



KEY THEME¹

Article 10

Expressive conduct

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Introduction

This document aims to complement the [Guide on Article 10](#), by providing a more focused and detailed overview of the case-law on expressive conduct.

The Court has applied Article 10 not only to traditional forms of expression, such as speeches and written texts, but also to less obvious means of expression through which people choose to convey their opinions, messages, ideas and criticisms (*Semir Güzel v. Turkey*, 2016, § 27). Thus, for the purposes of this Key Theme, expressive conduct refers to acts and/or conduct, other than traditional verbal speech, which communicate ideas and opinions and are protected under Article 10².

As with other forms of expression, in its case-law on expressive conduct the Court has reiterated that Article 10 is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb: such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society” (*Handyside v. the United Kingdom*, 1976, § 49, cited in, inter alia, *Tatár and Fáber v. Hungary*, 2012, § 35; *Murat Vural v. Turkey*, 2014, § 61).

Principles drawn from the current case-law

- Article 10 covers both the substance of the ideas and information expressed, and the form in which they are conveyed (*Gough v. the United Kingdom*, 2014, § 149; *Karuyev v. Russia*, 2022, § 17; *Borzykh v. Ukraine* (dec.), 2024, § 36). The Court has considered that ideas and opinions are capable of being communicated not just through traditional verbal expression, but equally through non-verbal expression or through a person’s conduct (*Ibrahimov and Mammadov v. Azerbaijan*, 2020, § 165).
- Where an act is considered expressive conduct under Article 10, States may nevertheless interfere with the act as long as the interference is prescribed by law and is necessary in a democratic society to attain a legitimate aim, namely, those listed in Article 10 § 2 (*Genov and Sarbinska v. Bulgaria*, 2021, § 64). However, these exceptions must be construed strictly, and the necessity of interference must be convincingly established (*Gough v. the United Kingdom*, 2014, § 165).
- In determining the breadth of the margin of appreciation afforded to the States in this field, due deference must be given to the national authorities’ assessment where the

¹ Prepared by the Registry. It does not bind the Court.

² Campaigns to express dissent and protests in the form of assemblies, although falling within the scope of Article 10 (*Steel and others v. the United Kingdom*, 1998; *Hashman and Harrup v. the United Kingdom* [GC], 1999) will not be the focus of the concept of expressive conduct as discussed in this document. For that group of cases, see the [Guide on Article 11 \(Section B.2, Chapter I\)](#): “assembly as a form of expression”.

expression in question might have many levels of meaning which could only be fully understood by those with a comprehensive knowledge of the historical, social and political background (*Borzykh v. Ukraine* (dec.), 2024, § 47).

- A person who exercises his or her freedom of expression under Article 10 also undertakes certain duties and responsibilities. The scope of those duties and responsibilities depends on the particular context, and must be considered in the Court's assessment of the necessity of an interference (*Gough v. the United Kingdom*, 2014, § 167).
- The interests of an individual must be balanced against societal and group interests in a way that ensures the fair and proper treatment of people from minorities. Although the need to maintain and promote the ideals and values of a democratic society may necessitate certain concessions on the part of individuals, conduct which represents a minority view but which is not *per se* incompatible with democratic values or wholly outside societal norms of conduct should be tolerated by States in the interests of pluralism and harmony (*Gough v. the United Kingdom*, 2014, § 168).
- Artistic expression in particular is covered by Article 10, as the creation, performance, distribution, or exhibition of works of art contributes to the public exchange of cultural, political, and social information, and to the exchange of ideas and opinions. States therefore have an obligation not to unduly encroach on the freedom of expression of authors or artists (*Mariya Alekhina and Others v. Russia*, 2018, § 206).
- Where the conduct in question is an act of political expression or an engagement with a debate on questions of public interest, the Court permits little scope for restriction (*Mariya Alekhina and Others v. Russia*, 2018, § 260; *Baldassi and Others v. France*, 2020, § 78).

