FREEDOM OF PEACEFUL ASSEMBLY

IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

HRA HUMAN RIGHTS ACTION MONTENEGRO | AKCIJA ZA LJUDSKA PRAVA

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FOREWORD

This guidebook serves to better understand the European standard of the right to freedom of peaceful assembly enshrined in Article 11 of the European Convention on Human Rights (hereinafter: the Convention) and built on the long-standing practice of the European Commission of Human Rights and the European Court of Human Rights.

It is a minimum standard, which means that there is nothing standing in the way of states being able to afford people in their jurisdiction a standard that is even higher than that which is guaranteed by the Convention and presented in this guidebook.

The European Court of Human Rights (hereinafter: the Court) has issued hundreds of decisions and rulings in which it had considered whether states had violated the right to freedom of assembly. We are not going to mention all of them in this document. Instead, we will try to provide a good selection that reflects the most important things the Court had to say on this topic to date.

The guidebook also offers a colorful catalog of events and people who, for various reasons, have invested energy in expressing themselves in public, connecting with others, and attempting to change something together in the countries in which they live. The Court considered, inter alia, petitions of druids concerning Stonehenge, those of Greenpeace boat activists against whalers, farmers who blocked highways, female protesters who were beaten on Women's Day, illegal immigrants who participated in the protest held in a church in Paris, as well as those of numerous opposition leaders who stood before police cordons. The cases they submitted to Strasbourg speak volumes about the state of democracy in their countries. Based on the decisions of the Court in these cases, we can become better acquainted with the European democratic values and accordingly assess the performance of the authorities in Montenegro.

The guidebook was created as part of the project "Voice Your Rights! - Expanding Space for Free Assemblies" implemented by non-governmental organizations Institute Alternative (IA) and Human Rights Action (HRA) with the support of the Delegation of the European Union to Montenegro.

The authors

1. INTRODUCTION

In its judgments concerning the right to freedom of peaceful assembly, the European Court of Human Rights (hereinafter: the Court) emphasises that this right, together with the right to freedom of expression, constitutes the foundation of any democratic society. The essence of protecting this freedom is in protecting the right to express their message at a gathering, but also the desire of people to express their views together with other demonstrators (*Primov*, 2014, § 91). It is about freedom, and therefore all exceptions must be interpreted narrowly (*Navalnyy,* 2018, § 98). The Convention protects the democratic system whose basic instrument is public debate. The Court stated that the aim of freedom of assembly is to secure a forum for public debate and the open expression of protest (*Éva Molnár*, 2008, § 42). The negative effect of unjustified restriction of freedom of assembly - the chilling effect - is to deter citizens from participating in such protests and public debate (*Ibrahimov*, § 86).

Although the right to peaceful assembly encompasses various forms of gathering, the Court most often considered applications concerning political protests, as they were most frequently restricted by the authorities. They ranged from demonstrations organised against the way the country voted at the Eurosong contest, to protests against election results and e advocating for the change of state borders.

Whoever intends to organise peaceful demonstrations has the right to freedom of peaceful assembly, unlike those who use violence or incite it or otherwise reject the fundamental values of a democratic society (*Kudrevičius*, § 92).

The Court emphasised that the Convention protects pluralism, tolerance and broadmindedness as the hallmarks of a "democratic society", and that democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids abuse of a dominant position (*Navalnyy*, §175).

In that spirit, it is the obligation of the state to ensure the holding of the demonstrations which are opposed by the majority in the society, as well as counter-demonstrations that appear in response to demonstrations (*Christians against Fascism and Nacism*).

It should not be forgotten that the ban on apartheid, the women's right to vote, the right to abortion and the rights of sexual minorities were once distinctly minority views which, thanks to public and visible demonstrations, grew into universally recognised human rights.

The European Convention on Human Rights

Freedom of Assembly and Association

Article 11

1. 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..

2. 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.

2. BASIC PRINCIPLES OF THE APPLICATION OF THE RIGHT TO PEACEFUL ASSEMBLY

2.1. Presumption in Favour of the Right to Peaceful Assembly

The Convention guarantees *everyone* the right to freedom of peaceful assembly, stating that this right *shall not be restricted* except under specific circumstances, which means that there is a presumption in favour of the enjoyment of that right. Freedom of assembly is the rule, and prohibition the exception. Bearing in mind that the right to freedom of assembly is a fundamental right in a democratic society, the Court emphasised that it should not be interpreted restrictively (*Kudrevičius and Others*,[1] § 91).

In practice, this means that, even when gatherings are not notified in accordance with regulations, it is important for the authorities to show a certain degree of tolerance and allow those gathered to convey the message for which they gathered, unless there are particularly important reasons for interrupting and dispersing the gathering (*Oya Ataman*,[2] §§ 41-42).

2.2. Positive Obligation of the State to Enable and Protect the Right to Peaceful Assembly

In addition to the obligation to refrain from restricting the right to assembly, the authorities also have the obligation to actively ensure that this right is exercised in a peaceful and safe manner (*Kudrevičius*, § 158). This means that, in principle, the competent state body – usually the police – has an obligation to allow peaceful assembly of citizens, at the place and time provided by the assembly organiser in the notification (*Lashmankin and Others*,[3] § 405). Any restrictions must be in accordance with Article 11 § 2 (to be discussed in detail below).

It is also a positive obligation of the state to regulate the application of the right of assembly by way of regulations that are in accordance with the standards of the Convention, which also provide for an effective remedy; to secure gatherings, which

1 *Kudrevičius and Others v. Lithuania*, app. no. 37553/05, 15 October 2015, available at: http://hudoc.echr.coe. int/eng?i=001-158200

2 *Oya Ataman v. Turkey*, app. no. 74552/01, 5 December 2006, available at: http://hudoc.echr.coe.int/en-g?i=001-78330

3 *Lashmankin and Others v. Russia*, app. no. 57818/09, 7 February 2017, available at: http://hudoc.echr.coe. int/eng?i=001-170857

is especially important in the case of counter-demonstrations, when gatherings of participants of opposing views are held at the same time; to investigate and process complaints of violations of the right to peaceful assembly including impartial investigation into the actions of state employees. These obligations of the state are explained in greater detail in Chapter 3.

2.3. Legality of Restriction

The Convention requires that grounds for the restriction of rights be prescribed in domestic law. The state is obliged to align its laws with the Convention so as not to prescribe more reasons for restriction of rights than those set forth in Article 11 § 2. In addition, the law governing the right guaranteed by the Convention must meet a certain standard of quality. This will be discussed in greater detail in Chapters 4.1 and 5.2.

2.4. Proportionality of Restriction

In addition to the fact that the restriction of rights must be prescribed by law, in paragraph 2 of Article 11 the Convention requires that it be applied only in a manner that is "necessary in a democratic society". This standard implies the application of the principle of proportionality, according to which a balance should be struck between the requirements of the purposes listed in Article 11 § 2 of the Convention – 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 on the one hand, and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places, on the other (*Ezelin v. France,*[4] § 52).

This standard also requires that any restrictive measure applied be proportionate to the legitimate aim, referred to in Article 11 § 2 to be achieved by the restriction. For example, the fact that a gathering has not been notified or is held contrary to the law because the terms from the notification have been exceeded does not, in itself, mean that it is necessary to prohibit it. In making such a decision, the authorities must assess whether a gathering needs to be terminated in order to achieve the aims set out in Article 11 § 2.

Finally, the standard also requires the application of the mildest possible restriction needed to achieve the desired aim. For example, if the authorities assess that the proposed venue is not adequate for the envisaged number of participants, and that the crowd could disturb public order and endanger the rights of others, they should reflect on a possible

4 *Ezelin v. France*, app. no. 11800/85, 26 April 1991, available at: http://hudoc.echr.coe.int/eng?i=001-57675

alternative suitable venue nearby rather than prohibit the event altogether (*Primov and Others*[5], §§ 130-131). All this will be discussed further in Chapter 5.

2.5. Prohibition of Discrimination

The right to freedom of assembly is guaranteed to "everyone", and therefore everyone has an equal right to enjoy that freedom. When legally regulating and enforcing assembly regulations, the authorities must not put anyone in a position of disadvantage, on any grounds, without a particularly valid reason. The following text will explain in greater detail who, and in what way, has the right to freedom of assembly.

The authorities must be especially careful in treating all the gathering notifications equally. The Court has established in several cases that the authorities had organised gatherings as they wished, while unjustifiably prohibiting those of their critics who wished to assemble at the same venue, at or about the same time (see judgments in *Lashmankin and Makhmudov*).[6]

> In cases of prohibition of gatherings of sexual minority activists, the Court most often found, in addition to the violation of Article 11, the violation of Article 14 of the Convention, which prohibits discrimination in the enjoyment of human rights. In several cases, it was established that restrictions imposed on gatherings such as "pride parades" were based on discrimination, most often due to the government's openly discriminatory attitude towards this minority (see judgments in cases *Baczkowski and Others v. Poland*,[7] 2007; *Alekseyev v. Russia*,[8] 2010; *Alekseyev and Others v. Russia*,[9] 2018; *Genderdoc - M v. Moldova*,[10] 2012; *Zhdanov and Others v. Russia*,[11] 2019).

5 *Primov and Others v. Russia,* app. no. 17391/06, 12 June 2014, available at: http://hudoc.echr.coe.int/eng?i=001-144673

6 *Makhmudov v. Russia*, app. no. 35082/04, 26 July 2007, available at: http://hudoc.echr.coe.int/eng?i=001-81966

7 *Baczkowski and Others v. Poland*, app. no. 1543/06, 3 May 2007, available at: http://hudoc.echr.coe.int/eng?i=001-80464

8 *Alekseyev v. Russia*, app. no. 4916/07, 21 October 2010, available at: http://hudoc.echr.coe.int/eng?i=001-101257

9 *Alekseyev and Others v. Russia,* app. no. 14988/09, 27 November 2018, available at: http://hudoc.echr.coe.int/ eng?i=001-187903

10 *Genderdoc – M v. Moldova*, app. no. 9106/06, 12 June 2012, available at: http://hudoc.echr.coe.int/ fre?i=001-111394

11 *Zhdanov and Others v. Russia,* app. no. 12200/08, 16 July 2019, available at: http://hudoc.echr.coe.int/ spa?i=001-194448

3. FRAMEWORK OF THE RIGHT

3.1. Who Has the Right to Peaceful Assembly

The right to freedom of assembly, individually, belongs to children, women, men and transgender and inter-gender persons, including persons without full legal capacity and persons with mental illness,[12] as well as groups of people who can be organised as unregistered associations,[13] trade unions,[14] for-profit and non-profit legal entities,[15] political parties,[16] religious communities,[17] as well as minority ethnic,[18] national,[19] sexual,[20] spiritual,[21] and other communities and groups.

Citizens and non-citizens (foreign nationals, stateless persons, refugees, asylum seekers, illegal immigrants[22] and tourists)[23] have an equal right to peaceful assembly, whether as participants or organisers. [24]

Persons who accidentally get mixed with protesters, or who are just waiting to enter the same building, each for their own reason, are not considered participants in a

12 *Baczkowski and others v. Poland*, app. no. 20071543/06, 3 May 2007, available at: http://hudoc.echr.coe. int/eng?i=001-80464

13 *Hyde Park and Others v. Moldova* (no. 3), app. no. 33482/06, 31 May 2009, available at: http://hudoc.echr.coe.int/ rus?i=001-91936

14 *Disk and Kesk v. Turkey*, app. no. 38676/08, 27 November 2012, available at: http://hudoc.echr.coe.int/eng?i=001-114776

15 *Identoba and Others v. Georgia*, app. no. 73235/12, 12 May 2015, available at: http://hudoc.echr.coe.int/ eng?i=001-154400

16 *Christian Democratic People's Party v. Moldova (no. 02)*, app. no. 25196/04, 2 February 2010, available at: http://hudoc.echr.coe.int/eng?i=001-97049

17 *Barankevich v. Russia,* app. no. 10519/03 , 26 July 2007, available at: http://hudoc.echr.coe.int/rus?i=001-81950

18 *The Gypsy Council and Others v. the United Kingdom (dec.)*, 2002, available at: http://hudoc.echr.coe.int/eng?i=001-22414

19 *Stankov and United Macedonian organisation Ilinden v Bulgaria*, app. no. 29225/95, 2 January 2002, available at: http://hudoc.echr.coe.int/rus?i=001-59689

20 *Genderdoc – M v. Moldova*, app. no. 9106/06, 12 June 2012, available at: http://hudoc.echr.coe.int/fre?i=001-111394

21 *Pendragon v. the UK, 1998*, dec. app. no. 31416/96, 19 October 1998, available at: http://hudoc.echr.coe.int/ eng?i=001-4459

22 *Cisse v. France*, app. no. 51346/99, 9 February 2002, available at: http://hudoc.echr.coe.int/eng?i=001-60413

23 See *Guidelines on Freedom of Peaceful Assembly OSCE/ODIHR*, 2010: https://www.osce.org/odihr/73405

24 *Djavit An v. Turkey*, app. no. 2065292/92, 20 February 2003, available at: http://hudoc.echr.coe.int/eng?i=001-60953

"peaceful assembly" in terms of the right to freedom of peaceful assembly. It is necessary for those gathered to have a common view and goal that make them act together. The Court considered that the activists who had gathered in front of a court building with the intention of attending the trial and expressing solidarity with the defendants did in fact constitute a peaceful assembly because their intention was to express "personal involvement in a matter of public importance" (*Navalnyy*, § 110).

