RIGHT TO FREEDOM OF ASSEMBLY IN EUROPE:

How are the Domestic Regulations able to address the Developments and Potential Problems of the Right to Freedom of Assembly in the light of the International Standard of the Right?

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Lastly, I am dedicating this to my parents who are the best.

Content

Introduction

Throughout the year 2011[1] the right to freedom of assembly has been on the agenda: pro-democracy movement described as the "Arab spring" has effected Libya, Egypt, Syria and at least 14 other countries[2] in the region; in Europe the Greeks protested against austerity measures[3], the Spanish against the government[4] and several cities hosted the "Slut Walks" against sexual assault,[5] starting from the USA, the "people's assembly" against unfair global economy called "Occupy Wall Street" inspired by the "Arab spring" has spread to actions in 1500 cities globally.[6]

Therefore it could not have been more timely when on the 1st of May 2011 the newly appointed United Nations (UN) Special Rapporteur (SR) on the rights to freedom of peaceful

[1] The following paper is written based on the status of the data and information available as of 15 November 2011.
[2] Algeria, Bahrain, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Morocco, Palestine, Saudi Arabia, Tunisia, UAE, Yemen. In: *Middle East Protest Interactive Timeline.*
[3] *Thousands protest against Greek austerity* (2011).
[4] *Mass Spanish protests continue into polling day* (2011).
[5] *"Slut Walk" hits London* (2011).
[6] *Occupy Wall Street* webpage (2011).

assembly and association took up his functions.[7] This is the first time the UN has appointed a SR for the right to freedom of assembly.[8]

Paradoxically, the right to freedom of assembly has not deserved much attention from the legal research.[9] There is found literature by sociologists who tackle the questions of why people protest, how resistance movements have changed the societies, and what is the role of gatherings of people.[10] Although context-wise important for legal scholars as well, that material should not aim to substitute legal research. John D. Inazu has rightly called the right to freedom of assembly "forgotten"[11], and Margaret M. Russell regretted "[…] it has simply fallen from public, scholarly, and judicial attention".[12]

The following paper will use the tepid academic interest and the social importance of the right to freedom of assembly as a departure point. Thus, the first aim of the paper is to fill the gap in the legal research of the freedom of assembly and through this hopefully provoke and inspire others to follow. Naturally, it is not possible to address all the problems and gaps with one paper. Therefore, this paper will have its focus in the following.

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[7] *Maina Kiai biography*, UN Human Rights. SR's mandate was established with HR Council's Resolution. See: *A/HRC/RES/15/21*, 6 October 2011, point 5.

[8] With the *resolution 1993/45* of the (then) UN Commission on Human Rights the mandate of the SR on the promotion and protection of the right to freedom of opinion and expression was established (see point 11 of the resolution). Although the resolution was mindful of the right to freedom of assembly as well as an "intrinsically linked right"(see points 2, 7), the focus of this SR has not been the right to freedom of assembly.

[9] There have been books published quite recently on the topic such. See Mead (2010) and *The First Amendment: Freedom of Assembly and Petition. Its Constitutional History and the Contemporary Debate* (2010), but they are rather country-specific, or do not analyse the recent developments of the right. Overall the literature is scarce. As D. Mead writes: "It is hard to count the numbers of books in the Anglo-Commonwealth world dedicated to the topic of free speech. Those on the topic of protest and assembly would probably not utilize the fingers of both hands." In: Mead (2010) p.6.

[10] See e.g. *The Social Movements Reader*. *Cases and Concepts* (2009).

[11] Inazu (2010).

[12] *The First Amendment: Freedom of Assembly and Petition. Its Constitutional History and the Contemporary Debate* (2010) p. 21.

The author of this paper would propose that there are two principles that define human rights law. First, at the end of the day, the implementation of human rights takes place on the domestic level and, secondly, it is the defining factor whether the international standards of human rights law find their way into the domestic regulations or not. Just as the UN High Commissioner for Human Rights has summarised: ”It is also clear that the primary responsibility for implementing human rights lies with Governments. It is through action at the national level that international human rights obligations can be translated into reality.”[13]

Thus, the second and main aim of the paper is to answer the research question: “How are the domestic regulations of the selected countries in Europe able to address the potential problems and developments of the right to freedom of assembly in the light of the international standard of the right?”.

As noted, it would not be sensible nor possible to cover all the legally relevant and under-discussed questions about the right to freedom of assembly with the paper at hand. However, the author of this paper would argue that the research question chosen is fundamental and of great relevance. Firstly, because this investigation into international standard will offer analysis of all the relevant international and regional instruments in the light of one context. Secondly, in order to define the international standard for the right to freedom of assembly it will be necessary to define the right to freedom of assembly itself which is a valuable contribution to all further works on the topic. Thirdly, this research question demands not only an analysis of the problematic aspects of regulating the right to freedom of assembly, but also an overview of the most recent developments of the right. And fourthly, this question will allow us to at least scratch the surface of how one region in the world is able to address that standard.

To answer that research question, the paper will be divided into three chapters.

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[13] *UN doc. A/59/2005/Add.3*, para. 22.

Chapter 1 will define the object of this paper by asking: "What is the right to freedom of assembly?". By defining we will mean analysing the elements, limits and essence of the right to freedom of assembly. The author of this paper would like to emphasize that Chapter 1 will aim at finding a model definition of the right to freedom of assembly in general, abstract manner without adding any country-specific context to the final result. Under this chapter, first, the interplay of and relationship with the right to freedom of assembly and other rights will be discussed. It will be seen if and how the separate right to freedom of assembly is argued for. This will be done by analysing the right to freedom of assembly also in the United States of America under the First Amendment doctrine. The reason the thesis will also look at the USA is that by raising the questions about treating the right to freedom of assembly as separate from the freedom of speech, the USA offers an interesting comparative context. Further, the second half of the Chapter 1 will investigate what are the essential elements of the right to freedom of assembly. Through analysing the elements of intent, agenda/content, temporariness, group, public forum and act/conduct, a model definition and understanding of the right to freedom of assembly emerges. The conclusion of Chapter 1 offers an illustrative model graph that summarises the definition proposed by the author.

Chapter 2 will first provide what is the international standard in general, what kind of sources are entailed in it, and secondly, what is the international standard for the specific selected problems and developments of the right to freedom of assembly. The search for the international standard will be based on the International Covenant on Civil and Political Rights (ICCPR)[14], Universal Declaration of Human Rights (UDHR)[15], Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[16] and the OSCE/ODIHR

[14] *International Covenant on Civil and Political Rights* (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966). 999 UNTS 171.
[15] *Universal Declaration of Human Rights* (Adopted by General Assembly Resolution 217 A(III) of 10 December 1948).
[16] *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome 1950.

Guidelines on Freedom of Peaceful Assembly, 2nd ed. 2010 (Guidelines [2010])[17] as the latter are being the most recent, holistic and comprehensive source for the right to freedom of assembly. The Guidelines (2010) are not legally binding and hold a descriptive nature rather than prescriptive. Guidelines (2010) provide: "[…]the Guidelines do not attempt to provide ready-made solutions but, rather, to clarify key issues and discuss possible ways to address them.", and "They [Guidelines] demarcate parameters for implementation consistent with international standards and illustrate key principles with examples of good practice from individual states".[18]

In addition, the relevant case-law of the European Court of Human Rights (ECourtHR) and UN Human Rights Committee (UN HRC) will be used. The focus of Chapter 2 is *international* standard, but as the research question investigates Europe, regional standard is analysed within by including the Guidelines (2010) and the ECHR into the standard.

Chapter 3 as the last chapter will bind the pieces of the analysis together and offer an answer to the main research question. For that, the domestic assembly regulations of five selected countries will be analysed in the context of the international standard. Simply put, it will be seen whether the domestic regulations of these countries meet the international standard in the four chosen aspects: the subjects of the right, the possibility to hold a spontaneous assembly, the requirement of peacefulness and ability to protect the new forms of assemblies. The countries selected for the research are: Estonia, Georgia, Germany, Russia, Sweden. This choice is based on the development and different level of democracy of the countries. The selection is narrowed to countries sharing one regional human rights document – the ECHR– as this allows to make general conclusions and the newest legal source on assembly – Guidelines (2010) – would not be as relevant elsewhere.

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[17] *OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly*, 2nd ed. 2010. http://www.osce.org/odihr/73405 [Visited 2 September 2011].
[18] *Guidelines (2010)*, p. 10.

The author of this paper would like to note that due to the restricted scope of this paper, it will and could not be the aim of the research to cover all the aspects of the right to freedom of assembly or more specifically, all the possible problems with the domestic regulation of the selected countries in the context of the international standard. Thus, the case-law of those countries will not be analysed. Rather, as explained, a choice of approach and tackled issues will be made.

The nature of this paper and the research question proposed require the author to adopt two complementary methods of research. Chapter 1 and Chapter 2 will be based on the critical analysis of different sources available. As the material on the right to freedom of assembly is quite scarce, and, especially, as the newest developments of the right have not been addressed in academic literature, the paper could not be limited to primary legal sources and scholarly writings only. Thus, in Chapter 1 and Chapter 2 relevant information from online media sources in addition to sources of law, books and articles has been used.[19] In Chapter 3 the author of this paper has created a more specific method. As noted, four aspects of the domestic regulations of the five chosen countries will be discussed and summarised in a form of comparative table and graphs. The method used in Chapter 3 will be introduced more thoroughly in the relevant chapter.

[19] Full references to online sources can be found in the References of this paper.

1 What is the Right to Freedom of Assembly? A Model Definition

1.1 Problem setting

Before any further analysis based on the right to freedom of assembly[20] can be conducted, it is necessary to grapple what the right to freedom of assembly in fact is. Specifically, what are the (unique) elements that define and separate the right from other human rights. Because some civil and political rights are at times so closely connected that we might struggle when pinpointing one from the other, or explaining the need to separate them. The ECourtHR has also acknowledged[21] the close links between freedom of association and freedom of assembly (ECHR Article 11), freedom of thought, conscience and religion (ECHR Article 9), and the freedom of expression of Article (ECHR Article 10).[22]

The fact that different human rights (and their protection) overlap at times is not problematic, but rather inevitable and thus, normal. However, although every individual right can fuel

[20] When researching the right to freedom of assembly, one encounters many other terms that aspire to address if not the same, then similar phenomenon. Some examples are "right of public meeting", "symbolic speech", "speech plus conduct", "right to protest" etc. This paper will use principally the "right to freedom of assembly" because first, all human rights are rights of freedom (See: Bielefeldt [2009], p. 6), and secondly, the word "assembly" should be preferred, as it is more general than e.g "meeting", and can thus be applied to different types of assemblies.

[21] *Theory and Practice of the European Convention on Human Rights* (2006) p. 818.

[22] See e.g.: *Young, James and Webster v. the United Kingdom* (1981), para. 57. *Refah Partisi (Welfare Party) and Others v. Turkey* (2003), para. 87, *Freedom and Democracy Party (ÖZDEP) v. Turkey* (1999), para. 37, *Ezelin v. France* (1991), para. 37.

hesitation with questions about its scope and definition (as almost every aspect in the field of law), it is largely straightforward what and we aim to protect with the right to freedom of speech, freedom of religion, freedom for education, but we struggle far more when we try to explain what the right to freedom of assembly is about: how many people are required for assembly? Is holding a banner/poster an assembly or just freedom of speech? When people "gather" online on the Internet, is that an assembly? Answering to these questions is far more difficult than we would (like to) assume because with every question we encounter more and more exceptions. Thus, it would be the argument of this paper that a general point of departure, a model to operate with would not only serve this thesis, but also any further research and above all – the practice and protection of the right to freedom of assembly.