Relevant criteria

Applicability of Article 10:

When determining whether an impugned act or conduct falls within the scope of Article 10, the Court considers two factors: first, the nature of the act or conduct, specifically, its expressive character as seen from an objective point of view; and second, the purpose and intention of the person engaging in the act or conduct (*Murat Vural v. Turkey*, 2014, § 54; *Karuyev v. Russia*, 2022, § 19). The Court will conduct its assessment inclusively and not restrictively (*Murat Vural v. Turkey*, 2014, § 52).

The Court has applied Article 10 to *inter alia* the following kinds of expressive conduct:

- **provocative acts and gestures**, such as cutting a public figure's name off a commemorative ribbon (*Shvydka v. Ukraine*, 2014), putting paint or decoration accessories on statues of historical figures (*Murat Vural v. Turkey*, 2014; *Handzhiyski v. Bulgaria*, 2021; *Genov and Sarbinska v. Bulgaria*, 2021), the decision to forego clothing altogether and appear nude or partially nude in public (*Gough v. the United Kingdom*, 2014; *Bouton v. France*, 2022); or spitting on the photograph of a politician in the wake of his re-election (*Karuyev v. Russia*, 2022);
- **artistic and/or political performances or demonstrations that are non-verbal** (*Tatár and Fáber v. Hungary*, 2012; *Stern Taulats and Roura Capellera v. Spain*, 2018; *Mătăsarv v. the Republic of Moldova*, 2019) or that are both verbal and non-verbal (*Mariya Alekhina and Others v. Russia*, 2018; *Sinkova v. Ukraine*, 2018; *Ibrahimov and Mammadov v. Azerbaijan*, 2020; *Bumbeş v. Romania*, 2022; *Bouton v. France*, 2022);
- wearing of **expressive or symbolic clothing or accessories** (*Vajnai v. Hungary*, 2008; *Donaldson v. the United Kingdom* (dec.), 2011; *Fratanoló v. Hungary*, 2011; *Z.B. v. France*, 2021; *Ibragimova v. Russia*, 2022; *Borzykh v. Ukraine* (dec.), 2024, § 36);

- **boycotts** (*Baldassi and Others v. France*, 2020);
- **inaction**, i.e. an act of defiance towards an authority representing the State (*Semir Güzel v. Turkey*, 2016);
- **other forms** (*Melike v. Turkey*, 2021, where the applicant was dismissed from work for using the “Like” button on Facebook to express approve the contents published by third persons; *Ete v. Türkiye*, 2022, where the applicant was found guilty of propaganda in favour of a terrorist organisation for slicing and distributing cake to celebrate the birthday of the leader of the Kurdish Workers’ Party).

The Court assesses the applicability of Article 10 on a case-by-case basis and often looks to contextual factors to determine whether the conduct in question is sufficiently “expressive” to warrant Article 10 protections (*Kotlyar v. Russia*, 2022, § 41). For example:

- The Court has found conduct to be expressive where it engages a broader debate on a matter of public interest (*Stern Taulats and Roura Capellera v. Spain*, 2018, §§ 39-40) or takes place during a prolonged nation-wide protest against the government (*Handzhiyski v. Bulgaria*, 2021, § 45; *Genov and Sarbinska v. Bulgaria*, 2021, § 59).
- The Court has also considered an act to be expressive conduct where it was performed in front of other people and sought to convey certain ideas to those people (*Shvydka v. Ukraine*, 2014, §§ 37-38), including where the person(s) engaging in the conduct invited media and other spectators to deliberately publicise their intended message (*Mariya Alekhina and Others v. Russia*, 2018, § 205).
- An act may be expressive even when it is done stealthily in an attempt to conceal the identity of the actor (*Genov and Sarbinska v. Bulgaria*, 2021, § 59).
- An act may also constitute an expression although it was categorised as an assembly by the domestic authorities. In the case of *Tatár and Fáber v. Hungary*, 2012, the Court was satisfied that the event amounted predominantly to expression, as opposed to an assembly, all the more so since it involved only two persons and lasted a very short time (§ 29). The applicants’ performance – exposing dirty clothing at the fence of Parliament to symbolise the “nation’s dirty laundry” – amounted to a form of political expression (§ 36).

