



International Human Rights Law (4th edn)

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Abstract

This chapter discusses the sources, scope, and limitations of the four fundamental freedoms: thought, expression, association, and assembly. Freedom of thought includes freedom of conscience, religion, and belief. Freedom of expression includes freedom of opinion and freedom of information. Freedom of association concerns the right to establish autonomous organizations through which individuals pursue common interests together. The right of assembly protects non-violent, organized, temporary gatherings in public and private, both indoors and outdoors.

Keywords: freedom of thought, freedom of expression, freedom of association, freedom of assembly, international human rights limitations

Summary

The four freedoms introduced in this chapter—thought, expression, association, and assembly—are interrelated and fundamental freedoms of the individual. They are essential for the exercise of many other rights. None are absolute in the sense that their exercise may never be restricted. International law provides the grounds on which each freedom may be required to be balanced against the rights of others or broader community interests. In the first instance, it is national authorities that have to carry out the careful balancing act. But international law also offers principles to safeguard against abuse of restrictions by the state. Freedom of thought includes freedom of conscience, religion, or belief. Freedom of expression includes freedom of opinion and freedom of information. Media freedom is also protected in international human rights law as essential for the enjoyment of freedom

of expression. Freedom of association concerns the right to establish autonomous organizations through which individuals pursue common interests together. The right of assembly protects non-violent, organized, temporary gatherings in public and private, both indoors and outdoors.

1 Introduction

1.1 Four Freedoms and their Relationships

The freedoms of thought, expression, association, and assembly, often described as fundamental freedoms, are closely related civil and political rights. The guarantee of each is necessary for the enjoyment of the other and, indeed, for the exercise of many human rights. Thus, freedom of expression is necessary if freedom of thought is to be exercised. In turn, freedom of expression has little meaning without the individual having freedom to think and have an opinion. The right to practise or to teach a religion includes the freedom to publish religious literature or broadcast religious programmes. If religious communities or denominations p. 210 are to exist, their freedom of association is essential, as is their right to assemble for religious purposes. Freedom of expression is essential when people come together to pursue their interests through other associations, such as trade unions, political parties, or community groups. The European Court of Human Rights has defined one of the objectives of the freedom of association as the protection of opinions and the freedom to express them.¹ Freedom of expression is essential also to the freedom to assemble and the right to demonstrate over grievances. Thus, while each freedom is distinct in theory, in practice they are interrelated and interdependent.

The consecutive location of the freedoms in all international human rights texts, beginning with the Universal Declaration of Human Rights (UDHR), reflects their complementary nature. Article 18 UDHR proclaims freedom of thought, conscience, religion, or belief, Article 19 freedom of opinion and expression, and Article 20 the freedoms of association and assembly. Each of the freedoms is pivotal for the individual's right to democratic participation, a right proclaimed in Article 21 UDHR. Each freedom needs also to be understood as integrating the right to equality and non-discrimination in Article 2 UDHR. Denials of the freedoms often occur in the context of discriminatory policies directed at particular groups or minorities, for example religious or ethnic minorities. Each freedom, as defined in international law, is expressed as a freedom of the individual but also has a collective dimension. Thus, Article 18 UDHR provides that freedom of thought, religion, or belief is to be enjoyed 'alone or in communion with others'. Freedom of expression includes not only the right of a speaker to communicate with others but the right of others to hear what the speaker has to say. By definition, the freedoms of association and assembly concern the collective activities of individuals.

Given the similar provisions of these four freedoms in international human rights law instruments, states and individuals could reasonably expect that the respective interpretations would be broadly consistent and coherent.

1.2 Limitations

A common feature of these freedoms is that none is unconditional in the sense that its exercise by individuals cannot be limited by the state. International human rights standards set out the grounds of permitted limitation. Two categories of limitation are envisaged. First, the freedoms may legitimately be regulated by law to protect the rights and freedoms of others. Second, limitation may be justified for different public interest reasons, namely, public order, health, morality, or national security. The constant challenge arising in practice is how to strike a balance, which is acceptable in a democratic society, between the right to exercise the freedom, on the one hand, and the need to protect the rights of others and the public interest, on the other hand. The factual and legal contexts are always critical.² The European Court of Human Rights explicitly affords states a margin of appreciation in applying restrictions, albeit ultimately subject to European supervision.³ Other international human rights bodies have not expressly adopted that doctrine—indeed, the Human Rights Committee has explicitly rejected it, but in practice it may offer something similar.⁴

Most violations of these freedoms arise over patently unjustified limitations by governments. The killing of journalists, censorship of the internet, or the arbitrary banning of political movements or religious denominations occur with depressing frequency. But, even where these freedoms are broadly respected, difficult questions can arise over how to respond to direct conflict between the freedoms themselves or with other rights.

p. 211 In the case of the news media, for example, conflict arises on a daily basis between freedom of the press and the right to privacy. The tensions and misunderstandings which can arise between freedom of religion and freedom of expression were vividly demonstrated in the worldwide controversy over the publication of cartoons of the Prophet Mohammed in a Danish newspaper in 2005.⁵ Another contemporary example concerns the display of religious symbols or wearing of religious dress (see Section 2.4). In summary, a society which enjoys the freedoms under discussion is not one in which there are no restrictions on their exercise. It is rather one in which the boundaries of freedom are openly debated and democratically resolved under the rule of law.

Limitations will be discussed further as regards each freedom but some general principles applicable to all can be set out here:⁶

- *Legality:* any limitation on a freedom must be ‘prescribed by’ or be ‘in accordance’ with the ‘law’. A restriction cannot be legitimate where it is the arbitrary whim of an official. The source of the national law may be a constitutional, legislative, or administrative measure, or a judicial ruling. The law must set out the ground of restriction in clear and precise terms so that it is both accessible and foreseeable.
- *Legitimate aim:* the limitation must follow a legitimate purpose, that is, be based on one of the exhaustive grounds of limitation listed in the international standards which define the particular freedom.
- *Necessary in a democratic society:* the limitation must correspond to a pressing social need, be justified by decisions that give relevant and sufficient reasoning, and be proportionate to the legitimate aim pursued. Any restrictive measure should be the minimum required to achieve its purpose in a democratic society. States must choose the means that cause the least possible prejudice to the rights in question.
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Presumption of freedom: freedom is the rule, its limitation the exception. Restrictions are to be narrowly construed and convincingly justified.⁷ Thus one should start with a strong presumption in favour of the freedom in question. The onus is on the authorities in the particular case to show that it is legitimate to restrict it. Blanket, indiscriminate restrictions will always be closely scrutinized. The situation is more complicated when two human rights have to be balanced. In such situations, the rights may be of presumptively equal weight and an intensive factual and contextual analysis will be required.

The following sections consider, in turn, the right to freedom of thought (Section 2), freedom of expression (Section 3), freedom of association (Section 4), and freedom of assembly (Section 5). Each section explains the sources of the respective right, its scope, and the limitations that can be imposed on it.

2 Freedom of Thought, Conscience, and Religion

2.1 Sources

This freedom is enshrined in Article 18 UDHR and in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) as well as its Article 27 concerning the ↗ rights of minorities. It is also to be found in all regional human rights instruments.⁸ The equality and non-discrimination provisions of the ICCPR (Articles 2, 3, and 26) and their equivalents in the regional instruments are vital for the enjoyment of the freedom as they prohibit unjustified differential treatment on the basis of religion. No international human rights treaty specifically devoted to freedom of thought, conscience, and religion has ever been adopted. However, an important Declaration was agreed by the UN General Assembly in 1981,⁹ which provides the mandate of the Special Rapporteur on freedom of religion or belief, who is appointed by the UN Human Rights Council.¹⁰

2.2 Scope

Article 18 UDHR proclaims:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

The UDHR by its nature could not specify fully the substance of this freedom in international law. That came with the drafting of Article 18 ICCPR. The predominant focus of both texts is on freedom of religion. However, the scope of the right is wider. It protects freedom of thought, that is, the right of the individual to have independent thoughts, ideas, and beliefs. This includes, for instance, an individual's right not to have to accept a political ideology or a religion with which he or she disagrees. Freedom of conscience, the individual's moral sense of right and wrong, is also explicitly recognized and protected. One common instance, considered in Section 2.4, in which this freedom is invoked arises where a citizen refuses on grounds of conscience to undertake compulsory military service. Finally, Article 18(4) ICCPR offers specific safeguards against the indoctrination of children by the state. It establishes a duty on the state to respect the

liberty of parents or guardians to determine the religious and moral education of their children in conformity with their own convictions. The child's right to freedom of thought, conscience, and religion is provided for in the Convention on the Rights of the Child (CRC) though it is accompanied by an obligation to respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.¹¹

2.3 Freedom of Religion or Belief

While freedom of religion is the central concern of Article 18 ICCPR, that provision speaks of 'religion or belief', thus underlining the intention of the drafters that all beliefs, including non-theistic and atheistic beliefs, are protected.¹²

p. 213 ↵ There is no definition of religion offered in any international human rights instrument. It is probably impossible for states to agree a definition given the sheer diversity of religious ideas in the world. However, the significance of religion as one of the 'fundamental elements in [the] conception of life' for believers is recognized in international human rights law.¹³ Freedom of religion is an individual right but has a collective aspect also. It means the right to hold spiritual beliefs and to *live by them*, whether in private or in public, alone or in community with others. The Human Rights Committee has stated that the term religion or belief is to be broadly construed, thus also including new religions.¹⁴ But there are limits. For example, the Committee thought it inconceivable that the cultivation and worship of a narcotic drug could be a protected religion or belief under Article 18 ICCPR.¹⁵