Jarrett and Mund have written:" […] the act of people assembling developed early in the history of man. It was a natural thing for men, as social beings, to gather together and discourse with one another."[23] The author of this paper would argue that the question of justifying the existence of the right to freedom of assembly is not a question of only and pure academic interest as many would claim. Rather, answering that is the foundation of the whole right's protection. As D. Mead so succinctly writes: " Knowing the basis on which it is being asserted that […] a particular protest are good things is important, as it means that any restrictions imposed must confront and deal with those assertions.[24] Thus, the author of this paper would develop that in other words, if we cannot justify the existence of something, we will struggle advocating its protection.

[23] Jarrett (1931), pp. 4-5.
[24] Mead (2010) p. 7.

1.2 What defines the Right to Freedom of Assembly?

1.2.1 Separating the Right to Freedom of Assembly from the Right to Freedom of Speech

In Europe and in the context of international human rights law we operate with legal sources that entail the provisions of the right to freedom of assembly, and we tend not to question the need for, or justification of those provisions. Article 21 ICCPR provides: "The right of peaceful assembly shall be recognized […]." The corresponding article of ECHR is Article 11. It provides: "Everyone has the right to freedom of assembly […]". The exact same wording is also found in UDHR Article 20 (1).

What connects all three provisions, is the laconic and non-descriptive wording of them. As can be drawn from the preparatory works of ICCPR and ECHR, leaving the provisions general was the intention and wish of the majority of drafters.[25] This can be seen as a safe approach that grounds the risk of undermining the protection of the right with a too narrow definition. However, it would be the view of the author of this paper that a definition that would not try to list different forms of assemblies, but would rather incorporate the essential elements of an assembly, could be very beneficial for providing a solid definition of the right to freedom of assembly.

It seems as if the right to freedom of assembly just "has been and is there". Nevertheless, some doubt can be traced down when reading the writings of a British jurist Dr. A. V. Dicey.[26] He wrote the following: "[…] so it can hardly be said that our constitution knows of such

[25] *European Commission of Human Rights, Preparatory work on Article 11 of the European Convention of Human Rights, Strasbourg 16 August 1956,* p. 13.
[26] Dicey (1915).

thing as any specific right of public meeting […]".[27] And continued: "The right of assembling is nothing more than a result of the view taken by the Courts as to individual liberty of person and individual liberty of speech."[28] Dicey proposes an example to illustrate his argument. He states that person *A* just has a right to go "where he pleases so that he does not commit trespass"[29], and to say to person B "what he likes so that his talk is not libellous or seditious"[30], and it can just happen that they meet persons C,D,E and F who have the same rights to move around and talk. So, in summary, Dicey seems to argue that the right to freedom of assembly is just a sum of freedom of movement and freedom of speech. Dicey did not grant the right to freedom of assembly a value of its own when he put down his ideas in the 19th century. Although we must keep in mind the political and historical context Dicey was acting in, the author of this paper would argue that as a balancing illustration we can regard his thoughts.

In the United States of America, however, the existentialistic question of separating the right to freedom of assembly is proposed and discussed also now.[31] This does not mean an extensive and heated debate that would serve this paper with extensive material or answers, but rather another comparative view point.

1.2.2 The Right to Freedom of Assembly in the USA

The world's second oldest written constitution still in use is the Constitution of the USA[32], adopted 17 September, 1787. Although with a central meaning for the legal and political system in the USA, the text of the Constitution itself does not entail individual rights and liberties, freedoms. The latter are found in the first 10 amendments to the Constitution that

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[27] *Ibid*., p. 169.
[28] *Ibid*., p. 170.
[29] *Ibid*., p. 170.
[30] *Ibid*., p. 170.
[31] Inazu (2010). Inazu's book: "*Liberty's Refuge: The Forgotten Freedom of Assembly*" will be published by Yale University Press in 2012.
[32] *Johnson Paugh* (2011).

altogether form the Bill of Rights that came into effect 15 December 1791[33]. The Bill of Rights is the fundamental source of protection of individual rights in the USA.

The right to freedom of assembly is entailed in the First Amendment. It reads: "Congress shall make no law […] abridging […] the right of the people peaceably to assemble, and to petition the government for a redress of grievances." Although proposed by some,[34] the possible dualism of the assembly right and petition allegedly meant by the drafters, will not be analysed, but the right to assembly will be looked at as separate from petition. What interests us, is the line between the right to freedom of assembly and freedom of speech as it is common for the American scholarly writings to use confusing terms as for example "symbolic speech" and "expressive conduct".

A good point of departure is offered by C. Herman Pritchett whose writings deal with "a part of freedom of speech called speech plus conduct".[35] "Speech plus conduct" involves the communication of ideas by patrolling, marching, and picketing on sidewalks, streets, or other public areas.[36] Pritchett names the "speech plus" a constitutional hybrid and explains: […] the picketing and demonstrating involve physical movement of the participants, who rely less upon the persuasive influence of speech to achieve their purposes and more upon the public impact of assembling, marching, and patrolling. Their purpose is to bring a point of view – by signs, slogans, singing, or their mere presence – to the attention of the widest possible public, including those uninterested or even hostile […].[37]

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[33] *The First Amendment: Freedom of Assembly and Petition. Its Constitutional History and the Contemporary Debate* (2010) p. 19.
[34] See further e.g: Mazzone (2002) and *Freedom of Assembly and Petition. Its Constitutional History and the Contemporary Debate* (2010).
[35] Pritchett (1984) p. 39.
[36] *Ibid*., 39-40.
[37] *Ibid*., p. 40.

With that, Pritchett proposes similarly to Dicey[38] that assembly is related to freedom of speech. However, there's an important difference between the arguments of Dicey and Pritchett. Notably, when Dicey defines assembly as a "consequence" of freedom of speech and freedom of movement, then Pritchett gives an emphasis to the *conduct* (act). The latter, however, is apparently one of the defining and essential assembly-elements that precisely differs the right to freedom of assembly from the right to freedom of speech. This will be elaborated more in sub-section 1.3.4.

It must be noted however, that symbolic speech does not equal right to freedom of assembly. Pritchett's proposal of recognizing the "conduct" as something valuable or worth mentioning is important because it emerges one of the assembly-elements, but it does not mean that there cannot be such phenomenon as "symbolic speech". On the contrary – "symbolic speech" or "expressive conduct" is a sub-form of freedom of speech. According to Pritchett "[…] symbolic speech involves the communicating of ideas or protests by conduct, such as burning a card or pouring blood over draft files to express opposition to Vietnam War. Such action serves as surrogate for speech and conveys an ideational message perhaps more effectively than speech would do."[39] With that in mind, the author of this paper would argue that symbolic speech of one person should be under the protection of the freedom of speech, i.e. the free speech framework. But if symbolic speech "develops" into temporary group of people exercising symbolic speech, it can already be the case of the right to freedom of speech as will be later seen.

Although the right of assembly has been the object of a USA Supreme Court decisions[40] many times, the Court seems not to place too much value on the distinction between the rights under the First Amendment. It is as if it did not matter whether a person is protected through the concept of "freedom of expression", "right to freedom of assembly", or "symbolic speech", as

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[38] See sub-section 1.2.1.
[39] *Ibid*., p. 50.
[40] See for example: *Hague v. CIO (1939),* or *States v. Cruikshank* (1876).

long as the protection is effective. This kind of approach might be the result of the source of the protection – the First Amendment – as it incorporates the freedom of speech, right to freedom of assembly and the petition right to *one sentence*, or the distinct legal system of the USA. Whatever the reason, the author of this paper would still argue that the right to freedom of assembly firstly has a distinctive concept that needs to be distinguished from other human rights as will be shown in the following parts.

1.3 What are the elements that define the Right to Freedom of Assembly?

Contrary to UDHR, ECHR and ICCPR, Guidelines (2010) offer a definition of an assembly. Guidelines point 1.2 proposes: " […] an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.[…]". This is a fairly ideal definition as it incorporates the *intent* of the people to gather, the *non-permanent* character of the assembly, the requirement for a *public place* and the *n+1 of participants, i.e. group* criterion, and the *common expressive purpose, i.e. act/conduct*. The author of this paper would argue that if an universal definition of this kind would be incorporated into the human rights conventions, the scope of the right would be much more clear.
We will now turn to look these elements more closely.

1.3.1 Intent and Agenda/Content

The definition of Guidelines (2010) provides that one aspect about assembly is that it requires persons' *intentional presence*. Guidelines (2010) do not elaborate on that requirement. However, the author of this paper would argue that the intent is an important criterion when defining an assembly and its participants. Firstly, because this intention to participate in the assembly is what differs participants from mere by-passers. And secondly, it will be argued that it is necessary that the participants to the alleged assembly *themselves* would regard their activities as an exercise of the right to freedom of assembly.

The latter proposal could somewhat be rebutted by UN HRC case *Kivenmaa v. Finland*.[41] *Kivenmaa v. Finland* involved Auli Kivenmaa who gathered with other 25 members of her organization near the Presidential Palace, distributed leaflets, raised a banner. She was charged violating Finnish assembly act by holding a "public meeting" without a prior notification.[42] The main claim of Kivenmaa's complaint was that the gathering did not fall within the definition of "public meeting".[43] UN HRC delivered a decision in favour of Kivenmaa and argued that: "[…] it is evident […] that the gathering of several individuals at the site of the welcoming ceremonies for a foreign head of State on an official visit, publicly announced in advance by the State party authorities, cannot be regarded as a demonstration." [44]

However, this decision was criticized in a dissent by Mr Herndl: "[…] If this does not constitute a demonstration, indeed a public gathering within the scope of article 21 of the Covenant, what else would constitute a 'peaceful assembly' in that sense […]."[45] Herndl continued: "[…] The decisive element for the determination of an "assembly" – as opposed to a more or less accidental gathering (e.g. people waiting for a bus, listening to a band, etc.) – obviously is the intention and the purpose of the individuals who come together […]".[46]According to Herndl's dissent, Kivenmaa and her group admittedly joined the event to make a political demonstration, and could not have been just bystanders. Therefore, the crux of Herndl's argument is that even if the participants do not have the intention to regard their activities as an assembly, their activities can form one nevertheless.

But the author of this paper would argue that Herndl might have misunderstood the UN HRC. We could put emphasis on the "official visit, publicly announced in advance" and might argue that as the *whole* event of people coming to see the head of state of the other state was

[41] *Auli Kivenmaa v. Finland (1994).*
[42] *Ibid*., para. 2.1.
[43] *Ibid*., para. 3.
[44] *Ibid*., para 9.2.
[45] *Ibid*., in Individual Opinion, para. 2.5.
[46] *Ibid.*, in Individual Opinion, para. 2.7.

planned, Kivenmaa and her organisation members could not have hold an assembly within that planned event or "become" an assembly by "just raising the banner".

Another element that is closely linked to intent is "agenda". This means according to Martin Nowak that the participants to an assembly gather for a specific purpose.[47] The author of this paper would argue that an assembly requires an opinion, a statement, a viewpoint that the participants want to *share* with the public. This means that the participants must have a common agenda that they want to make heard, seen. As Nowak further notes, Article 21 is directed at assemblies concerned with the discussion or proclamation of ideas.[48] This does not mean only political agenda or anything specific, but the author of this paper would argue that the content itself is not important as long as there is an agenda as such. Hypothetically, we could ask what happens if there are different agendas within seemingly one assembly? The paper would put forward that then we should first identify the agendas and then see whether there are actually two or more assemblies taking place. Why is the agenda that participants want to share with the public so important for the definition of the assembly? Because with that distinction we can differentiate for example Herndl's "accidental" crowd gatherings or public events[49] from the exercise of the right to freedom of assembly.