Specific examples:

Statues, monuments and memorials

- In *Murat Vural v. Turkey*, 2014, the Court held that a prison sentence of over thirteen years was grossly disproportionate in light of the applicant’s act of pouring paint on statues of Atatürk. Though the applicant’s acts could be understood as a physical attack on property, the Court considered that “no reasoning” could be sufficient to justify the severity of the punishment for the acts in question (§§ 66-68).
- In the case of *Shvydka v. Ukraine*, 2014, the applicant publicly detached a ribbon from a wreath laid by the President at a commemorative ceremony. Although she was prosecuted in administrative rather than criminal proceedings, the domestic courts applied the harshest sanction, deprivation of liberty, for what constituted a wrongdoing not involving any violence or danger. The Court held that this could not be justified (§ 41).
- Conversely, in *Sinkova v. Ukraine*, 2018, where the applicant had been convicted in criminal proceedings for frying eggs at an eternal flame at a memorial to fallen soldiers and sentenced to three years’ imprisonment, suspended for two years, the Court considered that sanction to be proportionate noting that the sentences had been a suspended one and that the applicant had not served a single day of it (§ 111).
- The Court has acknowledged that preventing damage to public monuments may be considered a legitimate aim within the protection of morals because there is a general

public interest in the preservation of cultural heritage (*Genov and Sarbinska v. Bulgaria*, 2021, § 68). In the similar cases of *Genov and Sarbinska v. Bulgaria*, 2021, and *Handzhiyski v. Bulgaria*, 2021, the Court contemplated “whether it was at all ‘necessary in a democratic society’ to penalise” the applicants’ acts of spray painting a public monument and placing satirical accessories on a public monument, respectively. In both cases the Court drew a distinction between “damaging” and “profaning” public monuments: where the impact on the monument is “fully reversible” (accessories or spray-paint which may be removed), the Court has considered that the monument is not “damaged” but may be “profaned” (*Handzhiyski v. Bulgaria*, 2021, § 54, *Genov and Sarbinska v. Bulgaria*, 2021, §§ 76-80).

- In the case of conduct relating to monuments which did not include any element of violence or physically affect the monument, the Court considers the precise nature of the act, the intention behind it, and the message sought to be conveyed, as well as the social significance of the monument, the values or ideas which it symbolises, and the degree of veneration that it enjoys in the respective community (*Handzhiyski v. Bulgaria*, 2021, § 55). In both *Genov and Sarbinska* and *Handzhiyski*, the acts of the applicants targeted communist-era monuments, occurred during widespread political protests, and were clearly intended to express political criticism rather than “disdain for deep-seated social values” (*Handzhiyski v. Bulgaria*, 2021, § 56; *Genov and Sarbinska v. Bulgaria*, § 82). The Court, applying the above analysis, noted that the applicants’ acts were in line with beliefs expressed by a large portion of society and thus distinguished both cases from *Sinkova v. Ukraine*, 2018, in which the applicant faced criminal sanctions for “desecrating” a memorial to fallen soldiers (*Handzhiyski v. Bulgaria*, 2021, § 57; *Genov and Sarbinska v. Bulgaria*, § 82). Thus, the imposition of fines in both cases was found to be not necessary in a democratic society due to the reversibility of the actions and their contextual significance (*Handzhiyski v. Bulgaria*, 2021, § 59; *Genov and Sarbinska v. Bulgaria*, § 84).