2.3.1 Manifestation of religion

Article 18 ICCPR speaks of the right to manifest religion through 'worship, observance, practice and teaching'. The Human Rights Committee has offered guidance as to the wide range of activities encompassed by these words:

The concept of *worship* extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The *observance and practice* of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the *practice and teaching* of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.¹⁶

Practices that are merely *motivated* by religious belief are not protected. The existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case but it is not necessary to establish that the individual acted in fulfilment of a duty mandated by the religion in question.¹⁷ The freedom to manifest one's religion includes the right not to be obliged to disclose one's religion.¹⁸

2.3.2 Freedom to change religion or belief

It follows from the freedom of thought and conscience that one may decide to change one's beliefs. The individual's right to change or choose religious belief is contested particularly by the Islamic faith. In some Muslim-majority countries, conversion from Islam to another religion (but not the reverse) constitutes the offence of apostasy, which in some cases is punishable by death. Similarly, in India several states have passed anti-conversion laws aimed primarily at inhibiting conversion from Hinduism to Christianity. Freedom to change a religion or belief is stated explicitly in Article 18 UDHR. However, reflecting Muslim sensitivities over the issue,¹⁹ Article 18 ICCPR speaks of 'freedom to have or to adopt a religion or belief of his choice'. Despite this difference of language, the Human Rights Committee has confirmed that Article 18 guarantees that anyone may replace a current religion with another religion or become an atheist.²⁰ States must respect this right by abolishing state-sanctioned punishments for conversion and ensuring that there are no administrative obstacles to changing religion. There is also a positive obligation to protect individuals from harassment or violence from third parties that arises as a consequence of conversion.

2.3.3 Proselytism

Article 18(2) ICCPR stipulates that there must be no coercion of the individual in the decision to either retain or change beliefs. Subject to this prohibition on forced conversion, the right to spread one's faith and to seek to persuade others to convert to it is protected as a manifestation of religion.²¹

2.3.4 Religion and the state

International human rights law does not require a separation between religion and the state. Such separation is to be found in the constitutional arrangements of many states, following the long-established examples of France and the US.²² But in other states the relationships range from fusion of state and religion to formal recognition in law of the majority faith. The sole principles on religion and the state that international human rights law insists upon are those of pluralism and non-discrimination. Thus, the existence of a state church should not entail the suppression of, or discrimination against, minority faiths or new religions.²³ It is the duty of the state to defend religious diversity in a democratic society, and to insist on the values of pluralism and tolerance.²⁴ The European Court of Human Rights has held that for democracy to function properly, the state must remain neutral and impartial in its relations with various religions, denominations, and beliefs.²⁵ The right to freedom of religion normally excludes any assessment by the state of the legitimacy of religious beliefs or their means of expression.²⁶ In states that require the registration of religions to give legal status to a denomination, neither the law nor its application should discriminate

between religions by refusing, for example, to register some faiths while recognizing others.²⁷ All religions must have the freedom to establish communities or organizations and these should be autonomous in their activities. Autonomy includes determining their own leadership without interference from the state.²⁸

While there may be exceptional cases,²⁹ the state has no general authority to decide whether or not a religion is legitimate. In *Moscow Branch of the Salvation Army v Russia*, the branch was refused registration by the city authorities, which claimed that it was a paramilitary organization.³⁰ The European Court of Human Rights p. 215 found a violation of ↗ the branch's freedom of association in the context of the guarantee of freedom of religion. The Court emphasized that the guarantee of freedom of religion meant the state had no discretion to decide whether religious beliefs or the means used to manifest them were legitimate. It could not be credibly argued that the Salvation Army advocated the violent overthrow of the constitution or threatened the security of the state.

2.4 Limitations

2.4.1 *Forum internum* and *forum externum*

An important distinction is to be drawn between those dimensions of the freedom of religion or belief which may be subject to limitation and those which may never be limited. Under Article 18(3) ICCPR, it is the manifestation of the freedom of religion or belief in 'worship, observance, practice and teaching' (the *forum externum*) which may be limited. The individual's freedom of thought, conscience, religion, or belief (*forum internum*), guaranteed in Article 18(1), must be respected by the state unconditionally, and that includes the freedom to have or adopt a religion or belief of one's choice. Thus, no one may be compelled to reveal his or her thoughts or beliefs, for example by a requirement to swear a religious oath or to carry a religious affiliation in an identity card.³¹

2.4.2 Grounds of limitation

Manifestation of religious belief may be limited on the grounds set out in Article 18(3) ICCPR: 'public safety, order, health, or morals or the fundamental rights and freedoms of others'. National security, however, is not included as a permissible ground in the case of freedom of religion, whereas it is a permissible ground with the other freedoms. Many cases ultimately turn on the proportionality of the particular restriction or its discriminatory application.³²

Religious clothing and symbols

A contemporary and complex issue regarding religious manifestation concerns regulation of the wearing of religious dress or symbols in public spaces, which amounts to an interference with the believer's freedom to express their religious beliefs or identity. For example, the injunction to women in the Koran of *Hijab* or modesty is the religious source of the headscarf or the *burka* worn by some Muslim women. International human rights bodies have taken different positions as to whether restrictions of the wearing of the veil in public can be justified.

If there is evidence that individuals present a threat to public order or that they have been involved in proselytism by exerting inappropriate pressure on passers-by, then a restriction on religious dress could be legitimate.³³ Greater regulation of the wearing of religious symbols in some public spaces, for example classrooms or courtrooms, may be permissible on the basis that state secularism or religious neutrality can take precedence over the right to manifest one's religion. Such regulations can apply to public officials, on the basis that they are under a duty of discretion, neutrality, and impartiality, including a duty not to wear religious symbols and clothing while exercising official authority. By contrast, private citizens attending a courtroom as parties or witnesses should not be under such a duty of discretion.³⁴

- p. 216 ↵ A small number of states have banned any kind of face-covering in public. This represents an extremely extensive interpretation of the public spaces that must be regulated to accord with a particular state's ideology. Even if the ban is a general one, it particularly impacts Muslim women who wear the *burqa* or the *niqab*. In *SAS v France*, the European Court upheld such a ban on the basis that 'living together' was a legitimate dimension of 'the rights of others' that could justify limitations on freedom of religion.³⁵

In *Yaker v France*, the Human Rights Committee had to consider essentially the same face-veiling issue. In stark contrast to the European Court, it held that the state had failed to demonstrate that the limitation of the author's freedom to manifest her religion or beliefs was necessary and proportionate. It specifically observed that the concept of 'living together' was very vague and abstract. Moreover, it considered that the criminal ban on full-face veiling disproportionately affected Ms Yaker as a Muslim woman who chose to wear the full-face veil, and introduced an unreasonable distinction between her and other persons who could legally cover their face in public. This constituted a form of 'intersectional discrimination' based on gender and religion, in violation of Article 26 ICCPR.³⁶

Previously, the Human Rights Committee had found that the exclusion from a university in Uzbekistan of a practising Muslim student for wearing a headscarf interfered with her rights under Article 18 ICCPR.³⁷ The Committee held in line with its General Comment³⁸ that the freedom to manifest her religion encompasses the right to wear clothes or attire in public that is in conformity with her religion. In the light of little evidence suggesting that the restriction was justified, the Committee was also of the view that her exclusion from studies amounted to a violation of her right to be free from coercion in matters of religion under Article 18(2). In contrast, in *Leyla Sahin v Turkey*, the European Court of Human Rights upheld a similar Turkish regulation which prevented the applicant from continuing her medical studies at Istanbul University because she refused to remove her headscarf on religious grounds.³⁹ The Court considered that the interference with her religious freedom was justified in the interests of the rights and freedoms of others, which it linked to the Turkish constitutional principles of equality and secularism.⁴⁰

Issues regarding regulation of religious dress are not limited to Islamic dress. In 2004, a French law banned the wearing of conspicuous religious symbols in state schools invoking the constitutional principle of secularism. The law prohibited not only the Islamic veil but also Jewish skullcaps, Sikh turbans, and Christian crosses. The European Court rejected complaints over this law brought by several Muslim girl pupils and Sikh boys over their expulsion from school. The children had worn substitute headwear, kerchiefs in the case of the girls and under-turbans in the case of the boys, which they refused to remove.⁴¹ Noting that the pupils could still continue their schooling by correspondence courses, the Court found that the interference with their freedom to manifest their religion was justified and proportionate to the aims pursued, namely the

p. 217 rights and freedoms of others and public order. However, the Human Rights Committee took a different view in a communication based on similar facts, holding that expulsion could neither be considered necessary nor proportionate.⁴² The Human Rights Committee has also held that a requirement for a Sikh man to appear bareheaded in an identity card photograph constitutes a continuing interference with his right to freedom of religion. The Committee noted that:

even if the obligation to remove the turban for the identity photograph might be described as a one-time requirement, it would potentially interfere with the author's freedom of religion on a continuing basis because he would always appear without his religious head covering in the identity photograph and could therefore be compelled to remove his turban during identity checks.⁴³

Where international human rights bodies take such different positions on religious clothing, states are put in a difficult position. France has not followed the views of the Human Rights Committee.⁴⁴

In some Muslim majority countries, it is compulsory for all women to wear a veil, even if they are not Muslims. Such a requirement may also violate the freedom of religion. A human rights approach would argue that it should be for the individual to decide whether to wear religious dress or not. States should respect and seek to accommodate that choice.

