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REPORT

ON ORGANISING AN ASSEMBLY AND PROCEDURAL REQUIREMENTS

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ORGANISING AN ASSEMBLY
PROCEDURAL REQUIREMENTS

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PART 1 - GENERAL PRINCIPLES OF ECHR

Subsidiarity

The essential point here is that the aim of this workshop is to equip Azerbaijan to comply with its treaty obligation to protect the freedom of peaceful assembly. In an ideal world, the work of the Venice Commission and ODHIR would lead to complaints to the European Court of Human Rights being completely unnecessary.

In the European Convention context the principle of "subsidiarity" means that the intended effect of the ECHR is to encourage states to bring their domestic law into conformity with the standards of the Convention, rather than for the Convention rights to be relied on directly. Human rights ought to be protected by national authorities, rather than by the Strasbourg mechanisms. In European Convention law the principle of subsidiarity is used to express that the Convention mechanisms are thus subsidiary to the activities of the Contracting Parties themselves. This observation is supported by the terms of the Convention, and has been consistently re-affirmed by the Court.

Evidence of the notion of subsidiarity in the Convention is provided firstly by Article 1 ECHR. The primary aim of the ECHR, stated in Article 1, is to ensure that "Contracting Parties shall secure within their jurisdiction" the rights and freedoms set out in the Convention. According to Article 13 ECHR failure to provide an "effective remedy before a national authority" for the breach of a Convention right is a breach of the Convention itself. The position was neatly summarised in the case of *Z and Others v UK*:

The Court emphasises that the object and purpose underlying the Convention, as set out in Article 1, is that the rights and freedoms should be secured by the Contracting State within its jurisdiction. It is fundamental to the machinery of protection established by the Convention that the national systems themselves provide redress for breaches of its provisions, *the Court exerting its supervisory role subject to the principle of subsidiarity*. In that context, Article 13, which requires an effective remedy in respect of violations of the Convention, takes on a crucial function. [1] [emphasis added]

The requirement in Article 35 ECHR, that all domestic remedies must be exhausted before the Strasbourg enforcement mechanisms are engaged, also emphasises the subsidiary nature of the protection offered by the Convention. This recognises the traditional rule of international law that states should have the opportunity to redress any claims made against them in domestic law before international law can play a role. In this sense, it is a principle derived from respect of states' sovereignty. The other admissibility requirements under the Convention also re-affirm the principle that the European Court itself is the last resort, and that the primary arena for judicial protection of human rights is in national courts.

Likewise confirmation of the subsidiarity principle in the Convention is provided by Article 53. Article 53 does not prohibit the protection of human rights to a greater extent than the Convention itself specifies:

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

The Convention is thus a residual safeguard of human rights that ought ideally to be protected in national law. It clearly also suggests that the Convention is not itself a maximum standard for the protection of human rights in Europe, but more a minimum standard.

Judicial affirmation of the principle of subsidiarity dates far back into the European Court's jurisprudence, and can be seen in many of its most famous judgments such as the *Handyside* case and *Belgian Linguistic*.[2] Paragraph 48 of the *Handyside* judgment contains the observation that:

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[1] *Z and Others v UK* (2001) (Application no. 29392/95)

[2] *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium* (1968) (Application no. 1474/62). See especially para. 10 under the heading "Interpretation adopted by the Court".

The machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. [...]The Convention leaves to each Contracting State, in the first place, the task of securing the rights and liberties it enshrines.[3]

The concept of subsidiarity is thus used in the Convention system to encourage domestic authorities to shoulder the burden of protecting and promoting human rights. This means that in the day to day work of the authorities in relation to freedom of peaceful assembly, including the work of the police, they have a responsibility to protect the Convention rights throughout their conduct of operations.

Democracy

The notion of a "democratic society" permeates the entire European Convention system. In the preamble to the Statute of the Council of Europe, participating states reaffirm:

their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy.[4]

Likewise the Preamble to the ECHR states that fundamental freedoms:

are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend.

Article 9, 10, 11, of the ECHR – freedom of religion, freedom of expression, and freedom of peaceful assembly, along with Article 3 of Protocol 1, the right to free elections, are the rights that are most closely associated with the protecting democracy. The limitations on human rights permitted in Articles 8-11 ECHR all require that such limitations are "necessary in a *democratic* society".