The Court emphasised that freedom of public assembly, as well as freedom of expression, was particularly important for elected representatives of the people, and that any interference with that freedom called for the closest scrutiny on the part of the Court (*Osmani).*[25]

An individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (*Primov*, paragraph 155). This will be further discussed in Chapter 3.5.

3.2 Form of Assembly

The right to freedom of peaceful assembly encompasses various forms of assembly, from the usual demonstrations that are held in one place and in a standing position, to protests that involve the hugging of trees in parks or forests (*Chernega and Others*[26]), protests held in a sitting position (*Çiloğlu and Others*[27]; *G v. the Federal Republic of Germany*) and next to erected camping tents (*Frumkin,*[28] § 4), as well as protests in motion such as walks, parades, marches, religious processions, processions of cars, cyclists, motorcyclists,[29] roadblocks (e.g. *Kudrevičius*), and gatherings for the purpose of quick public performances, the so-called flash mobs (*Obote*).

> The Court deliberately did not define the term "assembly", in order to avoid the risk of such a definition leading to a restrictive interpretation of the law (*Navalnyy*, § 98). In the case law of the Court, the right to peaceful assembly most often referred to political and protest rallies as these were the most frequently restricted forms of assembly, as a result of which the Court as

25 *Osmani and others v. "The Former Yugoslav Republic of Macedonia"*, app. no. 50841/99, 11 October 2001, available at: http://hudoc.echr.coe.int/eng?i=001-22050

26 *Chernega and Others v. Ukraine*, app. no. 74768/10, 18 June 2019.

27 *Çiloğlu and Others v. Turkey*, 6 March 2007: http://hudoc.echr.coe.int/eng?i=001-79664

28 *Frumkin v. Russia*, app. no. 74568/12, 2016. http://hudoc.echr.coe.int/eng?i=001-159762

29 See: *Guidelines on Freedom of Peaceful Assembly OSCE/ODIHR*, 2010, item 17.

receiving the greatest number of such cases.[30] In addition, the Court found that the right also encompasses cultural events (*The Gypsy Council and Others*[31] – the annual fair of the Roma community), religious gatherings (*Barankevich*, sermon in a park) and other spiritual gatherings (*Pendragon,*[32] gathering of druids at Stonehenge).

3.3 Time of Assembly

The right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, and the authorities may therefore request a change of time only within the terms referred to in Article 11 § 2 of the Convention (*Sáska v. Hungary,*[33] § 21).

The purpose of an assembly is often linked to a certain location, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact (*Lashmankin*, § 405).

The Court has noted that the nature of democratic debate requires that the timing of public gatherings be crucial to their political and social impact. Thus, although the state authorities may, under certain conditions, deny permission to hold a gathering in accordance with Article 11 of the Convention, they cannot change the date on which the organisers planned to hold it. If a public gathering is held at the time when the issue has already lost its relevance in the ongoing social or political debate, its impact could be severely diminished. Freedom of assembly can be meaningless if its exercise at the planned time is prevented (*Baczkowski*, § 82).

When it occurs as a reaction to a sudden event, the gathering is called "spontaneous" and the authorities are obliged to show tolerance of the fact that it was not notified. There will be more about this in Chapter 6.3.

A gathering is usually a temporary activity, but it can last continuously over a long period of time, as a form of protest against some specific social situation until such situation ends, and it can be repeated each day, week, month or year. The authorities usually require that expected time and duration be stated in the notification of the gathering, which is reasonable as the purpose of the notification is to enable appropriate

30 Mass protests - Guide on the case-law of the European Convention on Human Rights, European Court of Human Rights, First edition, 29 February 2020, para. 2.

31 *The Gypsy Council and Others v. the United Kingdom*, app. no. 66336/01, 14 May 2002.

32 *Pendragon v. the UK*, 1998, Dec. app. no. 31416/96, 19 October 1998, available at: http://hudoc.echr.coe. int/eng?i=001-4459

33 *Sáska v. Hungary*, app. no. 58050/08, 27 November 2012, available at: http://hudoc.echr.coe.int/eng?i=001-114769

securing of the gathering, the public order and the rights of others. However, the fact that a gathering was not notified, or that the time of the event stated in the notification was exceeded, is not in itself a sufficient reason for the authorities to prohibit such a gathering (*Navalnyy*, § 133).

> In the case of an un-notified protest over the results of the presidential election in Armenia, which was banned and dispersed by the authorities after nine days although the assembly was peaceful and did not interfere with the rights of others, the Court found that, under Article 11 § 2, there had been no sufficient grounds for the ban and that the authorities were in principle obliged to tolerate such a gathering "until it became a real threat to public order or a deliberate serious threat to the lawful activities of others by demonstrators, even more than it would be normally expected regarding the enjoyment of the right to peaceful assembly" (*Mushegh Saghatelyan*,[34] § 246).
>
> In the case of peaceful demonstrations in Istanbul, which were also not notified, the authorities terminated, within half an hour, the protest of about forty people who marched on the tram rails to draw attention to the bad conditions in prisons. The Court established a violation of Article 11 of the Convention and emphasised that it was "particularly struck by the authorities' impatience in seeking to end the demonstration" because they did not significantly endanger public order (*Balčık and Others*,[35] §§ 51-53).

The state cannot permanently restrict the right to peaceful assembly (*Christians against Fascism and Nacism*).[36] The restriction can be only temporary and the state must explain, in each specific case, the reasons for the restriction of the right.[37]

Also, in accordance with Article 11 § 2, the state may introduce a general ban on gatherings for a period of two months if there are sufficiently justified reasons for such action (*Christians against Fascism and Racism*). This will be further discussed in Chapter 5.6.

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34 *Mushegh Saghatelyan v. Armenia*, app. no. 23086/08, 20 September 2018.

35 *Balcık and Others v. Turkey*, app. no. 25/02, 29 November 2007, available at: http://hudoc.echr.coe.int/eng?i=001-83580

36 *Christians against Rasism and Fascism v. UK,* app. no. 8440/78, 16 July 1980, available at: http://hudoc. echr.coe.int/eng?i=001-74286

37 Also, the Constitution of Montenegro allows only temporary restriction of the right to peaceful assembly (Article 52, paragraph 2). In its decision of 24 February 2017, the Constitutional Court of Montenegro found that Article 9a of the Public Assembly Act ("Official Gazette of the Republic of Montenegro" no. 31/05 and "Official Gazette of Montenegro" 1/15) was not aligned with the Constitution and the Convention because various forms of assembly were restricted permanently (decision is available at: http://www.ustavnisud.me/ustavnisud/skladiste/blog_4/objava_99/ fajlovi/odluka0215.pdf).

3.4. Location of Assembly

The right to freedom of assembly includes the right to choose the venue, but that choice is subject to the restrictions laid down in Article 11 § 2 of the Convention (*Sáska*, § 21). It is permissible to restrict gatherings, for example, in areas designated as special security zones, such as the residence of a Prime Minister (*Rai and Evans*)[38], or on private property such as a shopping center (*Appleby and Others*,[39] § 47), in government buildings. (*Taranenko*,[40] § 79) or the premises of the university administration (*Tuskia and Others*,[41] §§ 86-87).

If the authorities assess that a public venue is not suitable for gathering - for example, that there is no sufficient space in the park for the expected number of participants, and that the crowd could endanger safety, they are obliged to offer an alternative venue instead of just banning the gathering (*Primov*, §§ 130-131).

> The Court recognised that the purpose of gatherings is often connected to a particular location or time, and that it is important that it be held at a location which would allow it to be seen and heard in the vicinity of the target building and at the time when the message could have the strongest impact (*within sight and sound*). When the location of the gathering is crucial for the participants, an order to change it could represent interference similar to ordering them to give up the message of the gathering or some specific speech or slogan (*Lashmankin*, p. 405). Therefore, a request of the authorities to change the gathering venue in any way must be justified and necessary, and explained by relevant and sufficient reasons in accordance with Article 11 § 2 of the Convention.

The Court did not find a violation of the right in the situation where the authorities banned a gathering at one location in the city centre due to its negative impact on public order and the rights of others (namely, the flow of traffic) while simultaneously offering another location, also in the centre, where there was more space and where traffic would not have been disrupted. The Court established that the authorities had given a

38 *Rai and Evans v. the United Kingdom, app. no. 26258/07 and 26255/07, 17 November 2009,* available at: http://hudoc.echr.coe.int/eng?i=001-96022

39 *Appleby and others v. The United Kingdom, app. no. 44306/98, 6 May 2003,* available at: http://hudoc.echr.coe.int/eng?i=001-61080

40 *Taranenko v. Russia, app. no. 19554/05, 15 May 2014,* available at: http://hudoc.echr.coe.int/eng?i=001-142969

41 *Tuskia and Others v. Georgia,* app. no. 14237/07, 11 October 2018, available at: http://hudoc.echr.coe.int/eng?i=001-186667

convincing explanation for the change of venue, in accordance with the Convention, while the organisers had failed to adduce any argument as to why holding the rally only at the location they had proposed would allow the effective exercise of their right to freedom of peaceful assembly (*Berladir and Others*, 2012, § 60).

On the other hand, in the case of demonstrations scheduled in Budapest's Kossuth Square right in front of the Parliament, the authorities restricted the gathering to protect public order and the rights of MPs by ordering organisers to move the rally to a remote part of the park in front of the Parliament. The Court concluded that a relevant and sufficient explanation for such a restriction was missing, since no sessions of either the Parliament or its committees were planned on the day when demonstrations were scheduled, and noted that the same location had been approved without restrictions to another organizer, who had planned the rally at the time when several committees were in session. It was concluded that the ban was not necessary and that Article 11 had been violated (*Saska*, 2012, §§ 21-23).

In the case where protesters were forbidden to hold demonstrations on May Day i.e. Labour Day in Istanbul's Taksim Square, and were then forcibly dispersed by police, the Court established that gathering in that specific square on that specific holiday had important symbolic significance, and that it had been permitted in earlier years (*Disk and Kesk*,[42] § 31). In this case, a violation of Article 11 of the Convention was established due to the violent dispersal of protesters who did not act violently.

If the authorities, for justified reasons, offer a change of venue in order to be able to adequately ensure the safety of the gathering, this should not be done at the last moment, when it was virtually impossible for the organisers to modify the form, scale and timing of the event (*Primov*, § 147).

With regard to the protests that are held on roads, the Court pointed out that demonstrations in public can cause a certain level of disruption to ordinary life, including obstruction of traffic, and that this, in and of itself, does not justify obstructing the right to freedom of peaceful assembly. It also pointed out that the authorities should show "a certain degree of tolerance" towards such behavior (*Kudrevičius*, p. 155). The appropriate "degree of tolerance" cannot be defined *in abstracto*; instead, particular circumstances of the case and the extent of "disruption to ordinary life" must also be taken into account. On the other hand, the Court noted that the intentional failure by the organisers to abide by the rules and the structuring of a demonstration in such a way as to cause disruption

42 *Disk and Kesk v. Turkey,* app. no. 38676/08, 27 November 2012, available at: http://hudoc.echr.coe.int/eng?i=001-114776

to ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances constitutes conduct which cannot enjoy the privileges of protecting expression and political speech and assembly (*Kudrevičius*, § 156). Thus, in the case of a protest which was organised on a highway in the form of slowing down traffic, the Court did not establish that a violation had been committed by arresting and punishing a man who had completely brought his vehicle to a halt, and thus also the traffic, even though the police warned him to continue moving and tolerated the unannounced protest for several hours (*Barraco*)[43].