Where restrictions upon religious dress in the workplace are imposed by a private company, the European Court of Human Rights has confirmed that the state still has a duty to ensure that a 'fair balance' is struck between the religious rights of the individual and the interests of the company.⁴⁵ Religious dress rules may also be open to challenge as discriminatory on the basis of religion and/or gender. As noted, such a challenge succeeded in *Yaker v France*. By contrast, in the context of equal treatment in employment and occupation under Directive 78/2000/EC, the Court of Justice of the European Union has taken the view that an internal rule of an undertaking which prohibits the visible wearing of any political, philosophical, or religious sign does not constitute direct discrimination. However, in the absence of such a rule, the willingness of an employer to take account of the wishes of a customer no longer to have the employer's services provided by a worker wearing religious clothing cannot be considered an occupational requirement that could rule out discrimination.⁴⁶

The presence of religious symbols (crucifixes) in Italian schools was challenged in *Lautsi v Italy*. The European Court of Human Rights held that there had been no violation of Article 2 (right to education) of Protocol No 1, and that no separate issue arose under Article 9 ECHR.⁴⁷ It found in particular that the question of religious symbols in classrooms was, in principle, a matter falling within the margin of appreciation of the state—particularly as there was no European consensus as regards that question—provided that decisions in that area did not lead to a form of indoctrination. In *Perov v Russian Federation*,⁴⁸ the European Court was divided on whether a Russian Orthodox Church religious blessing in a classroom, initiated by a parent group and performed in the presence of a seven-year old child who was a member of a different Christian denomination, constituted indoctrination. The blessing involved kissing a crucifix, which P refused to do, and to make the cross as per the Orthodox tradition, which P did not know how to do.

Conscientious objection to military service

In a number of states, conscription laws require that adult citizens have a legal duty to undertake a period of military training or service. For some individuals such a duty conflicts with their conscience due to their religious or philosophical beliefs, and they assert the right to refuse to undertake military service. International human rights standards are evolving in the direction of accepting that such refusal is a manifestation of the individual's conscience and should be protected under the guarantee of freedom of thought, conscience, and religion. Indeed, the Human Rights Committee's interpretation of the right to conscientious objection to military service has evolved from not being protected at all to it being an absolute element of freedom of conscience under Article 18(1) which is not capable of limitation under Article 18(3) ICCPR.⁴⁹ States may, instead, require individuals to undertake alternative service, which must not be punitive in nature but a real service to the community and compatible with respect for human rights.⁵⁰ Similarly, the European Union Charter of Fundamental Rights and Freedoms (CFREU) recognizes a right to conscientious objection to military service.⁵¹ All member states of the Council of Europe, except Turkey, have recognized such a right. In *Bayatyan v Armenia*, the European Court of Human Rights relied upon this consensus when holding that opposition to military service, where it is motivated by a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion, and importance to attract the guarantees of Article 9 European Convention on Human Rights (ECHR).⁵² Thus, compulsory military service can only be justified where convincing and compelling reasons suggest that there is a pressing social need for conscription. By contrast, the Inter-American Commission on Human Rights has declined to accept that obligatory military service may conflict with freedom of conscience.⁵³

3 Freedom of Opinion and Expression

3.1 Sources

This freedom is contained in Article 19 UDHR and in Articles 19 and 20 ICCPR. Detailed and authoritative guidance on states' obligations under these provisions can be found in the Human Rights Committee's General Comment 34.⁵⁴ Similar but not identical formulations of the freedom can be found in the regional human rights instruments.⁵⁵ There are also important provisions in the International Convention on the Elimination of Racial Discrimination (ICERD), in particular Article 4, which concerns the prohibition of racist speech and organizations. The CRC recognizes the child's right to freedom of expression.⁵⁶ Since 1993, there exists the position of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who is now appointed by the Human Rights Council.⁵⁷

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3.2 Scope

Freedom of expression has been described as the touchstone or cornerstone of all rights.⁵⁸ Not only is freedom of expression inseparable from freedom of thought, association, and assembly, it is essential for the enjoyment of many rights, including economic, social, and cultural rights. It is a vital freedom for individual development, the functioning of democracy, and modern economies.

Article 19 UDHR provides the foundation for the fuller definition of the freedom in the ICCPR:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Although this text was drafted over 70 years ago, it powerfully expresses the ideal of freedom of speech in today's era of the internet and other digital communication technologies. Freedom of expression is an individual right. It includes the freedom, without interference or penalty, to hold opinions. Freedom of expression also has its collective components. Human beings communicate with others, not with themselves. The freedom includes the right to hear other views and to exchange ideas and information with others. It also includes the right to inform oneself, to be informed, and increasingly the right to access information. Hence, the crucial importance of all media as means of communication.

3.2.1 Freedom of opinion

Article 19 ICCPR guarantees freedom of opinion as well as expression. Human beings have diverse and differing opinions on all kinds of subjects, including political and social affairs. Article 19(1) provides that everyone is entitled to hold such views without interference. No one can be forced to think in a particular way. Nor should anyone suffer prejudice, discrimination, or repression because of their views or opinions. The freedom to hold opinions is, in the words of the Human Rights Committee, 'a right to which the Covenant admits no exception or restriction'.⁵⁹ In other words, people may think what they like.

3.2.2 Freedom of expression

Article 19(2) ICCPR sets out the positive meaning of freedom of expression. Its scope is extensive. The right is defined as including freedom to seek, receive, and impart information and ideas of all kinds. Freedom to seek includes active and investigative journalism in the public interest. Freedom to receive has been interpreted by the European Court of Human Rights as including the right of the public to be informed and the duty of the mass media to impart information to the public.⁶⁰ The freedom to *impart* extends to every kind of information and idea expressed through any media of choice, 'either orally, in writing or in print, [or] in the form of art'.⁶¹ As the European Court has noted, the freedom 'is applicable 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 State or any sector of the population'.⁶²

All forms of expression are protected. These include spoken and written language, satire, as well as art and images, including caricature and cartoons. The manner in which these are transmitted, that is, through fictional and non-fictional books, newspapers, the internet, leaflets, film, paintings, sculpture, song, and so on, is also protected. Developing regulatory challenges relate to so-called 'disinformation'⁶³ and 'fake news'.⁶⁴

The internet

The internet has become ‘one of the principal means by which individuals exercise their right to freedom of expression and information; it provides essential tools for taking part in activities and discussions concerning political issues or matters of public interest.’⁶⁵ It also ‘plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general’.⁶⁶ Moreover, ‘[u]ser-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression’.⁶⁷ A Joint Declaration on Freedom of Expression and the Internet, adopted by several Special Rapporteurs in 2011, sets out that freedom of expression must apply to the internet in the same way that it applies to any other media.⁶⁸ However, it has been recognized that the internet is different from the printed press and poses greater risks for the enjoyment of the rights of others, particularly young people.⁶⁹ Duties and responsibilities are placed on the owners and controllers of internet portals to exercise a degree of control over content. The duties and responsibilities will be heavier where economic interests of commercial organizations are involved and lighter if non-profit organizations are involved.⁷⁰

There is a developing human right to access the internet. Given the increasing importance of the internet in daily lives, particularly in terms of participation, facilitating governmental transparency, and access to diverse sources of information, it is arguable that the positive obligations of states to promote and facilitate the right to freedom of expression must include facilitating access to the internet.⁷¹

- p. 221 ↵ Freedom of expression is to be enjoyed ‘without regards to frontiers’, in other words it does not stop at the borders of the state. This clause was intended to outlaw forms of censorship such as the Cold War practice of radio jamming of foreign broadcast signals and extends in today’s digital age, for example, to the blocking of access to the internet or mobile phones. So, completely blocking access to the internet during times of social unrest, as took place during the anti-government protests arising in various countries in the Arab world in 2011, known as the Arab Spring, or the blocking of content of particular websites, such as YouTube, Facebook, or Twitter, constitute interferences with the right. The interference will constitute a violation if it is excessive or arbitrary and available remedies are insufficient to prevent abuses.⁷² However, access to websites can be blocked for legitimate reasons, for example to ensure respect for copyright legislation or other intellectual property rights.⁷³

3.2.3 Media freedom

There is no explicit recognition or protection offered to the press and other media in international human rights standards, although such is often to be found in national laws and constitutions. At the international level, the freedoms and responsibilities of the press have been developed from the guarantee of freedom of expression of the individual. The protection afforded under human rights standards to all media—print and modern mass electronic media as well as the new information communication technologies—is justified because of their role in making people’s freedom of expression meaningful and their contribution to democratic life. All such means of communication provide access to news and to opportunities to exchange information and ideas. International and national standards on freedom of expression have largely been shaped by the struggle for journalistic and artistic independence against government licensing and censorship of media. That struggle continues in different parts of the world. Media freedom is thus

inseparable in practice from the enjoyment of freedom of expression in society. The media has a watchdog role on the exercise of power in society, and free media facilitates political debate. As the European Court of Human Rights has put it:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. In particular it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the core of the concept of a democratic society.⁷⁴

States must, therefore, protect journalists from threats, violence, or other acts of harassment that stop them from fulfilling this essential role.⁷⁵ Human rights bodies have adopted an expansive definition of the term 'journalists', which includes: 'professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere'.⁷⁶ The duties and

responsibilities on journalists → include that they must investigate in a rigorous, objective, and balanced manner, although the methods of doing this may vary depending on the media in question.⁷⁷ However, journalistic freedom also includes possible recourse to a degree of exaggeration or even provocation. Concerning internet discussion sites, the European Court has held that the limit of admissible criticism is broad where the comments are those of professional journalists who are well known to the public and are commenting on matters of general interest.⁷⁸

But media in all its forms is also a source of considerable power, including economic power. The international standards speak, therefore, of the media's duties and responsibilities.⁷⁹ Media regulation is necessary to ensure the effective protection of freedom of expression,⁸⁰ democratic accountability, and to guard against excessive concentration of ownership.