Case law has elaborated upon the importance of a "democratic society". For example in *United Communist Party of Turkey v Turkey* the Court summarised its position as follows:

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[3] *Handyside v UK* (1976) (Application no. 5493/72)

[4] Statute of the Council of Europe, ETS 01

Democracy is without doubt a fundamental feature of the European public order [...]. That is apparent [... firstly, from the Preamble to the Convention [...]. [The Court] has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society [...]. In addition, Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is "necessary in a democratic society". The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from "democratic society". Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it. [5]

The Court thus looks to the concept of a "democratic society" as part of its guiding rationale, or its general object and purpose, when it interprets the Convention.

Article 17 ECHR and content-based restrictions

The European Court of Human Rights generally takes a sceptical view of restrictions placed upon the exercise of democratic rights that are imposed solely due to the content of the message that it is being promoted by actors in the democratic process. For example it has frequently held in relation to Article 10 ECHR that the right to freedom of expression extends to not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. The only exception to this is via application of Article 17 ECHR, which states that,

Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Thus no-one may attempt to rely on the Convention to undermine democracy itself. For example in *W.P. and Others v. Poland*,[6] which concerned Article 11 ECHR, the Court observed that "the general purpose of Article 17 is to prevent totalitarian groups from exploiting in their own interests the principles enunciated by the Convention." In this case the Court declared a complaint about a prohibition upon formation of an anti-Semitic group inadmissible on the basis of Article 17 ECHR.

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[5] *United Communist Party of Turkey v Turkey* (1998) (Application no. 19392/92)

[6] *W.P. and Others v. Poland* (2004) (Application no. 42264/98)

This has implications for the freedom of peaceful assembly because, as we shall see further in this presentation, an assembly may 'annoy' or 'offend' and yet be deemed 'peaceful', so as to receive protection under Article 11 ECHR.

Prior Restraint

The Court also takes a generally more sceptical view of prior-restraint. Thus a restriction on freedom of expression, assembly or association that prevents exercise of the right from the outset will have to meet a high threshold before it can be adjudged proportionate. For example, in *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*[7] the completion prohibition upon the applicant association's activities before it had even begun to operate was disproportionate. There had been no opportunity for the association to act in such a way as to suggest that it was promoting violence, and the text of its constitution did not suggest a risk either. Of course, if it did begin to act in such a way then the authorities would be wholly justified in seeking to restrain its activities.

This logic has implications for freedom of peaceful assembly because it means that the complete prohibition on assemblies by a particular group, without any evidence that they present a risk, would be very difficult to justify as being compliant with the European Convention.

Negative and positive obligations

Throughout the law of the European Convention has become clear that Contracting Parties have both positive and negative obligations.

For example in *Ozgur Gundem v Turkey*[8] the applicants complained that a newspaper had been forced to close because of serious attacks on journalists and others associated with it and legal measures which had been taken against the newspaper and its staff.

From 1992 to 1994 there had been numerous incidents of violence, including killings, assaults and arson attacks, involving the newspaper and journalists, distributors and other persons associated with it. The concerns of the newspaper, and its fear that it was the victim of a concerted campaign were brought to the attention of the authorities. However, no measures were taken to investigate this allegation. Nor did the authorities respond by any protective measures, save in two instances.

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[7] *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania* (2005)(Application no. 46626/99)

[8] *Ozgur Gundem v Turkey* (2000)(Application no. 23144/93)

The Court explained that,

[A]lthough the essential object of many provisions of the Convention is to protect the individual against arbitrary interference by public authorities, there may in addition be positive obligations inherent in an effective respect of the rights concerned. It has found that such obligations may arise under Article 8 and Article 11. Obligations to take steps to undertake effective investigations have also been found to accrue in the context of Article 2 and Article 3, while a positive obligation to take steps to protect life may also exist under Article 2.

Subsequently the Court found that,

[The] authorities were aware that Özgür Gündem [the newspaper], and persons associated with it, had been subject to a series of violent acts and that the applicants feared that they were being targeted deliberately in efforts to prevent publication and distribution of the newspaper. No response however was given to almost all petitions and requests for protection submitted by the newspaper or its staff.

