sup>97</sup>

Policing involves a responsibility both to uphold the law and to maintain public order, but the policing must aim also to protect and facilitate human rights. Sometimes, particularly when policing public assemblies, balancing the law and public order against the right to peaceful assembly can be challenging. It requires skill, training, leadership and restraint. Most assemblies do remain peaceful, but violence flares up too often, and those participating in the assembly are too regularly held responsible. Research indicates that aggressive policing often contributes to outbreaks of public disorder.

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96 “Human Rights Handbook on Policing Assemblies”, OSCE, 11 March 2016, para 133, <<https://www.osce.org/odihr/226981>>.

97 “FoPA Guidelines”, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

# Use of force by law enforcement at assemblies

During the pandemic there were numerous cases where assemblies involved acts of violence. In some instances, for example the *pass sanitaire* protests in France (mentioned above) or at some BLM protests in the USA, the clashes took place in a context of ongoing tensions between law enforcement officials and protesters. In such cases the pandemic was merely a new backdrop to established patterns of interactions between the police and protesters, where a history of use of force by law enforcement officials has been documented in human rights reports or cases before the European Court of Human Rights.

In some cases the violence was sparked by participants in an assembly, but then led to an aggressive response from the police. For example, in Serbia, after the President announced a weekend long curfew on 7 July 2020, thousands of people spontaneously assembled peacefully in front of the National Assembly building in Belgrade. However, a small number of people entered the building and behaved aggressively towards the police, who responded with disproportionate force involving tear gas, batons, dogs and horses against anyone in the vicinity.<sup>98</sup> The FoPA Guidelines make it clear that police use of force should always be proportionate and discriminate so that the focus is on those who are violent rather than treating all assembly participants as aggressors.<sup>99</sup>

There were a number of reports of the police intervening to disperse peaceful assemblies in a wide range of countries during the COVID-19 pandemic in contravention of international human rights standards. These included Turkey where, in the first half of 2020, at least nine assemblies were subjected to the use of force on the grounds of anti-COVID-19 measures and 42 demonstrators were taken into custody for breaches of COVID-19 restrictions.<sup>100</sup> In Georgia the police used water cannons against protesters

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98 “Legal environment and space of civil society organisations in supporting fundamental rights – Serbia”, European Agency for Fundamental Rights, January 2021, <[https://fra.europa.eu/sites/default/files/fra\\_uploads/franet\\_serbia\\_civic\\_space\\_2021.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/franet_serbia_civic_space_2021.pdf)>.

99 “FoPA Guidelines”, paras. 181-188, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

100 “Turkey: Attack on freedom of assembly undermines work of human rights defenders”, International Federation for Human Rights, 29 July 2020, <<https://www.fidh.org/en/region/europe-central-asia/turkey/turkey-attack-on-freedom-of-assembly-undermines-work-of-human-rights>>.

gathered outside the Central Election Commission in Tbilisi in November 2020. This in turn led to an escalation of violence as protesters responded by throwing missiles and the police reacted with additional force.<sup>101</sup> In Nicosia (Cyprus) in February 2021, police used water cannons, chemical irritants and stun grenades against a peaceful anti-corruption protest.<sup>102</sup> In Baku (Azerbaijan) in December 2021, police used force and detained people for participating in an ‘illegal’ assembly that breached the COVID-19 regulations.<sup>103</sup>

In Greece, where there have been recurrent clashes between police and demonstrators over a number of years,<sup>104</sup> there were several violent interventions by the police at peaceful protests during the pandemic. These include the use of chemical irritants, stun grenades and water cannons to disperse peaceful protesters in Athens (Greece) on 17 November 2020 and the use of force against protesters in northern Greece and on the island of Crete on the same day.<sup>105</sup> In February 2021, protests took place in response to government plans to introduce education reforms and the police used tear gas and stun grenades to disperse people. This in turn led to further violent clashes a few days later.<sup>106</sup>

Pride parades have become widely supported celebrations globally, but have also been subject to (often violent) hostility and opposition in some OSCE participating States, particularly in Eastern European and Central Asian countries. This hostility continued to be expressed during the pandemic. For example, in Turkey, the Istanbul governorate banned the proposed Pride event planned for 26 June 2021 on the grounds that “provocative incidents may occur, for the protection of peace and security of the people including the participants, personal inviolability (...), general health and morals, the rights and freedom of others, possible violence and terrorism, for the prevention of provocative incidents.” When the organizers planned to move the event

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101 Nino Tsagareishvili, “Right of Peaceful Assembly and Manifestation in Georgia”, Human Rights Center, 2021, pp. 38-41, <<https://ecnl.org/sites/default/files/2021-09/162RIGHT%20OF%20PEACEFUL%20ASSEMBLY%20...%20-%20Main%20flaws%20in%20law%20and%20practice%2C%202021.pdf>>.

102 “Cyprus: Police violence must be investigated and blanket ban on protest lifted”, Amnesty International, 24 February 2021, <<https://www.amnesty.org/en/latest/news/2021/02/cyprus-police-violence-must-be-investigated-and-blanket-ban-on-protest-lifted/>>.

103 “Azerbaijan: latest police violence against peaceful protesters”, Amnesty International, 15 December 2021, EUR 55/5110/2021, <<https://www.amnesty.org/en/documents/eur55/5110/2021/en/>>.

104 Dr. Stathis Kalyvas et al., The Greek Riots: A Political and Historical Analysis, The Wilson Center, event 22 2009, <<https://www.wilsoncenter.org/event/the-greek-riots-political-and-historical-analysis>>.

105 “Greece: Freedom of assembly at risk and unlawful use of force in the era of COVID-19”, Amnesty International, 14 July 2021, EUR 25/4399/2021, <<https://www.amnesty.org/en/documents/eur25/4399/2021/en/>>.