3.2.4 Freedom of information laws

The most striking advance in the norms on freedom of expression over recent years has been the growth of laws implementing the right to access official information held by governments. Democracies have come to understand that transparency affords governments and public administration legitimacy in the eyes of the public. In all regions of the world, governments have established 'the right to know' through legislation. An 'access to information law' works on the principle of maximum disclosure: all official information should be made public as a matter of principle, unless there are legitimate reasons justifying non-disclosure. In 2009, the Council of Europe adopted the first international treaty on the subject: the Council of Europe Convention on Access to Official Documents.

In *Claude Reyes and others v Chile*, the Inter-American Court of Human Rights became the first international tribunal to hold that there is a right to access information held by the government, derived from the guarantee of freedom of expression.⁸¹ The case originated in a request for information made by three environmental activists about a controversial deforestation project, which was ignored by the government. The Human Rights Committee has confirmed that states must 'proactively put in the public domain Government information of public interest ... [and] enact the necessary procedures, whereby one may gain access to information, such as by means for freedom of information legislation.'⁸² However, the European

Court of Human Rights has suggested that there is no positive obligation on the state to collect and disseminate information of its own motion.⁸³ The Court also indicated that Article 10 ECHR only obliges the government to impart information to an individual where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression.

3.3 Limitations

If people may think what they like, they may not always say or write what they like. As opposed to freedom of opinion, freedom of expression is not an absolute right. Under Article 19(3) ICCPR, its exercise carries with it p. 223 'special duties and responsibilities'. Such language acknowledges the power of the media, but also the justification of restriction where it is necessary to respect the rights or reputations of others, and where it is necessary on grounds of national security, public order, public health, or morals. It is possible to examine only some of these grounds here. But as discussed already, it is crucial how restrictions are applied because if wrongly or excessively invoked, they can have a 'chilling effect' on the freedom or even eliminate it.⁸⁴ For example, a ground such as national security in the context of counter-terrorism is often misapplied or abused to the detriment of freedom of expression.⁸⁵

3.3.1 Privacy

One right which may clash with freedom of expression is privacy.⁸⁶ In *Von Hannover v Germany*, Princess Caroline of Monaco, who had campaigned for many years over paparazzi taking pictures of her and her children, complained to the European Court of Human Rights.⁸⁷ The Court found that her right to privacy was violated. There was no justification for the constant media intrusion into her private life. The public interest was not advanced since the photographs were published to satisfy public curiosity, not to contribute to public debate. The Court considered that the Princess, although a member of a royal family, exercised no official functions and was thus a private person. While public figures such as politicians and popular celebrities do have a right to private life, it is less extensive given that they are willingly in the public arena.⁸⁸ Therefore, when considering whether the correct balance has been struck between freedom of expression and privacy, regard should be had to the following issues: whether the expression contributes to a debate of general interest; how well known the person concerned is; the nature of the activities that are the subject of the report and how they link to the role of the person concerned; the prior conduct of the person concerned; how the information was obtained and its veracity; the content, form, and consequences of publication; and finally the severity of the sanction imposed.⁸⁹

3.3.2 Defamation

To publish a false statement about another which damages his or her reputation is a civil and often a criminal wrong. But the implementation of laws which impose liability for defamation can, and often do, undermine the freedom of the media to fulfil their function of informing the public and to comment critically on public affairs. Given the vital importance of free media in a democracy, international human rights standards have been directed at ensuring that national laws on defamation are applied as narrowly as possible as regards 'political speech'. Robust criticism of the government or a politician should be tolerated in the interests of

open debate on political issues. In *Lingens v Austria*, a journalist was convicted of criminal libel because he had accused a former prime minister of Austria of political opportunism and of using his influence to prevent an investigation of a political ally for Nazi crimes. The European Court of Human Rights found that Austrian

p. 224 ↵ law, which required Lingens to prove the truth of what were his opinions, operated as an excessive interference with press freedom.⁹⁰ There is an increasing trend towards the abolition of criminal penalties for defamatory statements based on the argument that civil remedies, such as the payment of damages, are a sufficient sanction and the threat of criminal prosecution has a chilling effect on freedom of expression. This approach has garnered the support of the Human Rights Committee.⁹¹

3.3.3 Hate speech

Control of the advocacy of violence, hatred, and discrimination against individuals or groups on the basis of their race, colour, ethnicity, religious beliefs, sexual orientation, or other status presents a challenge to all states. The internet has added a global dimension to the availability of propaganda advocating violence or hatred of others.⁹² Article 20 ICCPR and Article 4 ICERD oblige states to criminalize speech that amounts to war propaganda or that advocates racial hatred. However, these limitations on expression must be compliant with Article 19(3) ICCPR and thus be provided by law and be the least restrictive means of achieving the relevant aim.⁹³ The use of speech to incite violence is a criminal offence in virtually all states. But to strike an acceptable balance between the right to freedom of expression and restraint on other forms of objectionable speech is in practice often difficult.⁹⁴ If the speech is regarded, in its context, as abusive, inciting, or justifying violence or armed resistance, condones terrorism, or is classed as 'hate speech', it may not be protected at all because it negates fundamental human rights values.⁹⁵ Alternatively, it may be viewed as an expression which states have considerable scope to restrict and restrain as necessary in a democratic society for the protection of the reputation and rights of others.⁹⁶ Obviously the line between the two approaches can be difficult to navigate.⁹⁷ In terms of practicalities, internet news portals which, for commercial purposes, provide a platform for user-generated comments assume the 'duties and responsibilities' associated with freedom of expression in accordance with Article 10(2) ECHR where users disseminate hate speech or comments amounting to direct incitement to violence.⁹⁸

Islamophobia, anti-Semitism, and Holocaust denial

The mere fact of defending *Sharia* (Islamic law), without calling for violence to introduce it, cannot be regarded as hate speech.⁹⁹ However, incitement to ethnic, racial, or religious hostility, hatred, and

p. 225 ↵ discrimination is not protected speech. A current concern is the widespread expression, particularly in Europe, of prejudice and hostility towards Muslims, sometimes termed Islamophobia. In 2001–2, a member of the British National Party displayed a large poster in his flat window with a photograph of the Twin Towers in flames with the caption 'Islam out of Britain—Protect the British People' and a symbol of a crescent and star in a prohibition sign. He was convicted of displaying hostility to a racial or religious group. His complaint to the European Court of Human Rights that his freedom of expression was infringed was dismissed.¹⁰⁰ The poster, the Court held, represented a vehement attack against Muslims linking the group as a whole with a grave act of terrorism.

Like Islamophobia, anti-Semitism is a widespread phenomenon, which frequently finds expression in Holocaust denial. Holocaust denial or negationism denies the Nazi genocide against Jews during the Second World War or seeks to minimize its true scale. Such speech is a criminal offence in several European states. A French historian, Robert Faurisson, in an interview with a magazine said it was his personal conviction that there were no homicidal gas chambers for the extermination of Jews in Nazi concentration camps. The Human Rights Committee upheld his criminal conviction because of these comments as a justifiable interference with his freedom of expression under Article 19 ICCPR.¹⁰¹ It was persuaded by the French government's argument that holocaust denial is the main vehicle of anti-Semitism in France.¹⁰²

Disputing the existence of clearly established historical events, such as the Holocaust, does not constitute scientific or historical research.¹⁰³ However, debates surrounding historical events of a particularly serious nature should be able to take place freely as they are an integral part of freedom of expression to seek historical truth.¹⁰⁴ In *Perinçek v Switzerland*,¹⁰⁵ a Turkish politician was the subject of a criminal conviction for publicly expressing the view, in Switzerland, that the mass deportations and massacres suffered by the Armenians in the Ottoman Empire had not amounted to genocide. The European Court held that there had been a violation of Article 10. It had not been necessary, in a democratic society, to subject Perinçek to a criminal penalty in order to protect the rights of the Armenian community. Perinçek's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance.

By contrast, *M'Bala v France*¹⁰⁶ concerned the conviction of M'Bala, a comedian with political activities, for public insults directed at persons of Jewish origin or faith. The European Court declared the application inadmissible, finding that under Article 17 ECHR (prohibition of abuse of rights), M'Bala was not entitled to the protection of Article 10. During the offending scene, the performance in question could no longer be seen as entertainment but rather resembled a political meeting, which, under the pretext of comedy, promoted negationism and amounted to a degrading portrayal of Jewish deportation victims.