[...]

The Court has noted the Government's submissions concerning its strongly-held conviction that Özgür Gündem and its staff supported the PKK and acted as its propaganda tool. This does not, even if true, provide a justification for failing to take steps effectively to investigate and, where necessary, provide protection against unlawful acts involving violence.

The Court concludes that the Government has failed, in the circumstances, to comply with its positive obligation to protect Özgür Gündem in the exercise of its freedom of expression.

In terms of Article 11, this means that Contracting Parties must not only refrain from disproportionate interference with the exercise of the right, but must also take reasonable and appropriate measures to facilitate its exercise – regardless of the message of the assembly (except in so far as Article 17 might apply). In terms of procedural requirements of freedom of assembly, this will be important because where a proposed peaceful assembly may need police assistance to take place (for example by stopping traffic temporarily) the state is under a duty to take facilitative measures that are reasonable and appropriate. This also extends to protecting peaceful assemblies from harm caused by counter demonstrators, and also facilitating multiple simultaneous assemblies where to do so is reasonable and appropriate.

Restrictions in a democratic society

Flowing in particular from our discussion of subsidiarity and democracy, it is vital to understand that there is a certain logic to the way that the European Court of Human Rights seeks Contracting Parties to uphold the rights in the Convention.

First, as a matter of principle, and as we have seen already, any restriction imposed on freedom of peaceful assembly must be compatible with a democratic society. Second, and flowing from the principle of subsidiarity is the idea that the Court does not want to take the position of, or supplant, domestic authorities. This means that Contracting Parties even have a 'margin of appreciation' in which certain measures that might be unacceptable in one state might be acceptable in another, due to distinctive social issues. In the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*[9] to which we shall return shortly, the Court explained that,

When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, after having established that it pursued a "legitimate aim", whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts. [emphasis added]

Thus in any situation in which restrictions or prohibitions are imposed upon the freedom of peaceful assembly, Contracting Parties must be able to show that there was an evidence base supporting the reasons put forward for the restriction or prohibition.

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[9] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001)(Application no. 29221/95)

PROCEDURAL REQUIREMENTS GENERALLY

Extract from OSCE Guidelines (2007):

1) Advance notice. The legal provisions concerning advance notice should require a notice of intent rather than a request for permission. The notification process should not be onerous or bureaucratic. The period of notice should not be unnecessarily lengthy, but should still allow adequate time prior to the notified date of the assembly for the relevant state authorities to plan and prepare for the event, and for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged. If the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able to proceed with the planned activity in accordance with the terms notified and without restriction.

2) Spontaneous assemblies. The law should explicitly provide for an exception from the requirement of advance notice where giving advance notice is impracticable. Even if no reasonable grounds for the failure to give advance notice are provided, the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature. Organizers who ignore or refuse to comply with valid advance-notice requirements may be subsequently prosecuted.

3) Simultaneous assemblies. Where notification is given for two or more assemblies at the same place and time, they should be facilitated as much as possible. Emphasis should be placed on the state's duty to prevent disruption of the main event where counter-demonstrations are organized.

THE ECHR AND PROCEDURAL ASPECTS OF FREEDOM OF PEACEFUL ASSEMBLY

In the following slides we shall see how each of these issues, which we have introduced in relation to the OSCE guidelines, has been dealt with by the European Court of Human Rights.

ECHR cases on procedural aspects (1)

In *Rassemblement Jurassien v Switzerland*[10] the Commission held that having to comply with a notification scheme for assemblies to be held in public would not *per se* be an interference with the right to peaceful assembly. It is clear that the authorities must be able to check whether the proposed assembly is indeed peaceful, and to prepare to ensure that it goes ahead safely. Note that in this case the European Commission also highlighted that Article 11 extends to assemblies on private property.

The case arose out of a dispute between French and German speaking populations of Jura, in Canton Berne, Switzerland. A complete ban on demonstrations was imposed, and a minority complained about this. The Commission found that the ban was temporary, related to one area only, and that there was 'considerable tension' on the eve of the protest such that 'serious clashes and disorder could be foreseen'. Thus the restriction was compatible with Article 11, and the application was declared inadmissible.