The court found that the police demonstrated a "high degree of tolerance" in the case of protests by farmers in Lithuania who had blocked three highways for a period of two days. The police did not end the protest; it rather re-directed the traffic and prevented violent clashes of lorry drivers and protesters (*Kudrevičius,* §§ 176-177). Once the protest ended, the protesters were punished for unlawful behaviour and disturbing public order, which the Court found to be in line with the Convention.

3.5. Peaceful Nature of Assembly

The Convention protects only "peaceful" assembly, i.e. gatherings that are not violent, and those that do not call for hatred, violence or conflict. An assembly is considered "peaceful" if its organisers do not incite violence or otherwise reject the foundations of a democratic society (*Kudrevičius*, §92). The authorities bear the burden of proving the violent intentions of the organisers of protests (*Christian Democratic People's Party,* (no. 2),[44] § 23).

The organiser of the protest cannot be held responsible for the violent behaviour of the participants just because s/he is one of the organisers, if his/her behaviour was peaceful at all times and if s/he did not incite anyone to violence (*Razvozzhayev v. Russia*,[45] § 293). However, another organiser of the same gathering, who acts violently, cannot refer to the protection of the right to "peaceful" assembly. In the same case, the Court rejected the application of another organiser of the same protest as inadmissible because it found that he had led the breaking of the police cordon, which then led to an escalation of violence and provoked conflicts (*Razvozzhayev*, § 294).

43 *Barraco v. France*, app. no. 31684/05, 5 March 2009, available at: http://hudoc.echr.coe.int/eng?i=001-91571

44 *Christian Democratic People's Party v. Moldova (no.02)*, app. no. 25196/04, 2 February 2010, available at: http://hudoc.echr.coe.int/eng?i=001-97049

45 *Razvozzhayev v Russia i Ukraine i Udaltsov* v. Russia, apps. no. 75734/12, 2695/15 and 55325/15, 19 November 2019, available at: http://hudoc.echr.coe.int/eng?i=001-198480

> If a gathering is joined by persons with violent intentions who are not members of the organising group, this in itself does not deprive the others of enjoyment of the right to peaceful assembly (*Primov*, § 155). This means that an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour (*Frumkin*, § 99).

Even if there is a real risk of a public demonstration resulting in disorder as a result of developments outside the control of those organising it, such a demonstration does not cease to be considered "peaceful" and any restrictions must continue to comply with Article 11 § 2 of the Convention (*Schwabe and MG*,[46] § 103).

Behaviour of participants in a gathering that might offend or disturb others, and which even temporarily interferes with the activities of third parties, is also considered "peaceful" (*Redfearn*,[47] § 56).

Shouting slogans is considered a common part of a "peaceful" protest (*Hyde Park*, § 49).

Obstruction of the main roads as part of demonstrations is an act which, in and of itself, is also considered "peaceful" (*Kudrevičius*, § 98).

The Court also deemed protests held in state buildings to be peaceful gatherings, and considered the applications of their participants within the rights referred to in Article 11, although these protests were not held in accordance with the law and have led to some disturbance of public order (*Cisse*,[48] a protest in a church in Paris, §§ 39-40; *Tuskia*, a protest in the office of the rector of a university, § 73; *Annenkov*,[49] protest at the green market, § 126).

Criminal sanctions for incitement to hatred and violence during demonstrations may be considered acceptable under certain circumstances (*Osmani*). This will be further discussed in Chapters 5.9 and 7.

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46 *Schwabe and M.G. V. Germany*, apps. no. 8080/08 and 8577/08, 1 December 2011, available at: http://hudoc.echr. coe.int/eng?i=001-107703

47 *Redfearn v. United Kingdom*, app. no. 47335/06, 6 November 2012, available at: http://hudoc.echr.coe.int/eng?i=001-114240

48 *Cisse v. France*, app. no. 51346/99, 9 February 2002, available at: http://hudoc.echr.coe.int/eng?i=001-60413

49 *Annenkov and Others v. Russia*, app. no. 31475/10, 25 July 2017, available at: http://hudoc.echr.coe.int/eng?i=001-175668

4. POSITIVE OBLIGATIONS OF THE STATE

4.1. Prescribing a Legal Framework Guaranteeing the Right to Peaceful Assembly

The law prescribing the restrictions must be in line with Article 11 § 2 of the Convention and must be of adequate quality - it should be accessible to the person concerned and foreseeable as to its effects (*Rotaru*,[50] § 52).

The accessibility of laws applies not only to the law that directly governs public gatherings, but also to all other regulations that may prevent or restrict people from participating in gatherings, such as e.g. those relating to the permission to travel and cross borders (*Djavit An*,[51] § 64-68).

> For a law to be foreseeable, it must be formulated with sufficient precision and clear, and it must give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to interfere with the rights guaranteed by the Convention. This is important to prevent the arbitrariness of the authorities in the application of the law (*Lashmankin*, § 410).

The Court explained that experience had shown that it is impossible to absolutely predict all the consequences. Many laws inevitably contain terms that are more or less vague and whose interpretation and application happens to be a matter of practice (*Primov*, § 125).

The law must also provide an effective remedy against violations of the right to freedom of peaceful assembly. This will be discussed in greater detail in Chapter 8.

For a more detailed description of the application of this statutory obligation in practice, see Section 5.2.

50 *Rotaru v. Romania*, app. no. 28341/95, 4 May 2000, available at: http://hudoc.echr.coe.int/eng?i=001-58586

51 *Djavit An v. Turkey*, app. no. 2065292/92, 20 February 2003, available at: http://hudoc.echr.coe.int/eng?i=001-60953

4.2. Obligation to Ensure Safe Assembly

On the one hand, states must not only refrain from applying unreasonable indirect restrictions upon the right to assemble peacefully but they must also safeguard that right (*Kudrevičius*, § 158; *Djavit An*, § 57).

The authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens. However, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used. The obligation of the state is an obligation as to measures to be taken and not as to results to be achieved (*Kudrevičius*, § 159).

While an unlawful situation such as the absence of timely notification of a gathering does not in itself justify interference with the freedom of assembly, interferences with the right guaranteed by Article 11 are in principle justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others (*Protopapa*,[52] § 109).

The Court emphasised the importance of prevention, such as e.g. the need to timely prepare the public for the event by making public statements, to plan on time the number of police officers required to secure the event (see below, in Section 4.3, *Identoba and Others*,[53] §§ 99-100), and to ensure the presence of first aid services at the site of the demonstrations regardless of whether the gathering is of a political, cultural or another nature (*Oya Ataman*, § 39).

> The obligation of the authorities to communicate with the protest organisers is one of the most important statutory obligations aimed at ensuring peaceful assembly, preventing disorder and ensuring the safety of all participants. In the case of large demonstrations held in Moscow's Bolotnaya Square against the 2012 election results, the Court found that despite exceptional preparations for securing the demonstrations, the security plan did not envisage a contact person who would communicate with the organisers on behalf of the police during the protest. A police cordon was established in the course of the protest, which prevented the protesters from passing through the park on Bolotnaya Square, although the park was also previously agreed as a gathering place. In response to the cordon, protest organisers sat down in the street, which led to traffic congestion. The police dispatched an ombudsman

52 *Protopapa v. Turkey*, app. no. 16084/90, 24 February 2009, available at: http://hudoc.echr.coe.int/eng?i=001-91499

53 *Identoba and Others v. Georgia*, app. no. 73235/12, 12 May 2015, available at: http://hudoc.echr.coe.int/ eng?i=001-154400

> just to inform the leaders that they should return and give up passing through the park. The Court concluded that the authorities had not fulfilled even the minimum obligation to communicate with the protest organisers, which was an essential part of their statutory obligation to ensure the peaceful flow of the gathering, prevent disorder and ensure the safety of all citizens. Thus, the Court found a violation of Article 11 (*Frumkin*, §§ 128-120).

The Court noted that the Venice Commission's Guidelines on Freedom of Peaceful Assembly recommend negotiations and mediation in the event of a standstill or other dispute during a gathering, in order to avoid escalation of the conflict (*Frumkin*, §§ 80 and 129).

The authorities have a duty also to ensure the peaceful conduct of lawful demonstrations which, as such, fall under Article 11 of the Convention, even when they are not held in accordance with the law, e.g. are not notified, especially those of which the authorities have had sufficient notice, whether formal or *de facto*, enabling them to take appropriate measures (*Chernega*, § 271).

> In the case of a protest against a road construction project which involved cutting trees in a park, which was not announced but which the authorities knew in advance would take place, the Court found that the state had failed to ensure a peaceful gathering by failing: (i) to regulate in an adequate fashion the use of force by security personnel it had engaged to secure the park, (ii) to properly organise the division of responsibility in maintaining order between the private security personnel and the police, which would also have allowed for the identification of the security personnel deployed, (iii) to enforce the rules concerning adequate identification of persons authorised to use force, and; and (iv) to explain the decision of the police not to intervene in any meaningful fashion capable of preventing or controlling effectively the clashes (*Chernega*, § 281).

The Court praised the attitude of the authorities in cases when they showed a high degree of tolerance towards protests that were unlawful for various reasons, and whose participants were later subsequently and proportionately punished for unlawful behaviour.

In the case of a strike of farmers in Lithuania, which went from a permitted location to an illegal blockade of highways for a period of two days, the police ordered the participants to remove the roadblocks and warned them of their possible liability, but chose not to disperse the gatherings. When tensions arose between the farmers and the truck drivers, the police urged the parties to the conflict to calm down in order to avoid serious confrontations. Additionally, traffic was immediately diverted to auxiliary roads. The Court concluded that the authorities had shown a "high degree of tolerance" towards the protesters, regardless of the fact that they caused considerable ruckus. It was noted that the police had tried to balance the interest of the protesters with the interests of highway users in order to ensure peaceful assembly and the safety of all citizens, and that it had satisfied any statutory obligation that they might be considered to have had" (*Kudrevičius*, §§ 176-177).

However, tolerance of complete blockage of traffic on a highway is not the standard. In the case of a protest which was also un-notified, and which occurred by slowing down the movement of traffic, when three protesters at the head of the line of vehicles after some time decided to bring their cars to a complete halt and thus stop all traffic, the police first tried to convince them not to do that, then warned them, and finally arrested and removed them from the venue. Protesters were later punished. The Court did not find a violation of the Convention, stating that the authorities had shown a sufficient degree of tolerance towards the protest (*Barraco*, §§ 46-47).

4.3. Counter-demonstrations

The statutiry obligation of the authorities to ensure the right to peaceful assembly is especially important in high risk situations, when the safety of participants directly depends on the authorities' active action. Such situations most often involve protest gatherings of people with opposing views, i.e. the so-called counter-demonstrations.

The Court has explained that, although demonstrations may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote, participants be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents. Such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate (*Plattform "Ärzte für das Leben"*,[54] § 32).

54 *Plattform "Ärzte für das Leben" v. Austria*, app. no. 10126/82, 21 June 1988, available at: http://hudoc.echr.coe.int/eng?i=001-57558

An unconditional prohibition of counter-demonstrations is not a viable option, especially when demonstrations address matters of public interest (*Öllinger*,[55] 2006, § 44). Therefore, the police must ensure the right of assembly for both sides and adequately secure both events. Circumstances are extremely rare, and must be justified by relevant and convincing reasons, when the danger of disturbing public order makes it impossible to secure such events and when the state can decide to ensure public order by banning all protest gatherings (more on this in Chapter 5.6).

> The Court concluded that the right to peaceful assembly of the member of the Austrian Parliament w3as violated as he was forbidden from holding a peaceful protest at the cemetery in Salzburg against the commemoration of SS officers which was held in the same place on the same day, on the religious holiday of All Saints. The Court did not agree that it was necessary to ban the protest in order to protect the interests of the visitors of the cemetery, considering that the protest was supposed to be peaceful and that the police could have ensured that the supporters of the opposing groups remained separated. It concluded that the state had failed to strike a fair balance between the competing interests by giving too little weight to the MP's right to holding the assembly while giving too much weight to the interest of cemetery-goers in being protected against some rather limited disturbances (*Öllinger*, §§ 47-50).

Thus, the authorities are, as a rule, obliged to protect the right of assembly of both groups that wish to demonstrate at the same time, and should find the least restrictive means to enable both demonstrations to take place (*Faber*,[56] § 43). When there is a serious threat of violent counter-demonstrations, the authorities have a wide field of discretion regarding which measures to take to ensure that the competing groups tolerate each other (*Alekseyev*, §75). As a rule, such measures are those that are taken to separate opposing groups by a police cordon and to prevent participants from being physically endangered (*The United Macedonian Organization Ilinden and Ivanov (no. 2)*,[57] §34).

