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# COMPARATIVE STUDY ON FREEDOM OF ASSEMBLY AND ASSOCIATION (FRANCE-ESTONIA-FINLAND)



WEglobal



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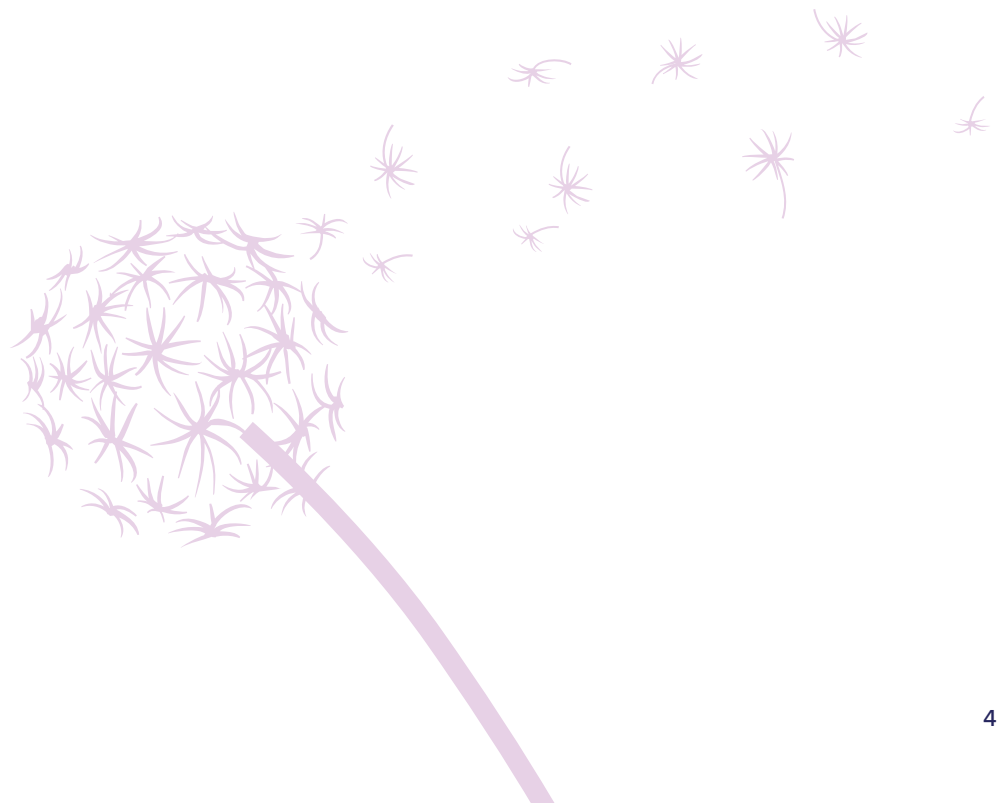
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## LIST OF ABBREVIATIONS

AAI	Independent Administrative Authority
CGLPL	Supervisor-General of Places of Deprivation of Liberty
CNCDH	National Consultative Commission on Human Rights
CSCE	Conference on Security and Cooperation in Europe
DDD	Defender of Rights
ECHR	European Convention on Human Rights
ELEA	Estonian Law Enforcement Act
ENSP & ENAP	National Police College of France & National School of Prison Administration
EU	European Union
EPC	Estonian Penal Code
FAA	Finnish Assembly Act
FCC	Finnish Criminal Code
FISC	French Internal Security Code
FraPC	French Penal Code
GANHRI	Global Alliance of National Human Rights Institutions
IGGN	French Inspectorate General of the National Gendarmerie
IGPN	Inspectorate General of the National Police
IGS	Inspectorate General of Services
NHRI	National Human Rights Institution
NPM	National Prevention Mechanism
OCLCH	Central Office for Combating Core International Crimes and Hate Crimes
OPCAT	UN Convention against Torture and other Cruel, Torture or Degrading Treatment or Punishment
PFS	French Reporting Platform
RIO	French Operator Identity Number
SNMO	French National Law Enforcement Plan
UN	United Nations



# Introduction



The freedom of assembly and association recognizes that everyone has the freedom to peacefully assemble and organize, which are the basic elements of democracy. To this end, the freedom of expression forms the basis and integral part of freedom of assembly and association. The freedom of expression, one of the cornerstones of democracy, constitutes the fundamental component and purpose of the effective use of freedom of assembly and association. The freedom of peaceful assembly and association serves as a means for the exercise of many other rights guaranteed under international law, including freedom of expression and the right to participate in the decision-making and conduct of public activities, and therefore, is considered an indispensable component of democracy.<sup>1</sup>

While the right to or freedom of assembly includes the right to organize meetings, sit-ins, strikes, rallies, events or protests, both offline and online, the right to or freedom of association covers the right of individuals to interact and organize among themselves and to form unions to collectively express, support, pursue and defend their common interests. The freedom of association is also defined as the freedom of individuals to form a collective organisation that represents them to protect their own interests.<sup>2</sup> The freedom of assembly and the freedom of association complement each other, and in relation to other freedoms, play an important role in ensuring pluralism, open-mindedness, inclusiveness and tolerance in a democratic society. It is an area of freedom that shapes individuals' ideas and, thus, their democratic choices, contributing to the individual's self-improvement. Therefore, it is a requirement of the positive obligations of states that interventions against the freedom of assembly and association must be lawful, pursue a legitimate purpose and comply with the criteria of necessity and proportionality in a democratic society while ensuring a healthy environment for the exercise of these freedoms.

Taking into account the place and importance of freedom of assembly and association in a democratic society, this study aims to raise awareness through country practices to ensure the effective use of these freedoms. This study discusses the regulation and implementation of this right in legislation by comparing the legislation and practices of France, Estonia and Finland, which are Member States of the European Union (EU) and parties to the European Convention on Human Rights (ECHR) and the United Nations (UN) International Covenant on Civil and Political Rights. This study examines above-mentioned three Member States in terms of their legislation, institutional structure and practices regarding freedom of assembly and association. In addition to being good examples for the purposes of the study, these Member States also ensure that different legal systems are compared by selecting a founding member of the EU, a country which joined the EU after the Eastern expansion, and a Northern European country.

To this end, in order to examine these Member States, the study first discusses international standards and EU *acquis*, followed by the examination of the legislation of each Member State regarding freedom of assembly and association and the purposes of these legislations. Afterwards, the study focuses on the institutional structures established by Member States to realize the freedom of assembly and association, and how this freedom is implemented in Member States.

## 1. International Standards



The first international document that protects freedom of assembly and association is the Universal Declaration of Human Rights. Article 20 of the Declaration states “*Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.*” In parallel with this provision, Article 15 of the Convention on the Rights of the Child lays down that “*States Parties recognize the rights of the child to*

<sup>1</sup> <https://www.ohchr.org/en/topic/freedom-assembly-and-association#:~:text=Everyone%20has%20the%20rights%20to,protests%2C%20both%20offline%20and%20online>.

<sup>2</sup> KARAN U., Örgütlenme ve Toplanma Özgürlüğü, Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi [Freedom of Association and Assembly, Individual Application to the Constitutional Court Handbook Series], No. 3, 2018, p. 3, [https://www.anayasa.gov.tr/media/3546/03\\_organme\\_toplanma.pdf](https://www.anayasa.gov.tr/media/3546/03_organme_toplanma.pdf)

*freedom of association and to freedom of peaceful assembly.”*

The ECHR regulates the issue in Article under the title of “Freedom of assembly and association”, stating “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.” The second paragraph of Article 11 regulates the reasons that may legitimize the restriction of the freedom of assembly and association: “No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

Another international document that imposes a number of positive and negative obligations on the States Parties regarding the freedom of assembly and association is the International Covenant on Civil and Political Rights. According to Article 21 of the Covenant governing the freedom of assembly, “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” Moreover, Article 22 governing the freedom of association states “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

The participating States to the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE) reaffirm that “everyone will have the right of peaceful assembly and demonstration” and “any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.” This Document lays down the fundamental principles regarding the freedom of peaceful assembly.<sup>3</sup> Accordingly, in general, it is underlined that

- There is a presumption in favour of the freedom of peaceful assembly, and any restrictions must be prescribed by law and must comply with the ECHR and the case-law of the European Court of Human Rights (ECtHR);
- Assemblies are as much a legitimate use of public space as commercial activity and the movement of vehicular and pedestrian traffic.
- States, in accordance with their positive obligations, must implement regulations and measures to ensure that meetings and demonstrations are held in venues preferred by the organisers;
- The principle of proportionality should be taken as a basis in the regulation and implementation of the limitation regime;
- As required by the principle of proportionality, the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference;
- Legislative provisions which limit the holding of assemblies only to certain specified sites or routes (whether in central or remote locations) seriously undermine the communicative purpose of freedom of assembly, and should thus be regarded as a prima facie violation of the right.

To this end, it should be emphasized that there is a presumption of legality in favour of the freedom of peaceful assembly. As underlined in this document, “As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden in law should be presumed to be permissible and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of the freedom should be clearly and explicitly established in law.”

On the other hand, States have a positive obligation to facilitate and protect the exercise of the right to freedom of peaceful assembly. As stated in this document, “It is the primary responsibility of the State to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation”. States should also protect freedom of assembly against interference by non-state actors so that it can be exercised effectively. States should facilitate the exercise of the freedom

<sup>3</sup> See [https://www.esithaklar.org/wp-content/uploads/2016/03/KopenhagBelgesi\\_TUR-.pdf](https://www.esithaklar.org/wp-content/uploads/2016/03/KopenhagBelgesi_TUR-.pdf).

of peaceful assembly by creating a healthy and conducive environment. As explained in this document, “An assembly should be deemed peaceful if its organisers have professed peaceful intentions and the conduct of the assembly is non-violent. The term ‘peaceful’ should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties”.