1.3.2 Temporary group

Just as Guidelines (2010) provide, the author of this paper would also argue that one of the elements of the assembly is a temporarily assembled group of persons. ECHR, ICCPR or UDHR do not provide when an assembly "starts", i.e. how many persons are required for an assembly to be formed. The Guidelines (2010) state that: "An assembly, […] requires the presence of at least two persons. […], an individual protester exercising […] right to freedom of expression, where the protester's physical presence is an integral part of that expression,

[47] Nowak (1993) p. 373.
[48] Nowak (1993) p. 374.
[49] On the topic of differentiating between assembly and public event, see further the example of Love Parade in Germany. In: *Cutting-in On the Dance: The Federal Constitutional Court Rejects a Motion for a Temporary Injunction from Berlin's Love Parade (2001).*

should also be afforded the same protections as those who gather together as […] an assembly."[50]

It will be argued with this paper that the requirement for assembly is the n+1 rule which dictates that at least two persons are required for an assembly. However, the author of this paper does not necessarily agree with the Guidelines (2010) that claim the right to freedom of assembly protection to one person whose "physical presence is an integral part of his expression of views". As explained before in this paper, symbolic speech or speech plus conduct is a possible concept protected by the freedom of speech provisions. The author of this paper would argue that it would be confusing to apply the right to freedom of assembly provisions on one-person-situations, and then still claim that assembly needs at least two persons.

The view of the author that n+1 rule should apply is also supported by UN HRC case *Patrick John Coleman v. Australia*[51] that was deemed inadmissible in regards to Article 21 as: "In the Committee's view, the author has not advanced sufficient elements to show that an 'assembly', within the meaning of article 21 of the Covenant, in fact existed" as Coleman was acting *alone* [52]when " […] standing on the edge of a water fountain in the mall with a large flag with a pole over his shoulder and then moving on to a concrete table close to the fountain, he loudly spoke for some 15 to 20 minutes on a range of subjects […]."[53]

The author of this paper would additionally argue that this clarity in "quantity" should be provided by law, and not be a subject of discretion of the law enforcement bodies. A good example is the third available UN HRC case on the right to freedom of assembly. In *Elena Zalesskaya v. Belarus*, Zalesskaya together with other two persons, distributed newspapers and

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[50] *Guidelines (2010*), point 16, pp. 29-30.
[51] *Patrick John Coleman v. Australia (2006),* para. 6.4.
[52] Emphasis added by the author.
[53] *Patrick John Coleman v. Australia (2006),* para. 2.1.

leaflets to passers-by on a sidewalk. Soon after, they were arrested by the police and Zalesskaya was accused of violation of the procedure for organizing and conducting street marches.[54] Zalesskaya maintained that her movement on a sidewalk and distribution of newspapers and leaflets to passers-by cannot be considered a street march.[55] Zalesskaya also claimed that : "[…] the Law 'On Mass Events' in Belarus is ambiguous and lacks clarity, as it does not define precisely the term 'mass event' and does not specify the lower limit of the number of participants in order for an event to be qualified as 'mass' event".[56] Belarus acknowledged this fact, but submitted that "[…] the question of qualification of one or another event as a 'mass' event shall be decided each time by the competent state organs."[57] The author of this paper would argue that this legal uncertainty has a negative effect on the right to freedom of assembly as rights-holders would not know when their activity should be pre-notified. However, the UN HRC did not comment on that as they found that the issue before it is not the question how the author's actions ought to be qualified as their "[…] task is not to evaluate the facts and evidence made by the courts of the State party or interpret its domestic legislation." Rather, they found "it is called upon to decide whether the imposition of the fine amounts to a violation of article 19 of the Covenant".[58]

Now one might ask why do two persons in front of the government building are protected by the right to freedom of assembly, but one person in front of the very same building would not. The author of this paper would argue that there is a different degree of protection needed as a group is seen a larger disturbance than one individual.

Another important character of an assembly is that it is a temporary phenomenon. This demonstrates the borderline between the right to freedom of assembly and freedom of

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[54] *Elena Zalesskaya v. Belarus (*2011), para. 2.1.
[55] *Ibid.*, para. 4.3.
[56] *Ibid.*, para. 10.3.
[57] *Ibid*., para. 10.3.
[58] *Ibid*., para. 10.4.

association – the latter is of permanent character.[59] This does not necessarily mean time as such as also assemblies can take place for a longer time of period, but rather it demonstrates again the intent of the participants: an association would at least in principle have a focus on future as well whereas for assembly the present is more important.

1.3.3 Public Forum

The Guidelines (2010) provide: "The Guidelines apply to assemblies held in public places that everyone has an equal right to use (including, but not limited to, public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths)."[60] This part of the Guidelines (2010) describes another essential character of an assembly – it has to take place in a public place. This follows the ideology of the essence of right to freedom of assembly as the participants of an assembly aspire for a dialogue with the public. In turn, a forum is created with the usage of a public place.

The free and unrestricted use of a public place plays an important role for the right to freedom of assembly. For example, in the USA, the police and officials have a practice of using metal barricades and fences to create "free speech zones"[61] for protesters. There is a traceable practice of the usage of those zones, but probably the most famous example is the Democratic National Convention. The USA Secret Service and the Boston Police Department set up a demonstration zone that consisted of fences standing eight feet high which were allegedly intended for protecting the participants, but resulted in "obstructing the view of delegates passing by on their way to the convention and, thus, effectively reduced the impact of the protest".[62] This example demonstrates how the free use of public forum can have a great effect on the efficient use of the right to freedom of assembly.

However, there is a very important aspect about public forum. The author of this paper would argue that different from what is stated in Guidelines (2010), the notion of public forum is not

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[59] See e.g. ICCPR Article 21, 2nd part of ECHR Article 11.
[60] *Guidelines (2010),* point 19, p. 31.
[61] Winnett (2004) p. 467.
[62] *Ibid*., p. 468.

restricted to public place. Meaning that public forum does not necessarily form only in public places. In practice this means that public forum can form also in a private place, e.g. in a shopping mall, privately owned stadium etc. Based on D. Mead's analysis[63] there are on the large scale three approaches concerning the place of an assembly. As one extreme, we could argue that people can assemble only on the land they own themselves. This would not be consistent with the idea of human rights (i.e. right to freedom of assembly) as person's right to assemble could not be dependant on whether he owns land or not. The other extreme according to Mead is when "the legal framework could permit a group to use whatever land they wanted – no matter who owned it […]. This, clearly, would have the effect of overturning centuries of private law jurisprudence".[64] And the third approach would come as a combination of the other two: whether meaning that the consent must be obtained from a land-owner, or some other in-between solution.

For this paper the public forum would mean two things: first all public places and secondly, private places where the public forum has been "activated" – meaning that there is a dialogue between the person and the public – and where there is a consent of the owner of the private place. However, it is important to note that if, for example, an assembly is held on private land and the owner has not issued the consent, then the participants should leave not because the assembly regulation does not allow holding an assembly there, but because the restriction comes from private law.

1.3.4 Act/Conduct

The last essential element of an assembly is the act/conduct. Act can mean chanting, singing, holding banners, posters etc., but the author of this paper would argue that act does not equal activity. But an act as an element of assembly can also mean non-activity. This means that e.g. the participants of the assembly just come together and sit. Thus, this paper would claim that the act here has two (if not more) levels. First and even primary level is the *act* of persons coming together (the moment we can determine the beginning of an assembly) and the second

[63] Mead talks about protests, but his analysis can also be applied on assemblies in general.
[64] Mead (2010), p. 119.

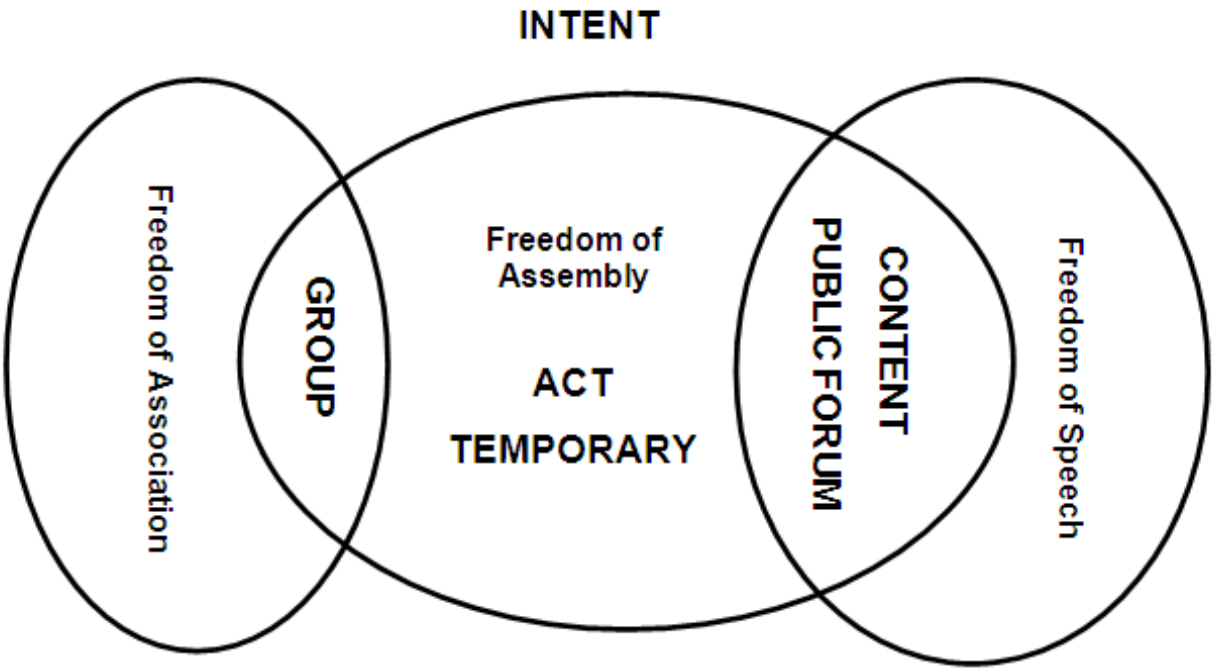
level is the activity/non-activity that will take place. The first level can be also analysed from a more philosophical approach: there is a collective, democratic value in the right to freedom of assembly and in people assembling.[65]

1.4 Conclusion of Chapter 1: Model

The aim of Chapter 1 was to define the right to freedom of assembly. With the Graph No. 1 an illustrative summary for Chapter 1 is proposed. It demonstrates the interplay between the three rights: the right to freedom of assembly, freedom of speech and freedom of association, and the elements of the right to freedom of assembly. The graph draws a distinction between assembly-elements that are characteristic only for the right to freedom of assembly, and assembly-elements that overlap with other rights.

The keyword "intent" placed to subsume all three rights demonstrates the argument of the right to freedom of assembly among others requiring a person using the right to freedom of assembly to do that intentionally as explained before. "Group" is what the right to freedom of assembly and freedom of association share, but the difference is created by the nature of the group – for association it is of permanent character, for assembly temporary. "Act" (also conduct) is what differentiates the right to freedom of assembly from the freedom of speech, but it must be kept in mind that the difference is only there when the "Act" is combined with the "Group", i.e. it is a right of a collective nature and value. Because if there is only one person involved in an occurrence of the "Act", it is not an assembly, but a symbolic speech. And lastly, what the right to freedom of assembly and freedom of speech share is the usage of public forum and the Content/Agenda.