55 *Öllinger v. Austria*, app. no. 76900/01, 29 September 2006, available at: http://hudoc.echr.coe.int/eng?i=001-76098

56 *Faber v. Hungary*, app. no. 40721/08, 24 July 2012, available at: http://hudoc.echr.coe.int/fre?i=001-112446

57 *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (no. 2)*, app. no. 34960/04, 18 October 2011, available at: http://hudoc.echr.coe.int/eng?i=001-107044

However, this obligation does not mean the absolute obligation of the authorities to protect protesters from harassment. In a case in which the applicants argued that the police had not taken sufficient measures to protect their protest march from the opponents' shouting, and from having eggs and grass thrown at them, the Court dismissed the application on the ground that the police had reasonably assessed that its focus should be on preventing physical violence instead of forcibly interrupting both gatherings, since that would have only caused even greater unrest (*Plattform "Ärzte für das Leben"*, § 11).

On several occasions, the Court considered and found violations of the Convention in cases where the state failed to secure gatherings of people advocating for the rights of sexual minorities, either by banning such rallies (*Alekseyev*, 2012), or by failing to sufficiently secure them from the violence of counter-demonstrators. In these cases, the Court particularly emphasised that a democratic state must ensure the application of the principles of pluralism, tolerance and broad views, and in particular the protection of the views of minorities subject to victimisation.

> In the case in which the LGBT rights organisation had notified the Tbilisi police, nine days in advance, of their gathering on the occasion of the International Day Against Homophobia, the Court found that the authorities had not done enough to plan for the security of the gathering, although they must have known about the attitudes in parts of Georgian society towards the sexual minorities. The Court pointed to the authorities' failure to: a) prepare the public for the event by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance, b) provide stronger protection of the gathering in the form of sufficient police presence, both at the rally site and subsequently along the procession route, c) in response to the attack on the procession, incapacitate the most aggressive attackers from religious associations that organised the counter-demonstration, instead of the police focusing exclusively on arresting and evacuating participants in the procession, who were actually the victims of the attack (*Identoba*, §§ 99-100).

In 2018, the Constitutional Court of Montenegro found that the ban on holding a peaceful assembly in Nikšić in 2015, entitled "Academic Walk of Pride", had violated the rights of the applicants - organisations LGBT Forum Progres and Hiperion - to freedom of peaceful assembly, contrary to Article 52 of the Constitution and Article 11

of the Convention.[58] In this case, the Supreme Court upheld the ban, finding, without explanation, that the police had carried out a valid risk assessment in connection with the planned rally. The Constitutional Court found that this was not the case, that there was no evidence of a seriously performed assessment of danger from the supporters of the Yugoslav Communist Party of Montenegro, whose gathering on the same day had not been banned, and that the police did not adequately react to the threats of football fan groups, which should have been prosecuted instead of the authorities "banning the rally condemned by the fans". The Constitutional Court noted that the police assessment indicated that 40-50 participants would appear at the rally, "which is a number that is significant, but by no means insurmountable from the security point of view in a city the size of Nikšić." It concluded that the ban was not "necessary in a democratic society" because a fair balance had not been struck between the fundamental freedom of assembly of the applicants and the interest in preserving public order and the safety of people and property, and that groups that were ready to commit violence "should not have been allowed to effectively stifle the freedom of peaceful assembly" (U-III 778/16, 24.10.2018, items 10-10.1).

4.4. Obligation to Investigate

The state is obliged to investigate violent incidents that interfere with the freedom of association rights referred to in Article 11 of the Convention (*Ouranio Toxo and Others*,[59] § 43). This obligation also includes a review of the police's handling of complaints filed against the conduct of its officers, so as to prevent recurrence of the same omissions (*Identoba*, § 80).

> In the case in which activists were attacked by masked persons during a protest, the Court found that the state had violated the procedural obligation under Article 11 of the Convention to investigate the attack and punish the perpetrators, although six attackers had been identified. Four of them were convicted, but it was never explained why the remaining two were not. The Court particularly criticised the fact that the authorities did not even try to establish who had given the order, although one attacker admitted to having been paid to execute the attack (*Promo Lex and Others*[60]).

58 Decision of the Constitutional Court of Montenegro U-III 778/16, available at: http://www.hraction.org/wp-content/uploads/2018/10/Odluka-Ustavnog-suda_LGBT-Forum-Progres.pdf

59 *Ouranio Toxo and Others v. Greece*, app. no. 74989/01, 20 October 2005. available at: http://hudoc.echr.coe.int/eng?i=001-70720

60 *Promo Lex and Others v. the Republic of Moldova*, app. no. 42757/09, 24 February 2015. http://hudoc.echr.coe.int/eng?i=001-152425

5. RESTRICTION OF THE RIGHT TO FREEDOM OF ASSEMBLY

5.1. State Interference in the Right to Peaceful Assembly - Types of Restrictions

In examining the applications filed against states in relation to the violation of the right to freedom of peaceful assembly, the Court first examines whether there has been any decision, action or omission that can be attributed to the state, which had affected the applicant's right. In other words, it examines whether, due to state intervention, the right to peaceful assembly was restricted before, during or after the gathering.

Lack of interference attributable to the state would exist, for example, in a situation where people gather without prior notification, someone else threatens them and orders them to disperse and the rally therefore fails, but no one informs any state authority thereof and the application is immediately addressed to the Court. In such a situation, the Court would find that the state did not in any way influence the exercise of the right of assembly, and that it did not fail to ensure the enjoyment of that right since the state authorities were informed of neither the gathering nor the incident.

The most common state interventions that serve to restrict the right to freedom of peaceful assembly are: the requirement to notify the assembly in advance, as is the case in Montenegro, or to request permission to hold it, as is the case in some other states; making a decision to ban a gathering; a request to change the venue, modality or time of the gathering; preventing participants from coming to the gathering; issuing an order to disperse the gathering; dispersing the gathering with the use of force; insufficient securing of the gathering; arrest and punishment of participants or organisers for participating in the gathering or for their conduct in connection with the gathering, as well as failure to conduct an investigation into the obstruction of the gathering.[61]

61 A similar overview was provided in the judgment in *Lashmankin and Others v. Russia*, 2017, § 404.

In the case of *Ezelin,*[62] the applicant was a lawyer from the Caribbean island of Guadeloupe who complained that the Bar Association i.e. the court that decided on the appeal against the Association's decision, had violated his right to peaceful assembly by reprimanding him for participating in a protest. The French authorities pointed out that his right was not restricted, since he had in fact participated in the gathering, and that the disciplinary sanction was imposed on him only later, for actions that were not in accordance with the requirements of the profession, and that there was thus no interference with freedom of assembly. However, the Court emphasised that restrictions of the right referred to in Article 11 § 2 of the Convention must be interpreted in a way that includes measures taken before, during and after the gathering, as well as in relation to it, and concluded that even an ethics sanction, such as the one that was imposed on him, is a sanction that also represents interference with the rights and a restriction of the right to peaceful assembly (§ 39).

In the *Baczkowski* case, the applicants complained that the ban had violated their right to peaceful assembly, regardless of the fact that they held the gathering despite it. The Court found that previous ban on assembly, even when a gathering is held without interference, could have the effect of deterring participation and that it therefore constituted state interference with the right to freedom of assembly. Especially if one keeps in mind that the ban put the participants at great risk during the gathering, because the state did not provide sufficient police forces to protect them from clashes with counter-demonstrators. In addition, in the present case the organisers of the gathering did not have an effective remedy which would ensure a final review of the decision on the ban before the date of the planned gathering (§§ 67-68).

Not every restriction constitutes a violation of rights. Once it finds that the state's intervention has led to a restriction of rights, the Court then assesses, in accordance with Article 11 § 2 of the Convention, whether the restriction was "prescribed by law"; whether it was imposed in order to achieve a "legitimate aim", and whether the restriction was "necessary in a democratic society". A negative answer to any of these questions means that there has been a violation of the rights referred to in Article 11. This will be explained in greater detail below.

62 *Ezelin v. France*, app. no. 11800/85, 1991. See also: *Makhmudov v. Russia,* app. no. 35082/04, 26 July 2007, available at: http://hudoc.echr.coe.int/eng?i=001-81966

5.2. Legality of Interference

The obligation of the state to prescribe restrictions of rights in a law that must meet a certain quality standard is explained in Chapter 4a. Here, we present the cases in which the Court found that laws were not "accessible" or "foreseeable" in accordance with that standard.

The Court concluded that the law in Russia did not meet the "quality of law" standard because it allowed the authorities to arbitrarily ban gatherings, i.e. to condition their holding in an almost unlimited way by requesting change of venue, time or modality, all in a discriminatory manner. Opposition and human rights organisations were prohibited from assembling in central city locations, allegedly because they would obstruct traffic and interfere with the rights of others, while pro-government rallies in the same locations were simultaneously approved (*Lashmankin*, §§ 429-430).

The Court found that the law prohibiting holding gatherings "in the immediate vicinity of court buildings" was not sufficiently precise, as it allowed for an arbitrary assessment of said proximity, and was not adaptable to the circumstances of each case. This also led to a ban on gatherings which, at the times for which they were planned, could not possibly interfere with the work of the court (*Lashmankin*, 2017, §§ 440-442).

In the cases of *Djavit An* and *Adali*[63] *v. Turkey*, the applicants appealed against the decision of the Turkish authorities in Cyprus not to allow them to cross the border (the "green line") in order to participate in the gatherings of two Turkish communities. The Court noted that there was no law governing permits to cross the border, and concluded that the restriction was not prescribed by law as required by the Convention.

In the case of *Primov*, the Court reiterated that a provision cannot be considered "law" if it is not formulated with sufficient precision. The issue at hand was the provision of the law requiring that a notification be "lodged" not earlier than fifteen and not later than ten days before the planned event. The provision could be interpreted in two ways: the organisers believed that in order to comply with the law they had to *send* the notice during that period, whereas the district administration considered that the notice had to be *received* before the deadline (*Primov*, § 124).

63 *Adali v. Turkey*, apps. no. 38187/97 and 31/03/2005, 31 March 2005, available at: http://hudoc.echr.coe.int/eng?i=001-68670

The Court found that, for twenty years, there had been a legal gap in the regulation of freedom of peaceful assembly in Ukraine. One human rights activist was sentenced to three days in prison for holding demonstrations without approval, although there was no basis in the law for such a conviction (*Vyerentsov,* § 63).

5.3. Legitimate Aim

The restriction of the right to peaceful assembly is in conformity with the Convention only if it serves one or more of the purposes prescribed in Article 11 § 2:

- Interests of national security,
- Public safety,
- Prevention of disorder or crime,
- Protection of health,
- Protection of morals,
- Protection of the rights and freedoms of others

(and if the restrictive measure is necessary, which is discussed in greater detail below, in Section 5.4).

It is important to note here that the fact that a gathering is unlawful because it has not been notified, or because the time or place of the gathering specified in the notification has been exceeded, does not in itself mean that there is a legitimate aim, e.g. the interest of public safety or the prevention of disorder, in prohibiting such a gathering.

In the case of *Navalnyy,*[64] where an opposition leader was arrested following a protest, the Court did not accept allegations that the aim of the arrest was to prevent disorder because the protest did not provoke any greater violence, nor did Navalny act violently. The Chamber of the Court concluded that this case was the same as several others in which it was established that Russia had violated the Convention, since the police stopped and arrested protesters simply because the demonstrations were not approved, and the unlawfulness of the gatherings was the main justification for punishment. The Court found that there were indications that it had become routine for the Russian police to interrupt opposition political rallies and arrest their participants (§§ 87-88).

64 *Navalnyy v. Russia*, app. no. 29580/12, 15 November 2018, available at: http://hudoc.echr.coe.int/eng?i=001-187605

- Interest in Protecting National Security

The Court established that, in itself, a request to change the state borders in the form of advocating the independence of part of the territory does not, in speeches and demonstrations, pose a threat to a country's territorial integrity and national security and cannot automatically justify a ban on gatherings (*Stankov and United Macedonian Ilinden*[65], §§ 97-98).