In *Balcik v Turkey*,[11] upon receipt of intelligence reports that on 5 August 2000 a group of demonstrators would gather in the İstiklal Street in Istanbul to read a press declaration and block the tram line to protest against the creation of a new and controversial type of high security prison, police officers and members of the "Rapid Intervention Force" (*çevik kuvvet*) were deployed in the area. The applicant and nearly forty others gathered, as expected, at midday to make the press declaration. The police asked the group to disperse and to end the gathering, and informed them that the demonstration was unlawful since no advance notice had been submitted to the authorities. The demonstrators refused to obey and attempted to march along İstiklal Street, chanting slogans and reading out the press declaration. Subsequently, at about 12.30 p.m. the police dispersed the group, allegedly by using truncheons and tear-gas. The applicants were arrested along with thirty-nine other persons. Some protestors received moderate injuries.

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[10] *Rassemblement Jurassien v Switzerland* (1979) (Application no. 8191/78)

[11] *Balcik v Turkey* (2008)(Application no. 25/02)

The applicants tried and failed to complain about the behaviour of the police. However the Beyoğlu public prosecutor filed a bill of indictment with the Beyoğlu Criminal Court. The public prosecutor accused the applicants under Article 28(1) of Law no. 2911 of taking part in an illegal demonstration without prior authorisation and not dispersing despite the police officers' warning. However, they were later acquitted.

The European Court noted that the group did not obey the police warnings to disperse. However there was nothing in the case file to suggest that the demonstrators presented a danger to public order. In those circumstances, the European Court found that the Government had failed to furnish convincing or credible arguments which would provide a basis to explain or to justify the degree of force used against the applicants, whose injuries were corroborated by medical reports. There was therefore a violation of Article 3 ECHR.

In relation to Article 11 the Court reiterated that it is not contrary to the spirit of Article 11 if, for reasons of public order and national security, *a priori*, a High Contracting Party requires that the holding of meetings be subject to authorisation and regulates the activities of associations - but added that notification regimes should not represent a hidden obstacle to the freedom of peaceful assembly as it is protected by the Convention. It also recalled that the demonstrators were informed by the police that their march was unlawful and would disrupt public order at a busy time of the day, and were been ordered to disperse. The applicants and other demonstrators did not comply with these orders and attempted to continue their march. However, the Court went on to reason that,

[Where] demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.

[...]

In the instant case the police's forceful intervention was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.

ECHR cases on procedural aspects (2)

The case of *Baczkowski and others v Poland*[12] concerned a discriminatory ban on certain demonstrations. A group of individuals, entitled, the "Foundation for Equality" intended to hold a march through Warsaw to highlight the problem of discrimination against sexual, national, ethnic and religious minorities, women and disabled persons. Although the authorities initially agree a march could take place, permission was later withdrawn. The group then proposed three stationary assemblies, of which only three were permitted. The permitted assemblies dealt only with discrimination against women. In other words, the demonstrations on the subject of discrimination on other grounds were prohibited. Just prior to taking his decision on the static demonstrations, the Mayor of Warsaw gave an interview in which he indicated that he would ban all demonstrations which he perceived as supportive of homosexuality.

The Mayor then proceeded to allow demonstrations on certain other topics, some of which might appear to be more socially conservative or even in opposition to the campaign for gay rights, including, "Against any legislative work on the law on partnerships", "Against propaganda for partnerships", "Education in Christian values, a guarantee of a moral society", "Christians respecting God's and nature's laws are citizens of the first rank", "Against adoption of children by homosexual couples".

The 'Foundation for Equality' carried out both the static and moving assemblies as intended, notwithstanding that permission had been refused. The applicants successfully appealed against the decision to refuse permission for their march and against the restriction on the number and theme of the stationary assemblies. However they also took their case to the European Court of Human Rights, where they proved a violation of articles 11, 13 and 14.

Note that the European Court took a decision in this case, even though the applicants had been successful in their action before the domestic courts. The European Court approved the reasoning of the domestic Constitutional Court, but explained that because the domestic decision in favour of the applicants had been taken well after the date on which the applicants had originally wanted to hold their demonstration, it had not provided an effective domestic remedy for the admitted violation of Article 11. This meant that there was a violation of Article 13 (right to an effective remedy) in conjunction with Article 11.