[65] See e.g. Smilov (2009), Györfi (2009).



Graph No. 1: Assembly-elements and relations between the freedom of assembly, freedom of speech and freedom of association

2 The Problems and Developments of the Right to Freedom of Assembly in the light of the International Standard

Chapter 2 will ask and answer for the existence and concept of international standard-setting: what is an international standard and how is it made up? Why is it necessary? It will also be established what is the international standard for the right to freedom of assembly.
The second part of Chapter 2 will introduce and analyse the developments of the right to freedom of assembly that are potentially problematic for the sources of law regulating the right. Consecutively, under every potentially problematic development it will be proposed how the standard should address that.

2.1 What is an international standard and why do we need it?

2.1.1 Why do we need international standards in human rights law?

The point of departure for this question can be found in the analysis by Henry J. Steiner. He asks: "Are not matters like implementation and protection better left in the hands of governments and civil society in the different States, particularly since human rights issues are imbedded in national […] governments, traditions, and cultures?" Steiner then proposes that: "[…] standard-setting by itself – the declarations and treaties that dominated the early decades of the human rights movement, and the related spread to interest groups, media and the general population of this new discourse of international human rights – will advance the cause of human rights." Steiner explains further that when states internalise treaty norms, those norms become the "key ingredient of the domestic legal system" and can in the longer

run influence how people think about issues.[66] Steiner further discusses that international treaties give human rights advocates and others the means to base their demands against their states and thus, the text of a treaty can be regarded as a tool of empowerment.[67] However, the author of this paper would like to draw attention to the fact that this is the case of treaties, i.e. when states have taken treaty obligations. It is harder to base demands on soft law.

The need for international standards is also summarised by the UN who states that the international human rights standards were developed to protect people's human rights against violations by individuals, groups or nations.[68] According to Makau Mutua, the important thing is that there is a nexus between the state and the abuse committed. This nexus is necessary because the state is the basic obligor of the human rights corpus. It is the target of human rights standards.[69] There would be no purpose to developing standards, but never enforcing or implementing them. [70]

In sum, with referring to words of Christine Chikin we can argue that human rights law (and standards) "[…] speaks to people who appeal to its standards against what they regard as unwarranted state intrusion into their lives. It provides a language, a methodology, and techniques for challenging state action". [71]

2.1.2 The definition of an international standard

The law dictionaries do not offer a definition of the international standard.[72] What is commonly known, is the term "international minimum standard", but this has no relevancy for the object of this paper.[73] Mutua states that: "A standard is a vacuous, empty receptacle into

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[66] Steiner (2010) p. 786-787.
[67] *Ibid*., p. 786-787.
[68] *The United Nations and Human Rights* (1996).
[69] Mutua (2007) p. 578.
[70] Mutua (2007) p. 614
[71] Chikin (2010) pp. 122-123.
[72] For example: *A Dictionary of Law* (2009). *Black's Law Dictionary* (2009).
[73] "A minimum standard of treatment that must always be observed with regard to the treatment of foreign nationals" in A Dictionary of Law (2009).

which one can fit almost anything. It refers to a level of achievement or expectation that may carry with it moral, cultural, or other civilizational aspiration."[74] Mutua's proposal that a standard refers to "level of achievement or expectation" appears to be appropriate in international law and human rights law. Because what is mainly found in the relevant literature, are "international human rights standards"[75] and the latter are usually linked to the activities of UN: "To enhance respect for fundamental human rights and to further progress towards their realization, the UN adopted a three-pronged approach: (a) establishment of international standards […]"[76]

But if we want to move away from that general level and get some specific insight into international standard in regards to the right to freedom of assembly, we must ask what do the "level of achievement or expectation" and "international standards" compose of?

Mutua proposes that a standard encompasses both norms and rights: "That is why the process and exercise of the creation of expectations and obligations in human rights can be referred to as standard setting, an expression that covers both binding and non-binding rules and codes of conduct."[77] Thus, a standard can find its base from hard law and soft law instruments.

The most widely used instruments for the creation of human rights standards are treaties and declarations.[78] There appears to be consensus within the UN and among states, academics, and human rights advocates that UDHR is the most significant embodiment of human rights standards.[79] The preamble of UDHR itself also sets out that the text of UDHR is a "common standard" for international human rights law.

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[74] Mutua (2007) p. 557.
[75] The main focus of this paper is not the general human rights law and the forming of international human rights standards. For that, see: De Schutter (2010) pp. 31-121; Chikin (2010) pp. 103-123; Turner (2011) pp. 313-341.
[76] *The United Nations and Human Rights* (1996).
[77] Mutua (2007), p. 558.
[78] *Ibid*., p. 569.
[79] *Ibid*., p. 554.

2.1.3 What is the international standard for the right to freedom of assembly made of?

Following that model of what an international standard should comprise of, the international standard of the right to freedom of assembly should base on the sources noted already in Chapter 1: UDHR (Article 20) and the subsequent ICCPR (Article 21). As the region of object of this paper is Europe, ECHR (Article 11, 2nd part) can also be regarded as a source for that standard. However, as noted in Chapter 1, the relevant provisions of these treaties and the declaration prove to be quite laconic. One could of course argue that a "standard" needs to be with a certain level of generality and thus, regard the laconic manner very appropriate. However, the author of this paper would argue that there are different degrees and understandings of generality, and "generality" does not necessarily mean short and of little guidance. This means that a provision in a treaty could provide more information and help, but not lose its value as a general standard that can be applied universally. In turn, this paper would propose that if those provisions would entail for example the proposed elements of the right to freedom of assembly, and thus the scope of protection, the standard would be much more concrete. What is more, without any intention to undermine the value of assembly-provisions in UDHR, ICCPR and ECHR, the author of this paper would also argue that the field of the right to freedom of assembly has grown and changed to a large extent since the treaties and the declaration were composed, and the standard that they offer is thus outdated. A legal source that would offer more detailed and specific standards is missing.

A good analogy to this proposal is found from other fields of human rights law where we meet area or right-specific conventions such as the Convention on the Elimination of All Forms of Discrimination against Women as an extension of ICCPR Article 26 and UDHR Article 7, Convention on the Rights of the Child corresponding to the Article 24 of the ICCPR and Article 25 of UDHR, and Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data specifying Article 17 ICCPR and Article 12 UDHR.

What is more, as noted before, this paper will also refer to ECourtHR and UN HRC case-law. What is the meaning of case-law for the international standard? The author of this paper would

argue that this depends on how the dispute settlement body itself relates to case-law: whether it considers it binding for its future decisions, uses it for interpretation, or whether one court relies on the case-law of another court etc. Thus, ECourtHR and UN HRC case-law can be considered part of international standard to the extent it is part of the ECHR and ICCPR.

The second part of what can offer standards, is soft law. Ulrika Morth identifies two main components of soft law: it is not legally binding, and it comes in many different forms.[80] The forms of soft law can be divided into three groups.[81] The first group are non-binding decisions of international organizations and bodies (e.g. guidelines, programmes, opinions, plans of action), non-obligatory agreements and declarations created by states belong to the second group[82] and the third category are recommendations passed by non-governmental organizations which can have a considerable impact in terms of international practice.[83]

For the right of freedom of assembly there are the already referred Guidelines (2010). As the treaties and declaration are lacking more detailed guidance, Guidelines (2010) seem to be very useful and necessary. However, the author of this paper would argue that it is not very clear whether they should be regarded or if they even aim for to be regarded as part of the international standard for the right to freedom of assembly. The author of this paper would claim that ICCPR, UDHR and ECHR would need a thorough and up-to-date soft law source as a supporting source of international law, and as the Guidelines (2010) offer more detailed information, they could be that support.

However, if we look at how the drafters have perceived the (aim of the) Guidelines (2010), it appears that they do not necessarily see them as a standard-setting instrument. Guidelines (2010):"They [Guidelines] set out a clear minimum baseline in relation to these standards, thereby establishing a threshold that must be met by national authorities in their regulation of

[80] Morth (2004) p. 5.
[81] Different classifications of soft law might be possible, but a thorough analysis is not relevant for this paper.
[82] Blutman (2010) p. 607.
[83] *Ibid.*, p. 607-608.

freedom of peaceful assembly. This document, however, does not attempt to codify these standards or summarize the relevant case law."[84] Furthermore, "[…] this document does not attempt to provide ready-made solutions. It is neither possible nor desirable to draft a single, transferable "model law" that can be adopted by all OSCE participating States. Rather, the Guidelines and the Explanatory Notes seek to clarify key issues and discuss possible ways to address them. […]".[85]

Guidelines (2010) and Explanatory Notes are, therefore, primarily addressed to "practitioners – drafters of legislation, politicians, legal professionals, police officers and other law-enforcement personnel, local officials, trade unionists, the organizers of and participants in assemblies, NGOs, civil society organizations and those involved in monitoring both freedom of assembly and police practices."[86]

In sum, it remains rather unclear and vague what is the official status of the Guidelines (2010) in the light of the international standard of the right to freedom of assembly.

To offer some comparison of how the aim of Guidelines (2010) could also be worded and thus better perceived, an example will be brought. Although the purpose and scope of these guidelines are different from the Guidelines (2010), the connection to the international standard is still emphasized and taken into consideration. In 2002 a pan- Commonwealth[87] Expert Group was convened to develop "Guidelines of Best Practice to Promote Freedom of Expression, Assembly and Association".[88] Commonwealth Guidelines set out that they "offer assistance to member states of the Commonwealth to give effect to their international

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[84] *Guidelines (2010),* p. 12.
[85] *Guidelines (2010),* p. 12.
[86] *Guidelines (2010),* p. 12.
[87] The Commonwealth is a voluntary association of 54 countries working together in the common interests of their citizens for development, democracy and peace. The list of Member States is available at: http://www.thecommonwealth.org/Internal/191086/142227/members/ [Visited 29 September 2011].
[88] *Guidelines of Best Practice to Promote Freedom of Expression, Assembly and Association*. Commonwealth Law Bulletin (2003), pp. 791-802.

obligations relevant to freedom of expression, assembly and association".[89] As the introduction of the Commonwealth Guidelines notes, they seek "to explore practical ways of converting and applying [the minimum international] standards at the domestic level so that a synergy can develop between international human rights obligations of members and the reality of national or domestic practice".[90]

Thus, it can be concluded that the Commonwealth Guidelines aim for being part of the international standard by addressing the international standard created by UDHR and ICCPR for the domestic level. The author of this paper would suggest that it would benefit the scarce amount of sources of the international standard of the right to freedom of assembly if Guidelines (2010) were to more strongly considered as a source of the standard. Nevertheless, as Guidelines (2010) do talk about addressing the international standard to some extent and there are not – as mentioned several times already – too many other detailed sources available, then in this paper the international standard for the right to freedom of assembly will be based on UDHR, ICCPR, ECHR and Guidelines (2010).[91]

2.2 The new developments and problems of the right to freedom of assembly

Chapter 1 concluded with a graph illustrating the right to freedom of assembly and its elements. It is an abstract model, a proposed common understanding of what the right is, and what are the core elements of the right to freedom of assembly. The model was proposed as an independent idea without adding any specific context. But in practice there is always a context where a model operates. In our case the context is the international standard of the right to

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[89] *Ibid.*, p. 791.
[90] *Ibid*., p. 791.
[91] *Guidelines (2010)* also address the sources of the international and regional standard and refer to some additional sources such as the *American Convention on Human Rights, CROC, the Charter of Fundamental Rights of the European Union and the Convention on Human Rights* and *Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention*). See in *Guidelines (2010)* pp. 25-27. However, those sources will not be further discussed here due to the limited scope of the paper and as they are not essential for the analysis.

freedom of assembly. Thus, in the following part of Chapter 2 it will be investigated how the elements of the right to freedom of assembly emerge in the context of the international standard and a selection of problems that may occur with the exercise of the right and the application of assembly regulations will be presented. The paper avoids just repeating and rewording what has been discussed in Guidelines (2010). As Guidelines (2010) are recent and voluminous, they manage to address possibly all the important aspects of the right to freedom of assembly. Thus, a selection of less discussed issues will be presented.