- Interest in Public Safety and Prevention of Disorder and Crime

The aim of protecting public safety, public order and peace, and the rights and freedoms of others was most often used to restrict the right to freedom of peaceful assembly.[66]

In practice, there is no clear distinction between the interpretation of the aims of public safety and those of protecting public order and peace (prevention of disorder and crime). Special questions regarding these aims arise when it comes to protests that take place on roads. In several cases, the Court found that the relatively mild subsequent punishment of protesters who blocked roads was in line with the Convention and the need to protect public order and the rights of others (*G. v. Germany;*[67] *Lucas v. United Kingdom;*[68] *Barraco*; *Kudrevičius*).

In the case of *Bukta and Others*,[69] regarding the dispersal of an unannounced protest, the Court concluded that when there is no evidence to suggest that the applicants represented a danger to public order beyond the level of the minor disturbance which is inevitably caused by an assembly in a public place, and that "where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance" (§ 37).

In the case where a protest was banned due to the "potential terrorist attack" "in places of mass gatherings", the Court found that the reasoning of the city authorities was neither sufficient nor justified, especially since rallies organised by the Mayor and the Government

65 *Stankov and United Macedonian organisation Ilinden v Bulgaria*, app. no. 29225/95, 2 January 2002, available at: http://hudoc.echr.coe.int/rus?i=001-59689

66 *Guide on Article 11 of the European Convention on Human Rights – Freedom of assembly and association*, European Court of Human Rights, First edition, 31 December 2019, items 59-60.

67 *G. v. The Federal Republic of Germany*, app. no. 13079/87, 6 March 1989, available at: http://hudoc.echr. coe.int/eng?i=001-1054

68 *Lucas v. The United Kingdom* dec, app. no. 9013/02, 18 March 2003, available at: http://hudoc.echr.coe.int/eng?i=001-23125

69 *Bukta and others v. Hungary*, app. no. 25691/04, 17 July 2007, available at: http://hudoc.echr.coe.int/eng?i=001-81728

were held at about the same time. It was therefore found that the prohibition did not have a justifiable aim and was instead arbitrary (*Makhmudov*, §§ 71-73).

- Protection of Health

The Court concluded that the dispersal of the two-month protest of immigrants in a Parisian church was justified in order to protect their health, because their health condition worsened due to hunger strike, while their hygienic conditions became completely inadequate. The Court found that the state's interference with the right to freedom of assembly of immigrants had become necessary because of the wholly inadequate sanitary conditions in which they lived, and that their forced evacuation from the church for health reasons was not disproportionate (*Cisse*, §§ 51-54).

- Protection of Morals

In the *Alekseyev* case, which concerned several bans on the organisation of a pride parade by the Moscow authorities to protect both public order and the moral principles of the majority in society, the Court concluded that it would be incompatible with the Convention's fundamental values if the application of human rights of a minority group was conditioned by the majority's consent thereto. In such a case, the rights of minorities to freedom of religion, expression and assembly would remain only theoretical, instead of being practical and effective as required by the *Convention* (§ 81). In the same context, in the case of *Bajev and Others v. Russia*,[70] the Court noted that it was true that popular views can influence the Court's decision to justify restrictions of rights on moral grounds, but that there was an important difference between giving in to a majority opinion when expanding the rights guaranteed by the Convention and the situation when the pressure of the majority is referred to in order to reduce the scope of basic protection of rights (§ 70).

- Protection of Rights and Freedoms of Others

The authorities must strike an appropriate balance between respect for freedom of peaceful assembly and the rights of those who live, work or move around in the location of a particular gathering. In cases in which it spoke of disturbing public order by unannounced rallies that obstructed traffic (see above), the Court also pointed out that this also unduly interfered with the rights of others. For cases of intentional obstruction of traffic, see Section 5.7 below.

70 *Bayev and others v. Russia*, apps. No. 67667/09, 44092/12 and 56717/12, 20 June 2017, available at: http://hudoc.echr.coe.int/eng?i=001-174422

In the case of *Körtvélyessy*,[71] the applicant intended to organise a protest of up to 200 people in an eight metres wide cul-de-sac in Budapest. The police banned the gathering due to the non-existence of an alternative traffic route and because the protest would stop vehicles' access to buildings in the street. The gathering was not held. The court established a violation of the law, finding that any demonstration held in a public place could cause a certain level of disturbance to everyday life, and that it was unlikely that the protest of 200 people, or even more, would really cause a serious problem with traffic. It was concluded that the authorities had not struck the appropriate balance between the rights of those who wished to exercise their right to peaceful assembly and those whose freedom of movement might have been temporarily disturbed.

In the case of Greenpeace activists who actively obstructed whaling in Norway, the Court rejected the application they filed because they spent two days detention and were fined, and because the ship they used to place themselves between the hunters and the whales, thus preventing whaling, was confiscated. The Court found that the state punished activists proportionately, with the legitimate aim of protecting the rights and freedoms of others and preventing disorder and crime (*Drieman and Others v. Norway*)[72].

5.4. Necessary in a Democratic Society

The right to freedom of assembly is subject to restrictions which must be narrowly interpreted and "necessary in a democratic society", which means that in each individual case the necessity for any restrictions must be convincingly established (*Kasparov and Others*,[73] § 86).

There must be an "pressing social need" for the restriction, it must be proportionate to the "legitimate aim", and the state authorities must provide "relevant and sufficient reasons" for it. When deciding on a restriction, the authorities must apply the standards in accordance with the principles of Article 11 and base the decision on an acceptable assessment of all relevant facts.[74]

71 *Körtvélyessy v. Hungary*, app. no. 7871/10, 5 April 2016, available at: http://hudoc.echr.coe.int/eng?i=001-161952

72 *Drieman and Others v. Norway*, app. no. 33678/96, 4 May 2000, available at: http://hudoc.echr.coe.int/eng?i=001-5290

73 *Kasparov and Others v. Russia*, app. no. 21613/07, 2013, § 86, available at: http://hudoc.echr.coe.int/eng?i=001-126541

74 Ibid.

The Court also examines whether the decisions or omissions of the state authorities were based on an acceptable assessment of the relevant facts, and whether they acted reasonably, carefully and in good faith.[75]

The Court also noted that the principle of proportionality required that a balance be struck between the aims set out in Article 11 § 2 of the Convention and those pursued by freedom of expression using words, gestures or silence of persons gathered in the street or other public places (*Osmani*).

In the case of *Navalnyy* - a prominent Russian opposition figure who was arrested and fined by the authorities seven times during various protests - the Court found that such conduct by the state, even if enshrined in law, was not proportionate to the aim pursued. It found that Russia had failed to prove the existence of an "pressing social need" to disperse the gatherings, arrest the applicant and sentence him twice to imprisonment, regardless of the fact that the sentences were short (§ 88).

In the case of *Schwabe and M.G.*,[76] the applicants spent almost six days in preventive detention during the G8 Summit. Two days before the Summit, the police arrested them because they found banners with the slogans "Freedom for all prisoners" and "Release everyone, now" in their van. They were detained for six days due to the danger of inciting others to forcibly release demonstrators from prison, and they were released no earlier than on the day after the Summit ended. The Court noted that, at the protests, the applicants intended to take part in a debate of general interest, which left the authorities little room for restriction. It was never established that they intended to incite violence. It was concluded that the six-day detention sanction was not proportionate to the need to prevent them from using slogans and, perhaps inadvertently, incite someone to violence. Detention did not strike a fair balance between the interests of the exercise of the right to freedom of assembly and the aims of public safety and prevention of crime, and it was therefore concluded that interference with the right to freedom of assembly was not "necessary in a democratic society".[77]

75 See, for example, the judgment in *Frumkin v. Russia*, 2016, § 94.

76 *Schwabe and M.G. v. Germany*, apps. no. 8080/08 and 8577/08 of 1 December 2011, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-107703%22]}

77 In addition to the violation of Article 11, the Court found in this case also a violation of Article 5 (right to liberty) due to detention which is contrary to the Convention, and established that Germany had detained as many as one thousand people preventively at the time of the G8 Summit.

5.5. Restriction Due to the Message of Assembly

Public events related to political life in the country or at the local level enjoy strong protection under the Convention, and rare are the situations where a gathering may be legitimately banned in relation to the substance of the message which its participants wish to convey (*Primov*, § 135).

Freedom of assembly applies to all gatherings except those whose organisers and participants have violent intentions or otherwise "deny the foundations of a democratic society" (*Christians against Racism and Fascism*, § 155).

Restrictions on freedom of assembly on account of the message conveyed are possible only under the conditions under which the freedom of expression, protected by Article 10 of the Convention, may be restricted as well. The Court emphasised that the link between freedom of assembly and freedom of expression is particularly important when authorities interfere with freedom of assembly because of the statements made by participants in demonstrations. For example, in the case where the participants in a rally advocated a change of state border, and their expression and assembly were therefore restricted to protect national security and territorial integrity, the Court pointed out that there was no sufficient reason to ban the non-violent rally (*Stankov and the United Macedonian Organisation Ilinden*, § 85).

It should also be borne in mind that expressing opinion regarding policies or other topics of public interest enjoys special protection under Article 10 and that there is very little room for its restriction (see *Schwabe and M.G.*, § 113, described in Section 5.4 above). The Court pointed out that the authorities should not have the power to ban a demonstration because they consider that the demonstrators' message is wrong. It is especially so where the main target of criticism is the very same authority which has the power to authorise or deny the public gathering (*Primov*, § 135).

> The opposition leader was arrested seven times in two years, which also hindered his right to peaceful assembly. Based on evidence, the Court established that the actual purpose pursued by the authorities had nothing to do with the Convention and that it rather sought to "suppress that political pluralism which forms part of effective political democracy governed by the rule of law" (*Navalnyy*, § 175).
>
> The court found a violation of the right to freedom of assembly when the city authorities prohibited a citizens' association from protesting in front of the Parliament because of the way the country had voted at the Eurosong

> contest. The explanation of the authorities was that the Parliament was not responsible for voting, and that the issue concerned an event that had already ended. The Court concluded that it was unacceptable for the authorities to ban the assembly simply because they believed that participants' demands were unfounded (*Hyde Park*, § 26).

However, when it comes to inciting violence against a person, government official or part of the population, the authorities have more room to freely assess the need to restrict freedom of expression (see *Osmani* in Chapter 7).

The Court found a violation of the Convention in the controversial case of a dispersed gathering of several people around a man who carried an 13th century Hungarian flag, associated by many with the state's fascist period. The police demanded that the participant, who was protesting peacefully wholding the flag, remove said flag. When he refused, he was arrested. The Court considered the case from the point of view of freedom of expression in the context of freedom of assembly, and found that the flag had not been prohibited in Hungary, that it was not considered in every case a symbol that might insult the victims of a totalitarian regime – which, under certain circumstances, could be a reason for the application of Article 17 of the Convention (prohibition of abuse of human rights), and it therefore concluded that in the present case there was no "pressing social need" for the request to remove the flag and end the gathering (*Faber*, § 58).

In this context, it should be borne in mind that the Court also restricted the freedom of speech of MPs who denied war crimes (e.g. the Holocaust) and belittled victims, finding that such views were exempt from the Convention because they were contrary to its fundamental values (see *Pastörs v. Germany*,[78] §§ 36-37). Accordingly, rallies to promote hatred, deny crime and belittle victims can be restricted, due to their message, as rallies that "deny the foundations of a democratic society."

The Court noted that any measure of interference with freedom of assembly and expression – with the exception of inciting violence or rejecting democratic principles – does not serve democracy and can often even endanger it, regardless of how shocking and unacceptable the authorities find some of the views or words used at rallies. In a democratic society based on the rule of law, the ideas which challenge the existing order must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means (*Sergey Kuznetsov*[79], § 45).

78 *Pastörs v. Germany*, app. no. 55225/14, 3 October 2019, available at: http://hudoc.echr.coe.int/eng?i=001-196148

79 *Sergey Kuznetsov v. Russia*, app. no. 184/02, 11 April 2007, available at: http://hudoc.echr.coe.int/eng?i=001-78982

5.6. General Prohibition of Assembly

In exceptional circumstances, the authorities may temporarily apply restrictions relating to all gatherings or all gatherings of the same kind. In such cases, states are obliged to ensure that restrictions are in accordance with Article 11 § 2 of the Convention.