The 2019 recommendations of the Council of Europe Venice Commission on the subject state that the less intrusive notification procedure should be preferred instead of a permit system, and that the notification processes should follow an open, fair, transparent and simple process. At this point, for example, it is pointed out that the notification process should not be regulated excessively, and that the information requested for notification should be kept to a minimum level and that it should not be made bureaucratic and cumbersome.<sup>4</sup>

## 2. European Union Acquis



The freedom of assembly and association is governed by Article 12 of the EU Charter of Fundamental Rights, which closely establishes its relationship with democracy. Article 12 states “Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.”

With its Resolution of 14 February 2019 on the right to peaceful protest and the proportionate use of force<sup>5</sup>, the European Parliament underlines the proportionate use of force, especially in restrictions that may be imposed on the freedom of peaceful association, and the obligations of states in this regard. It is emphasized that the right to public debate and protest is vital to the functioning of democratic societies. The Resolution of the European Parliament:

1. Calls on the Member States to respect the rights of freedom of peaceful assembly, freedom of association and freedom of expression;
2. Stresses that public debate is vital to the functioning of democratic societies;
3. Condemns the adoption of restrictive laws concerning freedom of assembly in several Member States in recent years;
4. Condemns the use of violent and disproportionate interventions by state authorities during protests and peaceful demonstrations; encourages the relevant authorities to ensure a transparent, impartial, independent and effective investigation when the use of disproportionate force is suspected or has been alleged; recalls that law enforcement agencies must always be held accountable for the fulfilment of their duties and their compliance with the relevant legal and operational frameworks;
5. Calls on the Member States to ensure that the use of force by law enforcement authorities is always lawful, proportionate, necessary and the last resort, and that it preserves human life and physical integrity; notes that the indiscriminate use of force against crowds contravenes the principle of proportionality;
6. Notes the important role of journalists and photojournalists in reporting cases of disproportionate violence, and condemns all instances in which they have been deliberately targeted;
7. Believes that violence against peaceful demonstrators can never be a solution in a debate or in politics;
8. Acknowledges that the police, among whom there have also been many casualties, are operating in difficult conditions, owing in particular to the hostility of some protesters, but also to an excessive workload; condemns every kind of violence against individuals or property by violent, militant protesters, who only come for a violent purpose and harm the legitimacy of peaceful protests;

<sup>4</sup> European Commission for Democracy through Law (Venice Commission) OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Guidelines on Freedom of Peaceful Assembly. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017Rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017Rev-e)

<sup>5</sup> European Parliament resolution of 14 February 2019 on the right to peaceful protest and the proportionate use of force (2019/2569(RSP)) [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0127\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0127_EN.html)

9. Encourages the Member States' law enforcement officials to actively participate in training provided by the European Union Agency for Law Enforcement Training (CEPOL) on 'Public order – policing of major events'; encourages the Member States to exchange best practices in this regard;
10. Emphasises the importance of guaranteeing the safety of law enforcement officers, police officers and soldiers engaged in security maintenance operations during public protest demonstrations;
11. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe, the Organisation for Security and Cooperation in Europe and the United Nations.

These regulations that protect the freedom of assembly and association introduce a number of internationally accepted principles regarding the use and limitation of this freedom. The most important of these principles is that, in order to realize the right to freedom of assembly and demonstration, states have a positive obligation to respect this right, protect this right and facilitate the implementation of this right. On the other hand, any restrictions imposed by states on the freedom of assembly and association must be based on law and comply with the ECHR and other international human rights instruments, and these restrictions must be determined in accordance with the principle of proportionality. Another important issue is that when regulating freedom of assembly and association, the relevant authorities must not discriminate against any individual or group on any basis.

## 3. National Legislation of Member States on Freedom of Assembly and Association



### 3.1. France

In France, one of the founding members of the EU and a party to the ECHR and the International Covenant on Civil and Political Rights, although there is no explicit provision regarding the freedom of assembly and association in the Constitution<sup>6</sup>, the right to demonstrate is a fundamental right. In its decision of 4 April 2019 (Conseil constit, 4-4-19, decision no. 2019-780), the Constitutional Council considers that the "right to the collective expression of ideas and opinions" derives from Article 11 of the Declaration of Human and Civic Rights of 1789. Although the authorities are not required to obtain prior permission for a demonstration or assembly, the Internal Security Code requires that such collective expressions be declared in advance (Articles L 211-1 to L 211-4 of the Internal Security Code). In general, the government cannot, on its own initiative, by decree, subject demonstrations on public roads to a permit system, even in times of emergency, without a provision of law granting it this authority (CE, 15-1-21, n°441265, FO et a. c/Ministère de l'intérieur).

Before prohibiting a demonstration, the administrative authority has some tools to ensure that the demonstration runs smoothly, such as changing the timetable or planned route, prohibiting certain banners, etc.

A decision to prohibit a demonstration that requires justification may be taken, except in urgent or exceptional cases, only after the organizers of the demonstration have been given the opportunity to submit written comments (CE, 25-6-03, no. 223444). In addition to verifying the reality of the threat to public order, the administrative judge must, as part of the proportionality review, determine whether the administrative authority has other means to ensure public order that are less restrictive than the prohibition (CE, 12-11-97, no. 169295), such as deploying larger police forces.

The prohibition on demonstration is implemented through an order immediately communicated to the organizers of the demonstration. The organizers may apply to the administrative court for interim measures against the decision.

In any case, when the governor issues an order prohibiting demonstrations in a particular area, he/she is obliged to publish the order within a reasonable period of time, in particular on the governor's website, so that interested parties can object to this order: The late publication or non-publication of the orders constitutes a serious and manifestly unlawful violation of the right of the parties concerned to have an effective remedy before the interim measures judge (TA Paris, 4-4-23, no. 2307385/9).

<sup>6</sup> [https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank\\_mm/anglais/constitution\\_anglais\\_oct2009.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constitution_anglais_oct2009.pdf)

### Cautionary decision

Within the scope of the “référé-liberté” procedure, which regulates the possibility of objecting before the administrative judicial body regarding the decision taken by the administration regarding a fundamental freedom in the French system, if the administration seriously and illegally violates a fundamental freedom, the judge may be asked to take a cautionary decision to protect this freedom. The judge is obliged to make a decision within 48 hours and the assistance of a lawyer is not mandatory. The parties may appeal against the summary decision to the Council of State within 15 days. The Council of State is also obliged to decide within 48 hours.

When acts of violence (Articles 222-7 to 222-13 and 222-14-2) regulated in the French Penal Code (FraPC)<sup>7</sup> are committed during demonstrations on public roads, a prohibition on participation in demonstrations on public roads may be imposed for a period not exceeding three years pursuant to Article 222-47 of the FraPC. The penalty of prohibition from participating in demonstrations on public roads for a period not exceeding three years entails the imposition of a prohibition on demonstrations on public roads in certain places determined by the court.

Article 4 of the Constitution provides for that political groups shall be formed and carry on their activities freely so as to respect the principles of national sovereignty and democracy. This Article also states that statutes shall guarantee the expression of diverse opinions and the equitable participation of political parties and groups in the democratic life of the Nation, while such groups shall contribute to the implementation of the principle set out in Article 1 of the Constitution. Moreover, Article 2 of the Declaration of Human and Civic Rights, considered to be binding in the preamble of the Constitution of the French Republic, protects the right to assembly and demonstration by stating “*The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression.*”

Article 431-3 of the FraPC lays down which activities can be considered as “assembly” (*attroupements*). Moreover, Article 431-1 states “concerted obstruction, with the use of threats, to the exercise of the freedom of expression, labour, association, assembly or demonstration is punished by one year’s imprisonment and a fine of €15,000”. If such concerted obstruction is carried out with the use of blows, acts of violence, or acts of destruction or damage within the meaning of the FraPC, such act is punished by three years’ imprisonment and a fine of €45,000. In addition, Article 431-2 regarding such offences provides for additional penalties such as forfeiture of civic, civil and family rights, prohibition to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, and prohibition to hold or carry a weapon requiring a licence for a maximum period of five years.

The French Internal Security Code (FISC)<sup>8</sup> also lays down restrictions and requirements regarding the exercise of freedom of assembly and association. The FISC classifies activities as “demonstrations on public highways”, “musical festivals”, “profit-oriented sports, entertainment or cultural events” and “assemblies” (*attroupements*), which are subject to different provisions. According to Article L211-1 of the FISC, all processions, parades, meetings and demonstrations on public highways are subject to prior notification, except public demonstrations held in accordance with local customs. The notification should be made to the institutions specified in Article L211-2 of the FISC. The notification must include the purpose of the event, the meeting place of the groups invited to participate, the date and time and the planned route, if any, of the event. The notification must be signed by at least one of the people organizing such demonstration. Article L211-4 of the FISC states that if the police authorities are of the opinion that the planned event may disrupt public order, such an event can be prohibited with an order, which should be immediately notified to the persons who signed the notification. The prohibition order should be submitted within twenty-four hours by the administrative head of the region to the representative of the region where the demonstration is to be held. On the other hand, if circumstances give rise to concerns about serious disruption of public order, the state’s representative in the region, from the day the demonstration is announced, or if it has not been announced, as soon as the representative becomes aware of it, may prohibit, from the beginning of the twenty-four hours before the demonstration until the demonstration dispersed, the carrying and transfer without a legitimate reason of objects that may constitute weapons within the meaning of Article 132-75 of the FraCP. Article L211-3 of the FISC states that the geographical area subject to such prohibition should be limited to the activity area and neighbouring areas, and the scope of the prohibition should be proportionate to the needs arising from the circumstances.