2.2.1 Group – the subjects of the right

One of the core elements of the right to freedom of assembly is the *group*. The question of how many people form a group and thus may form an assembly, was tackled in Chapter 1. But there is another aspect for discussion if we move away from the concept of the assembly and look at the group forming the assembly in the light of the international standard of the right. Does the international standard propose the right to freedom of assembly as a human right, as everyone's right? The texts of UDHR Article 20 and ECHR Article 11 explicitly use the word "everyone". Article 21 ICCPR remains less direct and provides that the right "shall be recognized". This does not indicate whether it would be recognized for everyone or not. However, an investigation into the preparatory works of ICCPR demonstrates that an everyone's right was what the drafters had in mind. The Drafting Committee materials demonstrate that in the first session in 1947 the wording of the provision was "There shall be freedom of peaceful assembly" which is similar to the final text.[92] However, during the subsequent sessions the wording changed several times and described the right to freedom of assembly as "all persons", "everyone's" right and as one version proposed "No one shall be denied freedom to assemble peaceably without […]"[93] One opinion was that the right should be enunciated as in Article 20 of UDHR: "Everyone shall have the right to freedom of

[92] Bossuyt (1987) p. 413.
[93] *Ibid*., p. 413.

peaceful assembly" as such a formulation, it was thought, would make it clear that the right belongs to every person.[94] Therefore we can conclude that the passive wording of Article 21 ICCPR also refers that the right to freedom of assembly is everyone's right.

Guidelines (2010) also address the subjects of the right to freedom of assembly and provide: "Freedom of peaceful assembly is to be enjoyed equally by everyone."[95] The Guidelines (2010) demonstrate their usefulness and importance by adding extra explanation to what "everyone" in legal context really means: it is further explained also that the freedom to organize and participate in assemblies must be guaranteed equally to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists), to children and to persons without full legal capacity, including persons with mental illnesses.[96] Also, according to the international human rights law "aliens receive the benefit of the right of peaceful assembly".[97]

The same idea has been expressed by ECourtHR in the *Cisse v. France* case, where the applicant was an illegal immigrant who together with a group of aliens took collective action to draw attention to the difficulties they were experiencing in obtaining a review of their immigration status in France. The applicant occupied a church with others, but this was stopped by the police. Although overall the ECourtHR did not find a violation of Article 11, it held that the fact that the applicant was an illegal immigrant did not suffice to justify a breach of her freedom of assembly.[98]

Thus, in summary, we can conclude that according to the international standard the right to freedom of assembly should be guaranteed for everyone without discrimination. Whether this

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[94] *Annotations on the text of the draft International Covenants on Human Rights*. p. 54.
[95] *Guidelines (2010),* p. 16, point 2.5.
[96] *Guidelines (2010),* p. 16, point 2.5.
[97] *UN Human Rights Committee, ICCPR General Comment No. 15*, point 7.
[98] *Cisse v. France* (2002), para.-s 39,40,50.

international standard is followed by the domestic regulations of the example countries, will be seen in Chapter 3.

2.2.2 Spontaneous assemblies

One integral element of the right to freedom of assembly is that the persons exercising the right use a public forum that can form in a public place. This is also the connecting reason why there are restrictions to the right that are allowed under some circumstances. The international standard also provides the possibility for restrictions – mainly in the form of "limiting clauses".[99]

There are many sub-issues and problems raised by the implementation of those restrictions, but we will discuss only one of them – the possibility of a spontaneous assembly, i.e. an assembly without any prior act of notification. The reason we choose this issue is the considerable growth of the tendency of people using mobile phones, text messaging, social networking to organize an assembly. This in turn means that a decision to assemble may be very spontaneous and thus, a prior notification is not an option. These situations may especially occur when there is something happening that needs an immediate reaction and postponing the assembly due to notification requirement may violate the right to freedom of assembly.

UDHR, ICCPR and ECHR do not offer a specific international standard for that problem. The limiting clauses in them give room to interpretations of both directions. Guidelines (2010), however touch upon the issue of spontaneous assemblies. They provide: "Spontaneous assemblies should be lawful […] Laws regulating freedom of assembly should explicitly provide either for exemption from prior-notification requirements for spontaneous assemblies

[99] See e.g. ECHR Article 11 (2), ICCPR Article 21 2nd sentence.

(where giving advance notice is impracticable) or for a shortened notification period (whereby the organizer must notify the authorities as soon as is practicable) […]".[100]

In addition, the ECourtHR has also confirmed in the case of *Bukta and the Others v. Hungary* that: "[…] in special circumstances when an immediate response […] to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly."[101] Quite the same has ECourtHR expressed in the case of *Eva Molnar v. Hungary*: "[…] the right to hold spontaneous demonstrations may override the obligation to give prior notification to public assemblies only in special circumstances, namely if an immediate response to a current event is warranted in the form of a demonstration. […]".[102] It is interesting to note however, that in that case the ECourtHR did not find a violation of Article 11 ECHR as it concluded that the facts of that case did not disclose such special circumstances to which the only adequate response was an immediate demonstration and that the applicant had a sufficiently long time to show solidarity with her co-demonstrators.[103]

Although not explicitly stated, it can be concluded based on the case law of the ECourtHR and the Guidelines (2010) that according to the international standard of the right to freedom of assembly, the occurrence of spontaneous assembly should be allowed. The author of this paper would advise that a more efficient and better application of the international standard would be guaranteed if the domestic assembly regulations had provisions regulating the issue of spontaneous assemblies. Whether this is the practice of the states will be investigated again in Chapter 3 of this paper.

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[100] *Guidelines (2010)* point 128, p. 68.
[101] *Bukta and the Others v. Hungary (2007)*, para. 38.
[102] *Eva Molnar and the Others v. Hungary (2008)*, para. 38.
[103] *Ibid*., see para.-s 39, 43.

2.2.3 Peacefulness of the act

One of the assembly elements is also the act/conduct. According to the international standard the act, i.e. the assembly has to be peaceful: UDHR, ICCPR and ECHR all protect only a peaceful assembly. Further, the Guidelines (2010) also provide that only peaceful assemblies are protected and: "An assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. […] 'peaceful' should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties."[104]

But for example, it has been argued that the adjective "peaceful" has restricted the scope of the protection offered by ECHR Article 11, para. 1 to a very large extent.[105] Because if the planned or occurring assembly is not peaceful, the authorities may prohibit it without referring to Article 11 para. 2 that requires that the prohibition or restriction be "prescribed by law".[106] However, a peacefully organised demonstration that runs the risk of resulting in disorder by developments beyond the control of the organisers, e.g. through a violent counter-demonstration, does not for that reason fall outside the scope of Article 11 of the Convention.[107]

Thus, on the one hand there is a restriction to the right to freedom of assembly provided by the international standard itself – the requirement of peacefulness. But on the other hand the author of this paper would argue that this restriction of the right is justified as it aims at what is meant by the human right to freedom of assembly and a violent act that also carries the elements of an assembly. Thus, for this paper and especially for Chapter 3 the requirement of peacefulness will be defined as what was formulated by the ECourtHR: "[…] that the freedom to take part in a peaceful assembly […] is of such importance that it cannot be restricted in any

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[104] *Guidelines (2010),* para. 1.3, p. 15.
[105] *Theory and Practice of the European Convention on Human Rights* (2006) p. 821.
[106] *Ibid.,* p. 821.
[107] See e.g.: *Plattform Ärzte für das Leben vs. Austria (1988),* para. 32.

way […] so long as the person concerned does not himself commit any reprehensible act on such an occasion."[108]

2.2.4 New forms of assemblies?

The last issue under this chapter will bring all the assembly-elements together to one analysis and will establish whether the possible new forms of assemblies actually are assemblies, or rather just appear to be. Chapter 1 found its conclusion with a graph showing the elements of the right to freedom of assembly. This graph does not carry only theoretical importance, but is defining also in practice because as noted before – if we cannot determine whether something is an assembly, we cannot proceed to protect that "something" with right to freedom of assembly regulation. Therefore, that "something" has to have the elements of assembly. Maybe somewhat surprisingly it is not always as black and white as it could be. The following part will investigate the possibility of "*flash mob*" and "*planking*" falling under the assembly definition.

Flash mob and planking

Guidelines (2010) categorize a *flash mob* as a form of an assembly without much detailed analysis.[109] However, it might not be that straightforward. What is a *flash mob*? There are different definitions offered for *flash mob*. It would serve this paper to look at two of them. The online Merriam-Webster Dictionary offers the following: "Flash mob is defined as a group of people summoned (as by e-mail or text message) to a designated location at a specified time to perform an indicated action before dispersing. And the Oxford Dictionaries Online provides: "A public gathering of complete strangers, organized via the Internet or mobile phone who perform a pointless act and then disperse again."

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[108] *Ezelin v. France (1991), para.53.*
[109] *Guidelines (2010),* point 17, p. 30.

These definitions offer a good point of departure for the analysis. Firstly, it can be noted that the second definition provided by the Oxford Dictionaries is less neutral and gives an evaluation to the action (act) by calling it "pointless". Further, for some reason it places emphasis also on the fact that the people gathering have to be "complete strangers". What those two definitions share however, are the following elements: group, emphasis on action, limited time (temporary action). The Oxford Dictionaries' definition also indicates that a *flash mob* is a *public* gathering.

The assembly elements introduced in Chapter 1 were: group, temporary act, public forum, content and intent. If we compare these elements to the elements of a *flash mob*, we could argue that by and large a *flash mob* is an assembly. However, can we really say that a pillow fight that only aims for fun, entertainment and surprise-effect is an exercise of the right to freedom of assembly? The author of this paper would argue that the "content" or agenda-element of the act is what may draw the line. When we take the examples of common *flash mobs* such as a pillow fight or a slow-motion dance, we see that the act – the fight or the dance – is just a pure act without a meaning, without the intent to express a view, opinion, without a *content.*

So, generally *flash mobs* are seen just as performing art form, but there have been some cases where *flash mobs* become political, acquire an agenda. For example, in Belarus during the elections in 2006 the *flash mobs* began to be political: a mass of people gathered in the centre of Minsk, simultaneously opened the newspaper "*Soviet Belarus"* (the "official" newspaper of the regime) and began tearing it into pieces. Furthermore, during another post-election *flash mob*, participants floated paper ships bearing the names of opponents of the Lukashenko regime who had been arrested.[110] Similar tendencies of how *flash mobs* may fall under assembly right legislation have occurred also elsewhere.[111]

[110] Ousmanova (2010).
[111] Leigh (2008).