In the case of *Christians against Racism and Fascism*, concerning the two-month prohibition of all protest rallies in the territory under the jurisdiction of the London police, the Court established that the applicants' right to hold a peaceful protest had not been violated, finding that the London police chief had valid reasons to impose a general ban to ensure public order and security during the election period. The Court pointed out that such a broad ban on gatherings can be justified only if there is a real danger that they would lead to disorder which could not be prevented by any more lenient measures. Also, the authorities must take into account the consequences of such a ban on other demonstrations, those that do not pose a threat to public order. A general prohibition of assembly restricted to a specific territory can be considered necessary, within the meaning of Article 11 § 2 of the Convention, only when the need for safety justifying such a prohibition outweighs the harm of the prohibition itself, and when there is no other way to avoid adverse safety effects.

5.7. Intentional Interference with the Ordinary Life of Citizens and Traffic

Under Article 11 of the Convention, the right to freedom of peaceful assembly encompasses peaceful gatherings that are not in accordance with the law (see: Unlawful Gathering, 6.2). The state is expected to show a certain degree of tolerance towards such gatherings. However, when the organisers intentionally, and without sufficient justification, do not respect the obligation to notify a gathering, do not respect the approved route or time for which they received approval, and excessively interfere with the rights of others, such gatherings do not enjoy the same protection as lawful gatherings, i.e. do not enjoy the same privileged protection as political speech or debate on questions of public interest (*Kudrevičius*, § 156).

In several above mentioned cases, the Court considered gatherings that were held contrary to the law because they were not notified or the conditions from the notifications were exceeded, and whose participants also deliberately blocked roads in order to draw attention to their messages (*G. Lucas, Barraco, Kudrevičius*). In all of these cases, gatherings were held either without interruption (*Kudrevičius*) or the authorities allowed protesters to send a message before they interrupted them. The Court found that short-term detention and sanctions imposed on participants in such gatherings were proportionate to the legitimate aim of protecting public order and the rights of others, finding no violation of the Convention.

In the case of Éva *Molnáŕ*,[80] the applicant complained about the police order to stop the unannounced gathering which had already been going on for eight hours. The Court did not find a violation of the Convention, establishing that the police were sufficiently tolerant of the gathering that blocked several streets. It was noted that the aim of prior notification is precisely to reconcile, on the one hand, the right to assembly and, on the other hand, the rights and lawful interests of others, e.g. freedom of movement and prevention of disorder and crime (§ 37).

5.8. Chilling Effect

The Court often finds that excessive and disproportionate restriction of human rights can also have the unintended effect of discouraging, intimidating or deterring people from exercising those rights (the "chilling" effect), which unjustifiably limits the democratic development of society.

In the case in which the police stormed and arrested several people who tried to hold spontaneous demonstrations yet started to flee when they saw police officers, the Court found that the disproportionate interruption of a peaceful gathering, deprivation of liberty and criminal punishment of the participants could only deter them from participating in political gatherings in the future, as well as other opposition voters and the public - not only from attending demonstrations, but also from participating in open political debate (*Ibrahimov and Others*, § 86)[81].

In the case of the *Christian Democratic People's Party*, the authorities prohibited gatherings this political party was planning to organise on the occasion of the introduction of the Russian language in schools. The night before the local elections, the Ministry of Justice of Moldova took a decision to ban the activities of this party for a month. In considering the proportionality of these measures, the Court noted their discouraging effect, stating that inthe present case even a temporary ban could have discouraged the applicants from continuing with their activities.

80 *Éva Molnár v. Hungary*, app. no. 10346/05, 7 January 2009, available at: http://hudoc.echr.coe.int/eng?i=001-88775

81 *Ibrahimov and Others v. Azerbaijan*, apps. no. 69234/11, 69252/11 and 69335/11, 11 February 2016, available at: http://hudoc.echr.coe.int/eng?i=001-160430

In the *Baczkowski* case, local authorities did not allow the assembly and march of the LGBT population; however, the gathering was still held. The Court found a violation of the Convention and noted that the previous unjustified ban could have deterred people from participating in the gathering.

In the case of *Nurettin Aldemir and Others v. Turkey,*[82] the applicants took part in demonstrations against a bill which was proposed to the Parliament. The police dispersed the gathering by force, stating that it was not approved. The State Prosecutor's Office filed criminal charges against the applicants, but they were later dismissed by the court. The interference with the right to assemble and the force used by the police to disperse the participants, as well as the subsequent prosecution of the applicants, albeit discontinued, were qualified by the Court as acts which could have had a deterrent effect and discouraged the applicants from participating in similar gatherings.

In the case of *Disk and Kesk*, the applicants gathered to celebrate Labour Day on 1 May. Earlier, the city authorities rejected their request to gather on Freedom Square, so the police assumed that they were gathering in front of the party's headquarters to go to the Square despite the ban. The police asked the participants to leave, and when they refused they started to disperse the gathering using water hoses and tear gas. As hours went by, the intensity of the crackdown on the protest increased. It all ended with the injuries of those gathered and the arrest of the participants. The Court pointed out that the disproportionate behaviour of the police, i.e. the hostile attitude of the authorities which came to the fore in this case could discourage others from participating in other Labour Day gatherings.

In the case of *Alexander Navalnyy*, a prominent Russian opposition figure who was arrested and fined seven times during various protests (sentenced twice to prison), the Court found that the measures taken had a serious potential to intimidate and deter people from attending future public gatherings and prevent an open political debate. The Court found that the effect was amplified by the fact that a well-known public figure had been targeted, whose arrest was bound to attract wide media coverage (§ 88).

82 *Nurettin Aldemir and others v. Turkey*, app. no. 32124/02, 18 December 2007, available at: http://hudoc.echr.coe.int/eng?i=001-84054

5.9. Sanctions

Sanctions imposed on organisers and participants in gatherings constitute particularly severe restrictions on rights which also must meet the requirements of Article 11 § 2 of the Convention. The Court pointed out that it will be deemed that there is interference with the right to freedom of assembly whenever there is a clear and direct link between respect for that right and the punishment (*Navalnyy and Yašin*,[83] § 52), and that in such cases there will be a violation of Article 11 of the Convention unless it is proved that the intervention was "prescribed by law", that it pursued a legitimate aim, and that it was "necessary in a democratic society" (*Ziliberberg*)[84].

The nature of the punishment (criminal, misdemeanour, fine, imprisonment) and the severity of the penalty imposed on protesters are the factors that must be taken into account when assessing the proportionality of state interference in relation to the aim pursued (*Kudrevičius*, § 146).

Where sanctions imposed on the demonstrators are criminal in nature, they require particular justification A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty. Thus, the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence must be examined by the Court with particular scrutiny (*Kudrevičius*, § 146).

However, when organisers of protests which are considered "peaceful" deliberately extensively disrupt public order and the rights of others, the state has more room to punish such behavior. No violation of the Convention was established in four cases in which protesters who blocked traffic in protest and failed to act on police orders to lift the blockade were sanctioned by three months probation and fined in the amount of EUR 1,500 for blocking a highway lane (*Barraco v. France*);[85] in the amount of GBP 150 for sitting in a street that leads to a naval base (*Lucas v. The United Kingdom*);[86] in the amount of DM 100 for blocking the access road to the NATO base (*G. v. Germany*);[87] and sentenced

83 *Navalnyy and Yashin v. Russia*, app. no. 76204/11, 4 December 2014, available at: http://hudoc.echr.coe.int/eng?i=001-148286

84 *Ziliberberg v. Moldova*, app. no. 61821/00, 4 May 2004, available at: http://hudoc.echr.coe.int/eng?i=001-23889

85 *Barraco v. France*, app. no. 31684/05, 5 March 2009, available at: http://hudoc.echr.coe.int/eng?i=001-91571

86 *Lucas v. The United Kingdom* dec, app. no. 9013/02, 18 March 2003. available at: http://hudoc.echr.coe.int/eng?i=001-23125

87 *G. v. The Federal Republic of Germany*, app no. 13079/87, 6 March 1989, available at: http://hudoc.echr.coe.int/eng?i=001-1054

to six days in prison, conditionally, because they blocked three main highways for two days (*Kudrevičius and Others v. Lithuania*).[88]

Proportional punidhment for acts of violence or incitement to violence during demonstrations were considered acceptable, as was a misdemeanor sanction for participating in un-notofied demonstrations (*Yilmaz Yildiz and Others*,[89] § 42).

> In the case of *Akgol and Gol,*[90] the Court took the view that peaceful assembly in principle did not deserve criminal sanctions, and expressed concern over the fact that criminal proceedings were being instituted against demonstrators at all, even in the case of unlawful gatherings. In this case, the applicants were granted permission to hold a gathering on the premises of a university canteen. As the protesters failed to adhere to the limits of the allowed space from the very beginning of the protest, their gathering was unlafwul. After warnings and calls to disperse, and the students' refusal to comply, the police stopped the protest. The applicants were detained and criminal proceedings were instituted against them. They were initially sentenced to a prison term of two years and three months, and in a later re-trial to one year and three months. The Court found that imposed sanctions were neither proportionate nor necessary to maintain order.
>
> In the case of *Gun,*[91] the applicants held a rally at the time when protests in the country were temporarily banned, to pay tribute to the arrested leader of PKK (considered by the Turkish authorities to be a terrorist organisation). The assembly was going peacefully; one person gave a speech, following which the gathering ended. After the gathering, a dozen protesters who remained at the location lit a fire and did not allow firefighters to approach; some of those present even threw stones at the police. The police identified the applicants as organisers of the gathering. They were convicted only for organising an unlawful gathering, and were fined or imprisoned. The Court reiterated that the imposition of criminal sanctions, and in particular prison sentences,

88 *Kudrevičius and Others v. Lithuania*, app. no. 37553/05, 15 October 2015, available at: http://hudoc.echr.coe.int/eng?i=001-158200

89 *Yilmaz Yildiz and others v. Turkey*, app. no. 4524/06, 14 October 2014, available at: http://hudoc.echr.coe.int/fre?i=001-147470

90 *Akgol and Gol v. Turkey*, apps. no. 28495/06 and 28516/06, 17 May 2011, available at: http://hudoc.echr.coe.int/eng?i=001-104794

91 *Gun and others v. Turkey,* app. no. 8029/07, 18 June 2013, available at: http://hudoc.echr.coe.int/eng?i=001-122062

just for organising a peaceful gathering was not in the spirit of Article 11 of the Convention and that no balance was struck between the general interest requiring protection of public safety and the applicants' freedom to demonstrate.

In the case of *Yaroslav Belousov v. Russia*, the applicant was found guilty of participating in a lawful rally, displaying anti-government slogans, and throwing an unidentified small round object that hit a police officer. i.e. for participation in mass riots and assault on an official. He was sentenced to two years and three months in prison (21 months for participating in mass riots and 9 months for the assault). The Court concluded that the applicant, who had only sporadically participated in violent activities, was still under the protection of Article 11. In the this case it was noted that the sentence must be proportionate given the defendant's intention at the time of the protest, and the Court also took into account the nature of the offence, the severity of the consequences (whether or not injuries were inflicted), and the influence of the defendant on the deterioration of the peaceful character of the gathering. The Court found a violation of the Convention because there was no "pressing social need" for the applicant to be issued a severe punishment, which was grossly disproportionate to the aim of preventing disorder and crime and protecting the rights and freedoms of others. The Court particularly took into account the applicant's insignificant role in the protests, his marginal involvement in the clashes, and the fact that he had not harmed the police officer.

In the case of *Osmani*, the applicant was found guilty of presenting a speech in which he incited violence, failing to comply with a decision of the Constitutional Court, and for other actions. He was found guilty of inciting national, racial and religious hatred, of disagreement and intolerance, of organising resistance against a lawful decision or activity of a state authority, and of failure of an acting public officer to comply with the decision of the Constitutional Court (see the description of this case also in Chapter 7). He was initially sentenced to 13 years and 8 months in prison, after which the sentence was reduced to seven years; he was eventually amnestied and his sentence was revoked after he served one year and three months. With regard to the severity of the imposed sentence, and that which the applicant ultimately served, the Court pointed out that the nature and severity of the punishment must be taken into account in assessing the proportionality of the restrictive measures, which is why the original punishment might be

considered too severe. However, the Court was of the opinion that the prison term of one year and three months, which is how long the applicant actually spent in prison, was in fact not disproportionate taking into account all the circumstances of the case.

On the other hand, the Court established that a protester who participated in a gathering for which no prior approval was sought was proportionately fined in the amount of EUR 3 (*Ziliberberg v. Moldova*), as well as the participants in a protest which was held in a special security zone (near the residence of the British Prime Minister) whose organiser was fined GBP 350, while a protester was given a suspended sentence. Both were obliged to also pay the costs of the proceedings. The court emphasised that the amount of the fine was close to the legal minimum (*Rai and Evans*).