Blasphemy

Criticism of religion, as distinct from incitement to hatred of people because of their religious beliefs, is currently a highly contested freedom of expression issue at the international level. For example, the 1988 publication of *The Satanic Verses* by Salman Rushdie ↴ and the 2005 Danish cartoons that depicted the Prophet Mohammed were both considered to be 'insulting' to the Islamic faith.¹⁰⁷ Such incidences, amongst others, led to calls for a restriction of freedom of expression in order to suppress 'defamation of religions' and the Human Rights Council and the General Assembly, led by Muslim majority states, have passed resolutions supporting such an approach.¹⁰⁸ But others, mostly Western states, have rejected the need to protect religious institutions or doctrines from robust criticism, satire, or even ridicule. In 2011, the Human Rights Council moved away from the terminology of 'defamation of religion', returning to the idea of protecting believers from intolerance and violence.¹⁰⁹ This is a more convincing approach. Human rights law protects those individuals who have a religious belief rather than the religion itself. Therefore, blasphemy laws are, according to the Human Rights Committee, incompatible with the right to freedom of expression.¹¹⁰ Nevertheless, a number of states still retain offences of blasphemy in their criminal codes¹¹¹ and the European Court of Human Rights has accepted the legitimacy of a prosecution for blasphemy where 'believers may legitimately [have felt] themselves to be the object of unwarranted and offensive attacks' and the punishment imposed was an 'insignificant fine'.¹¹²

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4 Freedom of Association

4.1 Sources

Freedom of association is proclaimed as an individual right in Article 20 UDHR and is included in both international covenants and regional instruments.¹¹³ Article 22 ICCPR provides a general guarantee of freedom of association. It also includes the right to form and join trade unions, a right independently recognized in Article 23(4) UDHR. Article 8 ICESCR provides for the association rights of trade unions. Trade union rights are more fully protected in the international agreements of the International Labour Organization (ILO).¹¹⁴ The ILO Committee on Freedom of Association, comprising an equal number of representatives of governments, employers, and unions, oversees the protection of trade union freedoms.¹¹⁵ In 2010, the Human Rights Council established the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association.¹¹⁶

4.2 Scope

Freedom of association is the freedom to pursue collective action. It protects the right of individuals to form associations for common purposes, free from government interference. It includes the right of the association independently to determine its membership, appoint officers, employ staff, and generally conduct its own affairs subject only to the law. While linked historically with trade unions, the freedom includes the freedom to establish and belong to political parties, which are vital for the functioning of democracy. But the right of the individual to establish and participate in all manner of civil society associations is equally part of this freedom. Article 16 ACHR speaks of the right to establish associations for ‘ideological, religious, political, economic, labor, social, and cultural, sports, or other purposes’. This freedom is also of central importance to the activities of human rights defenders. The Declaration on Human Rights Defenders, passed by the UN General Assembly in 1999, affirms the right of human rights activists to form, join, and participate in NGOs for the purpose of, *inter alia*, seeking and imparting information about human rights, discussing and developing new ideas on human rights, and advocating on issues of human rights.¹¹⁷

4.2.1 The right not to associate

The right to associate includes the negative freedom to choose not to belong to an association and not to be compelled to join one. The negative formulation of the right is included in the UDHR (Article 20(2)) but not in the ICCPR. The explanation for its absence concerns the status of collective bargaining agreements between trade unions and employers over the employment of union members only (closed shop agreements). For the same reason, the right to freedom of association under Article 11 ECHR is also silent on the right not to associate. The jurisprudence of the European Court of Human Rights illustrates the tension which can arise between the individual and collective dimensions of the freedom of association. In *Young, James and Webster v UK*, the Court found that the dismissal of individuals employed prior to a closed shop agreement violated the right to freedom of association of the dismissed employees.¹¹⁸ In *Sigurjonsson v Iceland*, the same Court

examined an Icelandic law that made taxi drivers' licences contingent upon membership of a union.¹¹⁹ The Court found that the government interest in this rule—facilitating the regulation of public transport—was relevant but not sufficient to justify the extreme consequence of non-membership of the union.

In *Sorensen and Rasmussen v Denmark*, compulsion to join a particular trade union was regarded as striking at the very substance of the right to freedom of association.¹²⁰

4.2.2 The right to strike

The Human Rights Committee has held that the right to association in the ICCPR does not include a right to strike. In *JB et al v Canada*, the Committee noted that ILO Convention No 87 had been interpreted to provide such a right and that the ICESCR includes the right to strike along with its recognition of trade union rights.¹²¹ The Committee pointed out that 'each international treaty, including the [ICCPR] has a life of its own and must be interpreted in a fair and just manner'.¹²² Having been drafted in parallel discussions, the inclusion of the right to strike in the ICESCR without similar language in the ICCPR suggested that the right of association in that Covenant was not intended to protect the right to strike.

The European Court of Human Rights regards industrial action as a core aspect of trade union freedom. The taking of secondary industrial action, including strike action, by a trade union against one employer in order p. 228 to further a dispute in which the union's ↵ members are engaged with another employer is also regarded as being covered by Article 11 ECHR.¹²³ However, states have been awarded a wide margin of appreciation when it comes to restricting secondary action.

4.3 Limitations

The Human Rights Committee addressed the type of activities that constitute an interference with the right of association in *Korneenko et al v Belarus*.¹²⁴ In that case, the authorities stripped a human rights organization of its recognition because it had violated domestic regulations governing associations. Its official documentation was said to suffer from 'deficiencies' and it was accused of using equipment purchased with foreign grants for propaganda purposes. A domestic court ordered the dissolution of the group. The Committee held that the ICCPR protected all activities of an association. Dissolution of a group amounts to a severe interference with the freedom and must be strictly justified by reference to the grounds of limitation in Article 22(2). The government had failed to do this. Even if the NGO's documentation had been defective, the extreme step taken of dissolving it was a disproportionate response. The Committee found a violation.

Where domestic law requires registration of civic associations in order to obtain legal personality, a refusal or delay by the authorities in registration may constitute an interference with the freedom of association.¹²⁵ The European Court of Human Rights regards a refusal to register a political party as a drastic measure that can only be applied in the most serious cases where a party has not sought to pursue its aims by lawful and democratic means or its aims are incompatible with fundamental democratic principles.¹²⁶ The Inter-American Court of Human Rights has held that national requirements imposed on political parties to take part in elections must ensure that the members of indigenous and ethnic communities may participate in the electoral processes effectively and according to their traditions, practices, and customs.¹²⁷

4.3.1 Banning political parties

Political parties are an essential form of association if democracy is to exist. Without an effective democracy, human rights cannot be guaranteed. Political parties thus must be guaranteed the fullest freedom of association and compelling reasons must be given for any interference with the freedom. That principle applies most particularly where political parties are banned or dissolved.¹²⁸ Such measures will normally be considered disproportionate.

In *Refah Partisi (the Welfare Party) and Others v Turkey*, the European Court of Human Rights upheld the decision of the Turkish Constitutional Court to disband the largest political party in the state.¹²⁹ The judgment sparked considerable controversy as at the time the Refah party was serving in a coalition government. Certain of its leaders were accused of advocating the introduction of *Sharia* in Turkey, and p. 229 violating the secular principles ↗ of the Turkish Constitution. The Court recognized that closure constituted an extreme interference in the right of association, but concluded unanimously that it was justifiable. It noted that ‘protection of public safety and the rights and freedoms of others and the prevention of crime might depend on safeguarding the principle of secularism’.¹³⁰ The Refah party was likely poised to be able to implement policies that could undermine the democratic and secular nature of Turkey and threaten the rights of others.¹³¹

The decision in *Refah* can be contrasted with an earlier Turkish case, *United Communist Party of Turkey and Others v Turkey*.¹³² The Turkish Constitutional Court dissolved this political party on the basis that the party advocated class domination and threatened the territorial integrity of the state. The European Court found that the dissolution of the party was disproportionate. The party had not undertaken activities or adopted stances that would threaten the territorial integrity or national security of the state and the use of terminology that the state found offensive or threatening was not enough to justify the extreme step of its dissolution.

Thus, unless a party threatens the democratic nature of a state or its fundamental values and principles,¹³³ it cannot be suppressed, even if the party has challenged the way the state is currently organized¹³⁴ or has espoused offensive ideas.

4.3.2 Additional limitations applicable to military and police

Article 22(2) ICCPR provides that members of the armed forces and of the police may be restricted by law in their exercise of the right of association. The provision, however, does not deny the right of military and police to freedom of association. It recognizes only that the state may regulate the exercise of that freedom. There are similar restrictions in the ECHR and the ACHR. Other state employees and civil servants have the right to form and join trade unions.¹³⁵

5 Freedom of Assembly

5.1 Sources

The freedoms of assembly and association are contained in one provision in the UDHR and the ECHR.¹³⁶ The ICCPR (Article 21) and other regional instruments separate the rights.¹³⁷ In 2020, the Human Rights Committee adopted General Comment 37 which provides detailed and authoritative guidance on states' obligations under Article 21 ICCPR.¹³⁸ While the rights of assembly and association are closely connected, they are distinct. They are both vital democratic freedoms that enable individuals to act collectively to promote their interests. Freedom of assembly is qualified as a right of 'peaceful assembly' or in the ACHR a right to 'peaceful assembly, without arms'. Specific types of assemblies, such as religious assemblies, are additionally protected by Article 18 ICCPR, as are private assemblies in one's home by Article 17 ICCPR.