106 “2021 Greek Protests”, Wikipedia, last update 4 June 2022, <[https://en.wikipedia.org/wiki/2021\\_Greek\\_protests](https://en.wikipedia.org/wiki/2021_Greek_protests)>.



to Taksim Square instead of the designated meetings area in Maltepe district in Istanbul, the authorities also banned it. When people gathered anyway, the police used tear gas and physical force to disperse participants.<sup>107</sup>

A similar situation occurred in Tbilisi (Georgia) on 5 July 2021 when anti-Pride protesters occupied the site of the planned Pride march and attacked activists, journalists and others. It was reported that police officers failed to intervene, either to stop the attacks or to assist those who had been injured. As a result of the attacks, the concluding event of Pride week, a March for Dignity, was cancelled.<sup>108</sup>

These examples of the use of force by the police in different countries often appear to have been disproportionate because those assembling remained peaceful. This, in turn, suggests that the police may view protesters as inevitably hostile opponents; a thought process that then tends to become self-fulfilling. The FoPA Guidelines emphasize that use of force against peaceful protesters “should only be applied to the minimum extent necessary, following the principles of restraint, proportionality, minimization of damage and the preservation of life,” (para. 181) and, that when using force, there is a duty to minimize harm. This requires that states should comply with international standards concerning the use of force and that weapons, such as water cannons, chemical agents and less lethal projectiles should only be issued “following a decision taken at the highest level of command, and by police officers who have received extensive prior training” (para 182).

In Brussels (Belgium) violence occurred during a number of protests against COVID-19 restrictions during the pandemic. On 24 January 2022, an estimated 50,000 people took part in a protest that scheduled to end by 14:00. However, when the protest was still going at 15:00 the police intervened to disperse people. Violence broke out and the police used tear gas and water cannon and arrested an estimated 250 people.<sup>109</sup> The FoPA Guidelines have highlighted that dispersal of an assembly should always be

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107 “Turkey: Peaceful Pride protestors in Istanbul subjected to police use of unlawful force”, Amnesty International, 29 June 2021, EUR 44/4362/2021, <<https://www.amnesty.org/en/documents/eur44/4362/2021/en/>>.

108 “Georgia: Tbilisi Pride cancelled amid violent protests”, BBC News website, 5 July 2021, <<https://www.bbc.co.uk/news/world-europe-57720366>> and Nino Tsagareishvili, “Right of Peaceful Assembly and Manifestation in Georgia”, Human Rights Center, 2021, pp. 32-38, <<https://ecnl.org/sites/default/files/2021-09/162right%20of%20peaceful%20assembly%20...%20-%20main%20flaws%20in%20law%20and%20practice%2c%202021.pdf>>.

109 Ray Furlong, “Russian Police Break Up Anti-Lockdown Protest”, *Radio Free Europe Radio Liberty*, 21 April 2020, <<https://www.rferl.org/a/russian-police-break-up-anti-lockdown-protest/30568221.html>>.



a matter of last resort when violence has either broken out or is imminent and should not be used as a response for minor infringements of the law. Furthermore dispersal should not occur unless law enforcement officials have attempted to resolve the situation by less invasive measures while facilitating the peaceful nature of an assembly (para 179).

In most of these examples cited, those who were assembled appear to have been peaceful and violence seems to have escalated after an initial intervention and use of force by the police to disperse people participating in an assembly. Public disorder thus too often appears to have been a response to police actions, rather than police action being a legitimate and proportionate response to ongoing disorder.

## Inequalities in treatment of different types of assemblies

The FoPA Guidelines remind us (para. 101) that “Freedom of peaceful assembly shall be enjoyed equally by all individuals. The general principle that human rights shall be enjoyed without discrimination lies at the core of the interpretation of human rights standards. Article 26 ICCPR and both Article 14 and Protocol 12 ECHR require that States secure the enjoyment of the human rights recognized in these treaties to all individuals within their jurisdiction, without discrimination. This principle ‘ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position’.”

Research into the policing of assemblies during the COVID-19 pandemic produced numerous examples of cases where people believed that different types of assemblies were treated differently. Many of these involved cases where events organized by the authorities were enabled to take place while other assemblies were banned and others involved different treatment for different types of events.

In Belarus the authorities banned a commemorative assembly planned by three NGOs on 9 May 2020 (World War II Victory Day) due to COVID-19 concerns, instead

recommending people to mark the event on their apartment balconies. However, a military parade and concert was held later the same day.<sup>110</sup>

In Kosovo on one occasion the police banned a small assembly, which wanted to present a petition in compliance with physical distancing rules, on the grounds that “security conditions are not in place to allow the gathering because of the COVID-19 epidemic restrictions”; the previous day a public book launch had been held which was attended by a deputy prime minister.<sup>111</sup>

In Mongolia, two people were prosecuted and fined for organising a flash mob protesting against government COVID-19 restrictions in June 2021, but they noted that the government had organized a large ‘Digital Nation’ event that was attended by thousands of people in a public square a few weeks later.<sup>112</sup>

In Turkey, civil society actors highlighted the double standards applied to civil society organizations and groups with closer connections to the Government. For example, after the death of folk musician Ibrahim Gökçek following a hunger strike in May 2020, some right-wing groups with alleged connections to the Government alliance took to the streets in Kayseri to stop the funeral and threatened to burn the corpse. The group only dispersed when the police arrived. In contrast many assemblies held to express condolences for the deceased, including the one in his own neighbourhood in Istanbul, were dispersed by the police with tear gas. Some people were also prevented from attending the funeral on the basis of COVID-19 measures.<sup>113</sup>

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110 «Власти Минска запретили “Бессмертный полк” 9 мая из-за коронавируса», (Minsk authorities banned Immortal Regiment on May 9 due to coronavirus), Interfax website, 8 May 2020, <<https://www.interfax.ru/world/707834>>.

111 Njomza Haxhibeqiri and Tringë Sokoli “Striking a Balance: Human Rights v. Combating COVID-19 in Kosovo”, Prishtina, 2021, pp 29-30, <[https://crd.org/wp-content/uploads/2021/03/Kosovo\\_eng\\_web.pdf](https://crd.org/wp-content/uploads/2021/03/Kosovo_eng_web.pdf)>.

112 B. Tumurbaatar, “Entrepreneurs hold flash mob to protest against government”, *The UB Post*, 30 June 2021, <<https://www.pressreader.com/mongolia/the-ub-post/20210630/281496459261584>>.

113 “A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society”, Human Rights Association, Special Report, 29 July 2020, p. 55, <<https://ihd.org.tr/en/a-perpetual-emergency-attacks-on-freedom-of-assembly-in-turkey-and-repercussions-for-civil-society/>>.

In Turkmenistan the authorities organized many public gatherings to mark national anniversaries throughout 2020 and 2021 where people were forced to attend and participate. Meanwhile they reacted with force to protests over food shortages and economic hardship.<sup>114</sup>

There have also been a number of examples where there were accusations that right-wing assemblies were treated more favourably than others.