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[12] *Baczkowski and others v Poland* (2007)(Application No.1543/06)

In terms of Article 11 itself, the European Court stressed that the presumption of assemblies' legality constitutes a 'vital aspect of effective and unhindered exercise of freedom of assembly and freedom of expression'. Even if an event went ahead without permission, as in this case, the unreasonable refusal to give authorisation could violate the Convention because of the 'chilling effect' it could have had on the applicants and other potential participants in the assemblies. Likewise, with no permission from the state there would be no protection from possible hostile counter demonstrators.
This also could have deterred attendance.

ECHR cases on procedural aspects (3)

We will return to the *Stankov* case in more detail shortly, but for now we can simply read this extract which questions whether the organisation had in fact suffered an 'interference' with their Article 11 rights:

In one case, on 22 April 1995, despite the ban imposed by the mayor, supporters of the applicant association were allowed to approach the historical site where they wished to hold their meeting and were able to lay a wreath on the grave of Yane Sandanski and light candles. That was only possible, however, on the condition that the participants abandoned their posters and slogans. No speeches were allowed to be made at the site. The participants were permitted to celebrate the event only from a certain distance [...].

That approach by the authorities, allowing members of the applicant association to attend the official ceremonies held at the same place and time on the occasion of the same historical events, provided that they did not carry their posters and did not hold separate demonstrations, was reiterated in the mayor's decision of 11 April 1997 and the Government's submissions to the Court.

On the basis of the above, the Court considers that there has undoubtedly been an interference with both applicants' freedom of assembly, within the meaning of Article 11 of the Convention. [emphasis added]

The *Zeleni Balkani*[13] case the applicant organisation claimed that there had been an unlawful interference with its right to freedom of peaceful assembly on account of the prohibition by the Plovdiv Municipality of a public rally planned for 19 April 2000. It also claimed that it did not have an effective domestic remedy for the aforesaid complaint.

On an unspecified date the Plovdiv Municipality started clearing the banks and the riverbed of the river "Maritza", which runs through the city. The procedure involved the uprooting and eradication of trees and plant life, which were blocking the flow of the river.

The applicant organisation believed that the actions of the Plovdiv Municipality were in violation of domestic environmental protection laws and that the disorderly uprooting and eradication of the trees and the plant life would disrupt the biological balance of the river. On the 18th April 2000 it informed the municipality that it intended to hold a rally on the 19th. The date was crucial because the rally was timed to coincide with the clearing of the banks and the riverbed of the local river. The municipality sent a letter saying that the rally was not permitted, and then sent police to the organisation's HQ to gain signatures confirming that the organisation knew the rally was not permitted and would not go ahead with it. They complied with the letter, and the rally did not go ahead.

The Government said that the applicants could have held the event on a different day. The Court found that the date was actually important.

As it happened, a regional court had already held that the municipality's restriction was not in accordance with domestic law, and so the European Court quickly held that the restriction was not 'prescribed by law'. There was therefore a violation.

ECHR cases on procedural aspects (4)

At the time of the events giving rise to the application, Hyde Park (the first applicant) was registered with the Moldovan Ministry of Justice as a non-governmental organisation lobbying, *inter alia*, for freedom of expression and the right to peaceful assembly. It went formally disbanded due to alleged intimidation but continued to do the same work as a non-registered organisation.

On 10 February 2006 the first applicant applied to the Chişinău Municipal Council for authorisation to hold a peaceful demonstration in front of the Parliament building on 25 February 2006, to protest against the "non-transparent" manner of organising the Eurovision song contest in Moldova.

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[13] *Zeleni Balkani v Bulgaria* (2007) (Application no. 63778/00)

The Court summarised the dispute thus:
On 21 February 2006 the Chişinău Municipal Council rejected the application on the grounds that: "the Parliament was not responsible for organising the Eurovision song contest, which took place in Ukraine and the protest was groundless because it concerned past events".

On 22 February 2006 the first applicant challenged the refusal in court and argued, *inter alia*, that it was unlawful and contrary to Article 10 of the Convention. It also asked that the case be examined urgently.