<sup>7</sup> [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070719/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/)

<sup>8</sup> [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000025503132?etatTexte=VIGUEUR&etatTexte=VIGUEUR\\_DIFF](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000025503132?etatTexte=VIGUEUR&etatTexte=VIGUEUR_DIFF)

According to Article L211-5 of the FISC, in order to hold musical festivals, the organizers of the event must submit a notification to the competent authorities, which should include the planned measures to guarantee public safety, health, hygiene and peace. Pursuant to Article L211-7, the state authorities or law enforcement authorities of the relevant territory may request the organizers of the meeting to take any necessary measures to ensure the smooth performance of the meeting, in particular to provide security services or medical facilities, and if such activity is likely to seriously disturb public order, or if the measures taken by the organizer to ensure the smooth performance of the meeting are insufficient despite prior formal notification to the organiser, the authorities may prohibit such meeting. Article L211-15 states that if the meeting is held without prior notice or against the prohibition imposed by the state authority in that area, law enforcement officers may confiscate the equipment used for up to six months. In accordance with Article L211-11 of the FISC, organizers of for-profit sports, entertainment or cultural events may be held responsible for providing security services, if justified by the purpose or scale of the event, and are also obliged to pay additional expenses borne by the state if the state provides security services that cannot be attributed to the normal obligations of law enforcement forces.

Articles L211-9 and L211-10 of the FISC introduce provisions regarding “assemblies” (*attroupements*), referring to Article 431-3 of the FraPC for the definition of “assembly”. According to this Article, “an assembly” is any gathering of persons on the public highway or in any place open to the public where it is liable to breach the public peace. According to Article L211-9 of the Civil Code, an assembly may be dispersed upon failure to respond to two warnings to disperse immediately made to the assembled persons by government officials in the relevant area, the mayor, or any police officer responsible for public safety. Moreover, law enforcement officers called to disperse an assembly may use direct force if violence or aggression is used against them by the gathered persons or if they are otherwise unable to defend the area. Article L211-10 states that the state is legally responsible for damages and injuries resulting from crimes and misdemeanours committed by armed or unarmed groups using open force or violence against persons or property. The same provision also provides for that the state may have recourse against public officials who cause damage in accordance with the relevant provisions of the French Civil Code.

In Article L211-11-1 of the FSIC, it is laid down that a decree (*décret*), which is an executive action, may determine activities exposed to a risk of acts of terrorism due to their nature and scale of participation. Other provisions in the French legal system that provide for certain specific and exceptional limitations and requirements regarding the freedom of assembly and association on the issues they regulate are introduced in the Sports Code, the Highways Code, the Civil Aviation Code, the Environmental Code and the Transport Code.

The FraPC is referred to regarding the sanctions to be applied to people who organize assemblies and demonstrations if the above-mentioned obligations are not complied with. In accordance with Article 431-9 of the FraPC, “the organisation of a demonstration on the public highway without filing a prior notice pursuant to the conditions laid down by law”, “the organisation of a demonstration on the public highway which has been prohibited pursuant to the conditions laid down by the law” and “drawing up an inaccurate or incomplete notice liable to mislead about the objective or conditions of the proposed demonstration” are punished by six months’ imprisonment and a fine of €7,500. Article 431-9-1 states that the act by a person to voluntarily conceal all or part of his/her face without legitimate reason, within or in the immediate vicinity of a demonstration on a public highway during or at the end of which disturbances to public order are committed or likely to be committed, is punishable by one year of imprisonment and a fine of €15,000.<sup>9</sup> Moreover, Article 431-10 of the FraPC provides for that participating in a demonstration or public meeting while carrying a weapon is punished by three years’ imprisonment and a fine of €45,000. In addition, pursuant to Article 431-11 of the FraPC, in case of committing the offences laid down in Articles 431-9 to 431-10, such natural persons convicted of such offences also incur the penalties of forfeiture of civic, civil and family rights, prohibition to hold or carry a weapon requiring a licence for a maximum period of five years; confiscation of one or more weapons which belonged to the convicted person or which are freely available to him, and area banishment. On the other hand, pursuant to Article 431-12, any alien convicted of any of such offences may be banished from French territory either permanently or for a maximum period of ten years in accordance with the conditions laid down under article 131-30.

As explained above, the concept of “assembly” (*attroupement*) in French criminal law refers to any gathering of people that is likely to disturb the peace on a public highway or in a public place. Offences and penalties related to assemblies are separately regulated in the FraPC. Moreover, Articles L211-9 and L211-10 of the FISC introduce provisions regarding assemblies, Pursuant to Article 431-4, wilful participation in an unlawful assembly, after the

<sup>9</sup> This provision added to the FraPC on 10 April 2019 with Law No. 2019-290 aims to facilitate the identification, capture and punishment of perpetrators of crimes committed during demonstrations. CCPR/C/FRA/6, paragraph 232.

orders have been issued, committed by a person not carrying a weapon is punished by one year's imprisonment and a fine of €15,000. If the perpetrator voluntarily hides all or part of his face to avoid being identified, the penalty for such offence is three years' imprisonment and a fine of €45,000. In accordance with Article 431-5 of the FraPC, wilful participation in an assembly whilst carrying a weapon is punished by three years' imprisonment and a fine of €45,000, and where the person carrying a weapon has wilfully continued to participate in an assembly after the orders have been issued, the penalty is increased to five years' imprisonment and to a fine of €75,000. Moreover, if the perpetrator carrying a weapon voluntarily hides all or part of his face to avoid being identified, the penalty for such offence is five years' imprisonment and a fine of €75,000. Article 431-6 of the FraPC lays down that directly inciting an armed assembly, either through shouting or public speeches, or through writings, whether displayed or distributed, or through writings, words or pictures broadcast in any way, is punished by one year's imprisonment and a fine of €15,000. Where the incitement is acted upon, the penalty is increased to seven years' imprisonment and to a fine of €100,000. In addition, pursuant to Article 431-7 of the FraPC, in case of committing the offences laid down in Articles 431-5 and 431-6, such natural persons convicted of any of such offences also incur the penalties of forfeiture of civic, civil and family rights, prohibition to hold or carry a weapon requiring a licence, for a maximum period of five years, confiscation of one or more weapons belonging to the convicted person or which are freely available to him, and area banishment. On the other hand, in accordance with Article 431-8, any alien convicted of any of such offences may be banished from French territory either permanently or for a maximum period of ten years, pursuant to the conditions set out under article 131-30.

## 3.2. Estonia

In Estonia, a member of the EU since 2004 and a party to the ECHR and the International Covenant on Civil and Political Rights, the freedom of assembly and association is regulated in Article 47 of the Constitution of the Republic of Estonia<sup>10</sup>. According to this provision, everyone has the right to assemble peacefully and to conduct meetings without prior permission. However, this right may be circumscribed in the cases and pursuant to a procedure provided by law to safeguard national security, maintain public order, uphold public morality, ensure the safety of traffic and the safety of participants of the meeting, or to prevent the spread of an infectious disease.

In the Estonian legal system, Section 158 of the Estonian Penal Code (EPC)<sup>11</sup> includes provisions protecting the right to assembly and association. According to this provision, interference with or violent dispersion of lawfully organised public meeting is punishable by a pecuniary punishment or up to one year of imprisonment, and the same act, if committed by a legal person, is punishable by a pecuniary punishment.

Moreover, the Estonian Law Enforcement Act (ELEA)<sup>12</sup> includes provisions regarding the conditions under which and how the right to assembly and association can be exercised. Pursuant to Section 58, a public gathering can be a public "meeting" or a public "event". A meeting is defined as people being together in a public place for a common purpose of forming or expressing their opinions while an event is defined as an entertainment event, competition, performance, commercial event or other similar event where people are together and which takes place in a public place and is aimed at the public but which is not a meeting.

Section 62 of the ELEA regulates prohibited meetings according to their purpose. According to Section 62, it is prohibited to organise or hold a meeting which is directed against the independence and sovereignty of the Republic of Estonia or at changing the constitutional order of the Republic of Estonia by force; incites a breach of the territorial integrity of the Republic of Estonia by force; incites hatred, violence or discrimination on the basis of nationality, race, colour, sex, language, origin, religion, sexual orientation, political views, or property or social status; or aims to commit criminal offences or to incite them. Moreover, Section 63 of the ELEA lays down prohibitions on places for holding meetings. Pursuant to this provision, it is prohibited to hold a meeting in the area of an epidemic spread of a highly dangerous communicable disease, at a border crossing point and closer than 100 metres to the external border of the European Union, or in the protection zone for an electrical installation with the nominal voltage of over 1000 volts.