5.2 Scope

The right of peaceful assembly protects non-violent, organized gatherings in public and private, indoors, outdoors, and online.¹³⁹ By definition, the right to 'peaceful' assembly cannot be exercised using violence. But in practice the factual situations can present a mix of peaceful and violent elements.¹⁴⁰ The Human Rights Committee interprets violence as entailing 'the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property'. Thus, the mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to 'violence'.¹⁴¹ A broad range of assemblies is encompassed, including political, economic, artistic, and social gatherings. The right entails the possibility of organizing and participating in a peaceful assembly. The assembly can be stationary (such as a picket) or mobile (such as a march or protest) in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience.¹⁴² The right also extends to counter-protests, though states have an obligation to ensure counter-demonstrators do not interfere with the initial demonstration.¹⁴³ Thus, states must not only abstain from interfering with the right, but are also required to take positive measures to protect peaceful assemblies.¹⁴⁴ Although the right envisages temporary gatherings, it also protects mass political protests that may last for weeks or months.

The African Commission on Human and Peoples' Rights found that the convictions and executions of four indigenous Ogoni activists violated their right to life and also their right of assembly. The Nigerian government alleged that the activists were responsible for the deaths of four men following a rally for indigenous rights. The activists were not accused of perpetrating the deaths, but held responsible because their peaceful assembly 'incited' the killings. The Commission held that the executions were part of a widespread attempt to intimidate protestors and limit demonstrations.¹⁴⁵

5.3 Limitations

Restrictions on peaceful assembly may be imposed under Article 21(2) ICCPR, provided these are prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Restrictions

should be non-discriminatory and, in principle, content-neutral.¹⁴⁶ Outright banning of a demonstration p. 231 ↗ may prove necessary, but clearly requires the strongest justification. In *Öllinger v Austria*, the European Court of Human Rights held that the state's duty to protect the right of assembly as far as possible should have included considering alternatives to a total ban on a small counter-protest at a cemetery on All Saints Day where a commemoration was to take place for former SS soldiers.¹⁴⁷

5.3.1 Prior notifications and permits

Regulation of demonstrations or gatherings through prior notification or issuing of a permit by the authorities before a march or public meeting can take place is compatible with the freedom to assemble.¹⁴⁸ In *Kivenmaa v Finland*, the Human Rights Committee accepted that a requirement to notify the police of an intended demonstration in a public place in Helsinki six hours before its commencement would be compatible with the permitted limitations laid down in Article 21 ICCPR.¹⁴⁹ Such administrative procedures enable other rights and interests to be balanced with the right to assemble, for example the freedom of movement of others, national security, public order, and the normal circulation of traffic. An essential part of the state authorities' positive obligation to ensure the peaceful conduct of an assembly, to prevent disorder, and to secure the safety of all the citizens involved, is a duty to communicate with the assembly leaders.¹⁵⁰ The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it.¹⁵¹ Undue delays or arbitrariness in the issuance of permits, however, can constitute a violation of the right. In *Turchenyak et al v Belarus*, the Committee held that the de facto prohibition of an assembly in any public location in the entire city of Brest, with the exception of the Lokomotiv stadium, unduly limited the right to freedom of assembly.¹⁵² In *Baczkowski v Poland*, the application concerned the mayor of Warsaw's refusal to authorize a march and different other public gatherings to protest over discrimination, including against homosexual people. The mayor had said publicly before considering the applications for permits that he would ban any public propaganda for homosexuality. The European Court found, inter alia, that the mayor's refusal to permit the demonstrations constituted a discriminatory interference with the right to freedom of assembly.¹⁵³

The dispersal of a spontaneous peaceful demonstration, one that occurs, for example, in response to an unexpected political event, solely because of the absence of prior notice may amount to a disproportionate restriction on freedom of peaceful assembly.¹⁵⁴ Similarly, arrest and conviction for participation in such a spontaneous demonstration may also be disproportionate. A balance is required and public authorities need to show a certain degree of tolerance towards peaceful gatherings which cause some disruption but do not endanger public order.¹⁵⁵ However, the police can disperse a demonstration where there was ample time to file notice of a public demonstration in advance but this was not ↗ done.¹⁵⁶ Should dispersal of a peaceful assembly take place through violent means, including the use of tear gas, this will not be proportionate.¹⁵⁷ p. 232

5.3.2 Repressive restrictions

Any restriction on assembly must be shown to be necessary in a democratic society. In *Oscar Elías Biscet et al v Cuba*, the Inter-American Commission on Human Rights held that restrictions on the right of assembly are illegal if used solely to suppress the opposition.¹⁵⁸ The petitioners claimed they were arrested, detained, and

intimidated because they discussed dissident publications at their weekly meetings. The Commission concluded that the convictions were an arbitrary restraint on freedom of assembly since their primary purpose was to constrain political opposition. In *Navalny v Russia*, the European Court considered that the seven arrests and prosecutions of a well-known political activist for administrative offences related to the unlawfulness of public gatherings violated Article 11 ECHR.¹⁵⁹

Even where an assembly is unauthorized, the penalties for participation must be justified and necessary. The Human Rights Committee has found a violation of Article 21 ICCPR where an individual had been refused a 'lawyer's licence' following the imposition of a fine for his participation in an unauthorized rally. Although the imposition of the fine was appropriate, it was not clear to the Committee how the non-issuance of the licence was necessary for the purposes of Article 21.¹⁶⁰

6 Conclusion

In this chapter, four freedoms—freedom of thought, expression, association, and assembly—were introduced. The freedoms were discussed along with the body of international human rights norms and jurisprudence, which have helped to define their scope since each was proclaimed in the UDHR in 1948. Each freedom was examined as a discrete freedom of the individual. But it was also noted that each has a collective component. All are interrelated and mutually reinforcing. The freedoms share the common feature that they are not unconditional entitlements. In practice, their exercise needs balancing against the rights and freedoms of others and against certain public interest considerations, which are carefully and exhaustively set out in the international standards governing each freedom. A challenge common to all the freedoms is how to ensure that, where such restrictions are in principle necessary, they are implemented by the state in a proportionate manner. That requires a democratic society and one built on the rule of law. The freedoms are, in turn, part of the foundations of a democratic society. The right to dissent and to speak out, the freedom to come together with others in independent associations to promote common interests, and the freedom to demonstrate are all essential if a democratic society based on the participation of its members is to function successfully.

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Human Rights Without Frontiers: <http://www.hrwf.net/> [<http://www.hrwf.net/>](http://www.hrwf.net/)

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On Freedom of Expression:

Article 19: Global Campaign for Freedom of Expression: <http://www.article19.org/> [<http://www.article19.org/>](http://www.article19.org/)

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p. 234 **Questions for Reflection**

1. What test should be applied to determine if something constitutes ‘expression’?
2. Should the same principles apply to freedom of expression online as offline?
3. What is a ‘manifestation’ of a religion or belief? Should a belief in hitting children to discipline them be accepted as a manifestation of a religious belief? Or a belief in gender discrimination?
4. Should religious believers have to agree to respect the human rights of others as a condition for respect of their religious beliefs?
5. How helpful is the presence or absence of the concept of a ‘margin of appreciation’ in explaining the results of the cases considered in this chapter?

Notes

¹ *Ouranio Toxo and Others v Greece* (2007) 45 EHRR 8, para 35.

² *Frumkin v Russia* (2016) 63 EHRR 18.

³ See Chapter 7.

⁴ McGoldrick, ‘A Defence of the Margin of Appreciation and an Argument for its Application by the Human Rights Committee’ (2016) 65 *ICLQ* 21.

⁵ eg *Ahmad and Abdol-Hamid v Denmark*, CCPR/C/92/D/1487/2006 (18 April 2008).

⁶ See Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/71/373 (6 September 2016). See also Chapter 7.

⁷ *Sunday Times v UK* (1979) 2 EHRR 245, para 65.

⁸ ECHR, Art 9; Protocol 1 to the ECHR, Art 2; CFREU, Art 10; ACHR, Art 12; ACHPR, Art 8; Arab Charter, Art 30; ASEAN Declaration, Art 22.

⁹ Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, GA Res 36/55 (25 November 1981).

¹⁰ See now HR Council Res 40/10 (21 March 2019). See Wiener, ‘Interpretation of the 1981 Declaration through the Mandate Practice of the UN Special Rapporteur on Freedom of Religion or Belief’ in Evans, Petkoff, and Rivers (eds), *The Changing Nature of Religious Rights Under International Law* (OUP, 2015) 51.

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¹¹ CRC, Arts 14(1) and (2). See Interim Report of the Special Rapporteur on Freedom of Religion or Belief, A/70/286 (5 August 2015).

¹² See HRC, General Comment 22, HRI/GEN/1/Rev 9 (Vol I) 204, para 2.

¹³ 1981 Declaration, preamble.

¹⁴ HRC, General Comment 22, para 2.

¹⁵ *MAB, WAT and JAYT v Canada*, CCPR/C/50/D570/1993 (25 April 1994). Compare *Prince v South Africa*, CCPR/C/91/D/1474/2006 (14 November 2007).

¹⁶ HRC, General Comment 22, para 4 (emphases added). See also Bielefeldt, Ghanea, and Wiener, *Freedom of Religion or Belief: An International Law Commentary* (OUP, 2016).

¹⁷ *Eweida and Others v UK* (2013) 57 EHRR 8, para 82.