Places of worship

- In *Mariya Alekhina and Others v. Russia*, 2018, members of the feminist punk group Pussy Riot were arrested and criminally charged with hooliganism motivated by religious hatred for their performance of a song entitled *Punk Prayer – Virgin Mary, Drive Putin Away* at the altar of Moscow’s Christ the Saviour Cathedral. Recordings of the performance were then classified as extremist material and banned. The Court found violations of Article 10 for both the arrest of the applicants and the banning of the recordings. It considered that the domestic courts had failed to examine the context of the applicants’ performance and its (lack of) incitement to violence before issuing prison sentences (§§ 226-27). It also found a lack of relevant and sufficient reasons where the domestic court had failed to examine video evidence of the conduct in question, relying instead on the conclusions of an external report to classify the video as extremist (§§ 263-64).
- In *Ibragimova v. Russia*, 2022, the domestic courts had convicted the applicant for wearing a balaclava in public, under a law which was meant to prevent individuals from concealing their identities. The domestic courts in that case, however, failed to take into account that the applicant had willingly announced her identity to others in the area and had worn the balaclava for its symbolic value protesting in that way against the criminal conviction of the punk group Pussy Riot (§§ 36-38).
- In *Bouton v. France*, 2022, where the applicant, a feminist militant, was convicted for “sexual exposure” in connection with her performance at a church in Paris, during which she, topless, had simulated an abortion in protest against the stance of the Catholic Church on that matter, the Court noted that the law in question did not define the notion of “sexual exposure”, and that “the evolution of morals may have fuelled a debate before national courts on the sexual nature of a woman’s bare chest, as well as on the existence of

resulting discrimination between men and women”: however, the Court found that domestic case law had clearly established that the public display of a woman’s bare chest did fall within the bounds of the law against sexual exhibition, and so its application to the applicant’s performance had been reasonably foreseeable (§ 37).

- A prison sentence imposed in the context of a political or general interest debate is only compatible with the freedom of expression guaranteed by Article 10 of the Convention in exceptional circumstances. Such circumstances may be found when other fundamental rights have been seriously affected, as is the case with dissemination of hate speech or incitement to violence. The Court did not consider imprisonment to be a proportionate response to a woman’s act of protest (barring her chest in a Catholic church), which may have been shocking but not hateful or abusive (*Bouton v. France*, 2022, § 53).

Clothing symbols

- Regarding the use of emblems, the Court has held that the containment of a “mere speculative danger” does not constitute a pressing social need. Such was the case in *Vajnai v. Hungary*, 2008, wherein the applicant faced criminal sanctions for wearing a red five-pointed star during a left-wing political demonstration. While the Court acknowledged the symbol’s association with the former totalitarian communist regime, it considered that the symbol had also been used in other contexts and was not exclusively representative of totalitarian ideas (§ 52). Moreover, the applicant had worn it during a lawful political demonstration that did not promote totalitarian ideas (§ 53). Therefore, the “speculative danger” of the symbol’s threat to democracy did not amount to a pressing social need (§ 55; see also *Fratanoló v. Hungary*, 2011, §§ 25-28).
- In contrast, the Court has found, in *Donaldson v. the United Kingdom* (dec.), 2011, that Contracting States may enjoy a wide margin of appreciation in restricting the use of emblems that carry meanings “which can only fully be understood by persons with a full understanding of their historical background” (§ 28). Thus, the restriction on prisoners in Northern Ireland wearing Easter lilies outside of their cells could be understood to address a real, and not speculative, threat of sparking violence and disorder in the prisons (§ 29).
- Likewise, in *Borzykh v. Ukraine* (dec.), 2024, where the applicant complained about a legislative ban on wearing the St. George’s ribbon, a symbol used in former Soviet countries during events commemorating the victory in the Second World War, the Court considered that the national authorities were better placed to understand and appreciate the specific societal problems faced in particular communities and contexts (§ 52). Referring to the specific social and political context (§§ 49-51) and the fact that the ban in question was not the blanket one and allowed for a wide range of exceptions (§ 53), the Court found the national authorities have not overstepped their margin of appreciation (§ 54).