Organisers of meetings are regulated by Section 64 of the ELEA. This provision states that a meeting may be organised by an adult natural person with active legal capacity who is a citizen of the European Union or who

10 <https://www.riigiteataja.ee/en/eli/521052015001/consolide>

11 <https://www.riigiteataja.ee/en/eli/522012015002/consolide>

12 <https://www.riigiteataja.ee/en/eli/504012016003/consolide>

holds a long-term residence permit or who is an alien staying in Estonia on the basis of a permanent right of residence; or a legal person. In accordance with Section 64(3), an organiser of a meeting shall be required to guarantee the peaceful holding of the meeting and the safety of the participants in the meeting; guarantee that any objects used in holding of the meeting do not endanger persons not participating in the meeting, any property or the environment, immediately terminate the meeting if the meeting causes a significant or serious immediate threat or if circumstances specified in section 62 of this Act become evident, be available through a means of communication specified in clause 68 (2) 5) or 6) of this Act from the presentation of the meeting notice until one day has passed from the end of the meeting, comply with any orders given by the police or other competent law enforcement agency to ensure order at the meeting, ensure the removal of structures specified in clause 68 (2) 9) of this Act from the place of holding of the meeting within reasonable time after the end of the meeting, and ensure that after the end of the meeting any waste generated as a result of the meeting is removed from the place of holding of the meeting. Moreover, an organiser of a meeting may also require a person who has committed a gross violation of order at the meeting to leave the meeting.

Section 65 of the ELEA lays down the provisions regarding the “meeting steward” and provides for a number of obligations. If a meeting takes place outside a building or a construction intended for organising gatherings, the organiser of the meeting shall be required to designate a sufficient number of stewards to ensure order at the meeting. A meeting steward shall be required to assist the organiser of a meeting in the performance of obligations, stay during the meeting at the place of holding of the meeting, and wear markings which enable recognition as a steward during the meeting. In accordance with Section 66 of the ELEA, a “person taking part in a meeting” shall be required to comply with the orders given by the organiser of the meeting or a steward to ensure order at the meeting, and immediately leave the meeting if he/she is requested by the organiser of the meeting to leave the meeting if committed a gross violation of order at the meeting.

Section 67 of the ELEA regulates the prior notification procedure for meetings. According to this provision, an organiser of a meeting shall give notice to the governorship of the place of holding of the meeting concerning holding of a meeting no later than four working days, but no earlier than three months, before the day of holding of the meeting if the holding of the meeting requires reorganisation of traffic, or the meeting is intended to be held outside a building or a construction intended for holding gatherings and for the holding of the meeting there are plans to set up a tent, stage, stand or other large-scale structure, or use sound or lighting devices or it may disturb or prevent the usual possession of the building or construction in another manner. No prior notice needs to be given of a spontaneously assembled meeting (spontaneous meeting). The matters that must be covered by a notice to be submitted to the governorship are set out in Section 68 of the ELEA. According to this provision, if a meeting notice complies with the requirements provided for, the governorship shall accept the notice and immediately issue to the organiser of the meeting a written notification of receipt of the meeting notice.

In some cases, the ELEA lays down special control measures to be taken by the state regarding the organisation and conduct of a meeting. Pursuant to Section 24(6) of the ELEA, including a general provision regarding special control measures to be taken by law enforcement officers, direct coercion may not be applied for the prevention of a threat unless it is necessary for the prevention of a significant or serious threat. Section 69 of the ELEA states that a governorship may require an organiser of a meeting to change the time or place of holding of the meeting if a notice of holding another meeting at the same place at the same time has been previously received or it is unavoidable in order to avoid a serious immediate threat or to counter it. Moreover, in accordance with Section 70 of the ELEA, the police may require an organiser of a meeting to increase the number of stewards at the meeting if there is reason to believe that the designated steward will not be able to assist the organiser of the meeting sufficiently, or substitute the designated steward for another person if there is reason to believe that this person will not be able to fulfil the duties of a meeting steward. Moreover, governor may require an organiser of a meeting to fulfil any obligations not specified in this Act if it is unavoidable for preventing or countering a serious threat. In accordance with Section 71, the police may remove a person from a meeting if it is unavoidable and a less infringing measure than ending the meeting and if an immediate serious threat is arising from the person being removed, his or her behaviour exhibits circumstances specified in section 62 of this Act, or it is necessary to counter an immediate threat to the life or physical inviolability of the person being removed and it is not possible to counter it by applying another measure, except for the measure specified in section 73 of this Act. Moreover, in order to remove a person from a meeting, direct coercion may be used insofar as it is unavoidable for the achievement of the objective.

Pursuant to Section 72 of the ELEA, governor may prohibit the holding of a meeting if the organiser of the meeting does not agree to a restriction imposed on him or her on the basis of section 69 of this Act or fails to comply with it, or there is reason to believe that holding of the meeting causes a serious immediate threat and it is not possible to counter the threat by using a less infringing measure. On the other hand, according to Section 73/1, provided as a mandatory provision, the police shall give an organiser of a meeting an order to end the meeting if holding of the meeting is prohibited on the basis of section 62 or 72 of this Act or if the meeting is held at a place specified in section 63 of this Act. Subsection 2 of Section 73 regulates termination within the discretion of the police. According to this provision, the police may give an organiser of a meeting an order to end the meeting if the organiser of the meeting fails to comply with a restriction imposed on him or her on the basis of section 69 or 70 of this Act, holding of the meeting causes an immediate serious threat and it is not possible to counter the threat by using a less infringing measure, or the life or physical inviolability of the participants in the meeting is threatened by an immediate threat which cannot be countered by using a less infringing measure. Pursuant to Section 73(3), if an order specified in Subsection (1) or (2) of Section 73 cannot be given to an organiser of a meeting or if it is to no avail, the police shall give an order to end the meeting to the persons taking part in the meeting. Moreover, in the cases provided for in Subsections (1) through (3) of Section 73, the police may hinder persons in gathering at the place of holding of a meeting. Finally, in accordance with Section 73(5), if a person taking part in a meeting fails to comply with an order to end the meeting, direct coercion may be used with regard to him or her insofar as it is unavoidable for disbanding the meeting.

Section 74 of the ELEA titled "Direct Coercion" includes provisions regarding the authority of the law enforcement to use force, which is an important issue in terms of the use of the right to assembly and demonstration. According to this provision, direct coercion shall mean affecting of a natural person (hereinafter person), an animal or a thing by physical force, special equipment or a weapon. Pursuant to Section 75 of the ELEA, physical force, special equipment or a weapon may be used by the police. Other law enforcement agencies may use physical force, special equipment or a weapon only in the cases provided by law. Section 78 of the ELEA provides for the requirement of a warning before the application of direct coercion. In accordance with this provision, law enforcement officers caution people beforehand about the application of direct coercion against a crowd with the consideration that those who wish would have the possibility to retreat voluntarily. In applying direct coercion against a crowd, it is not required to caution people against the use of a technical barrier with regard to them. Cautioning may only be neglected if cautioning is not possible due to the urgent need to counter an immediate serious threat or eliminate a disturbance. Cautioning against the use of a firearm against a crowd may not be neglected. Section 76 of the ELEA regulates the admissibility of application of direct coercion. According to this provision, the police or, in the cases provided by law, another law enforcement agency may only apply direct coercion if ensuring the fulfilment of the obligation to ascertain or counter a threat or eliminate a disturbance imposed on a person by an administrative act is not possible by another administrative coercive measure or is not possible in a timely manner.

Section 79-1 of the ELEA states that for countering a serious threat, the police or, in the cases provided by law, another law enforcement agency may use a water cannon against a crowd if countering the threat by another measure of direct coercion, except for a firearm, is not possible or is not possible in a timely manner, and with the consideration that in using a water cannon, every effort is made in order not to jeopardise another significant benefit. Moreover, pursuant to Section 81(1) of the ELEA, the police or, in the cases provided by law, another law enforcement agency may use a firearm for countering a serious threat if countering the threat by another measure of direct coercion is not possible or is not possible in a timely manner, and with the consideration that in using a firearm every effort is made in order not to jeopardise another significant benefit. Section 81(2) lays down that the police or another law enforcement agency may only use a firearm with regard to a person as a last resort to make him or her incapable of attacking, offering resistance or escaping if it is not possible to achieve this objective by using a firearm against an animal or a thing or by another measure of direct coercion and if it is also necessary in order to: counter an immediate threat to life or physical inviolability, obstruct the commission of an imminent or already on-going violent criminal offence in the first degree or such a criminal offence for which life imprisonment may be sentenced as a punishment, or detain a suspect, accused or convicted offender or to hinder his or her escape if he or she may be deprived of liberty pursuant to law or if he or she has been deprived of it pursuant to law in relation to the commission of a violent criminal offence in the first degree or such a criminal offence for which he or she may be sentenced to life imprisonment as a punishment. Pursuant to Section 77 of the ELEA, if by the application of direct coercion, a bodily injury is caused to a person, a law enforcement agency shall be required to guarantee first aid to the person at the first opportunity and, if necessary, call an ambulance.

In case a meeting is held in violation of the above-mentioned provisions regarding the exercise of the right to assembly and association in the EEA, the relevant articles of the ECHR will also apply. In accordance with Section 264-1 of the ECHR titled “Violation of requirements for holding public meetings”, violation of requirements established with regard to holding public meetings is punishable by a fine. Moreover, Section 265 states that organising an unauthorised public meeting or incitement to participation in such meeting is punishable by a pecuniary punishment or up to one year of imprisonment. If committed by a legal person, the same act is punishable by a pecuniary punishment.

### 3.3. Finland

In Finland, a member of the EU since 1995 and a party to the ECHR and the International Covenant on Civil and Political Rights, the freedom of assembly and association is regulated in Article 13 of the Constitution of the Republic of Finland<sup>13</sup>. According to this provision, everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them. Everyone has the freedom of association. Freedom of association entails the right to form an association without a permit, to be a member or not to be a member of an association and to participate in the activities of an association. The freedom to form trade unions and to organise in order to look after other interests is likewise guaranteed. More detailed provisions on the exercise of the freedom of assembly and the freedom of association are laid down by an Act.