¹⁸ *İşik v Turkey* (2015) 61 EHRR 6.

¹⁹ Khaliq, 'Freedom of Religion and Belief in International Law: a Comparative Analysis' in Emon, Ellis, and Glahn (eds), *Islamic Law and International Human Rights Law* (OUP, 2012) 183.

²⁰ HRC, General Comment 22, para 5.

²¹ *Kokkinakis v Greece* (1994) 17 EHRR 397; *Sister Immaculate Joseph v Sri Lanka*, CCPR/C/85/D/1249/2004 (18 November 2005).

²² Hunter-Henin, *Why Religious Freedom Matters for Democracy* (OUP, 2020).

²³ HRC, General Comment 22, para 9.

²⁴ *Serif v Greece* (1999) 31 EHRR 561; *Metropolitan Church of Bessarabia and others v Moldova* (2002) 35 EHRR 306.

²⁵ *Hasan and Chaush v Bulgaria* (2002) 34 EHRR 1339; *Magyar Kereszteny Mennonita Egyház and Others v Hungary* (2015) 61 EHRR 23.

²⁶ *Hasan and Chaush*, para 78.

²⁷ *Metropolitan Church of Bessarabia*.

²⁸ *Hasan and Chaush*.

²⁹ eg *MAB, WAT and JAYT*.

³⁰ (2006) 44 EHRR 912.

³¹ HRC, General Comment 22, para 3; *Buscarini and Others v San Marino* (2000) 30 EHRR 208; *Alexandridis v Greece*, App no 19516/06, Judgment of 21 February 2008.

³² eg *Izzettin Doğan and Others v Turkey*, App no 62649/10, Judgment of 26 April 2016.

³³ *Ahmet Arslan and Others v Turkey*, App no 41135/98, Judgment of 23 February 2010.

³⁴ *Lachiri v Belgium*, App no 3413/09, Judgment of 18 September 2018.

³⁵ (2015) 60 EHRR 11; followed in *Belcacemi and Oussar v Belgium*, App no 37798/13; *Dakir v Belgium*, App no 4619/12, Judgments of 11 July 2017.

³⁶ CCPR/C/123/D/2747/2016 (17 July 2018).

³⁷ *Hudoyberganova v Uzbekistan*, CCPR/C/82/D/931/2000 (5 November 2004).

³⁸ See HRC, General Comment 22.

³⁹ (2007) 44 EHRR 5.

⁴⁰ Turkey has subsequently relaxed the restrictions on wearing headscarves. Turkey's Constitutional Court has re-interpreted the constitutional provisions on secularism and on freedom of religion in a more balanced manner, *Tuğba Arslan*, App no 2014/256, 25 June 2014.

⁴¹ *Aktas v France*, *Bayrak v France*, *Gamaleddyn v France*, *Ghazal v France*, *J Singh v France*, *R Singh v France*, App nos 43563/08, 14308/08, 18527/08, 29134/08, 25463/08, and 27561/08, Admissibility Decision of 17 July 2009.

⁴² *Singh v France*, CCPR/C/106/D/1852/2008 (4 February 2013).

⁴³ *Ranjit Singh v France*, CCPR/C/102/D/1876/2009 (27 September 2011) para 8.4.

⁴⁴ See McGoldrick (2016); Berry, 'A "good faith" interpretation of the right to manifest religion? The diverging approaches of the European Court of Human Rights and the UN Human Rights Committee <<http://sro.sussex.ac.uk/id/eprint/63027>>' (2017) 37 *Legal Studies* 672.

⁴⁵ *Eweida and Others*.

⁴⁶ Cases C-157/15 *Achbita*, *Centrum voor Gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions* and C-188/15 *Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole Univers*, Judgment of 14 March 2017.

⁴⁷ (2012) 54 EHRR 3. See McGoldrick, 'Religion in the European Public Square and in European Public Life' (2011) 11 *HRLR* 451.

⁴⁸ App no 47429, Judgment of 20 October 2020.

⁴⁹ HRC, General Comment 22, para 11; *Yoon and Choi v Republic of Korea*, CCPR/C/88/D/1321–1322/2004 (23 January 2007); *Atasoy and Sartuk v Turkey*, CCPR/C/104/D/1853–1854/2008 (29 March 2012). The right to conscientious objection to military service has been recognized also by other UN bodies. See OHCHR, *Conscientious Objection to Military Service* (2012). Cf. For conflicting views on State obligations with respect to a conscientious belief in same sex marriage see the majority and minority opinions in *Attorney General for Bermuda v Roderick Ferguson and others (Bermuda)* [2022] UKPC 5 (14 March 2022).

⁵⁰ *Jeong et al v Republic of Korea*, CCPRC/C/101/D/1642–1741/2007 (24 March 2011).

⁵¹ CFREU, Art 10.

⁵² (2012) 54 EHRR 15.

⁵³ Case 12.219, *Cristián Daniel Sahli Vera et al v Chile*, IACCommHR Report No 43/05 (10 March 2005).

⁵⁴ HRC, General Comment 34, CCPR/C/GC/34 (12 September 2011).

⁵⁵ ECHR, Art 10; CFREU, Art 11; ACHR, Arts 13 and 14; ACHPR, Art 9; Arab Charter, Art 32; ASEAN Declaration, Art 23.

⁵⁶ Arts 12 and 13.

⁵⁷ See now HR Council Res 43/4 (19 June 2020).

⁵⁸ *Handyside v UK* (1976) 1 EHRR 737; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, IACtHR Series A No 5 (13 November 1985).

⁵⁹ HRC, General Comment 34, para 9.

⁶⁰ *Thorgeir Torgeirson v Iceland* (1992) 14 EHRR 843, para 63.

⁶¹ ICCPR, Art 19(2).

⁶² *Handyside*, para 49. See also *Ivcher-Bronstein v Peru*, IACtHR Series C No 74 (6 June 2001).

⁶³ See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/47/25 (13 April 2021).

⁶⁴ Helm <https://academic.oup.com/hrlr/search-results?f_Authors=Rebecca+K+Helm> and Nasu <https://academic.oup.com/hrlr/search-results?f_Authors=Hitoshi+Nasu>, ‘Regulatory Responses to “Fake News” and Freedom of Expression: Normative and Empirical Evaluation <<https://academic.oup.com/hrlr/article/21/2/302/6129940>>’ (2021) 21 *HRLR* 302.

⁶⁵ *Yildirim v Turkey*, App no 3111/10, Judgment of 18 December 2012, para 54.

⁶⁶ *Times Newspapers Ltd v UK (nos 1 and 2)*, App nos 3002/03 and 23676/03, Judgment of 10 March 2009, para 27.

⁶⁷ *Delfi AS v Estonia* (2016) 62 EHRR 6, para 110.

⁶⁸ <<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=848&IID=1>>.

⁶⁹ See *Editorial Board of Pravoye and Shtekel v Ukraine* (2014) 58 EHRR 28; *KU v Finland* (2009) 48 EHRR 52 (protection of minors); *Perrin v UK*, App no 5446/03, Admissibility Decision of 18 October 2005 (morals and the rights of others).

⁷⁰ *Delfi AS v Estonia; Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary*, App no 22947/13, Judgment of 2 February 2016.

⁷¹ See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/66/290 (10 August 2011), paras 61–63; Tully, ‘A Human Right to Access the Internet? Problems and Prospects’ (2014) 14 *HRLR* 175.

⁷² See *Yildirim v Turkey* (blocking of access to Google sites, which hosted a website owned by an individual who was facing criminal proceedings for insulting the memory of Atatürk); *Vladimir Kharitonov v Russia*, App no 10795/14, Judgment of 23 June 2020.

⁷³ *Akdeniz v Turkey*, App no 20877/10, Admissibility Decision of 11 March 2014.

⁷⁴ *Castells v Spain* (1992) 14 EHRR 445, para 43.

⁷⁵ HRC, General Comment 34, para 23; *Vélez Restrepo v Colombia*, IACtHR Series C No 248 (3 September 2012) para 209.

⁷⁶ HRC, General Comment 34, para 44; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/20/17 (4 June 2012); Cram, *Citizen Journalists* (Elgar, 2015).

⁷⁷ *Delfi*, para 134.

⁷⁸ *Niskasaari and Otavamedia Oy v Finland*, App no 32297/10, Judgment of 23 June 2015, paras 9 and 54–9.

⁷⁹ On standards of responsible journalism, see *De Carolis and France Televisions v France*, App no 29313/10, Judgment of 21 January 2016.

⁸⁰ See *Editorial Board of Pravoye Delo; P Wragg, A Free and Regulated Press* (Hart, 2020).

⁸¹ IACtHR Series C No 151 (19 September 2006). See also *Társaság a Szabadságjogokért v Hungary* (2011) 53 EHRR 3.

⁸² HRC, General Comment 34, para 19. See also *Toktakunov v Kyrgyzstan*, CCPR//C/101/D/1470/2006 (28 March 2011).

⁸³ *Magyar Helsinki Bizottság v Hungary*, App no 18030/11, Judgment of 8 November 2016.

⁸⁴ *Baczkowski v Poland* (2009) 48 EHRR 19; *Fedotova v Russian Federation*, CCPR/C/106/D/1932/2010 (19 November 2012).

⁸⁵ HRC, General Comment 34, para 46. See also *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* adopted by a group of NGO experts in 1996, <<https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>>.