During the court proceedings the Chişinău Municipal Council relied on two new reasons for rejecting Hyde Park's application to hold a demonstration, namely that the members of Hyde Park had not participated in the Eurovision song contest and that the problem had already been discussed in Parliament. On 24 February 2006 the Chişinău Court of Appeal dismissed the applicants' action, finding that the Municipal Council had lawfully rejected its application and upholding all the reasons relied upon by it. Moreover, the court gave a new reason in favour of the Municipality's decision not to authorise the demonstration, namely that in its request for authorisation, Hyde Park had failed to correctly indicate the aim of its protest. In particular, it indicated that the protest was intended to be against the manner in which the contest was organised. Later, during the proceedings, it submitted that the intention was to protest against the non-transparent manner in which the televoting in Moldova had taken place.

The Court went on to hold observe that,
The Municipality rejected Hyde Park's application to hold the protest demonstration planned for 25 February 2006 on grounds which were not provided in sections 6 and 7 of the Assemblies Act. According to the Municipality's decision, "the Parliament was not responsible for organising the Eurovision song contest, which took place in Ukraine and the protest was groundless because it concerned past events".

It held that,

Such reasons cannot be considered compatible with the requirements of Article 11 of the Convention. There was never any suggestion that the organisers intended to disrupt public order or to seek a confrontation with the authorities. Rather their intention was to stage a protest concerning the Eurovision song contest and the manner in which the Moldovan authorities had organised the voting in Moldova. The Court finds it unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest. Therefore, the Court can only conclude that the Municipality's refusal to authorise the demonstration did not respond to a pressing social need. [emphasis added]

ECHR cases on notification (5)

The facts in *Bukta v Hungary*,[14] as described by the European Court itself, were that,

On 1 December 2002 the Romanian Prime Minister made an official visit to Budapest and gave a reception on the occasion of Romania's national day, which commemorates the 1918 Gyulafehérvár National Assembly when the transfer of the hitherto Hungarian Transylvania to Romania was declared.

The Hungarian Prime Minister decided to attend the reception and made that intention public the day before the event.

The applicants were of the opinion that the Hungarian Prime Minister should refrain from attending the reception, given the Gyulafehérvár National Assembly's negative significance in Hungarian history. Therefore, they decided to organise a demonstration in front of the Hotel Kempinski in Budapest where the reception was to be held. They did not inform the police about their intentions.

In the afternoon of 1 December 2002, approximately 150 people, including the applicants, assembled in front of the Hotel. The police were also present. There was a sharp noise, whereupon the police decided to disband the assembly, considering that it constituted a risk to the security of the reception. The police forced the demonstrators back to a park next to the Hotel where, after a while, they dispersed.

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[14] *Bukta v Hungary*(2007)(Application no. 25691/04)

Following the reasoning indicated on the slide above, the Court found a violation of Article 11.

In *Eva Molnar*, the applicant alleged that the dispersal of the demonstration in which she had participated because of a mere lack of prior notification to the police had infringed her freedom of peaceful assembly, within the meaning of Article 11 of the Convention.

In April 2002 legislative elections had taken place in Hungary, and the ruling coalition was disbanded. There were complaints about the way that the ballot had been run, but the OSCE felt that, 'the parliamentary elections had been conducted in a manner consistent with international standards and that the Hungarian election system had provided the basis for a generally transparent, accountable, free, fair and equal process'. The ballot papers were due for destruction in accordance with the law on the 20th to 22nd July 2002. Of course, after this point, there would be no further opportunity to examine them for irregularities.

On the 2nd July protestors blocked the centrally located Erzsébet Bridge in Budapest with their cars. Their objective was to force a recount of the election votes. Since they brought the traffic to a complete standstill and had not given prior notice of their gathering to the police, as required by Act no. 3 of 1989 on Freedom of Assembly ("the Assembly Act"), the demonstration was dispersed after several hours.

Shortly afterwards, at around 1 p.m., more demonstrators, again <u>without any prior notification</u>, assembled at Kossuth Square in front of the Parliament building demanding a recount of the votes and expressing their support for the participants in the morning's events at the Erzsébet Bridge.

[...]