In Hungary it was claimed that participants in a car-based protest in central Budapest in April 2020 were treated differently from participants in a neo-Nazi demonstration in another central area of the city in May 2020. The car-based protest involved people honking their horns to express their views of the government and participants were subject to fines of up to HUF 1.2 million (over 3,000 euros) for infringing the Highway Code. In contrast, the neo-Nazi demonstration, which included displays of racist symbols and anti-Roma slogans, was reportedly “protected” by the police.<sup>115</sup>

The policing of a number of assemblies in Italy in late April and early May 2020, including events in Milan, Naples and Trieste and Rome, also led to widespread criticism of what was perceived as differing treatment of demonstrators by security forces depending on their political affiliation.<sup>116</sup>

A similar type of complaint was made in Ireland. The police had initially tried to prevent anti-lockdown protests from taking place, but eventually facilitated them and, as the lockdown protests became more frequent, they attracted counter protests. Complaints were made that the police used a way more heavy-handed approach against the counter protests than the main anti-lockdown protests.<sup>117</sup>

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114 “Review of Turkmenistan under the International Covenant on Civil and Political Rights”, International Partnership for Human Rights, December 2021, p.8, <<https://www.iphronline.org/wp-content/uploads/2022/02/TIHR-IPHR-submission-on-Turkmenistan-December-2021.pdf>>.

115 “Concentration of Power Salvaged: Coronavirus Stocktaking”, Károly Eötvös Institute, 30 July 2020, p. 8, <[http://ekint.org/lib/documents/1595421967-EKINT\\_Concentration\\_of\\_Power\\_Salvaged\\_-\\_Coronavirus\\_Stocktaking\\_\(analysis\).pdf](http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf)>.

116 “Emergency Covid - 19: The Right Of Assembly And Protest In Italy Under The Lockdown”, Osservatorio Repressione, no date, pp. 7-9, <<https://civicspacewatch.eu/wp-content/uploads/2020/06/Emergency-Covid-19-The-Right-Of-Assembly-And-Protest-In-Italy-Under-The-Lockdown-.pdf>>.

117 “Joint Committee on Justice Report on Civil Liberties during the Covid-19 Pandemic”, Houses of the Oireachtas, September 2021, p. 146, <[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_justice/reports/2021/2021-09-28\\_report-on-civil-liberties-during-the-COVID-19-pandemic\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_justice/reports/2021/2021-09-28_report-on-civil-liberties-during-the-COVID-19-pandemic_en.pdf)>.

# Responses to journalists and assembly monitors

There has been growing awareness of the work that diverse types of third party participants play in protecting the right to freedom of peaceful assembly through their presence and documentation of what takes place.<sup>118</sup> The UN Human Rights Committee's General Comment no. 37 on the right to peaceful assembly noted that:

“ 30. The role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies, is of particular importance for the full enjoyment of the right of peaceful assembly, and they are entitled to protection under the Covenant. They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not be met with reprisals or other harassment, and their equipment must not be confiscated or damaged. Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor. It is a good practice for independent national human rights institutions and non-governmental organizations to monitor assemblies.”

Nevertheless, despite the recognition of the role that third party actors play in protecting the right to freedom of peaceful assembly, journalists, assembly monitors and others, including street medics, are often treated with suspicion and as a potential problem by the police, and sometimes as well by those participating in an assembly. This can be a specific problem for third party actors at right wing and populist assemblies and may result in them being denied access, harassed, or on occasion subject to violence.

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118 “FoPA Guidelines”, paras 189-216, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

# Attacks on journalists

Over the years, there have been numerous reports of police hostility towards members of the media, and the Council of Europe recorded twelve incidents where journalists were assaulted by police officers at public events during 2021. These included incidents in a variety of countries across Europe including Albania, France, Greece, Poland, Russia, Spain, Turkey and the United Kingdom, where the police reportedly failed to take appropriate action to protect journalists and, in some cases, impeded their work.<sup>119</sup>

However the COVID-19 pandemic drew attention to another challenge that journalists may face — the hostility of some assembly participants towards them. Journalists are often regarded by them as part of the ‘liberal elite’ and, thus, as antagonistic to the aims of those assembled rather than playing an independent role in reporting activities. Attacks on journalists have been a persistent feature of anti-COVID-19 protests since the beginning of the second wave in Europe from October 2020.

The International Press Institute recorded 58 incidents in Europe between October and December 2020 including assaults, threats and intimidation of journalists covering protests in Austria, Germany, Italy, Portugal and Slovenia. These included nine attacks on journalists in Florence, Naples and Rome (Italy) during October; incidents in Leipzig (Germany) where **43 journalists were harassed** during the “Querdenken” demonstration on 7 November, and a violent assault on a photo-journalist in Ljubljana (Slovenia) on 5 November who, as a result, required surgery and titanium plates to repair his jaw.<sup>120</sup>

A similar diverse array of attacks was reported the following year. According to a Council of Europe report there were 32 incidents of violence on reporters and journalists by protesters in 2021. These included cases in Armenia, Croatia, France,

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119 “Platform Protection of Journalists Annual Report 2022”, Council of Europe, 22 April 2022, <<https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>>.

120 “Europe: Growing attacks against journalists covering Covid-19 protests”, International Federation of Journalists, 8 December 2020, <<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/europe-growing-attacks-against-journalists-covering-COVID-19-protests.html>> and “Reporters attacked while covering protests against Covid-19 measures in Italy”, Reporters Without Borders, 6 November 2020, <<https://rsf.org/en/reporters-attacked-while-covering-protests-against-COVID-19-measures-italy>>.

Georgia, Germany, Greece, Italy, Montenegro, Netherlands, Serbia, Spain, Turkey, the UK and Ukraine.<sup>121</sup> Attacks on journalists covering anti-lockdown demonstrations during 2021 included examples in France, where a France 3 TV team was violently attacked on 27 March 2021 as they reported on a rally against COVID-19 mitigating measures; while in the UK a BBC journalist was chased by an anti-lockdown mob in London in June 2021.<sup>122</sup> There were again examples of attacks on journalists covering anti-COVID-19 protests in Italy, including a case in October 2021, where a photojournalist was taken to hospital after being attacked with a shovel by a man at a protest in Rome.<sup>123</sup>

Journalists faced similar problems in the US with at least 24 pandemic-related attacks in 2020 and 2021. These included instances where two reporters were assaulted while covering an anti-vaccination rally in Los Angeles on 14 August 2021 and four days later a journalist was assaulted while covering a protest against mask wearing in Miami.<sup>124</sup>

These examples appear to be evidence of a serious escalation of hostility towards journalists and a significant challenge to the right of the media to document public activities in several countries. It was noted that, as a result of the attacks, some media organizations and journalists stopped displaying their identity badges while reporting in the field. In some cases, such as for photojournalists, this may not help as they are readily identifiable by their equipment. Furthermore the police often expect journalists to carry some form of visible identification if they are to be treated differently to assembly participants; removing ID may help with one issue, but also create further problems.