For an illustration it is interesting to shortly analyse also another social phenomenon called *planking* that is defined as "a prank that involves lying face down in a public place, with photos posted on social networking sites"[112]It enjoys some of the same characteristic elements as the *flash mob*: a temporary act in a public place. It does not require a group of people by the definition, but it can be performed by several people. Further, the conducted act – the prank – is even more simplistic than the act done during a *flash mob*. Thus, it would be difficult to regard a group of people *planking* an assembly. The content of the act is similarly to *flash mob* missing. However, there are already people who do *planking* with a purpose to express their views, whose act has the content. For example, in Taiwan two girls use it to promote causes, such as *planking* with stray dogs to draw attention to the plight of the animals, or *planking* in famous tourist spots to promote travelling.[113] Thus, again we may start qualifying *planking* as a new form of assembly that grew out from a "prank".

"Cyber Assembly"

As a third example we will briefly look at "cyber assembly". There are actually two issues under that topic. One has been touched upon earlier in this paper and it is the tendency of people using text messaging, tweeting, social networks on the Internet to organize an assembly. It might fuel problems for assembly regulations in the context of spontaneous assemblies, but also, when the authorities start restricting the usage of those instruments in order to prevent people gathering, i.e exercising the right to freedom of assembly. This is what happened in the USA where the officials shut down cell-phone service in several of its underground stations because they said "they had information of planned protests and feared cell phones would be used to organize so-called 'flash mob' demonstrations on its subway platforms, endangering protesters and others."[114]

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[112] *Who, What, Why: What is planking?* (2011).
[113] *Made in Taiwan, the twins who have taken planking to another level.* (2011).
[114] *BART cell shutdown a landmark in cyber-assembly issue.* (2011).

Another issue here is the actual possibility of having a "cyber assembly" meaning that people "gather" on the Internet for example in a discussion forum.[115] Or a "cyber picket" is created, as was the case of IBM workers in Italy in 2007 where the action featured sign-carrying avatars created by IBM workers.[116] Or one tactic is setting up spoof web pages based on a company's logo or to use the protesting group's own page to display spoof items or products.[117]

We might find here the elements of an assembly: those people form a temporary group, they use a public forum – the Internet, we might also detect this group's intent to gather on the Internet, but the author of this paper would argue that it is more difficult to argue for the existence of an act. If there is for example a declaration this group is signing, this is still more of the issue of freedom of speech. Another question is also whether we can qualify the Internet, the cyberspace as a public forum indeed. As Internet-usage has been influential also for the right to freedom of speech, the question of Internet being a public forum has been analysed by quite a few scholars.[118] Some scholars have claimed that the Internet should be conceptualised as one grand "public forum".[119] At the same time we need to bear in mind that this might be only an illusion as "the vast majority of speech on the Internet today occurs within private places and spaces that are owned and regulated by private entities such as […] Yahoo! […]". [120] However, if we take the understanding that a public forum can be created despite the classification of the place (see 1.3.3) – whether it is public or private – we could argue that cyberspace can be a public forum.

[115] See e.g. Nasr (2009).
[116] Berry (2007).
[117] Mead (2010) p. 233.
[118] See e.g. Nunziato (2005).
[119] Nunziato (2005), p. 1116.
[120] Nunziato (2005), p. 1116.

Above all, as cyber-assemblies raise many additional and complex issues concerning Internet regulation, copyright, intellectual property, privacy etc. we can conclude that the "classic" assembly regulation falls short in addressing the issue of possible cyber-assembly.

When we again turn to the international standard of the right to freedom of assembly, we find as mentioned before that UDHR, ICCPR and ECHR give almost no guidance to how to actually determine an assembly. Guidelines (2010) prove to be more helpful as they provide examples of assemblies, but state that "those examples are not exhaustive", and furthermore, that "the domestic legislation should frame the types of assembly to be protected as broadly as possible".[121] Thus, the international standard would require from the domestic regulations to be broad enough to also cover possible new forms of assembly. How the domestic regulations of the selected example countries address the international standard or the proposed international standard will be seen Chapter 3.

2.3 Conclusion of Chapter 2

Chapter 2 investigated the international standard in general and established that the sources for the international standard of the right to freedom of assembly are UDHR, ICCPR and additionally – as the focus is on Europe – the regional ECHR and Guidelines (2010). It was further developed that according to the sources of these international standard instruments the right to freedom of assembly should be everyone's right, the regulation for assemblies should allow spontaneous assemblies, only peaceful assemblies are protected and the international standard alongside with domestic regulations should be ready for addressing the new forms of assemblies. If that standard is met by the domestic regulations, will be seen in the following chapter.

[121] *Guidelines (2010),* point 17, p. 30.

3 How are the Domestic Regulations of the selected Countries in Europe able to address the Developments and Potential Problems of the Right to Freedom of Assembly in the light of the International Standard of the Right?

With the third and final chapter of this paper the principal research question of this thesis will be finding its answer. Chapter 1 laid a core, a foundation for the following analysis by introducing and analysing the right to freedom of assembly through its elements and summarising the elements in a graph. The same concept of elements was then used under Chapter 2 where through those elements the problems and developments that the domestic assembly-regulations need to address, were discussed. Chapter 2 also added a context where the elements and analysis was put – the international standard for the right to freedom of assembly. Now, with Chapter 3 it will be seen whether the international standard that is set for the problematic aspects of the right is met by the domestic regulations of the five selected countries.

3.1 Methodology

In the following two (3.1.1 – 3.1.2) sub-paragraphs the methodology used for Chapter 3 will be introduced and explained.

3.1.1 Which countries and why have been selected for the analysis?

The restricted scope of this paper would not allow analysing wholly the domestic regulations of one geographical region. Nevertheless, the author of this paper would argue that if a representative group of countries from a region is chosen, the emerging patterns still show a tendency that can be used for conclusions. The countries are chosen on the basis of their level

of development, democracy index (DI)[122], history and record in human rights with the intent to have different countries that share one regional standard-setting document – the ECHR. Nevertheless, it should be noted that the choice is still dependant on the subjective preferences of the author of this paper.[123]

The countries chosen are Estonia, Georgia, Germany, Russia and Sweden.[124] Estonia (DI: 33; 8,82)[125] is chosen to represent a former Soviet Union country that has developed into strong democracy over the past 20 years. Georgia (DI: 103; 6,18) is a former Soviet Union country as well, but what differentiates it from Estonia are the struggles for democracy and often worrying human rights track record. Germany (DI: 14; 9,12) is chosen to represent countries that have a long history in human rights protection and are so-called old democracies. Sweden (DI: 4; 10,00) has been chosen to represent Scandinavian region with also an exemplary democracy. Russia (DI: 107; 4,71) representing the largest country in the region and a country with the second highest number of judgments from ECHR in 2010.[126]

3.1.2 How is the analysis done and structured?

It is not the aim of this paper to address the right to freedom of assembly in those countries exhaustively by elaborating on the social, historic and legal context in a detailed manner and covering all the possible issues, problems and case-law. Rather, the current chapter will be

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[122] *Democracy index 2010*.
[123] The choice is also limited to the amount of material that was available. For example for several countries it was impossible to find translations of the relevant regulations from the original languages to a language known to the author.
[124] Interestingly, the SR on the rights of freedom of peaceful assembly and association has planned 39 country visits and among the chosen countries are also Georgia and Russia that are chosen for this paper. See further: http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CountryVisits.aspx [Visited 15 November 2011].
[125] DI in the brackets indicates the rank of the country in a *Democracy Index 2010* out of 167, and the following number a category score for "Civil Liberties" out of maximum of 10,00.
[126] First one being Turkey. *European Court of Human Rights. Statistical information: Annual Statistics.*

based on the context established in Chapter 2 and thus, have the following narrow focus of interest in the form of five concrete questions. In simple terms it means that the domestic regulation of a country will be "put up" and compared against the international standard.[127]
The information about the domestic legal sources is obtained from the online database http://legislationline.org/ which is managed by the Organization for Security and Co-operation in Europe: Office for Democratic Institutions and Human Rights[128] or searched from direct sources such as the official web-pages of the countries.

The five questions proposed

(1) What are the domestic legal sources for the right to freedom of assembly?

There is a limitation to that question. The author of this paper has been concentrating on assembly-regulation provided by the constitutions and the specific assembly acts of the selected countries due to the restricted scope of this paper. Thus, this paper has relied on the LegislatiOnline database and if not indicated differently by the database (as for Sweden), the possibility of theses countries having other relevant regulations for the assembly has been disregarded. However, the author of this paper of course acknowledges that there might be additional regulations (e.g. police acts, anti-terrorist laws, emergency laws etc) that can affect the right to freedom of assembly in the selected countries.[129]

(2) Who are the subjects of the right?

(3) Does the domestic regulation allow spontaneous assemblies?

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[127] While writing this paper, the Venice Commission and the OSCE/ODIHR published the *Joint Opinion on the Draft Law on Freedom of Peaceful Assembly of Ukraine.* The Joint Opinion is structured and built up using a method similar to this paper: the suggestions for changes of the Draft Law are based on Guidelines (2010) and the international standard.
[128] Description of the database: *"Legislationline, a free-of-charge online legislative database, was created in 2002 to assist OSCE participating States in bringing their legislation into line with relevant international human-rights standards*." See further: http://www.osce.org/node/43644 [Visited 26 October 2011].
[129] These "side-issues" have in turn their own international standards. See e.g. *International Human Rights Standards for Law Enforcement.*

(4) Does the domestic regulation consider "peacefulness" as inseparable element of the right to freedom of assembly?

Peacefulness will be understood here as of explained in Chapter 2: the participants of the assembly should not be violent. And thus the domestic regulations will be analysed for having the same concept and understanding of peacefulness.

(5) Would the assembly definition(s) provided by the domestic regulation subsume the "new forms" of assemblies?

This question will look at the assembly definitions and analyse whether possible new forms such as *planking* and *flash mob* could fit under the definition. The international standard as explained in Chapter 2 would require the definition of an assembly to be not a narrow one. As the third new form – "cyber assembly" – would demand a more thorough analysis of laws regulating Internet and copyright, it will be left out from the scope of the question here.

3.2 How do the specific domestic regulations of the selected countries address the international standard?

3.2.1 Estonia

(1) For Estonia there are two relevant legal sources for the right to freedom of assembly: the Constitution and the Public Assembly Act. Article 47 of the Constitution provides: "Everyone has the right, without prior permission, to assemble peacefully and to conduct meetings. This right may be restricted in the cases and pursuant to procedure provided by law to ensure national security, public order, morals, traffic safety, and the safety of participants in a meeting, or to prevent the spread of an infectious disease." The Public Assembly Act provides the specific regulation in regards to the right to freedom of assembly.

(2) As referred, the Constitution determines the right to freedom of assembly as "everyone's" right and thus, meets the international standard. However, the Public Assembly Act stipulates that the organizer of an assembly needs to be an adult with full legal capacity and holding Estonian citizenship or long-term or permanent residence permit (Article 6 (4)). For participants of an assembly there are no limitations. In some cases however, the restriction from Article 6 (4) can become an obstacle for person's exercise of the right. Therefore, the international standard is not fully met.