Having learnt of these events from the news, the applicant joined the demonstration at around 7 p.m. By that time, traffic and public transport – including the circulation of trams and trolley-buses – had become seriously disrupted in the area of Kossuth Square. The estimated number of demonstrators ranged from several hundred to two or three thousand. The police initially attempted to allow the circulation of traffic to continue but eventually had to close some streets nearby. Finally, faced with an unmanageable situation, they broke up the demonstration at about 9 p.m. without using any force. The applicant participated in the demonstration until it was dispersed.

In contrast to the previous case, the Court held that,

The facts of the instant case do not disclose such special circumstances to which the only adequate response was an immediate demonstration. It is to be observed in this connection that the official results of the elections had been made public on 4 May 2002, two months before the impugned demonstration, and that the outcome of those elections had been objectively established. To the extent that the demonstrators' aim was to express solidarity with the protestors at the Erzsébet Bridge, the Court is not persuaded that this matter would have become obsolete had the demonstrators respected the notification rule.

Moreover, the Court observes that, at the material time, no authorisation was required in Hungary for the holding of public demonstrations; however, the notification of the police was required seventy-two hours prior to the event. If the police decided to ban a demonstration, the organisers could seek judicial review within three days. Therefore, the Court is satisfied that there were procedural safeguards in place preventing unreasonable restrictions on freedom of assembly.

Furthermore, the Court observes that the impugned events originated in an illegal demonstration [...] blocking a main bridge in central Budapest. Irrespective of whether the subsequent demonstration at Kossuth Square included partly or entirely the same participants, the declared objective of this latter gathering, in which the applicant participated, was to support those who had illegally demonstrated at the Erzsébet Bridge. The essentially disorderly character of this combination of events is therefore so manifest that the decision of the police to disband the gathering cannot be said to be at variance with the object and purpose of Article 11 of the Convention. The Court reiterates that those organising and participating in demonstrations, as actors in the democratic process, should respect the rules governing that process by complying with the regulations in force [...].

[...]

It observes in this connection that the demonstrators gathered at Kossuth Square at about 1 p.m. and the applicant joined them at about 7 p.m. However, the police did not break up the demonstration until about 9 p.m., with the result that the demonstrators had had several hours at their disposal to manifest their views.

In these circumstances, the Court considers that the applicant had a sufficiently long time to show solidarity with her co-demonstrators. Thus it finds that the ultimate interference with the applicant's freedom of assembly does not appear to have been unreasonable [...]. It is satisfied that the police showed the necessary tolerance towards the demonstration, although they had had no prior knowledge of the event. [...]

PART 2 - THE LAW ON FREEDOM OF ASSEMBLY OF THE REPUBLIC OF AZERBAIJAN (1) : DECISIONS ABOUT NOTIFICATION

Article 5. Notification on convening an assembly

I. A person or persons organizing any assembly enumerated in Article 2 of the present Law have to notify in advance the relevant body of executive power in written. A notification has to be submitted, as a rule, 5 days prior to the day of convening the intended assembly for coordinating its time and venue, and the route of a street procession in order to allow the relevant body of executive power to make necessary arrangements. In cases of notification in lesser time prior to the assembly, this should be justified by the organisers.

The main concern in the suggestion here is that the law does not clearly indicate who the 'relevant body of executive authority' is. This echoes concerns expressed in the Venice Commission's 2007 Opinion on the new draft Azeri freedom of assembly law.[15] As a result of a Presidential Decree, in practice this is now clear to the main protagonists, but this needs to be confirmed. Clear information should be displayed in relevant public buildings.

In relation to Article 10, it suffices to reiterate the Venice Commission's 2007 report at para. 28, which stated that, 'It is logical to infer from Article 10 that failure by the authorities to comply with the three-day deadline for deciding upon an assembly should result in the assembly being possible without any special arrangement or modification to its time and venue being necessary.'

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[15] Opinion on the Draft Amendments to the Law on Freedom Of Assembly of Azerbaijan adopted by the Venice Commission at its 73rd Plenary Session (Venice, 14-15 December 2007)(Opinion No. 437 /2007 CDL-AD(2007)042)

The Law on Freedom of Assembly of the Republic of Azerbaijan (2) : Organisers

In relation to the first element of Article 6, your attention is again drawn to the 2007 Opinion of the Venice Commission where, at para. 17 it was stated that it would be preferable to "specify that the obligation for the organisers of the assembly to be present does not apply to spontaneous assemblies." Since the legislation does not do this, compliance with the ECHR must be guarantee by its interpretation.