⁸⁶ ICCPR, Art 17.

⁸⁷ (2005) 40 EHRR 1.

⁸⁸ HRC, General Comment 34, para 38; *Axel Springer AG v Germany* (No 2), App no 48311/10, Judgment of 18 July 2014.

⁸⁹ *Axel Springer AG v Germany* (2012) 55 EHRR 6, paras 89–95; *Von Hannover v Germany* (No 2) (2012) 55 EHRR 15.

⁹⁰ (1986) 8 EHRR 407. See also *Bodrozic v Serbia and Montenegro*, CCPR/C/85/D/1180/2003 (31 October 2005).

⁹¹ HRC, General Comment 34, para 47; *Adonis v Philippines*, CCPR/C/103/D/1815/2008/Rev 1 (26 April 2012).

⁹² See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/74/486 <<https://undocs.org/A/74/486>> (9 October 2019).

⁹³ *Rabbae, ABS and NA v Netherlands*, CCPR/C/117/D/2124/2011 (14 July 2016).

⁹⁴ See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/67/357 (7 September 2012).

⁹⁵ *Pavel Ivanov v Russia*, App no 35222/04, Admissibility Decision of 20 February 2007 (general, vehement attack on one ethnic group); *Roj TV A/S v Denmark*, App no 24683/14, Admissibility Decision of 17 April 2018 (incitement to violence and support for terrorist activity).

⁹⁶ *Sürek (No 1) v Turkey*, App no 23927/94, Judgment of 8 July 1999 (encouraging violence and inciting hostility); *Vejdeland and Others v Sweden* (2014) 58 EHRR 15 (distributing homophobic leaflets); *ES v Austria*, App no 38450/12, Judgment of 25 October 2018 (criminal conviction and fine for statements accusing the Prophet Muhammed of paedophilia).

⁹⁷ Mchangama <https://academic.oup.com/hrlr/search-results?f_Authors=Jacob+Mchangama> and Alkiviadou <https://academic.oup.com/hrlr/search-results?f_Authors=Natalie+Alkiviadou>, ‘Hate Speech and the European Court of Human Rights: Whatever Happened to the Right to Offend, Shock or Disturb?’ <<https://academic.oup.com/hrlr/advance-article/doi/10.1093/hrlr/ngab015/6297494>>’ (2021) 21 HRLR 1008.

⁹⁸ *Delfi AS v Estonia* (2016) 62 EHRR 6, para 115.

⁹⁹ *Gunduz v Turkey* (2005) 41 EHRR 5.

¹⁰⁰ *Norwood v UK*, App no 23131/03, Admissibility Decision of 16 November 2004.

¹⁰¹ *Faurisson v France*, CCPR/C/58/D/550/1993 (8 November 1996).

¹⁰² See also *Ross v Canada*, CCPR/C/70/D/736/1997 (18 October 2000).

¹⁰³ *Garaudy v France*, App no 65831/01, Admissibility Decision of 24 June 2003.

¹⁰⁴ *Dink v Turkey*, App nos 2668/07 and others, Judgment of 14 September 2010; *Kimel v Argentina*, IACtHR Series C No 177 (2 May 2008).

¹⁰⁵ (2016) 63 EHRR 6.

¹⁰⁶ App no 25239/13, Admissibility Decision of 20 October 2015.

¹⁰⁷ Cox, 'Pourquoi Suis-Je Charlie? Blasphemy, Defamation of Religion, and the Nature of Offensive' Cartoons' (2015) 4 *Oxford J of L and Religion* 343.

¹⁰⁸ eg GA Res 62/154 (6 March 2008); HR Council Res 7/36 (28 March 2008). See Langer, *Religious Offence and Human Rights: The Implications of Defamation of Religions* (CUP, 2014).

¹⁰⁹ HR Council Res 16/18 (12 April 2011).

¹¹⁰ HRC, General Comment 34, para 48.

¹¹¹ Crouch, 'The Indonesian Blasphemy Case: Affirming the Legality of the Blasphemy Law' (2012) 1 *Oxford J of L and Religion* 514. Cf Cox, 'Justifying Blasphemy Laws' (2020) 35 *Journal of Law and Religion* 33.

¹¹² *IA v Turkey* (2007) 45 EHRR 30, paras 29 and 32.

¹¹³ ECHR, Art 11; CFREU, Art 12; ACHR, Art 16; ACHPR, Art 10; Arab Charter, Art 24.

¹¹⁴ Freedom of Association and Protection of the Right to Organize Convention 1948 (No 87); Right to Organize and Collective Bargaining Convention 1949 (No 98).

¹¹⁵ See also Chapter 12.

¹¹⁶ See now HR Council Res 41/12 (10 July 2019).

¹¹⁷ GA Res 53/144 (8 March 1999).

¹¹⁸ (1981) 4 EHRR 38.

¹¹⁹ (1993) 16 EHRR 462.

¹²⁰ (2008) 46 EHRR 29.

¹²¹ CCPR/C/28/D/118/1982 (18 July 1986). Five members dissented.

¹²² *JB et al v Canada*, CCPR/C/OP/1 (18 July 1986) para 6.2.

¹²³ *National Union of Rail, Maritime and Transport Workers v UK* (2015) 60 EHRR 10.

¹²⁴ CCPR/C/88/D/1274/2004 (10 November 2006).

¹²⁵ *Ismayilov v Azerbaijan*, App no 4439/04, Judgment of 17 January 2008.

¹²⁶ *Linkov v Czech Republic*, App no 10504/03, Judgment of 7 December 2006.

¹²⁷ *Yatama v Nicaragua*, IACtHR Series C No 127 (23 June 2005).

¹²⁸ Tyulkina, ‘Fragmentation in International Human Rights Law: Political Parties and Freedom of Association in the Practice of the UN HRC, ECtHR and Int-AmCtHR’ (2014) 32 *Nordic Journal of Human Rights* 157.

¹²⁹ (2003) 37 EHRR 1.

¹³⁰ (2003) 37 EHRR 1, para 66.

¹³¹ See also *Vona v Hungary*, App no 35943/10, Judgment of 9 July 2013.

¹³² (1998) 26 EHRR 121.

¹³³ *Herri Batasune and Batasuna v Spain*, App nos 25803/04 and 25817/04, Judgment of 30 June 2009.

¹³⁴ *Party for a Democratic Society (DTP) and Others v Turkey*, App nos 3840/10 and others, Judgment of 12 January 2016.

¹³⁵ *Demir and Baykara v Turkey* (2009) 48 EHRR 54.

¹³⁶ UDHR, Art 20; ECHR, Art 11. See Salát, *The Right to Freedom of Assembly* (Bloomsbury, 2015).

¹³⁷ ACHR, Art 15; ACHPR, Art 11; ASEAN Declaration, Art 24.

¹³⁸ HRC, General Comment 37, CCPR/C/GC/37 (23 July 2020).

¹³⁹ General Comment 37, paras 6, 10, 13, and 34; Hamilton, ‘The Meaning and Scope of “Assembly” in International Human Rights Law’ (2020) 69 *ICLQ* 521.

¹⁴⁰ *Women Victims of Sexual Torture in Atenco v Mexico*, IACtHR Series C No 371 (28 November 2018) para 175.

¹⁴¹ General Comment 37, para 15.

¹⁴² *Turchenyak et al v Belarus*, CCPR/C/112/D/1948/2009 (19 January 2015).

¹⁴³ *Alekseyev v Russian Federation*, CCPR/C/D/109/1873/2009 (2 December 2013); *Plattform ‘Ärzte Für Das Leben’ v Austria* (1988) 13 EHRR 204.

¹⁴⁴ General Comment 37, paras 23–9.

¹⁴⁵ 137/94, 149/94, 154/96, and 161/97, *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr and Civil Liberties Organisation v Nigeria*, 12th Activity Report of the ACommHPR (1998–1999) paras 1–2, 106.

¹⁴⁶ General Comment 37, paras 22, 26, 36, 48, and 53.

¹⁴⁷ (2008) 46 EHRR 38.

¹⁴⁸ General Comment 37, paras 70–3; *Coleman v Australia*, CCPR/C/87/D/1157/2003 (10 August 2005).

¹⁴⁹ CCPR/C/50/D/412/1990 (9 June 1994).

¹⁵⁰ *Frumkin v Russia* (2016) 63 EHRR 18.

¹⁵¹ General Comment 37, para 36.

¹⁵² CCPR/C/112/D/1948/2009 (19 January 2015).

¹⁵³ (2009) 48 EHRR 19. See also *Alekseyev v Russia*, App nos 4916/07, 25924/08 and 14599/09, Judgment of 21 October 2010.

¹⁵⁴ *Bukta and Others v Hungary* (2010) 51 EHRR 25.

¹⁵⁵ *Oya Ataman v Turkey*, App no 74552/01, Judgment of 5 December 2006.

¹⁵⁶ *Éva Molnár v Hungary*, App no 10346/05, Judgment of 7 October 2008.

¹⁵⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27 (21 May 2012) paras 33–8.

¹⁵⁸ Cases 771/03 and 841/03, IACommHR Report No 57/04 (14 October 2004).

¹⁵⁹ App nos 29580/12, 36847/12, 11252/13 and others, Judgment of 15 November 2018.

¹⁶⁰ *Gryb v Belarus*, CCPR/C/103/D/1316/2004 (26 October 2011).

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