In the Finnish legal system, Finnish Criminal Code (FCC)<sup>14</sup> includes provisions protecting the right to assembly and association. According to Section 5, titled “Offences against political rights”, of Chapter 14 of the FCC, a person who by violence or by a threat of serious injury to the well-being of another prevents him or her from expressing his or her opinion of public affairs in a meeting or other gathering arranged for that purpose, in the media or otherwise publicly, participating in a meeting, march or other gathering arranged for the conduct of public affairs, or founding an association intended for the conduct of public affairs or joining, belonging to or being active in such an association, shall be sentenced for violation of political freedom to a fine or to imprisonment for at most two years. Also, a person who in the manner referred to above makes another involuntarily express his or her opinion of public affairs in a meeting or other gathering, in the media or otherwise publicly, participate in a gathering arranged for the conduct of public affairs, or join, belong to or be active in an association intended for the conduct of public affairs, shall be sentenced for violation of political freedom. In accordance with Section 6 of Chapter 14 of the FCC, a person who, by using or threatening to use violence, unlawfully prevents the arrangement of a meeting, march or other occasion intended for the conduct of public affairs shall be sentenced for prevention of a public meeting to a fine or to imprisonment for at most two years. According to Section 5, titled “Employment offences”, of Chapter 47 of the FCC, an employer, a representative of an employer or an employee who prevents an employee from establishing a lawful professional or political association or from exercising his or her right to join or belong to such an association or to participate in its activities, or employees or their trade organisation from appointing or electing for a workplace a shop steward, an elected representative, an occupational safety and health representative or a personnel representative in group cooperation shall be sentenced for a violation of the right to organise to a fine. Moreover, a person who forces an employee to join or belong to a professional or political association shall also be sentenced for a violation of the right to organise.

Section 9 of Chapter 11 of the FCC contains the penal provision for discrimination in the organization of a public meeting or event. According to this provision, a person who, in the arrangement of a public occasion or meeting, without an acceptable reason, refuses someone entry to the occasion or meeting or ejects him or her or places someone in a manifestly unequal or otherwise essentially inferior position on the basis of his or her race, national or ethnic origin, colour, language, sex, age, family relations, sexual orientation, genetic inheritance, disability or state of health, or religion, societal opinion, political or vocational activities or another comparable factor shall be sentenced for discrimination to a fine or to imprisonment for at most six months.

Moreover, the Finnish Assembly Act (FAA)<sup>15</sup> includes provisions regarding the conditions which and how the right to assembly and association can be exercised. As stated in Section 1, the FAA aims to guarantee the exercise of the freedom of assembly, as provided in the Constitution of Finland, as well as to lay down the necessary regulatory provisions on the arrangement of public meetings and public events. Section 2 states that this Act

13 [https://oikeusministerio.fi/en/constitution-of-finland?\\_\\_cf\\_chl\\_tk=.RaGVXJwjLVf.f2iJvb3rEfqLePETakIFmqLG1mC5d0-1700825522-0-gaNycGzNELs](https://oikeusministerio.fi/en/constitution-of-finland?__cf_chl_tk=.RaGVXJwjLVf.f2iJvb3rEfqLePETakIFmqLG1mC5d0-1700825522-0-gaNycGzNELs)

14 <https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>

15 [https://finlex.fi/en/laki/kaannokset/1999/en19990530\\_20020824.pdf](https://finlex.fi/en/laki/kaannokset/1999/en19990530_20020824.pdf)

applies to public meetings and public events. In the FAA, a “public meeting” is defined as a demonstration or other assembly arranged for the exercise of the freedom of assembly, open for participation or observation also to persons who have not been expressly invited to it. However, a demonstration arranged merely for the expression of the opinion of an individual person is not considered to be a public meeting. Moreover, the FAA defines a “public event” as amusements, contests, performances and other comparable events that are open to the public, but not considered to be public meetings. It is also stated that the FAA does not apply to official events arranged by public corporations, nor to the characteristic events of religious communities where these are arranged for the purpose of public worship in the community’s own premises or in a comparable place.

Section 6 of the FCC reiterates the provision in the Constitution that “everyone has the right to participate in a public meeting” while Section 3 regulates the general principles regarding the arrangement of a public meeting or event. According to this provision, a public meeting and a public event shall be arranged peacefully, without compromising the safety of the participants or bystanders and without infringing their rights. When arranging an event, care shall be taken that the assembly does not cause significant damage to the environment. In addition, when arranging a public meeting or public event, no one shall without an acceptable reason be treated differently from others on the basis of personal circumstances. Pursuant to Section 4 of the FAA, the public authorities shall promote the exercise of the freedom of assembly by protecting the right to assemble without hindrance and by providing for the necessities in the arrangement of public meetings.

Section 5 of the FAA regulates who has the right to organize a public meeting. According to this provision, public meetings may be arranged by private persons with full legal capacity, by corporations and by foundations. A person who is without full legal capacity but who has attained 15 years of age may arrange a public meeting, unless it is evident that he/she will not be capable of fulfilling the requirements that the law imposes on the arranger of a meeting. Other persons without full legal capacity may arrange public meetings together with persons with full legal capacity. Section 12 of the FAA states that a public event may be arranged by a person with full legal capacity, by a corporation and by a foundation. A person without full legal capacity may arrange a public event together with a person with full legal capacity. The FAA imposes certain duties on the person organizing a public meeting or event. According to Section 17, the arranger of a public meeting and a public event shall see to the maintenance of order and security and to the compliance with the law in the event. If a chairperson is elected for a public meeting, that person shall be subject to the same duties. Moreover, in accordance with Section 18, the arranger of a public meeting or a public event may appoint persons to maintain order.

According to Section 7 of the FAA regulating the duty of notification for public meetings, when a public meeting is to be arranged outdoors in a public place, the arranger shall notify the local police of the same verbally or in writing at least six hours before the beginning of the meeting. Also, a later notification may be considered valid, if the arrangement of the meeting does not cause significant disruption to public order. The information that must be included in such notification is laid down in Section 8 of the FAA. Section 14 of the FAA states that in case of a public event, the arranger shall notify the police of the arrangement of a public event in writing at least five days before the beginning of the event. Similarly, the police may accept also a notification made later, if the arrangement of the event will not disrupt public order and if the late notification will not unreasonably hamper the performance of the statutory duties of the police. However, according to this provision, no notification need be made on a public event which, owing to the low number of participants, the nature of the event or the place of the event, does not require measures for the maintenance of order or security nor for the prevention of inconvenience to the bystanders or damage to the environment, nor special traffic arrangements. Moreover, the provisions in Section 8 on the notification on a public meeting apply to the contents of the notification on a public event. Where necessary, the police may require information also on other circumstances pertaining to the arrangement of the public event.

Section 9 of the FAA introduces provisions regarding places where public meetings can be organised. According to this provision, a public meeting may be arranged outdoors in a public square, opening, street, and in another similar public place that is suitable for meetings, without the permission of the owner or holder. However, the use of such a place for meeting purposes may be restricted, if it is to be anticipated that the arrangement of the meeting will cause unreasonable inconvenience to the owner or holder or unreasonable damage to the environment. Moreover, Section 13 of the FAA lays down that in case of public events, the arranger of a public event shall obtain the consent of the owner or holder of the place of the event for it being used for this purpose. There may be some restrictions to the place of public meetings, which are governed by Section 10 of the FAA. According to this provision, if several public meetings are notified to be arranged in the same place at the same

time, and their simultaneous arrangement is not possible, the arranger who first submitted the notification shall have precedence, unless the meeting place is traditionally or contractually to be used for another meeting. If the arrangement of a public meeting in the notified place will compromise the safety of people, cause considerable damage to the environment or damage to property, cause unreasonable inconvenience to bystanders, traffic or an event pertaining to an international conference arranged by a public corporation or another event requiring similar security arrangements, the police may, after having negotiated with the contact person, move the meeting to another place suitable in view of the purpose of the meeting. In addition, where the flow of the traffic so requires and after having negotiated with the contact person, the police may order the route of a procession to be altered. Finally, it is stated that the police may undertake the measures referred to in this section without negotiating with the contact person, if the contact person cannot be reached.

While Section 15 of the FAA contains provisions regarding the prohibition of a public event, the Act does not introduce any provision regarding the prohibition of a public meeting. The FAA distinguishes between a “public event” and a “public meeting” and defines them separately. Although there are provisions regarding the prohibition of an event, the Act does not prohibit meetings. According to Section 15, the police may prohibit the arrangement of a public event, if other measures are not enough and if it is evident that the event is illegal or its arrangement essentially violates this Act or the orders issued by virtue of this Act, order and security cannot be maintained in the event, the arrangement of the event will endanger health or cause damage to property, or the arrangement of the event will cause significant inconvenience to bystanders or damage to the environment.

Provisions regarding the interruption and dispersal of a public meeting or event are laid down in Sections 21 and 22 of the FAA. Pursuant to Section 21, the arranger of a public meeting shall interrupt the meeting or order it to disperse, if continuing the meeting would cause immediate danger to the safety of the people, property or the environment. Moreover, if other measures have not proven adequate, the police has the right to interrupt a public meeting or order it to disperse in situations referred to above and in situations where the public meeting is unlawfully arranged. Section 22 states that under circumstances referred to in Section 15, the arranger of a public event shall cancel or interrupt the event or order it to disperse. Under the same circumstances, the police also has the same authority if other measures have not proven adequate.