5.10. Termination of a Protest and Use of Force

Termination of a protest, especially with the use of force, is a rigorous restrictive measure by which a state can prevent public gatherings when there is an "pressing social need" to protect some of the justified aims that cannot be achieved by use of a more lenient measure.

The absence of prior authorisation and the ensuing "unlawfulness" of the action, because it was not notified or the conditions from the notification are exceeded, does not mean that it is allowed to be interrupted if the participants are not violent and when they do not excessively disrupt public order and the rights of others (*Primov*, § 119).

In the *Navalnyy* case, the Court found that before deciding to disperse a political rally it must be borne in mind that political speech, debate on questions of public interest and the peaceful manifestation on such matters enjoy privileged protection under the Convention, and that the authorities have little room to restrict political speech (§ 133).

The decision to terminate a rally must be justified by relevant reasons, while the decision to use force requires special reasoning (*Eğĭtim ve Bilim Emekçileri Sendikası*,[92] § 108).

The use of force for the purpose of terminating a gathering must be proportionate to the legitimate aim of preventing disorder and protecting the rights of others (*Oya Ataman*, §§ 41-43).

The Court concluded that the use of a gas bomb in a hospital cannot be considered a proportionate measure when protesters run into a hospital while fleeing from the police.

92 *Eğĭtim ve Bilim Emekçileri Sendikası v. Turkey*, app. no. 20641/05, 25 September 2012: http://hudoc.echr.coe.int/eng?i=001-113410

In this case, the Court noted that the authorities needed to show a certain degree of tolerance towards demonstrators who were not taking part in violent activities, so as not to deprive freedom of assembly of its essence (*Disk and Kesk*, § 34).

> In the İzci[93] case, the applicant took part in demonstrations marking Women's Day in Istanbul, during which a large number of police officers formed a ring around the persons who had gathered. Police officers did not prevent people from coming to the gathering place and did not interfere with the demonstrations. However, at the end, when people began to disperse, they started beating protesters with batons and butts of their weapons, and they also used pepper spray. In its judgment, the Court found that the police intervention was disproportionate and unnecessary to achieve the aim of preventing disturbance and crime. It particularly stressed that the use of pepper spray must be precisely regulated, and that the system must be set up to guarantee appropriate training of officers, control and supervision over them during demonstrations, and the effective subsequent assessment of the necessity, proportionality and reasonableness of any use of force, especially against people who are not resisting in a violent manner (§ 99).

In another case against Turkey, the Court found that it is particularly difficult to justify the use of tear gas when protesters cannot be separated from bystanders (*Sülejman* Çelebi *(no. 2)*,[94] § 111).

On the other hand, in a case in which a significant number of demonstrators, who had previously blocked the road, attacked police officers with stones, sticks, rods and and knives and seriously injured some of them, the Court found that the use of special equipment and even firearms by the police did ot seem as unjustified. It concluded that although some of the police officers acted unprofessionally and in defiance of the rules on the use of gas grenade launchers (ibid.), there was no evidence that the firearms had been used deliberately to kill or to wound the protesters (*Primov*, § 162).

93 *İzci v. Turkey*, app. no. 42606/05, 23 July 2013, available at: http://hudoc.echr.coe.int/eng?i=001-122885

94 Süleyman Çelebi and Others v. Turkey, app. no. 22729/08, 12 December 2017: http://hudoc.echr.coe.int/eng?i=001-179409

5.11. Restrictions on freedom of assembly for members of the military, police and State administration

The Convention in Article 11, paragraph 2, explicitly allows member states to restrict the freedom of assembly for members of the armed forces, members police or administration of the State, when necessary to achieve the legitimate aims.

The Court has emphasized that the legitimate aim of any democratic society is to have politically neutral security forces, and that members of the public are therefore entitled to expect that in their dealings with the police they are confronted with politically neutral officers who are detached from the political fray (*Rekvenyi*[95], § 41, 46). The same applies to the military (*Erdel*[96]).

The most frequent limitations on the political activities of members of the armed forces are:

- Prohibitions on participation in political parties;
- Prohibitions on eligibility for elected political office;
- Prohibitions on taking part in public demonstrations while in uniform;
- Restrictions on the freedom of expression.[97]

Restrictions imposed on the military, the police and other civil servants must be prescribed by law, foreseeable and formulated with sufficient precision, so as to prevent their arbitrary application (*Rekvenyi*, § 34). Restrictions must also be "necessary in a democratic society" (*Adefdromil*[98], § 45).

The Court allowed states wider discretion in relation to restrictions on the rights of members of the security forces, mainly due to the assessment of national security protection requirements. However, if the state is unable to prove that the restriction has a legal basis, it would be unable to take advantage of these restrictions. The proportionality

95 *Rekvenyi v. Hungary*, App. no. 25390/94, 20.5.1999, available at: https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-58262%22]}

96 *Erdel v. Germany*, dec., app. no. 30067/04, 12 August 2004, available at: http://hudoc.echr.coe.int/eng?i=001-58262

97 See *Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel*, OSCE 2008, page 56: https://www.osce.org/files/f/documents/0/c/31393.pdf

98 *Adefdromil v. France*, app. no. 32191/09, 2 October 2014, available at: http://hudoc.echr.coe.int/eng?i=001-146700

test in the application of a restriction requires consideration of the nature of the restriction and the extent to which it is justified by a legitimate aim.[99]

The right to peaceful assembly of members of the armed forces, of the police or other civil servants, although possibly subject to somewhat stricter restrictions in comparison to ordinary citizens, may not be abolished or excessively restricted. Restrictions must be lawful and should not be excessive and arbitrary, but exclusively proportionate to the legitimate aim pursued.

99 See *Handbook on Human Rights of Armed Forces Personnel and Fundamental Freedoms of Armed Forces Personnel*, OSCE 2008, page 59.

6. NOTIFYING ASSEMBLY

6.1 Purpose of Administrative Requirements

The obligation to notify the authorities of a public assembly, such as that which exists in Montenegro, or the obligation to seek permission for it, which is in effect in some other countries, does not in itself jeopardise the right to peaceful assembly, since the purpose of such procedures is to enable the authorities to take reasonable and appropriate measures to ensure that the smooth conduct of the event (*Oya Ataman*, § 39).

Prior notification serves not only the aim of reconciling, on the one hand, the right to assembly and, on the other hand, the rights and lawful interests (including the right of movement) of others, but also the prevention of disorder or crime (Éva *Molnár*, § 37).

> In the case of *Sergei Kuznetsov*,[100] the applicant was fined after the protest because he had not notified it ten days prior to its taking place, as required by Russian law on assemblies. Instead, he did it eight days before the scheduled date. The Court pointed out that the two-day difference in no way impaired the ability of the authorities to prepare for securing the protest, which was in fact held. It was concluded that a formal violation of the application deadline is not a relevant or sufficient reason for imposing misdemeanor liability.

The Court observed that organisers of public gatherings should respect the rules governing that process by complying with the regulations in force (*Primov*, § 117). It is not prohibited to impose proportionate penalties for organising or participating in gatherings that have not been previously notified or approved.

> In the *Ziliberberg* case, the applicant attended demonstrations against the municipal council's decision to abolish public transport benefits for students. The organisers did not apply for prior approval, and the protest was therefore unlawful. The gathering was peaceful at the beginning, but later some protesters started throwing eggs and stones at the municipal building. That is when the police intervened. The applicant was fined EUR 3 for participating in an unlawfully organised gathering. The Court rejected his application, stating that states have the right to demand that protests be subject to approval,

100 *Sergey Kuznetsov v. Russia*, app. no. 10877/04, 23 October 2008, available at: http://hudoc.echr.coe.int/eng?i=001-89066

and that they must be able to impose sanctions on those who participate in demonstrations without complying with said request.

However, regulations of this sort should not constitute a hidden obstacle to the execrise of the freedom of peaceful assembly (*Oya Ataman*, § 38; *Berladir*,[101] § 39).

6.2 Unlawful Assembly

A gathering may be considered "unlawful" if it was not notified, if it exceeds the scheduled time or has expanded outside of a certain space. However, the fact that a gathering is "unlawful" does not mean that there are sufficient grounds for its prohibition in accordance with Article 11 § 2 of the Convention (*Kudrevičius*, § 151). The Court has established the rule that holding an unlawful gathering should not be prohibited unless hat is necessary for reasons set out in Article 11 § 2 and until its participants have been allowed to communicate the message they have gathered to convey (*Oya Ataman*, §§ 41-42; *Samut Karabulut*,[102] § 37). It is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (Éva *Molnár*, § 36).

In the case of *Oya Ataman*, the applicant - a lawyer and a member of the board of directors of the Istanbul Human Rights Association - organised an unannounced protest against the situation in the country's prisons. There were 40 to 50 people present at the gathering. The police immediately asked them to disperse and end the rally, informing them that the protest was unlawful and might disturb public order. The protesters refused to comply with the request and tried to continue the march towards police officers, who dispersed the group by use of tear gas. On that occasion, the police arrested 39 protesters including the applicant. The Court established a violation of the right to peaceful assembly and pointed out that it was particularly struck by the authorities' "impatience in seeking to end the demonstration" and that an unlawful situation such as organising a protest without approval does not in itself give permission to restrict assembly. The Court pointed out that rules relating to public gatherings, such as the system of prior notice, are key to the smooth conduct of public events, but that their application cannot be a goal unto itself.

101 *Berladir and others v. Russia*, app. no. 34202/06, 19 November 2012, available at: http://hudoc.echr.coe.int/eng?i=001-112101

102 *Samut Karabulut v. Turkey*, app. no. 16999/04, 27 January 2009, available at: http://hudoc.echr.coe.int/eng?i=001-90933

In the case of an unannounced protest over the results of the presidential election in Armenia, which was terminated by the authorities after nine days even though the gathering was peaceful and did not interfere with the rights of others, the Court found that there were insufficient reasons for its termination since the authorities usually tolerate such gatherings until they become "a real danger to public order or constitute an intentional serious disruption by the demonstrators to ordinary life and to the activities lawfully carried out by others to a more significant extent than that caused by the normal exercise of the right of peaceful assembly" (*Mushegh Saghatelyan*, § 246). In this ruling, the Court explained that the authorities had to show a greater degree of tolerance for demonstrations because "it did not appear that the assembly caused any intentional or even unintentional obstruction of traffic. Nor was its purpose to obstruct the lawful exercise of an activity by others but to have a debate and to create a platform for expression on a public matter of major political importance which was directly related to the functioning of a democracy and was of serious concern to large segments of the Armenian society" (§ 246).

6.3. Spontaneous Assembly

A gathering that requires an "immediate response to a current event in the form of demonstration" is a spontaneous gathering, and it represents a justified exception to the rule that a gathering must be notified in advance (Éva *Molnár*, § 37).

A spontaneous, unannounced gathering occurs as a direct response to a sudden event when the organiser cannot meet the statutory deadline for its notification because postponing the gathering would render it meaningless, or when the organiser of the gathering does not exist. Such rallies often occur as a reaction to election results, to the passing of a verdict in a process of public importance, or to the arrest of politicians, when it is important for the rally to take place at a specific moment because its message would later lose its significance.

In the case of *Bukta*, an unannounced protest was held in front of the hotel where the Romanian Prime Minister had organised a reception at which the Hungarian Prime Minister - who announced his arrival only a day earlier - was supposed to appear as a guest. Protesters were therefore unable to notify police of the planned rally three days earlier, as required by law. About 150 people, including the applicants, gathered in front of a hotel. The police made the demonstrators move to the park near the hotel, after which they dispersed.

The Court ruled that the applicants' right to peaceful assembly had been violated and pointed out that in special circumstances, when spontaneous assembly is justified, for example in response to a political event, breaking up a demonstration just for lack of notification, without any unlawful conduct of participants, could represent disproportional restriction of their rights of peaceful assembly (§ 36).

However, in another case against Hungary, that of Éva *Molnár*, the Court did not find that there were insufficient grounds for an unannounced assembly. The applicant took part in demonstrations that blocked some of Budapest most important streets. The rally was a response to the interruption of another unannounced rally on one of the bridges. As the demonstrations were not notified in accordance with the law, the police, due to the impossibility to regulate the traffic, terminated the protest after eight hours, which is how long it had lasted. The Court concluded that there was no violation of Article 11 of the Convention because the demonstrations did not have to be held so urgently, and because the reason for both protests was actually opposition to the election results which were announced and confirmed two months earlier. The Court also noted that the authorities had sufficiently tolerated the gathering before ordering it to be terminated, and reiterated that notifying a protest in advance serves to reconcile the right of peaceful assembly with the rights and interests of others to freedom of movement, and to prevent disorder and crime. The Court concluded that spontaneous demonstrations can override the obligation to give prior notice only if it is necessary to give an immediate response to the current event, which here was not the case.