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121 “Platform Protection of Journalists Annual Report 2022”, Council of Europe, 22 April 2022, <<https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>>.

122 Sara Torsner, “Increasing numbers of physical attacks on European journalists as they report on COVID and other stories”, The Conversation website, 5 January 2022, <<https://theconversation.com/increasing-numbers-of-physical-attacks-on-european-journalists-as-they-report-on-COVID-19-and-other-stories-173941>>.

123 *Ibid.*

124 Liam Scott, “Journalists in Europe, US Face Harassment over Pandemic Coverage”, Voice of America website, 20 September 2021, <<https://www.voanews.com/a/journalists-in-europe-u-s-face-harassment-over-pandemic-coverage/6236403.html>>.

# Treatment of assembly monitors

ODIHR has played a prominent role in supporting and encouraging human rights defenders and civil society actors, as well as its own staff<sup>125</sup> to attend, observe, document and report on how far the right to freedom of peaceful assembly has been respected and facilitated in a wide range of participating States since 2007. ODIHR has also produced two editions of its “Handbook on Monitoring Freedom of Peaceful Assembly”<sup>126</sup> and “Guide on Law Enforcement Equipment most Commonly Used in the Policing of Assemblies”<sup>127</sup> to assist in the development of this work and to use the findings of monitoring reports to engage with state actors to improve practices around assemblies. Many monitoring activities were suspended when the restrictions were imposed on assemblies at the outset of the pandemic but, as assemblies began to resume, so did monitoring work in some countries.<sup>128</sup>

Although the role of assembly monitors (also known as observers or legal observers) has been acknowledged in international human rights standards, experiences on the ground can be variable. Often the role of monitors is not well understood and they are regarded as part of the assembly rather than as independent actors. In the USA for example, there were reports of legal observers being arrested in Las Vegas,

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125 See for example, “Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2017–June 2018)”, OSCE, 18 September 2019, <<https://www.osce.org/odihr/430793>>.

126 “Handbook on Monitoring Freedom of Peaceful Assembly: Second Edition”, OSCE, 11 December 2020, <<https://www.osce.org/odihr/monitoring-peaceful-assembly>>.

127 “Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies”, OSCE, 2 July 2021, <<https://www.osce.org/odihr/491551>>.

128 See for example recent reports on the situation in Georgia: Nino Tsagareishvili, “Right of Peaceful Assembly and Manifestation in Georgia”, Human Rights Center, 2021, <<https://ecnl.org/sites/default/files/2021-09/162RIGHT%20OF%20PEACEFUL%20ASSEMBLY%20...%20-%20Main%20flaws%20in%20law%20and%20practice%2C%202021.pdf>>; Kazakhstan: “Report on monitoring of the right to freedom of peaceful assembly in the Republic of Kazakhstan in 2018 – 2020”, Kazakhstan International Bureau for Human Rights and Rule of Law, 6 April 2021, <<https://bureau.kz/en/hot/report-on-pa-in-rk-in-2018-2020/>>; Montenegro: “Monitoring Report on the Freedom of Assembly in Montenegro”, institut alternativa, 1 July 2021, <<https://institut-alternativa.org/en/monitoring-report-on-the-freedom-of-assembly-in-montenegro/>>; and the UK: Dr Adam Elliott-Cooper, “Britain is Not Innocent”, Netpol, 2021, <<https://netpol.org/black-lives-matter/>>.



Nevada,<sup>129</sup> Kalamazoo, Michigan<sup>130</sup> and Raleigh, North Carolina,<sup>131</sup> and it was suggested that observers faced systematic challenges when attending BLM protests:

“Legal observers from the National Lawyers Guild were attacked, tear gassed, and arrested while monitoring protests in at least a dozen cities, despite their visible neon green hats and other identifying markers. One observer in Sacramento was shot in the face with a rubber bullet and hospitalised with a concussion, while several observers in Detroit were beaten with batons, punched, tear gassed and then arrested while trying to record the names of arrested protesters.”<sup>132</sup>

In Portland in July 2020 the American Civil Liberties Union secured a temporary restraining order against the city which barred the police from arresting or using physical force against anyone they “know or reasonably should know” is a journalist or legal observer, unless officers have probable cause that the person has committed a crime and prevented police from removing cameras, recording equipment or press passes of journalists and legal observers, or to ask them to disperse.<sup>133</sup>

In the UK, there have also been recent examples where the police have failed to accept the legitimate role of assembly monitors. Four monitors were arrested at a protest outside Parliament in London in March 2021<sup>134</sup> although the case was subsequently dropped and the police issued a public statement acknowledging that “legal observers at protests have an important role to play in the independent scrutiny

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129 Ricardo Torres-Cortez, “Sheriff defends arrest of legal observers during Las Vegas protest”, Las Vegas Sun website, 16 June 2020, <<https://lasvegassun.com/news/2020/jun/16/sheriff-defends-arrest-of-legal-observers-during-p/>>.

130 Brad Devereaux, “Arrests of legal observer, reporter at counter-protest ‘troubling,’ Kalamazoo Defender says”, Michigan Live website, 21 August 2020, <<https://www.mlive.com/news/kalamazoo/2020/08/arrests-of-legal-observer-reporter-at-counter-protest-troubling-kalamazoo-defender-says.html>>.

131 Travis Long, “Raleigh police arrest legal observers at protest”, The News & Observer website, 28 August 2020, <<https://www.newsobserver.com/news/local/article245392025.html>>.

132 Belkis Wille and Ida Sawyer, “The US Commits the Same Abuses it Condemns Abroad”, Human Rights Watch, 29 June 2020, <<https://www.hrw.org/news/2020/06/29/us-commits-same-abuses-it-condemns-abroad>>.

133 Rebecca Ellis, “Federal Judge Restricts Portland Police Interactions with Journalists, Observers”, OPB News website, 3 July 2020, <<https://www.opb.org/news/article/federal-judge-portland-police-journalists-protests/>>.