In accordance with Section 11 of the FAA, in a public meeting, banners, insignia, loudspeakers and other regular meeting equipment may be used and temporary constructions erected. In this situation, the arranger shall see to it that no danger or unreasonable inconvenience or damage is thereby caused to the participants, bystanders or the environment. Section 23 contains regulations regarding the objects and substances that are prohibited to be used in a public meeting or event. According to this provision, in a public meeting or a public event or in their immediate vicinity, no one shall keep a firearm, explosives, edged weapon or other comparable object or substance in his/her possession, where there is reason to believe that it could be used in the commission of a criminal offence against the life or health of another person. Moreover, the arranger and the police have the right to prohibit the possession of intoxicating substances in a public meeting or a public event.

Section 19 of the FAA regulates the duties of the police in a public meeting or event. Accordingly, it is the duty of the police to safeguard the exercise of the freedom of assembly. In addition, the police shall see to it that the arranger and the chairperson fulfil their duties under this Act and, where necessary, undertake measures for the maintenance of order and security in a public meeting or a public event. When in the performance of their duties, a police officer and a civil protection officer shall have free access to a public meeting and a public event. Moreover, pursuant to Section 20, where necessary, the police may, before or during the event, issue orders or instructions for the purpose of the maintenance of public order or security, the prevention of damage to health, property or the environment or the reduction of the damage to the environment, the safeguarding of the rights and interests of bystanders, and the ensuring of the free flow of traffic.

Pursuant to Section 19 of the Finnish Police Act, police officers have the right to order a crowd to disperse or move if the gathering threatens public order and security or obstructs traffic. If an order to disperse or move is not obeyed, police officers have the right to use force to disperse the crowd and to apprehend noncompliant persons. Apprehended persons shall be released as soon as the purpose of the measure has been served.<sup>16</sup>

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16 For the Police Act see [https://www.finlex.fi/fi/laki/kaannokset/1995/en19950493\\_20070560.pdf](https://www.finlex.fi/fi/laki/kaannokset/1995/en19950493_20070560.pdf)

## 4. Institutional Structures of Member States Regarding the Freedom of Assembly and Association



### 4.1. France

The “Defender of Rights” (Défenseur des Droits - DDD) is an independent public institution established in 2011 and regulated in Article 71-1 of the Constitution of the French Republic. In addition to receiving complaints, the Defender of Rights also has the authority to take action and file lawsuits ex officio. Aiming to defend people whose rights have been violated and to ensure equality in access to rights, the Defender of Rights is an important institution which is responsible for ensuring that the officers carrying out security activities in France comply with the ethical rules, although it does not have the task of directly implementing the prohibition of torture and ill-treatment.<sup>17</sup> The institution receives many applications regarding police violence, especially during meetings and demonstrations, and takes ex officio action in various cases which are published by various press organs.<sup>18</sup>

In August 2020, a hate crimes unit was established under the Central Office for Combating Core International Crimes and Hate Crimes (*L’Office central de lutte contre les crimes contre l’humanité et les crimes de haine-OCLCH*).<sup>19</sup> This unit prepares guides on issues such as non-discrimination and hate crimes, while conducting and coordinating criminal investigations regarding such crimes.<sup>20</sup>

The National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l’homme - CNCDH*) is a national institution established in France to protect and promote human rights, and accredited by the United Nations. As a national human rights institution, CNCDH has three main missions: providing recommendations to public authorities on human rights, monitoring France’s compliance with its international commitments in this field, and providing training on human rights. In this context, CNCDH investigates human rights violations during demonstrations and makes recommendations to the government.<sup>21</sup>

The Inspectorate General of the National Police (*Inspection Générale de la Police Nationale - IGPN*), the Inspectorate General of the National Gendarmerie (*Inspection Générale de la Gendarmerie Nationale- IGGN*) and the Inspectorate General of Services (*Inspection Générale des Services- IGS*) are the institutions responsible for controlling the security forces responsible for enforcing the law and the legitimate use of force. These institutions play an active role in considering and investigating complaints about ill-treatment of individuals by law enforcement forces.<sup>22</sup> Moreover, the National Police College of France (*l’École Nationale Supérieure de la Police*) and the National School of Prison Administration (*L’École Nationale d’Administration Pénitentiaire-ENAP*) together with the AAI (*Autorité Administrative Indépendante*) provide training to law enforcement forces regarding the prohibition ill-treatment, thus working to prevent possible problems in this regard.<sup>23</sup>

It is observed that, applications were made to administrative courts in France against the recent decisions regarding the prohibition of meetings by the offices of governor.<sup>24</sup> In this regard, it is an important balancing guarantee that rights-based nongovernmental organisations act actively and take legal action against prohibitive interventions on the freedom of assembly and demonstration.<sup>25</sup>

17 <https://www.defenseurdesdroits.fr/defender-rights-311>, also see CAT/C/FRA/Q/7/Add.1, paragraph 9-14 and CCPR/C/FRA/5, paragraph 11-13.

18 Among many news, see [https://www.lepoint.fr/societe/violences-policieres-la-defenseure-des-droits-saisie-100-fois-09-04-2023-2515553\\_23.php](https://www.lepoint.fr/societe/violences-policieres-la-defenseure-des-droits-saisie-100-fois-09-04-2023-2515553_23.php)

19 <https://www.gendarmerie.interieur.gouv.fr/notre-institution/notre-organisation/l-office-central-de-lutte-contre-les-crimes-contre-l-humanite-et-les-crimes-de-haine-oclch>

20 CCPR/C/FRA/6, paragraph 37.

21 <https://www.cncdh.fr/>

22 CAT/C/FRA/7, paragraph 145-152 and CAT/C/FRA/Q/7/Add.1, paragraph 110-129; CPT/Inf (2021) 14, paragraph 30. <https://rm.coe.int/1680a2f0a0>

23 CAT/C/FRA/7, paragraph 117-135 and CAT/C/FRA/Q/7/Add.1, paragraph 78-89.

24 Among many decisions, see <https://www.alpes-maritimes.gouv.fr/contenu/telechargement/49078/383371/file/Recueil%20special%20296.2023.pdf>

25 Among many news regarding applications see [https://www.lemonde.fr/les-decodeurs/article/2023/03/29/la-tres-grande-discretion-des-arretes-interdisant-les-rassemblements-spontanes-contre-la-reforme-des-retraites\\_6167480\\_4355770.html](https://www.lemonde.fr/les-decodeurs/article/2023/03/29/la-tres-grande-discretion-des-arretes-interdisant-les-rassemblements-spontanes-contre-la-reforme-des-retraites_6167480_4355770.html)

Finally, although not directly related to freedom of assembly and association, the Supervisor-General of Places of Deprivation of Liberty (*Contrôleur Général des Lieux de Privation de Liberté - CGLPL*) can be discussed to the extent that it is relevant. This control mechanism is an independent public institution established as the National Preventive Mechanism (NPM) in accordance with Article 17 of the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).<sup>26</sup> This institution may receive applications from any natural or legal person who wishes to ensure that their fundamental rights are respected in relation to actions or situations that may fall within its jurisdiction.<sup>27</sup> The jurisdiction of CGLPL covers places where people are deprived of liberty such as prisons, hospitals where people stay without their consent, places of custody or customs detention, centres for detention of foreigners, and vehicles which are used to transport people deprived of freedom.<sup>28</sup> Although not directly dedicated to implementing the freedom of assembly and association, CGLPL works to ensure the effective use of the freedom of assembly and association in terms of monitoring the interventions of law enforcement forces against individuals.

## 4.2. Estonia

As an ombudsman mechanism, the Chancellor of Justice of Estonia (Õiguskantsler) ensures that authorities and officials performing public duties would not violate people's constitutional rights and freedoms, laws and other legislations of general application. The main purpose of the Chancellor of Justice is to protect people against public authorities and the arbitrariness of officials.

If the Chancellor of Justice finds that the activity of an authority performing public duties is unlawful, he/she issues a statement that includes the description of how the authority has violated person's rights and if necessary, makes a recommendation to the authority. The Chancellor of Justice may criticise, express his/her opinion or give concrete recommendations for removal of the violation. The Chancellor of Justice is authorised to make an inquiry to the authorities under inspection to gain information on how his/her statement has been taken into consideration. If the Chancellor of Justice's proposal is not fulfilled or his/her inquiry is not responded to, he/she may submit a report to the supervisory authority, the government and the Parliament (Riigikogu). The Chancellor of Justice also has the right to disclose information regarding the case to public.

As of 2019<sup>29</sup>, the mandate of the Chancellor of Justice of Estonia was expanded to enable the Chancellor to act as the National Human Rights Institution (NHRI) under the Paris Principles on the status of national institutions for the promotion and protection of human rights. The Chancellor of Justice was granted A-status, the highest status, under the Paris Principles in December 2020.<sup>30</sup> Moreover, the Chancellor of Justice is determined as the National Preventive Mechanism (NPM) in accordance with Article 17 of OPCAT.<sup>31</sup> Although the institution has not specific mandate to protect the freedom of assembly and demonstration, its activities in the field of human rights in general are important to exercise this right.