7. PUNISHABLE CONDUCT

Punishing participants and organisers of gatherings for actions that concern the exercise of the right to freedom of peaceful assembly is also subject to restrictions referred to in Article 11 § 2 of the Convention and must be lawful, pursuing a legitimate aim, and necessary in a democratic society (*Ezelin*, § 39).

First of all, mere participation in a gathering which is not prohibited must not be subject to any punishment (see the *Ezelin case*, § 53, summarised on page 26).

> In *Galstyan v. Armenia*,[103] the applicant spent three days in prison for allegedly "obstructing traffic" and "making noise" during peaceful demonstrations which were not prohibited. The Court established that there were no reasons for his conviction, that traffic was already interrupted in the place where he stood, and that it was meaningless to expect that no slogans would be shouted and no noise made at a protest. The Court concluded that the applicant had been punished just for actively participating in the protest, despite the fact that he had not done anything illegal or violent, and stressed that punishing participants just for participating in a non-prohibited protest violates the very essence of the right to freedom of peaceful assembly.

The actions of participants in protests which are considered "peaceful", but which intentionally and seriously disturb the order and the rights of others to a more significant extent than that caused by the normal exercise of the right of peaceful assembly, also constitute punishable conduct. Examples of this are protests that involve blocking roads, where the Court had found that punishing participants for participating in such activities was not contrary to the Convention (see 5.9 for more details on the sanctions imposed in these cases).

Inciting violence or taking violent actions are punishable acts, subject to criminal prosecution which is in principle justified by the aims of preventing disorder or crime or protecting public safety and the rights of others (*Osmani*). Organisers of gatherings must not be held responsible for the violent behaviour of the participants if they themselves do not behave in that way (*Razvozzhayev*, § 293).

103 *Galstyan v. Armenia*, app. no. 26986/03, 15 November 2007, available at: http://hudoc.echr.coe.int/eng?i=001-83297

In the case of *Protopapa*, the applicant had taken part in violent demonstrations on the border between Northern and Southern Cyprus (Turkey). Although she claimed that the demonstrations were peaceful, the Court concluded, based on a United Nations (UN) report and other evidence, that she was among the demonstrators who had broken through the UN barrier and crossed into the territory of Southern Cyprus, where they were arrested by the Turkish authorities. The applicant and the other arrested persons were fined EUR 85 each and sentenced to two days already spent in detention. In this case, the Court did not find a violation of rights, concluding that the authorities' intervention was clearly provoked by the violent nature of the protest and not by its political message and was proportionate within the meaning of Article 11 § 2 of the Convention.

In the *Osmani* case, the Mayor of the city of Gostivar who is a member of a national minority fervently advocated displaying the Albanian state flag on a local government building in Macedonia. He organised a protest against the decision of the Constitutional Court that local government did not have the authority to take a decision to display the Albanian flag. He gave an incendiary speech at the protest, calling for the protection of the flag "at the cost of life", and the gathering ended with riots in which three people lost their lives. In addition, he actively worked on the creation of crisis taskforces and armed guards to protect the flag. He was sentenced to four years in prison for inciting racial, national and religious hatred, but was amnestied after serving one year and three months. The court rejected his application, finding that the criminal conviction and sentence he had served were a proportionate restriction on his right to freedom of assembly and expression due to the fact that his actions had instigated a significant degree of violence.

In the *Razvozzhayev* case, both organisers of a rally were prosecuted and sentenced to four and a half years in prison each for participating in riots during the protest held in Moscow after the announcement of the 2012 election results. While the Court found, concerning one organiser, who had led the crown in breaking a police cordon, that he could not invoke the right to peaceful assembly due to his violent behaviour, in the case of the other it found that the criminal conviction and sentence had violated his right to freedom of peaceful assembly because there was no evidence that he had behaved violently, while there *was* evidence that he tried to calm the situation. In this case, the Court also found that the strict punishment had an

intimidating effect which was further strengthened by the fact that the person punished was a public figure and that the trial attracted much media attention.

Misdemeanor prosecution for organising or participating in demonstrations that have not been notified or approved is also acceptable if the sanctions are proportionate (see 5.9). The Court emphasised that states have the right to demand that gatherings be notified, and that they must accordingly be able to impose sanctions on those who participate in demonstrations that do not meet this requirement (*Ziliberberg*).

8. THE RIGHT TO EFFECTIVE REMEDY

Under Article 13 of the Convention, in the event of a violation of the right to freedom of peaceful assembly, the state must provide an effective remedy.

As the timing of public events is crucial, the Court has reiterated that, bearing in mind that the timing of public events is crucial for the organisers and participants, and provided that the organisers have given timely notice to the competent authorities, the notion of an effective remedy implies the possibility of obtaining a ruling concerning the authorisation of the event before the time at which it is intended to take place (*Alekseyev*, §§ 98 and 99).

The Constitutional Court of the Republic of Serbia found that the Public Assembly Act was unconstitutional because, among other things, it did not ensure that the decision on prohibition or other restriction of the right to peaceful assembly had to be finally reconsidered by the date of the announced gathering (Decision IUz-204/2013 of 9 April 2015).

LIST OF DECISIONS AND JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS AND EUROPEAN COMMISSION OF HUMAN RIGHTS REFERRED TO IN THE GUIDEBOOK

- *Adali v. Turkey*, app. no. 38187/97, 31 March 2005
- *Akgol and Gol v. Turkey*, apps. no. 28495/06 and 28516/06, 17 May 2011
- *Alekseyev v. Russia*, app. no. 4916/07, 21 October 2010
- *Alekseyev and Others v. Russia*, app. no. 14988/09, 27 November 2018
- *Annenkov and Others v. Russia*, app. no. 31475/10, 25 July 2017
- *Appleby and Others v. The United Kingdom*, app. no. 44306/98, 6 May 2003
- *Baczkowski and Others v. Poland*, app. no.1543/06, 3 May 2007
- *Balcık and Others v. Turkey*, app. no. 25/02, 29 November 2007
- *Barankevich v. Russia*, app. no. 10519/03, 26 July 2007
- *Barraco v. France*, app. no. 31684/05, 5 March 2009
- *Bayev and others v. Russia*, apps. no. 67667/09, 44092/12 and 56717/12, 20 June 2017
- *Berladir and Others v. Russia,* app. no. 34202/06, 10 July 2012
- *Bukta and others v. Hungary*, app. no. 25691/04, 17 July 2007

- *Chernega and Others v. Ukraine*, app. no. 74768/10, 18 June 2019
- *Christians Against Rasism and Fascism v. UK*, decision, app. no. 8440/78, 16 July 1980
- *Christian Democratic People's Party v. Moldova (no. 02)*, app. no. 25196/04, 2 February 2010
- *Çiloğlu and Others v. Turkey*, app. no. 73333/01, 6 March 2007
- *Cisse v. France*, app. no. 51346/99, 9 February 2002
- *Disk and Kesk v. Turkey*, app. no. 38676/08, 27 November 2012
- *Djavit An v. Turkey*, app. no. 2065292/92, 20 February 2003
- *Drieman and Others v. Norway*, app. no. 33678/96, 4 May 2000
- *Eğĭtim ve Bilim Emekçileri Sendikası v. Turkey,* app. no. 20641/05, 25 September 2012
- *Éva Molnár v. Hungary*, app. no. 10346/05, 7 January 2009
- *Ezelin v. France*, app. no. 11800/85, 26 April 1991
- *Faber v. Hungary*, app. no. 40721/08 , 24 July 2012
- *Frumkin v. Russia*, app. no. 74568/12, 2016
- *G. v. The Federal Republic of Germany*, app. no. 13079/87, 6 March 1989
- *Galstyan v. Armenia*, app. no. 26986/03, 15 November 2007
- *Genderdoc – M v. Moldova*, app. no. 9106/06, 12 June 2012
- *Giuliani and Gaggio v. Italy,* app. no. 23458/02, 24 March 2011
- *Gun and others v. Turkey*, app. no. 8029/07, 18 June 2013
- *Hyde Park and others v. Moldova (no. 3)*, app. no. 45095/06, 31 March 2009
- *Ibrahimov and Others v. Azerbaijan*, apps. no. 69234/11, 69252/11 and 69335/11, 11 February 2016
- *Identoba and Others v. Georgia*, app. no. 73235/12, 12 May 2015
- *İzci v. Turkey*, app. no. 42606/05, 23 July 2013

- *Kasparov v. Russia*, app. no. 53659/07, 11 October 2016
- *Kasparov and others v. Russia*, app. no. 21613/07, 3 October 2013
- *Körtvélyessy v. Hungary*, app. no. 7871/10, 5 April 2016
- *Kudrevičius and others v. Lithuania*, app. no. 37553/05, 15 October 2015
- *Lashmankin and others v. Russia*, apps. no. 57818/09, 51169/10 and 4618/11, 7 February 2017
- *Lucas v. The United Kingdom*, app. no. 9013/02, 18 March 2003
- *Makhmudov v. Russia*, app. no. 35082/04, 26 July 2007
- *Mushegh Saghatelyan v. Armenia*, app. no. 23086/08, 20 September 2018
- *Navalnyy v. Russia*, app. no. 29580/12, 15 November 2018
- *Navalnyy and Yashin v. Russia*, app. no. 76204/11, 4 December 2014
- *Nurettin Aldemir and others v. Turkey*, app. no. 32124/02, 18 December 2007
- *Obote v. Russia*, app. no. 58954/09, 19 November 2019
- *Öllinger v. Austria*, app. no. 76900/01, 29 September 2006
- *Osmani and others v. The Former Yugoslav Republic of Macedonia*, app. no. 50841/99, 11 October 2001
- *Ouranio Toxo and Others v. Greece*, app. no. 74989/01, 20 October 2005
- *Oya Ataman v. Turkey*, app. no. 74552/01, 5 December 2006
- *Pastörs v. Germany*, app. no. 55225/14, 3 October 2019
- *Pendragon v. the UK*, app. no. 31416/96, 19 October 1998
- *Plattform "Ärzte für das Leben" v. Austria*, app. no. 10126/82, 21 June 1988
- *Primov and Others v. Russia*, app. no. 17391/06, 13 October 2014
- *Promo Lex and Others v. the Republic of Moldova*, app. no. 42757/09, 24 February 2015
- *Protopapa v. Turkey*, app. no. 16084/90, 24 February 2009.
- *Rai and Evans v. the United Kingdom*, apps. no. 26258/07 and 26255/07, 17 November 2009

- *Razvozzhayev v. Russia and Ukraine* and *Udaltsov v. Russia*, apps. no. 75734/12, 2695/15 and 55325/15, 19 November 2019
- *Redfearn v. United Kingdom*, app. no. 47335/06, 6 November 2012
- *Rotaru v. Romania*, app. no. 28341/95, 4 May 2000
- *Samut Karabulut v. Turkey*, app. no. 16999/04, 27 January 2009
- *Sáska v. Hungary*, app. no. 58050/08, 27 November 2012
- *Schwabe and M.G. v. Germany*, apps. no. 8080/08 i 8577/08, 1 December 2011
- *Sergey Kuznetsov v. Russia*, app. no. 184/02, 11 April 2007
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- *Stankov and United Macedonian organisation Ilinden v. Bulgaria*, app. no. 29225/95, 2 January 2002
- *Süleyman Çelebi and Others v. Turkey*, app. no. 22729/08, 12 December 2017
- *Taranenko v. Russia*, app. no. 19554/05, 15 May 2014
- *The Gypsy Council and Others v. the United Kingdom*, app. no. 66336/01, 14 May 2002
- *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (no. 2)*, app. no. 34960/04, 18 October 2011
- *Tuskia and Others v. Georgia*, app. no. 14237/07, 11 October 2018
- *Vyerentsov v. Ukraine*, app. no. 20372/11, 11 April 2013
- *Yaroslav Belousov v. Russia*, apps. no. 2653/13 and 60980/14, 4 October 2016
- *Yilmaz Yildiz and Others v. Turkey*, app. no. 4524/06, 14 October 2014
- *Zhdanov and Others v. Russia*, app. no. 12200/08, 16 July 2019
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