(3) According to Article 7 of the Public Assembly Act there is an obligation to notify the local government or the police prior to the assembly. This must be done no later than 4 working days before the assembly takes place, but it applies only to assemblies that require reorganisation of traffic, erecting a tent, a stage, a stand or any other large-scale construction or use of audio equipment or lighting installations. For all other assemblies – also spontaneous assemblies – the law provides that the police should be notified at least 2 hours prior to the assembly. Further, this can be done also via phone. The four-day-restriction does not affect that because it is not likely that a person would like to hold a spontaneous assembly within the next 4 hours and would also want to build a large-scale stage for that. Thus, it can be inferred that the international standard is met.

(4) The notion of peacefulness is first noted by the Constitution Article 47, but also emphasized in several articles of the Public Assembly Act. Article 1 sets out that the aim of the act is to guarantee persons' right to peacefully assemble, Article 11 provides that the organizer of the assembly should guarantee that the assembly is performed peacefully, and Article 13 stipulates that the participants have the obligation to act peacefully. Thus, international standard has been addressed.

(5) Article 2 of the Public Assembly Act provides that "an assembly is a meeting, demonstration, rally, picket, religious event, procession, or other manifestation conducted on a square; in a park; or on a road, street, or in another public place in open air".[130] Would the assembly definition provided by the Estonian domestic regulation subsume the "new forms" of assemblies? The author of this paper would claim that most likely it would, as "other manifestation" is not entirely fixed in its meaning. Therefore, new forms of assemblies would be protected as well and the standard is met.

3.2.2 Georgia[131]

(1) For domestic assembly regulation in Georgia there are two legal sources relevant: the Constitution of Georgia and the Law on Assemblage and Manifestations of the Republic of Georgia (LAM). Article 25 of the Constitution sets out that: "Everyone, except members of the armed forces and Ministry of Internal Affairs, has the right to public assembly without arms either indoors or outdoors without prior permission. […]".

(2) The Georgian Constitution provides that the right to freedom of assembly is guaranteed for everyone with the exception of members of the armed forces and Ministry of Internal Affairs. However, Article 3 of the LAM stipulates that "assemblage means a gathering of a group of citizens […]" as if the participants of an assemblage could be only citizens. On the other hand, "manifestation" is defined as "a public demonstration, mass public rally, or a march in the street to express solidarity or protest as well as a

[130] *Estonia country profile*.
[131] A very recent report has a short insight into assembly practices in Georgia. Although this is beyond the scope of the analysis of this paper, it offers an interesting background information. International Federation for Human Rights, *Steadfast in Protest - Annual Report 2011 - Georgia*, pp. 456-457.

march with the use of posters, slogans, banners, and other visual tools" with no reference to citizen status. Some assemblies require previous notification and if so, an organizer of the assembly will be appointed. According to Article 5 (2) of the LAM "citizens under 18 years of age and persons who are not citizens of Georgia shall not have a right to act as such responsible persons". And also in case of assemblies that do not require notification, the text of the LAM refers to citizens only – Article 7 sets out "the rule of mandatory notification does not apply to regular citizens […]". Thus, the international standard is not addressed.

(3) According to LAM there seems to be a possibility to hold a spontaneous assembly. First, according to Article 6 (1) "a local government body has a right to determine a permanent place and time for holding assemblages about which no preliminary warning notice has been made". Further, Article 7 states that "the rule of mandatory notification does not apply to regular citizens who would like to express their opinion by means of posters, slogans, banners, and other visible tools; however, they may not use entrances and stairs of buildings, block roads or hinder the movement of transport and pedestrians". However, as the local government only has a right and not an obligation to determine the permanent place for holding assemblages with no preliminary warning, it is possible that this right will not be used. Overall it seems that although there is a possibility to hold an assembly with no pre-notice, this is quite restricted and thus we could argue that the international standard is not met to full extent.

(4) The LAM does not use the common word "peaceful" in regards to assembly activities, but nevertheless it stems from the provisions that the activities should be non-violent in nature. For example, Article 1 (1) of the LAM provides that the aim of the LAM is to "govern relations arising from exercise of the Constitutional right to assemble […] without arms […]", and Article 11 (3) (a) stipulates that the "participants of an assemblage or manifestation shall be prohibited: to have arms, explosives, inflammables, tear gas, radioactive, paralyzing and poisonous substances […]". Thus,

in principle the international standard is met because the idea that participants should be non-violent is addressed.

(5) If we once again turn to the definitions of assemblage and manifestation, it can be concluded that the definition ("a gathering of a group of citizens indoors or outdoors or a public meeting to express solidarity or protest") is general enough to allow the application of the regulation also to some new, unusual forms of assemblies.

3.2.3 Germany

(1) There are three relevant legal sources for the right to freedom of assembly in Germany. First the Constitution of Germany provides that "all Germans shall have the right to assemble peacefully and unarmed without prior notification or permission" (Article 8 (1)) and "in case of outdoor assemblies, this right may be restricted by or pursuant to a law (Article 8 (1)). Further, there is the general Assembly Act that sets out the details of the right. As Germany is a federal state, it consists of 16 partly independent states and since the administrative reform in 2006 the states have the right to use a local assembly regulation. However, until they have not done that, the general Assembly Act applies.[132] With this paper we will only look at the standard set by the Constitution and Assembly Act.

(2) As seen from the Article 8 of the Constitution, the right to assemble peacefully is guaranteed for "all Germans" which makes the provision narrower than what the international standard would require. However, the Assembly Act itself provides in Article 1 (1) that *"Jedermann"* has the right to freedom of assembly and "*Jedermann"* is German for "everyone". Thus, if we consider the *lex specialis* here, the international standard in regard to the subjects of the right is met.

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[132] *Versammlungsrecht. Bundesministerium des Innern.*

(3) The possibility to hold spontaneous assemblies is the closest addressed with Article 14 of the Assembly Act in which it is stated that a person who wants to hold a public assembly should inform the relevant authority at least 48 hours before the assembly. It depends on what is the threshold, but the author of this paper would argue that the requirement of 48 hours should not be universal for all assemblies. Rather should the regulation also allow assemblies with no prior notification at all. Thus, to conclude, the international standard is not entirely met here.

(4) The requirement of peacefulness is entailed both in the Constitution and in the Public Assembly Act: the former uses explicitly the word "*friedlich"* which means peacefully and the latter refers that the participants should not carry weapons (Article 2). Therefore, the international standard is met.

(5) Neither of the two sources deal with the definition of an assembly and thus, it is impossible to analyse whether the Assembly Act would apply to the "new forms" of assembly.

3.2.4 Russia[133]

(1) The relevant domestic assembly law sources for Russia are the Constitution and the Federal Law No. 54-FZ of June 19,2004 on Rallies, Meetings, Demonstrations and Picketing**.** Article 31 of the Constitution provides that: "Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets." The Federal Law has 19 articles which add specifications to Article 31 of the Constitution.

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[133] A very recent report has a short insight into assembly practices in Russia. Although this is beyond the scope of the analysis of this paper, it offers an interesting background information. International Federation for Human Rights, *Steadfast in Protest - Annual Report 2011 - Russian Federation*, pp. 478-480.

(2) The departure point for determining the subjects of the right according to Russian domestic regulation is Article 31 of the Constitution that appears to be similar to the corresponding article in German Constitution.. Article 31 provides that the "citizens of the Russian Federation" have the right to assemble. This provision makes the right to freedom of assembly dependant on citizenship which does not accord to the international standard. Although Article 2 of the Federal Law provides that a public event (a rally, meeting, demonstration, march, picketing or a combination of those forms) is accessible to everyone, it has to be "undertaken at the initiative of citizens of the Russian Federation […]" and the remainder of the provisions in the Federal Law also refer to citizens (see e.g. articles 5, 6). Therefore, it can be inferred that the international standard is not addressed here properly.[134]

(3) The possibility to hold spontaneous assemblies is not available under Russian domestic assembly regulation.[135] It stems from the Federal Law that all assemblies need prior notification and according to Article 7 (1) **"**a notice of holding the public event […] shall be sent […] not later than ten days prior to holding of the public event. In case of holding a picketing by a group of persons, a notice of holding the public event may be submitted within the period not later than three days prior to the holding of same." Thus, the international standard has not been addressed.

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[134] Interestingly, Article 1 of the Federal Law provides that the Federal Law is among other domestic regulations also based on "the commonly recognized principles and norms of international law, international agreements of the Russian Federation".

[135] *A recent document (30 September 2011) "Comments of the Russian Federation on the letter of the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, on ensuring the right to freedom of assembly in the Russian Federation of 21 July, 2011*" is available.

(4) The requirement of peacefulness is entailed in the Constitution Article 31 (see before) and in the Federal Law: the preamble refers to “peaceful assembly without weapons” and Article 2 (1) to “peaceful action”. Thus, the standard is met.

(5) The question of “new forms” finding the protection of the assembly regulation is probably best answered if we look at the Federal Law as a whole. It seems that the drafters have had an intent to leave the scope of what is an assembly rather wide by acknowledging that “various combinations“ of meetings, rallies, marches etc. can occur. Thus, should a political *flash mob* take place it is likely to be seen as an assembly. However, as seen before, the essence of a *flash mob* is its spontaneity and this would not be compatible with the Russian assembly regulation not enabling spontaneous assemblies. But if we evaluate whether the regulation offers wider definition of an assembly and is “open” to new assemblies by definition, then we can infer that the international standard is met.

3.2.5 Sweden

(1) The domestic legal sources relevant for Swedish assembly regulation are the Constitution, the Penal Code, Public Order Act and Police Act. Article 1 (3) in chapter 2 of the Instrument of Government of the Constitution provides: “Everyone shall be guaranteed […] the freedom of assembly: that is, the freedom to organise or attend meetings for the purposes of information or the expression of opinion or for any other similar purpose, or for the purpose of presenting artistic work”.

(2) The subjects of the right have not been specified. The Public Order Act uses passive voice or remains neutral. In addition, the wording of the Constitution refers to “everyone” which allows to infer that the domestic assembly regulation addresses the international standard.

(3) According to the Public Order Act articles 4 and 5 there must be a permission for an assembly unless given the expected number of participants, the chosen place and time of meeting, and the devices referred to occur would take place without danger to public order and safety or traffic. In this case only a notification is required. According to Article 6 for permission the time frame is no later than one week before the meeting and the application for permission must be done in written form. Notification can be made in writing or orally and "if possible, notification shall be received no later than five days before the meeting or event". A notification is not required if again no threat would occur for public order, safety and traffic. Thus, if well reasoned, there is the possibility of a spontaneous assembly and the international standard is met.

(4) The Public Order Act and the Constitution neither use the wording of "peaceful assembly" nor an equivalent. It is not justified to automatically conclude that the international standard is not met because not including the peacefulness- "restriction" could also mean a larger protection. Further, the fact that participants should not be violent might be regulated also with other laws, e.g. criminal law. Thus, it is the opinion of the author that the international standard is met here.

(5) Chapter 2, Article 1 (5) of the Public Order Act provides that a public assembly is additionally also "other assembly where the freedom of assembly is exercised" which allows a wider interpretation and would also protect a "new form" of an assembly if needed. This means an alignment with the international standard.

3.3 Conclusion of Chapter 3: What are the overall tendencies that the selected countries propose?

Here, the outcome of investigating five countries will be summarised. As a comparison, the results will be compared to the data provided by the *Cingranelli-Richards (CIRI) Human*

Rights Dataset.[136] This variable indicates the extent to which the freedoms of assembly and association are subject to actual governmental limitations or restrictions (as opposed to strictly legal protections). A score of 0 indicates that citizens' rights to freedom of assembly or association were severely restricted or denied completely to all citizens; a score of 1 indicates that these rights were limited for all citizens or severely restricted or denied for select groups; and a score of 2 indicates that these rights were virtually unrestricted and freely enjoyed by practically all citizens in a given year. Although this variable combines the right to freedom of assembly with the right to freedom of association, it will still offer an interesting comparison because although this paper is narrowed down to address some of the issues of the right to freedom of assembly in a certain context, the specific problems are usually mirroring the overall human rights status.