134 “Liberty files Legal Action over Protest Arrests”, Liberty, 29 March 2021, <<https://www.libertyhumanrights.org.uk/issue/liberty-files-legal-action-over-protest-arrests/>>.



of policing”.<sup>135</sup> Assembly monitors also faced challenges when observing the COP26 conference in Glasgow in December 2021 and reported being harassed and intimidated by the police, threatened with arrest, and blocked by police from observing what was happening.<sup>136</sup> In France, there were reports of police preventing people from filming police activities at an assembly in Paris in December 2020.<sup>137</sup>

A somewhat different situation occurred in Tbilisi (Georgia) where monitors felt unable to observe certain events, particularly anti-LGBTI assemblies, because the police could not protect people from violent protesters. At one large anti-LGBTI assembly in Tbilisi on 5 July 2021, 53 journalists were physically assaulted by groups of violent opponents and one died several days after the assault. Assembly monitors observed part of the action but, as the assaults intensified, they decided to leave for safety reasons.<sup>138</sup>

This last example appears to reflect the situation faced by journalists in some countries where, in polarized contexts, which assemblies can often be, those present are expected and assumed to be clearly on one side or the other, and there is limited space for third party actors, who aim to be neutral observers and reporters.

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135 Damien Gayle, “Met drops case and accepts the role of legal observers at protests”, *The Guardian*, 29 May 2021, <<https://www.theguardian.com/uk-news/2021/may/29/met-drops-case-and-accepts-the-role-of-legal-observers-at-protests>>.

136 “Respect or Repression? An independent report of the COP26 Conference in Glasgow”, Netpol, 16 December 2021, pp. 44-47, <<https://netpol.org/2021/12/16/respect-or-repression-an-independent-report-of-the-cop26-conference-in-glasgow/>>.

137 “France: ‘Climate of total insecurity’: arbitrary arrests of peaceful protesters in Paris on 12 December 2020”, Amnesty International, 8 February 2021, EUR 21/3650/2021, p. 8, <<https://www.amnesty.org/en/documents/eur21/3650/2021/en/>>.

138 Personal communication from a Georgian human rights defender.

**Sanctions  
on assemblies  
during  
the pandemic**

**6**

The FoPA Guidelines note that the issue of proportionality of state interventions relating to the freedom of peaceful assembly applies just as much to penalties and punishments that may be imposed for putative breaches of laws or regulations. Disproportionate fines or prison sentences may have a wider chilling effect on people's readiness to take part in an assembly and thus act as a form of indirect restriction on the right (para 36).

## Legal sanctions as part of COVID-19 restrictions

A number of countries created new criminal offences within the temporary laws or regulations introduced to tackle the COVID-19 pandemic. These offences included varying levels of potential punishment for breaches of the law, including organizing or participating in a peaceful assembly.<sup>139</sup>

Legislation introduced at the onset of the pandemic illustrated the range of punishments that might be imposed and, in some cases, the scale of punishment available to the authorities would be considered disproportionate. Examples of known punishments include:<sup>140</sup>

- Albania: participating in or organizing a political, social, or cultural gathering was subject to a fine of €40,000 (5 million lek);
- Denmark: the legislation doubled the sentence for crimes connected to the COVID-19 pandemic;
- Greece: breaches of the regulations were liable to a €1,000 fine;
- Hungary: fines of up to €1,400 (500,000 HUF) could be imposed on participants of banned protests;
- Italy: sanctions for noncompliance with the COVID-19 regulations included detention for up to 3 months and fines of up to €200 euros;
- Poland: new sanctions for breaches of pandemic-related measures were

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139 "The Functioning of Courts in the COVID-19 Pandemic: A Primer", OSCE, 2 November 2020, pp. 38-40, <<https://www.osce.org/odihr/469170>>.

140 See for example, Covid-19 Civic Freedom Tracker webpage by the International Center for Not For Profit Law, accessed on 25 July 2022, <<https://www.icnl.org/covid19tracker/>>.

introduced, including for “exposure of a large number of people to contagious diseases” and “failure to comply with instructions from personnel”;

- Slovakia: breaches of COVID-19 regulations were liable to a €10,000 fine;
- Slovenia: misdemeanours under existing law were applied to sanction breaches of emergency measures such as not wearing a face mask and not keeping distance; and
- Spain: a €10,400 fine could be issued to anyone who attempted “to organize or participate in a gathering, party or celebration” that puts people at risk of contagion.<sup>141</sup>

While these represent fines that were imposed as part of the initial legislation to tackle the pandemic, it is important to remember that the nature of specific offences and the scale of punishments that might be imposed might have subsequently been changed over the course of the pandemic and laws were amended. For example, in England the penalties for COVID-19-related offences changed on a number of occasions. Under the initial regulations enacted in March 2020, participating in a public assembly incurred a fixed penalty fine of £60 (€70). Under the revised regulations, introduced in August 2020, the penalty for participating in a protest was raised to £200 (€240), while organizers became liable for a fine of £10,000 (€12,000).<sup>142</sup> This is a significant sum and represented a fourfold increase in the maximum fine that a person could face if organizing a public protest under the existing English legislation. The levels of fines for organizing an assembly appear to have been made deliberately high in order to deter people from protesting and thus appear to be disproportionate.

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141 Paul Joseph Watson, “Spain: €2,000 fine For “Disrespecting” a Police Officer During Lockdown”, Summit News website, 20 April 2020, <<https://summit.news/2020/04/20/spain-e2000-fine-for-disrespecting-a-police-officer-during-lockdown/>>.

142 “2. Coronavirus police powers and their use on protests”, Green & Black Cross website, accessed 22 July 2022, <<https://greenandblackcross.org/guides/coronavirus/2-police-powers/>>.

# The nature and scale of punishments

Having punishments written in law does not mean they will be imposed in practice. However, in a number of cases, significant penalties were reported for people organizing or participating in assemblies during the COVID-19 pandemic, with large numbers of people being fined for participation in assemblies in several countries including France, Georgia, Greece and Turkey.<sup>143</sup> The following examples illustrate the range of punishments imposed in different OSCE participating States.