## 4.3. Finland

In Finland, the Parliamentary Ombudsman of Finland<sup>32</sup> is determined as the NPM in accordance with Article 17 of OPCAT.<sup>33</sup> The Ombudsman mainly monitors the legality of the actions of the authorities by investigating the complaints received. On the other hand, illegalities or aggrievements may draw the attention of the Ombudsman through means other than complaints, and in this case, the Ombudsman may investigate the matter on its own initiative. The Ombudsman also carries out inspections in institutions and organisations. Although not directly mandated to the protection of the right to assembly and demonstration, the Parliamentary Ombudsman of Finland is an important institution for the implementation of this right as it focuses its activities on the development of fundamental and human rights.<sup>34</sup>

26 <https://www.cgpl.fr/en/the-tasks-of-the-controleur-general-des-lieux-de-privation-de-liberte/>

27 CCPR/C/FRA/5, paragraph 8.

28 CCPR/C/FRA/5, paragraph 9.

29 <https://www.oiguskantsler.ee/en/history-institution>

30 CCPR/C/EST/CO/4, paragraph 7-8 and CCPR/C/EST/4, paragraph 20.

31 <https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms>

32 <https://ennhri.org/our-members/finland-parliamentary-ombudsman/>

33 <https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms>

34 <https://www.oikeusasiamies.fi/oikeusasiamiehen-toiminta>

The Human Rights Centre<sup>35</sup> is an autonomous and independent expert institution whose task is to monitor and promote the implementation of fundamental and human rights and increase cooperation and exchange of information between various actors. This institution administratively reports to the Office of the Parliamentary Ombudsman. The Human Rights Centre has a 20 to 40-member Human Rights Delegation, whose members broadly represent the Finnish human rights actors. The Delegation's composition is diverse in terms of expertise as well as representative, and the selection process is transparent. The Delegation functions as a cooperative body in the field of fundamental and human rights and helps to intensify information flow between the different actors. It also deals with human rights issues of a far-reaching significance and principal importance.<sup>36</sup>

The Human Rights Centre, the Human Rights Delegation and the Office of the Parliamentary Ombudsman together form NHRI under the Paris Principles.<sup>37</sup> The Finnish NHRI was granted the highest status (A-status) in 2014 and again in 2019 by the Global Alliance of National Human Rights Institutions (GANHRI)<sup>38</sup>

## 5. Implementation of the Freedom of Assembly and Association in Member States

### 5.1. France

In terms of the implementation of the freedom of assembly and association in France, it is observed that the role of the police is, first, to ensure the safety of demonstrators and to guarantee the exercise of public freedoms, especially the freedoms of expression and peaceful assembly. To this end, the police may intervene in meetings and demonstrations when necessary to protect or re-establish public order, in accordance with duly defined legislation, regulations and techniques.<sup>39</sup> Following allegations that law enforcement officers use excessive force, the Ministry of Interior addressed the issue, and published the French National Law Enforcement Plan (*Schéma National du Maintien de l'Ordre -SNMO*)<sup>40</sup> to update the rules regarding the use of public power and make the legislation understandable.<sup>41</sup>

In France, law enforcement forces gradually use weapons and other means of use of force during meetings and demonstrations in line with the provisions of the French Internal Security Code. Therefore, the use of force by law enforcement officers is only possible if the circumstances make it absolutely necessary for the preservation of public order provided that the force used is proportionate to the disorder and the police ceases to use force when the disorder ends.<sup>42</sup> To this end, the first weapons that can be used by the police in meetings and demonstrations in accordance with the legislation are sound bombs, tear gas bombs and hand grenades. When demonstrators use violence against law enforcement officers or when there is no other means of defense, the police may use blast/rubber balls (*lanceur de balle*) for defense.<sup>43</sup> Moreover, in order to use all these weapons, law enforcement officers are required to receive training, which must be renewed regularly to be granted a special permit for the use of weapons.<sup>44</sup>

In addition, all law enforcement officers, regardless of their unit, who intervene in meetings and demonstrations are also required to wear a badge showing the "operator identity number" (*du relevé d'identité opérateur - RIO*).<sup>45</sup> These badges must be attached to the shoulders of law enforcement officers in a visible manner even when they wear clothes that cover their uniforms, such as vests, etc.<sup>46</sup> Furthermore, all officials who are part of a team and are involved in the maintenance of law and order are required to wear a uniform that enables their identification, if necessary, by a mark showing their team.<sup>47</sup>

35 <https://ennhri.org/our-members/finland-human-rights-centre/>

36 <https://www.humanrightscentre.fi>

37 <https://www.humanrightscentre.fi/about-us/>; CCPR/C/FIN /7, paragraph 7.

38 <https://www.humanrightscentre.fi/about-us/national-human-rights-institutio/>

39 CCPR/C/FRA/6, paragraph 215.

40 <https://www.interieur.gouv.fr/sites/minint/files/medias/documents/2021-12/schema-national-du-maintien-de-l-ordre-decembre-2021.pdf>

41 CCPR/C/FRA/6, paragraph 216.

42 CCPR/C/FRA/6, paragraph 217.

43 CCPR/C/FRA/6, paragraph 219.

44 CCPR/C/FRA/6, paragraph 220.

45 CCPR/C/FRA/6, paragraph 221; the legislative provision regarding this requirement is laid down in Article R.434-15 of the Internal Security Code.

46 CCPR/C/FRA/6, paragraph 222.

47 CCPR/C/FRA/6, paragraph 223.

In France, a reporting platform (*la plateforme de signalement -PFS*) was established in 2013 to monitor the public claims that law enforcement officers use disproportionate force during meetings and demonstrations and to improve the connection between the police and the public. This platform is an administrative service provided to users through an online form accessible via the website of the Ministry of the Interior, allowing users to refer matters to the IGPN<sup>48, 49</sup>. This service is effectively used in France. Following complaints of violence by persons in public authority, 456 judicial investigations initiated were entrusted to the IGPN and were conducted independently and impartially.<sup>50</sup> As a result, 88% of the investigations were closed and forwarded to the judicial authorities. In 70% of cases, the judicial authority concluded that the use of force was justified. In 2020, lawsuits were filed against 19 police officers.<sup>51</sup>

Regarding the gendarmerie, none of the investigations made to date by the IGGN's<sup>52</sup> Judicial Investigation Bureau have resulted in legal action being taken against a gendarmerie. The relevant reports do not contain any negative assessment regarding the independence and impartiality of the IGGN's investigations carried out by the Judicial Investigation Bureau.<sup>53</sup> In addition, the Ministry of Justice of France regularly publishes circulars on criminal policy instructions, draws the attention of public prosecutors' offices to offences that are likely to be committed during demonstrations and meetings and invite them to implement an appropriate and sensitive criminal policy. The sole purpose of these instructions is to combat such offences and to prevent and punish perpetrators of acts of violence to by disrupting the proper functioning of demonstrations and threatening the safety of demonstrators, thus hindering the freedom to demonstrate, which belongs to everyone. Moreover, these instructions aim to ensure the safety of peaceful demonstrators, not to repress people exercising their freedom to demonstrate peacefully. Finally, the aim is also to deter or prevent violent groups or rioters from participating in demonstrations, thus ensuring that demonstrations are performed as peacefully as possible.<sup>54</sup>

Regarding the notification obligation for a meeting, it is useful to refer to the decision of *Cisse v. France* awarded by the ECtHR. In this decision, the ECtHR "concluded that if notification was not made, the demonstration would be illegal and emphasized that making a notification would help the authorities to take the necessary measures in order to minimize the confusion that may arise from a demonstration held at a crowded hour." To this end, it is stated that it is important for the ECtHR to take security measures, such as the presence of public officials in demonstration areas, as a preventive measure in order to ensure the effectiveness of any event, meeting or gathering for political, cultural or other purposes. It should also be underlined that failure to fulfil the notification obligation does not in itself legitimize the prohibition or intervention of a peaceful assembly and that the freedom of assembly must be tolerated by public authorities as long as it is peaceful. In this regard, the ECtHR emphasized that any violation of the law does not justify interference with the freedom of assembly.<sup>55</sup> On the other hand, in the case of *Ezelin v. France*, one of the important cases that constitute the case-law regarding Article 11 of the ECHR, the ECtHR ruled that the fact that some of the demonstrators resort to violence does not mean that law enforcement officers can interfere others, and that the law enforcement should only interfere groups that resort to violence in such cases.<sup>56</sup>

Finally, it is necessary to underline the importance and influence of the Constitutional Council in France in protecting the freedom of peaceful assembly. Examining the Code No. 2019-290 published in the Official Gazette on 11 April 2019, introducing proposals for amendments in various laws to prevent acts of violence that may occur during demonstrations and to punish the perpetrators, the Constitutional Council decided on the unconstitutionality of the Code, and once again emphasized the importance of the freedom of peaceful assembly by making a partial annulment decision.<sup>57</sup>

48 Inspectorate General of the National Police (Inspection Générale de la Police Nationale), for more information see <https://www.police-nationale.interieur.gouv.fr/nous-decouvrir/notre-organisation/organisation/linspection-generale-de-police-nationale-ignp>

49 CCPR/C/FRA/6, paragraph 224.

50 CCPR/C/FRA/6, paragraph 226.

51 CCPR/C/FRA/6, paragraph 227.

52 Inspectorate General of the National Gendarmerie (Inspection Générale de la Gendarmerie Nationale), for more information see <https://www.gendarmerie.interieur.gouv.fr/notre-institution/notre-organisation/l-inspection-generale-de-la-gendarmerie-nationale-igng>

53 CCPR/C/FRA/6, paragraph 229.

54 CCPR/C/FRA/6, paragraph 234- 235.

55 ECtHR, *Cissé v. France*, no. 51346/99, 09/04/2002.

56 ECtHR, *Ezelin v. France*, no. 11800/85, 26/04/1991.

57 <https://www.lepetitjuriste.fr/le-conseil-constitutionnel-garant-de-la-liberte-de-manifester/>.