The Table No. 1 summarises the answers to the questions 2-5 for each country in a simple format: if according to the analysis the international standard was addressed in the domestic assembly regulation, a score of 1 is given, and if the international standard was not met, a score of 0 is given, if the analysis could not result in an answer, "no answer" is applied. The last column is the variable that country scored in the CIRI HR Dataset.

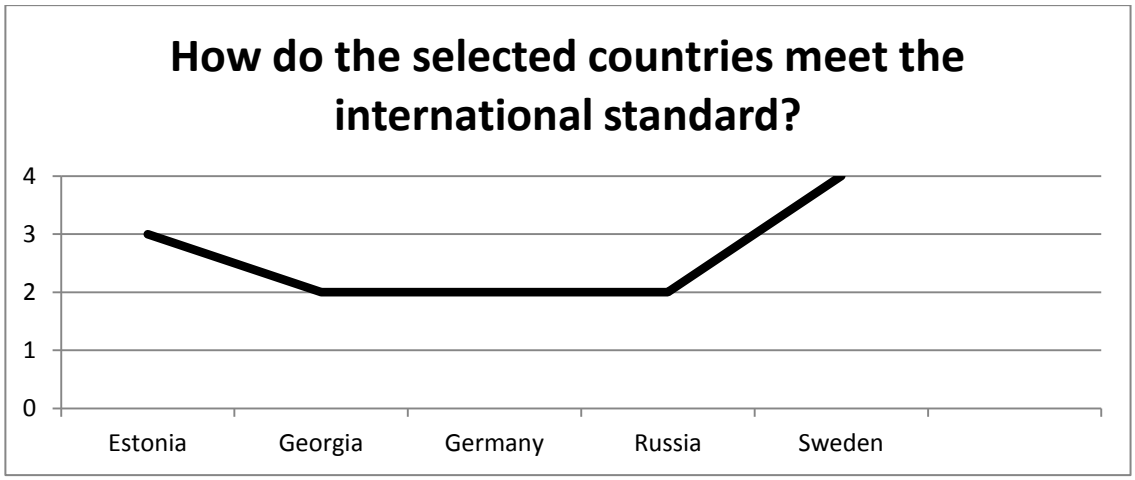
Country	**Subjects of the right (2)**	**Spontaneous assemblies (3)**	**Peacefulness (4)**	**New forms (5)**	**Total score**	**CIRI HR Dataset variable**
Estonia	0	1	1	1	3	2
Georgia	0	0	1	1	2	0
Germany	1	0	1	No answer	2	1
Russia	0	0	1	1	2	0
Sweden	1	1	1	1	4	2

Table No. 1: Summary of the analysis

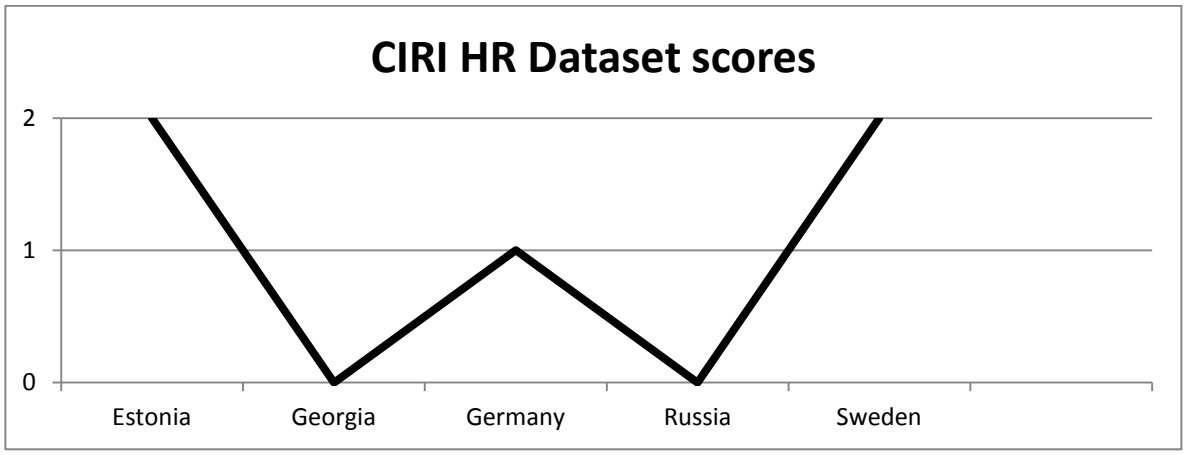
[136] *The Cingranelli-Richards (CIRI) Human Rights Dataset.*

As seen from the Table No. 1, only one of the five countries – Sweden – scored a maximum score of 4 in addressing the international standard in every question. For Germany, Georgia and Russia, the total score was 2, whereas Estonia scored a 3. However, for Germany it must be noted that the question number 5 was scored as "no answer". It stems from the Table that the most problematic was the question of subjects of the right to freedom of assembly – only 2 (Sweden and Germany) countries out of 5 could meet the international standard with the domestic regulation. Problematic is also the possibility to hold spontaneous assemblies – only 2 (Sweden and Estonia) met the standard.

The least problematic was the question of peacefulness – all 5 countries out of 5 managed to address the international standard.



Graph No. 2: How do the selected countries meet the international standard?



Graph No. 3: CIRI Human Rights Dataset scores

If we compare the two graphs, we see that for Estonia and Sweden the placement is very similar: in Graph No. 3 they score the highest, and in Graph No. 2 Sweden scores the highest and Estonia the second highest. For other countries there are some differences as in Graph No. 2 Germany, Georgia and Russia are all in the same category, but in Graph No. 3 Georgia and Russia score a 0. Why? There might be many reasons. First it might be that the method used for this thesis is too narrow and straightforward because even when we look at the analysis of the regulations, we encounter many assumptions and "possible scenarios". Another reason is very technical: language. It is also possible that what is meant by the regulations suffers through the translation. Lastly, the author of this paper only used a selection of issues and questions to evaluate the compliance of the international standard.

If we look at the presented table and Graph No. 2, it would be easy to make conclusions that by and large the domestic regulations of the selected countries do address the international standard of the right to freedom of assembly as none of them scored a 0 and 3 out of 5 scored an average 2 . But the author of this paper would like to argue that this is too easy of an approach. There are two concerns we should address and keep in mind. Firstly, that only 5 countries were looked at and among those 5 were at least three (Estonia, Germany, Sweden) that we consider strong democracies with no remarkable human rights violations. Thus, if already in this group we discovered gaps in addressing the international standard, this should

be a concern. Secondly, it is important to acknowledge where those gaps appeared. Bearing also in mind that the 4 questions (aspects) chosen were already regarded as essential and up-to-date for the right to freedom of assembly. The most problematic was the question of subjects of the right. The author of this paper would argue that the incompatibility there is not just a gap that could be treated light-heartedly, but a signal that there is something wrong with the fundamental understandings and perceptions of the right to freedom of assembly. Also, 3 domestic regulations of countries investigated did not address properly the international standard for the spontaneous assemblies which is again a very problematic. Therefore, the argument of this paper would be that the selected countries in Europe are not properly addressing the problematic aspects of the right to freedom of assembly in the light of the international standard.

Conclusion

The research question of the thesis was: “How are the domestic regulations of the selected countries in Europe able to address the developments and potential problems of the right to freedom of assembly in the light of the international standard of the right to freedom of assembly?” For establishing an answer to that question the paper was divided into three connected chapters.

Chapter 1 asked what is the right to freedom of assembly in order to properly define the object of the paper. It was found in Chapter 1 that although closely interrelated with other rights – such as the right to freedom of speech and freedom of association – , the right to freedom of assembly has some distinctive elements and carries an independent value as a human right. The main contribution of Chapter 1 was the summary of the analysis in a form of a model (Graph No. 1) that proposed the relations between the right to freedom of assembly, speech and association and thus, the elements of the right. It was established that the right to freedom of assembly elements are group, temporariness, act, public forum, content/agenda and intent. This model with its analysed elements was directly or indirectly used throughout the thesis.

Chapter 2 moved forward with the investigation and asked for the international standard and the problematic issues of the right to freedom of assembly. It was established that the relevant sources for the international standard for the right are UDHR, ICCPR, ECHR and Guidelines (2010). It was investigated what the international standard set for the issues concerning the subjects of the right, criterion of peacefulness, spontaneous assemblies and new forms of assemblies. Shortly put, it was found that according to the international standard the right to freedom of assembly is everyone’s right, only peaceful assembly activities are protected, the importance of spontaneous assemblies is higher than ever due to the technological

development and definitions of assemblies should address and thus protect also new forms of assemblies if applicable. Additionally, it was the argument of the author that in regards to the international standard of the right to freedom of assembly, a legal source that would offer more official guidance, detailed specific standards is missing.

In Chapter 3 the relevant provisions of the domestic assembly regulations of five countries – Estonia, Georgia, Germany, Russia, Sweden – were put against the international standard. The subjects of the right, spontaneous assemblies, peacefulness and new forms of assemblies were analysed. The results of that investigation were presented in a table (Table No. 1) and compared against another research (Graph No. 2 and No. 3). In summary it was found that although according to the overall numbers the selected countries addressed some of the issues analysed according to the international standard, the gaps appeared in very important questions – the subjects of the right, and possibility to hold a spontaneous assemblies. Thus, it can be concluded that within the restricted scope of this thesis the countries do not wholly address the international standard. Also, the investigation of the international standard of the right to freedom of assembly lets us infer that there are gaps within the standard itself as well. Meaning, that at times, the international standard itself is not up-to-date, instructive and straightforward enough. Of course, "good laws, by themselves, cannot mechanically generate improvements in practice",[137] but the author of this paper would argue that firstly, "good laws" that manage to address the international standard form a basis for "good practices", and secondly, "good laws" that address the international standard allow the rights-holders to rely on the law provisions in case of a violation of human rights.

In addition to the analysis and answer of the research question this paper has three additional contributions. Firstly, this thesis searched for all the relevant material and legal sources available for the right to freedom of assembly and put it all into one bigger context to demonstrate the relations and shortcomings. As a future implication and further development of this work, other countries/regions and the domestic case-law should be looked at

[137] *Guidelines (2010),* p. 9.

additionally. Furthermore, the research conducted by the author demonstrated that although the database LegislatiOnline.org is a vital contribution, it is neither perfect nor exhaustive: for many countries the translations of relevant assembly regulations are missing. Therefore, also this database should receive resources in order to provide sufficient information for further legal analysis.

Secondly, this thesis offered one model understanding of what is the right to freedom of assembly in the form of a fairly simple graph that could be used also in the future in practice, or academia. If discussed and, if necessary, amended by also other scholars, this could be used as a common basis of understanding of the right to freedom of assembly.

Thirdly, last but not least, this paper aims to fuel further general or specific legal discussions and debates on the subject of the right to freedom of assembly in order to put it back on the legal academic agenda. Not only would it be the interest of the author of this paper to see other authors expressing their assent or dissent, but it would benefit the work of the newly appointed SR and, above all – the rights-holders of the right to freedom of assembly.

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ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 1950
First Amendment	First Amendment of the United States Constitution 15 December 1791

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