The issues in relation to dispersal are those seen in the case of *Balcik v Turkey* discussed earlier, where disproportionate force had been used.

The Law on Freedom of Assembly of the Republic of Azerbaijan (3) : Restrictions and Prohibitions

Article 7 is very important, and very constructive. When applying it, the case law of the European Court of Human Rights will be of great assistance. Any departure from the received wisdom in how Article 11(2) ECHR is normally understood would need a high level of justification in order to remain Convention compliant.

The comments in relation to Article 8 (iv) raise the same issues seen in *Zeleni Balkan v Bulgaria* on the issue of timing. Article 8 (vii) reflects the general understanding the prohibition is a last resort, and as such it is a welcome provision. It will assist in being able to fulfil the positive obligations emanating from the ECHR.

The Law on Freedom of Assembly of the Republic of Azerbaijan (4) : Restrictions and Prohibitions concerning location or time

These types of restrictions are only justifiable to the extent that they meet the requirements of Article 7 which, in turn, should be interpreted in accordance with Article 11(2) ECHR.

Article 9(iii)(3) is quite loosely worded, and if it was interpreted broadly might give rise to a violation of the ECHR.

PART 3 - CASE STUDIES

Case study 1

- An association seeks recognition of, and better rights for, a national minority with strong links to a neighbouring state.
- Its stated aims are peaceful, but there are rumours that some members may be armed.
- Legal recognition of the association itself has been refused.
- The association has adopted a declaration calling for the "complete cultural, economic and political autonomy" of a particular region.
- The following situations arise:

a) it is refused permission for an assembly to commemorate an historical event. No reasons are given.
   - 150 people attempt to approach the intended site of the assembly, but are turned away by armed police.

b) it is refused permission for a separate assembly to commemorate the death of an historical figure who is of importance both to the national ethnic majority and the association. However, along with other people, it is allowed to hold a commemorate event at a monastery near the grave of the historicial figure, but its members are prohibited from carrying banners, carrying musical instruments, or making political speeches at the grave itself.

This is clearly based on the *Stankov* case.

Case study 2

- Elections were held two months ago. The losing party contests the result, alleging vote-rigging (despite OSCE assurances to the contrary).
- The following alternative situations arise:
  - The losing party give 3 weeks notification of a major rally (moving assembly) to take place in the capital city.
    i. On the day of the rally a spontaneous counter demonstration that threathens violence appears at the same lcoation.

- The losing party hold a spontaneous assembly blocking the capital city from 19:00 onwards.
    i. The police intervene at 21:00, and disperse the event without using force.
    ii. The police intervene at 21:30 and several people are detained without trial for two weeks. They are released without charge.
    iii. The police intervene at 20:00, using teargas, truncheons, and riotshields. It is not clear who gave the order. One protester dies.

This case raises issues in relation to procedural requirements, spontaneous assemblies, and the relationship between Article 11 ECHR and other Convention rights.
On a) see *Plattform "ärzte für das leben" v. Austria*,[16] which is the leading case on the positive obligation to facilitate freedom of peaceful assembly.
On b)(i) see the *Bukta* case and *Eva Molnar*.
On b)(ii) see *Galystan v Armenia,*[17] where the Court found a violation of both Article 6 and Article 11 when the applicant was warned not to attend an assembly; attended anyway; and although he merely participated in the assembly and committed no unlawful act was subsequently given an administrative sanction in circumstances in which he was not afforded adequate time and facilities to prepare his defence.
On b (iii) see *Balcik v Turkey*. See also *McCann v UK*,[18] in which the European Court held that under Article 2 ECHR there is a positive obligation to investigate killings.

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[16] *Plattform "ärzte für das leben" v. Austria* (1988)(Application no. 10126/82)

[17] Galystan v Armenia (2007)(Application no. 26986/03)

[18] *McCann v UK* (1995)(Application no.18984/91)