## 5.2. Estonia

In Estonia, the freedom of assembly and demonstration is generally exercised in accordance with the law, and the freedom of citizens to assemble and demonstrate freely granted to them by law is respected. In general, there are very few cases in Estonia, where law enforcement officers exceed their authority to use force and weapons specified in the legislation.<sup>58</sup> In this context, the reports do not contain any case where people's freedom of assembly and demonstration were excessively restricted by law enforcement forces or disproportionate force was used against demonstrators. Participants of public assemblies, human rights advocates, and journalists from Estonia see the overall environment for public assemblies as favourable.<sup>59</sup> However, in recent years, during the COVID-19 Pandemic, certain restrictions were imposed on the freedom of assembly and demonstration under state of emergency.<sup>60</sup>

Investigations carried out by nongovernmental organisations regarding the implementation of the freedom of assembly and demonstration show that in recent years, the government is more democratic, and less attack-minded, while restrictions during the crisis did not significantly infringe upon fundamental rights and freedoms.<sup>61</sup>

There is no application filed to the ECtHR against Estonia on the grounds that the right to freedom of assembly and association is violated. This shows that the practice in Estonia aims to protect the freedom of assembly and association in accordance with national legislation and the ECHR.

## 5.3. Finland

Before discussing to what extent the right to assembly and demonstration can be exercised in Finland, it is necessary to mention firstly that the public's trust in the police is extremely high. It can be stated that the reason for this is that the public see the police as a reliable authority, who does not resort to unnecessary or unreasonable use of force against individuals.<sup>62</sup> In Finland, police officers gain the right to use force and the right to carry and use equipment for this purpose only if they receive training on this subject, attend refresher training, participate in practical training and pass the test. When police officers receive such training and tests and practice regularly, this is recorded in their service records.<sup>63</sup>

The statistics regarding the use of force by police officers show that an unremarkable increase has been observed in recent years. However, it is reported that this increase is caused by the need for the police to be more equipped and prepared, as the people to whom the police can apply coercive measures have become more equipped in recent years.<sup>64</sup> Similarly, the increase in the use of stun guns by law enforcement appears to be caused by the increase in the number of staff trained to use them.<sup>65</sup> Investigating a case where a police officer fired a stun gun, the Parliamentary Ombudsman ruled that a stun gun was a useful and acceptable coercive tool when used appropriately.<sup>66</sup> Following this decision, the National Police Board prepared and published a guideline on the use of stun guns.<sup>67</sup>

In Finland, exceptional, fixed-term restrictions on the right to peaceful assembly and freedom of movement may be imposed under the State of Emergency Powers Act<sup>68,69</sup> However, even with these restrictions imposed during a state of emergency, the Parliamentary Constitutional Law Committee emphasized the need to comply with human rights obligations in the implementation of this Act.<sup>70</sup>

There is no application filed to the ECtHR against Finland on the grounds that the right to freedom of assembly and association is violated. This situation shows that the practice in Finland can be considered suitable for the

58 CAT/C/EST/6, paragraph 12-13.

59 <https://postsoviet.ovdinfo.org/en/estonia>

60 Freedom in the World 2022 Country Report, paragraph E.1, Freedom House, <https://freedomhouse.org/country/estonia/freedom-world/2022>

61 <https://humanrights.ee/en/materials/inimoigused-eestis-2022/freedom-of-assembly-and-association/>

62 CCPR/C/FIN /7, paragraph 160.

63 CCPR/C/FIN /7, paragraph 161.

64 CCPR/C/FIN /7, paragraph 162.

65 CCPR/C/FIN /7, paragraph 163.

66 CCPR/C/FIN /7, paragraph 164.

67 Decision of the Parliamentary Ombudsman, 1187/2/15, 31.08.2016, see CCPR/C/FIN /7, paragraph 164.

68 [https://www.finlex.fi/fi/laki/kaannokset/1991/en19911080\\_20030696.pdf](https://www.finlex.fi/fi/laki/kaannokset/1991/en19911080_20030696.pdf)

69 In recent years, practices regarding the state of emergency have come to the fore during the COVID-19 pandemic. CCPR/C/FIN /7, paragraph 10-16.

70 CCPR/C/FIN /7, paragraph 17.

effective exercise of the freedom of assembly and association in accordance with national legislation and the ECHR. However, in the *Pentikainen v. Finland* decision regarding the freedom of the press under the freedom of expression, there was an individual application due to the arrest and conviction of a journalist on the grounds that the journalist did not comply with police orders during a demonstration. Regarding the circumstances of the case, the decision emphasizes that the applicant was not deliberately prevented from reporting on the demonstration for the purpose of hiding from the public the actions of the police regarding the demonstration in general or individual protesters, and that the applicant was not prevented from fulfilling journalistic duties either during or after the demonstration. The Court therefore ruled that the interference with the applicant's freedom of expression could be said to be "necessary in a democratic society" within the meaning of Article 10 of the Convention. However, the ECtHR underlined that this decision should be evaluated in the specific circumstances of the case, taking into account the need to prevent damage to the "public watchdog" role of the press.<sup>71</sup>



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71 ECtHR, *Pentikainen v. Finland* [GC], no. 11882/10, 20/10/2015.

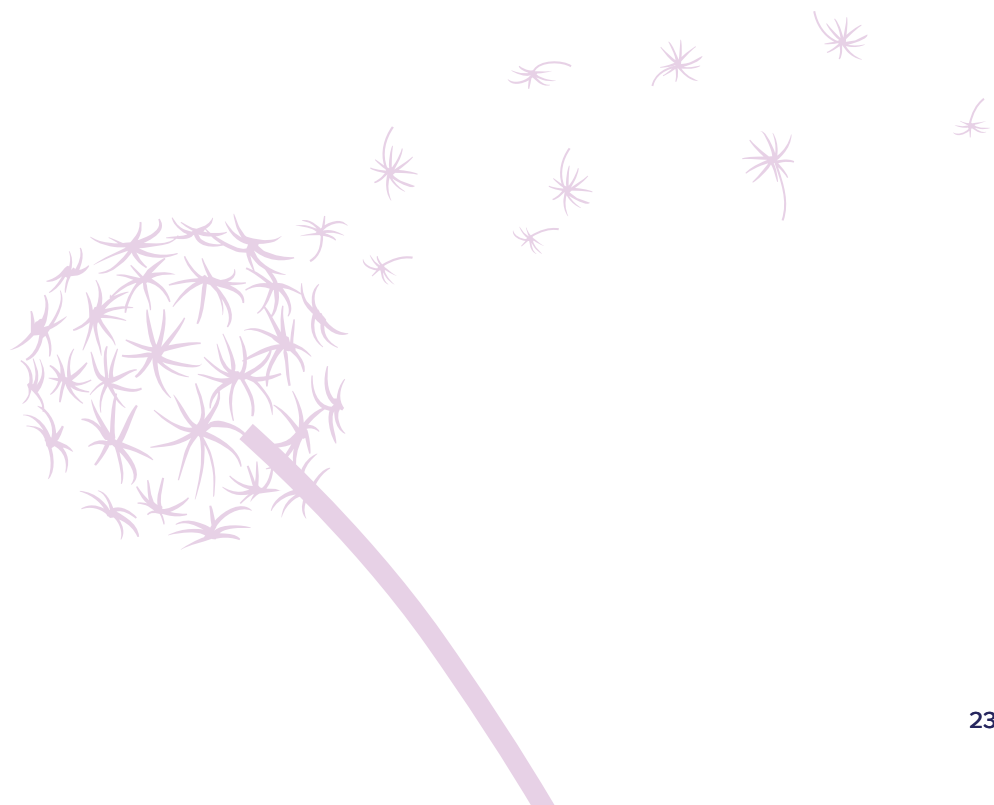
## Conclusion



Freedom of assembly and association is one of the human rights that enables people living in a society to exercise their freedom of expression and participate in the administration by announcing their demands and complaints on various issues to the state, which is therefore considered one of the indispensable elements of a democratic regime. Countries have positive and negative obligations to realize the freedom of assembly and association.

In this context, regarding the legislation of Member States discussed in this study on the freedom of assembly and association, it is observed that protecting this freedom and preventing the restriction of the use of this freedom by third parties are considered as the primary duties of Member States. It is understood that any restrictions imposed by the state through law enforcement forces on the use of this right are regulated by law in a clear and detailed manner, leaving no room for doubt. Since the freedom of assembly and association is not a right that can be used unlimitedly, in some cases, certain obligations may be imposed on individuals, such as obtaining permission from state bodies or making a notification before exercising this right, or law enforcement forces may intervene in case a problematic situation arises to disrupt public order while individuals are exercising their rights. However, what is important in terms of realizing the freedom of assembly and association and is also observed in the legislation of Member States is that these restrictions are clearly defined so as to ensure foreseeability for individuals and are proportionate so as to ensure the use of the right and avoid the violation of the essence of the right. It can be stated that the notification obligation alone does not conflict with the fundamental principles regarding the freedom of assembly and association; however, it is accepted that the prohibitions should not affect the essence of the right. To this end, it is observed that in all three Member States, prohibitive practices and use of force are considered last resort. It should be emphasized that the use of force must be absolutely necessary and, in the final analysis, proportionate. In France, the active participation of nongovernmental organisations in resorting to judicial remedies and the active attitude of the Constitutional Council are very important.

It is of importance that assemblies and demonstrations are regulated in the legislation to ensure effectiveness, that Member States must have institutional structures to implement these regulations and that state authorities must comply these regulations. An assessment of Member States discussed in this study shows that although there are differences, in general, they do not present major problems regarding the implementation of the freedom of assembly and association, that law enforcement officers are trained to be conscious and educated about people's freedoms, that various projects and action plans have been prepared to ensure the effective use of this freedom and that the practices do not deviate from the EU *acquis* and international human rights instruments.



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## Technical Assistance for Strengthening Fundamental Rights Sector Coordination