In Baku (Azerbaijan) 40 opposition activists were detained during a peaceful rally in December 2021. Most were released but five people were administratively charged and sentenced to 15-30 days' "administrative detention". Some of those who were released without charge were driven by the police to the outskirts of the city and left there. Two weeks later, a number of protesters were detained at a protest and, while most were not charged, three were fined 400 Azerbaijani manats (€225) for alleged violation of pandemic rules.<sup>144</sup>

In Slovenia, a theatre director was ordered to pay nearly €35,000 to cover the costs of policing a protest against restrictions on the rights to freedom of expression and freedom of peaceful assembly imposed in the context of the COVID-19 pandemic held in Ljubljana on 19 June 2020. The Slovenian authorities announced that they intended to claim over €970,000 against a range of other protesters for policing services at assemblies.<sup>145</sup>

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143 "France: Arrested for protest: Weaponizing the law to crackdown on peaceful protesters in France", Amnesty International, EUR 21/1791/2020, 29 September 2020, pp. 12-16, <<https://www.amnesty.org/en/documents/eur21/1791/2020/en/>>; Nino Tsagareishvili, "Right of Peaceful Assembly and Manifestation in Georgia", Human Rights Center, 2021, p. 49, <<https://ecnl.org/sites/default/files/2021-09/162Right%20Of%20Peaceful%20Assembly%20...%20-%20Main%20Flaws%20In%20Law%20And%20Practice%2C%202021.pdf>>; "Greece: Freedom of assembly at risk and unlawful use of force in the era of COVID-19", Amnesty International, 14 July 2021, EUR 25/4399/2021, pp. 28-32, <<https://www.amnesty.org/en/documents/eur25/4399/2021/en/>>; and "A Perpetual Emergency: Attacks on Freedom of Assembly in Turkey and Repercussions for Civil Society", Human Rights Association, Special Report, 29 July 2020, p. 52, <<https://ihd.org.tr/en/a-perpetual-emergency-attacks-on-freedom-of-assembly-in-turkey-and-repercussions-for-civil-society/>>.

144 "Azerbaijan: latest police violence against peaceful protesters", Amnesty International, 15 December 2021, EUR 55/5110/2021, <<https://www.amnesty.org/en/documents/eur55/5110/2021/en/>>.

145 "Slovenia: Protesters Forced to Pay Costs of Policing", Amnesty International, no date, <<https://www.amnesty.org.uk/urgent-actions/protesters-forced-pay-costs-policing>>.

In Poland it was reported that dozens of activists received fines of 10,000 PLN (€2000) for taking part in protests on 8 and 9 May 2020 against the government's lack of support for small businesses during the COVID-19 pandemic. However, two protesters, who had been fined similar amounts while participating in the "Letter" protest against the postal presidential election on 6 May 2020, had their fines cancelled after they argued that they had followed sanitary regulations, including the obligation to keep a two-metre distance between people and covered their faces.<sup>146</sup>

In England, where the law was amended in August 2020 to increase the maximum fine for organizing an assembly or public gathering to £10,000 (€12,000), it was recorded that, by 17 October 2021, the police had issued a total 371 of the largest fines (£10,000) to people who had organized gatherings of over 30 people.<sup>147</sup> At least 11 people were issued with such a fine on the first weekend after this was introduced, including those involved in organizing anti-COVID-19 regulation protests.<sup>148</sup>

Each of these are examples where participants in peaceful assemblies have received significant fines that appear to be disproportionate to the context. However, the Slovenian example raises a particular concern about people being expected to pay the costs of policing an assembly. The FoPA Guidelines make clear that this is not a legitimate expectation. The text notes that since the state has a duty both to facilitate assemblies and to maintain public order they should not impose charges on assembly organizers, which would constitute a disproportionate prior restraint and may serve to dissuade people from holding an assembly (para 89).

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146 "Poland: Covid-19 Is No Excuse to Crack down on Protests", Amnesty International, 29 May 2020, EUR 372421/2020, <<https://www.amnesty.org/en/wp-content/uploads/2021/05/Eur3724212020english.pdf>>.

147 Polly Bindman, "More than 100,000 fines for breaking lockdown restrictions have been handed out", The New Statesman, 8 December 2021, <<https://www.newStatesman.com/chart-of-the-day/2021/12/more-than-100000-fines-for-breaking-lockdown-restrictions-have-been-handed-out>>.

148 David Mercer, "Coronavirus: Jeremy Corbyn's brother Piers fined £10,000 over anti-lockdown protest", Sky News website, 31 August 2020, <<https://news.sky.com/story/coronavirus-first-10-000-fines-issued-to-eight-people-over-illegal-gatherings-12059943>>.

It is also worth noting, however, as the example from Poland (above) illustrates, that, in some situations at least, the fines could be rescinded on appeal. In a similar example from Northern Ireland, in August 2021 the police asked the Court Service to refund a number of fines and cancel plans to prosecute other people who had participated in BLM protests in Belfast and Derry in June 2020. The police also issued a statement saying, “We believe we erred in our use of penalty notices at these two events and are taking this action to correct that error.”<sup>149</sup>

As with the reviews by a number of Constitutional Courts in relation to blanket bans on assemblies, there is also some evidence that the authorities acknowledged that imposing severe fines or punitive penalties to punish COVID-19 rule breakers or to deter others from doing likewise, could be disproportionate. The FoPA Guidelines highlight this concern (para 222): disproportionately harsh sanctions could inhibit the holding of such events and have a chilling effect that may prevent participants from attending and thus constitute an indirect violation of the freedom of peaceful assembly.

There is always a risk that the introduction of potentially substantial legal penalties in law may be less about the possibility of imposing a proportionate response to law breaking or criminal activity and more about creating a chilling effect that dissuades people from participating in assemblies. This appears to have been the case with many of the temporary laws introduced in response to the COVID-19 pandemic.

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149 “Black Lives Matter: PSNI asks that protest fines be refunded”, BBC News website, 17 August 2021, <<https://www.bbc.co.uk/news/uk-northern-ireland-58251021>>.

**Changing the law  
on freedom of peaceful  
assembly during  
the pandemic**

**7**



In a number of OSCE participating States, the authorities introduced changes to existing legislation, or introduced new laws to regulate the right to freedom of peaceful assembly during the pandemic. The changes discussed in this section were not specifically a response to the COVID-19 pandemic and were in addition to short term changes to counter the public health risks created by COVID-19.

## Participation and consultation

Making changes to the law at a time when there were serious restrictions on people's freedom of movement may be considered inappropriate since there was a reduced opportunity for public consultation or for civil society organizations and individuals to meet to discuss the proposals and agree a formal response. The FoPA Guidelines note that the right to freedom of peaceful assembly is recognized as an element of the right to public participation. This is set out in Article 25 of the ICCPR and guarantees citizens the right and opportunity to take part in the conduct of public affairs, including the right to engage in dialogue with their chosen representatives. This process of participation includes the right to be consulted on law and policy. The Guidelines emphasize the importance of ensuring that civil society and interested parties have an opportunity to contribute to the drafting and amending of legislation. Furthermore, public consultation should be recognized as an integral part of the legislative drafting process to ensure it is open, transparent, meaningful and inclusive (para 99).

Opportunities for wider public participation in policy- and law-making processes, and thus in raising objections to proposed changes to laws regulating human rights and fundamental freedoms, were severely limited during the pandemic and the authorities in some countries appear to have taken the opportunity to introduce additional, and at times severe, restrictions on the right to freedom of peaceful assembly with limited scope for being held accountable.

## Further limits on the right to freedom of peaceful assembly

Among the countries that introduced new laws or amended existing legislation relating to freedom of assembly were Belarus (Amendments to the Law on Mass Events, 24 May 2021);<sup>150</sup> Greece (Law 4703/2020, 10 July 2020);<sup>151</sup> Kazakhstan (Law on Assemblies, 25 May 2020);<sup>152</sup> Russia (Amendments to the Law on Assemblies, 30 December 2020);<sup>153</sup> and Uzbekistan (Draft Law on Rallies, Meetings and Demonstrations, 18 August 2020).<sup>154</sup>

Although there are differences in the range and scope of the various pieces of legislation, and in general all the laws serve to impose limits on the right to freedom of peaceful assembly rather than to introduce further protections, there are nevertheless some commonalities in the approaches taken:

- The new laws in Belarus, Greece, Kazakhstan, Russia and Uzbekistan all impose greater demands for notification requirements which clearly make the process more about seeking permission than informing the authorities of the intention to organize an assembly. In contrast, the FoPA Guidelines emphasize that, if peaceful assembly is to be effective as a right, then organizers should not be expected to seek permission to hold an assembly, but rather should inform the authorities so that they

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150 “Belarusian law on mass events amended”, BELTA website, 24 May 2021, <<https://eng.belta.by/president/view/belarusian-law-on-mass-events-amended-140145-2021/>> and “Proposed Law Amendments in Belarus Pose Serious Threats to Freedom of Expression and Press”, Civicus Monitor, 28 May 2021, <<https://monitor.civicus.org/updates/2021/05/28/proposed-new-law-amendments-belarus-pose-serious-threats-freedom-expression-and-press/>>.

151 “Greece: Freedom of assembly at risk and unlawful use of force in the era of COVID-19”, Amnesty International, 14 July 2021, EUR 25/4399/2021, pp. 8-14, <<https://www.amnesty.org/en/documents/eur25/4399/2021/en/>>.

152 Mihra Rittmann, “Kazakhstan’s ‘Reformed’ Protest Law Hardly an Improvement”, Human Rights Watch, 28 May 2020, <<https://www.hrw.org/news/2020/05/28/kazakhstans-reformed-protest-law-hardly-improvement>> and “Kazakhstan: Massive restrictions on expression during Covid-19; sudden banning of peaceful opposition”, International Partnership for Human Rights, 24 August 2020, <<https://www.iphronline.org/kazakhstan-massive-restrictions-on-expression-during-COVID-19-sudden-banning-of-peaceful-opposition.html>>.

153 “Russia: No place for protest”, Amnesty International website, EUR 46/4328/2021, pp. 5-6, <<https://www.amnesty.org/en/documents/eur46/4328/2021/en/>>.

154 “Law of The Republic of Uzbekistan about rallies, meetings and demonstrations ID-21021”, Republic of Uzbekistan, 2 September 2020, <<https://regulation.gov.uz/uz/document/21021>> and “Comments on the Draft Law on Rallies, Meetings and Demonstrations of the Republic of Uzbekistan”, OSCE, 2 September 2019, <<https://www.osce.org/files/f/documents/d/f/434870.pdf>>.

can ensure that the appropriate resources are in place to facilitate the event.<sup>155</sup>

- The laws in Greece and Kazakhstan either ban or limit the scope of spontaneous or non-notified assemblies, while the FoPA Guidelines highlight the importance of being able to gather together at short notice to protest or express views collectively in public.<sup>156</sup>
- The legislation in Kazakhstan, Russia and Uzbekistan also impose greater limits on where and when assemblies may be held, rather than following the recommendations of the FoPA Guidelines in relation to the organizer having the right to determine the “time, place and manner” in which their peaceful assembly may be held. Instead the new laws have given disproportionate powers to officials to decide such matters.<sup>157</sup>
- The laws in Greece and Kazakhstan both give considerable powers to different authorities to ban an assembly completely, while in Greece such powers also extend to banning counter demonstrations if there is a potential threat to public disorder or disruption. Again the note that any assembly may cause some degree of disruption to daily routines, but that it is the responsibility of the police to minimize any such disruption while facilitating the assembly, rather than using the possibility of disruption as an excuse to ban a public assembly.<sup>158</sup>

In addition the amendments in Belarus impose restrictions on the media in reporting at assemblies. The law in Kazakhstan and draft law in Uzbekistan restricts the right of citizens to organize and participate in an assembly and prohibits foreigners, refugees and stateless persons from doing so; and both laws also impose an excessive range of obligations on organizers for matters related to public order and public safety. All of these restrictions serve fundamentally to undermine the right to freedom of peaceful assembly as a core element of a democratic society and serve to restrict opportunities for people to hold the authorities to account and to be able to express their views collectively in public.

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155 “FoPA Guidelines”, paras 112-124, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

156 *Ibid.* Para 79, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

157 *Ibid.* Paras. 58-59, 61-62, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

158 *Ibid.* Paras 77-78, <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)>.

# Conclusions and summary of key findings

# 8

The COVID-19 pandemic created a new and unexpected public health challenge to the authorities in all OSCE participating States, which required an urgent and effective response to a novel situation. The authorities in many countries initially reacted by imposing severe restrictions on people's fundamental rights, including their rights to freedom of movement and to peacefully assemble together in public places. The blanket restrictions on assemblies that were imposed in most states generated serious concerns for people's fundamental freedom. However, in the vast majority of cases, the restrictions were removed as the scale of the pandemic decreased and States took more nuanced approaches to controlling the spread of the virus.

The following highlights some of the key findings from this review on the impact of COVID-19 on the right to freedom of peaceful assembly in OSCE participating States.

- 1. Blanket restrictions** were initially imposed on the right to freedom of peaceful assembly in response to the COVID-19 pandemic in most OSCE participating States. However these extensive restrictions were soon removed in the majority of participating States. This was both in response to the development of more diverse and effective responses to COVID-19 and in response to protests against general restrictions, and challenges in national courts that highlighted the disproportionate nature of blanket restrictions on assemblies.
- 2. Legal Certainty:** Many of the laws/regulations in participating States that limited the right to freedom of peaceful assembly and which were introduced as a response to COVID-19 were vaguely formulated with regard to how, and in which circumstances, assemblies were legal or not, and how many people that were permitted to gather. In many countries laws/regulations were also frequently amended over relatively short periods of time. Such actions created a degree of legal uncertainty in some countries for potential organizers, but also for the law enforcement officials.
- 3. Legal Challenges:** In a number of countries legal challenges were pleaded before the relevant courts to challenge blanket restrictions on assemblies. While in many cases the constitutional courts ruled against the authorities, in others the constitutional courts upheld the legitimacy of the restrictions. The European Court of Human Rights ruled that the legal restrictions imposed by the Swiss government on assemblies violated the European Convention on Human Rights, albeit noting the specific circumstances of the particular context.

- 4. Few assemblies** were organized in the very earliest weeks of the COVID-19 pandemic (March – April 2020), although some took place with social distancing, at people’s homes and on balconies, or online as alternative forms of protests. However, from May 2020 onwards, and despite the restrictions still in place, there were an increasing number of assemblies taking place globally, including in response to the murder of George Floyd in the USA.
- 5. Protests against COVID-19 restrictions** began in the very early stages of the pandemic and many became associated with a wide range of extremist and populist groups and organizations. As new variants of the corona virus emerged and new cycles of restrictions were imposed in the latter parts of 2020 and throughout 2021, these protests became more confrontational and violent and involved clashes with the police.
- 6. Violence:** Most assemblies during the pandemic remained peaceful and most were facilitated by the authorities. However, the use of force by law enforcement authorities varied greatly across the OSCE region. In many cases excessive force was used against peaceful assemblies. Overall, the patterns of violence were not very different from the period prior to March 2020. However, serious violence occurred at some assemblies, particularly in countries with a history of a lack of respect for the right to freedom of peaceful assembly.
- 7. Inequality of treatment** between different types of assemblies was reported in a number of countries. These included cases where assemblies organized by opposition groups were banned while assemblies organized by pro-government groups or supported by the authorities, such as commemorations, were permitted to take place.
- 8. Hostility to journalists:** There have been a number of reports of hostility and violence directed towards journalists at assemblies during the pandemic and in particular to those covering protests directed at public health restrictions imposed in response to the second and subsequent waves of COVID-19 from late 2020 onwards.
- 9. Penalties and punishments:** In a number of countries, COVID-19 legislation/ regulations prescribed potentially disproportionate levels of punishment for offences related to the organization of, or participation in assemblies. In practice, these mainly involved the imposition of significant fines rather than prison sentences. In some cases, imposed fines were later rescinded, suggesting acknowledgment of their disproportionate scale.

**10. Restrictive assembly regulations/laws** not related specifically to the COVID-19 pandemic have been passed in a number of countries since March 2020. Introducing legislation that restricts the right to freedom of peaceful assembly during the pandemic limited opportunities for consultation and discussion which are central to the right to public participation.

The COVID-19 pandemic initially led to severe and serious restrictions being imposed on the right to freedom of peaceful assembly in OSCE participating States in the spring of 2020. However, in many countries such restrictions were temporary and began to be lifted after the first wave of COVID-19 declined in the summer months. The initial restrictions often imposed blanket bans on assemblies. In some countries these were ignored and, in others, they were challenged and overturned by the courts. Furthermore as restrictions were lifted, people began to organize and participate in public assemblies once again.

However, the response to the COVID-19 pandemic also resulted in a number of actions that had a broader impact on the right to freedom of peaceful assembly. These included restrictions on public consultation in relation to emergency legislation, with the hurried drafting of such laws leading to intervention by the courts in some OSCE participating States, in particular to strike down blanket bans on assemblies. In some countries there were also complaints of discriminatory behaviour, with state-sponsored assemblies being permitted while opposition events were prohibited. In a number of states, journalists and assembly monitors were attacked or prevented from doing their work.

In most OSCE participating States the pandemic does not appear to have had a sustained negative impact on the right to freedom of peaceful assembly; but neither did it have a positive impact. Rather the context appears to have returned to that of 2019, with increasingly severe restrictions on civil and political rights, increasing limitations on the right to freedom of peaceful assembly, and more aggressive and confrontational approaches to policing being experienced in many OSCE participating States.

## Chapter 8

The COVID-19 pandemic and the OSCE participating States' responses to it highlight a number of issues around the right to freedom of peaceful assembly that both states and human rights bodies will need to be more aware of in the future to ensure that the right to freedom of peaceful assembly is more fully protected.

These include:

- Giving greater consideration to the relationship between the right to health and other fundamental rights and freedoms. In particular, balancing the need to protect public health while also ensuring the right to freedom of peaceful assembly is protected and facilitated;
- Ensuring that legal responses to public health emergencies, including derogations from international human rights treaties, are always temporary, proportionate and respectful of other fundamental rights and freedoms, while also open to independent review and evaluation;
- Ensuring that the introduction of legislation in response to emergency situations is done in a way that respects the right to public participation through forms of effective public consultation, and that any such legislation is always drafted to ensure clarity and foreseeability;
- Making sure that responses to public health emergencies do not introduce hidden 'chilling effects' on the right to freedom of peaceful assembly, for example by including the threat of disproportionate penalties and punishments for those who continue to exercise their right to freedom of peaceful assembly;
- Working to ensure that peaceful assemblies are always enabled and facilitated even while responding to public health emergencies, rather than using emergencies as contexts to impose blanket restrictions on the right to freedom of peaceful assembly;
- Making sure that the right to freedom of peaceful assembly is implemented with equality and fairness, such that the rights of opposition and minority groups are protected and facilitated during periods of public health emergencies;
- Protecting the rights of journalists, assembly monitors and other third party actors, both from individuals and from law enforcement officials, who may attempt to prevent them from undertaking their legitimate work in reporting and documenting the extent to which the right to freedom of peaceful assembly is facilitated or restricted.