Boycott

- In *Baldassi and Others v. France*, 2020, a group of pro-Palestinian activists faced criminal charges for filling supermarket shopping carts with Israeli products and handing out flyers encouraging consumers to boycott those products. A domestic appellate court ruled that this act constituted incitement to economic discrimination as prohibited under French law. However, the Court found that the appellate court had disregarded the expressive value of the applicants’ conduct and had failed to provide detailed reasoning as to why the restriction was necessary in a democratic society. Such reasoning had been “all the more essential” given the political nature of the applicants’ speech on a topic of general interest (§ 78). The Court therefore found a violation due to a lack of relevant and sufficient reasons (§ 80).

Other

- The Court found that an interference had not been prescribed by law in *Semir Güzel v. Turkey*, 2016, in which the applicant had been sentenced to prison for allowing participants at a political party meeting, for which the applicant was the chairman, to speak in Kurdish rather than in Turkish. A national law prohibited political parties from using any language other than Turkish at meetings and declared that “they [could] not remain indifferent to such actions and acts when committed by others.” However, the section of the law which prescribed individual prison sentences as punishment for breaching the law had been declared unconstitutional and abrogated by the national constitutional court, who found that the prosecution of individuals under a law targeting political parties violated the constitutional provision that crimes and punishments must be prescribed by law. The Court thus considered that, following the ruling of the constitutional court, it had not been sufficiently foreseeable what kind of inaction could lead to criminal prosecution under the relevant law and to whom it would apply (§§ 37-40).
- The case of *Gough v. the United Kingdom*, 2014, highlighted the particularly wide margin of appreciation applicable in cases concerning the legitimate aim of the protection of morals, for which there is no uniform European standard (§ 166). While the Court recognised a public interest in allowing the applicant to initiate debate on the acceptability of public nudity, it also noted that legitimate moral and public-order considerations give the State a greater margin of appreciation in reacting to actual instances of public nudity as compared to mere statements or arguments on the subject (§ 172). Each time the applicant in *Gough* had appeared before a national court, that court had weighed factors relevant to establishing the existence of a pressing social need, such as the location of the incident and the applicant’s history of repeat offenses, and had issued penalties of varying severity in light of the specific facts, rather than enforcing a blanket prohibition on the applicant’s conduct (§§ 173-74). Given this, the Court considered that the State’s interference was a permissible exercise of its duty to protect the public from nuisances such as the applicant’s repeated instances of antisocial conduct, which demonstrated the applicant’s disregard for his own duty to show tolerance of, and sensitivity to, the views of others (§§ 175-76).

Noteworthy examples

- *Vajnai v. Hungary*, 2008 – a criminal conviction with no sanction for a one-year probationary period for wearing a five-pointed red star at a left-wing political demonstration – violation of Article 10;
- *Donaldson v. the United Kingdom* (dec.), 2011 – a criminal conviction of a prisoner in Northern Ireland for wearing an Easter lily emblem on his clothing in commemoration of the Irish republican combatants – manifestly ill-founded;
- *Fratanoló v. Hungary*, 2011 – a criminal conviction with a reprimand for wearing a five-pointed red star at a public gathering – violation of Article 10;
- *Tatár and Fáber v. Hungary*, 2012 – fine for attaching dirty clothing to Parliament fence to represent “the nation’s dirty laundry” – violation of Article 10;
- *Murat Vural v. Turkey*, 2014 – 13-year prison sentence for pouring paint on Atatürk statues to express “lack of affection” for Atatürk – violation of Article 10;
- *Gough v. the United Kingdom*, 2014 – multiple prison sentences for persistent public nudity – no violation of Article 10;
- *Shvydka v. Ukraine*, 2014 – detention for detaching a ribbon from a wreath laid by the President at a commemoration to criticise the President – violation of Article 10;
- *Semir Güzel v. Turkey*, 2016 – prison sentence for congress chairman allowing participants to speak in Kurdish during interventions – violation of Article 10;

- *Sinkova v. Ukraine*, 2018 – prison sentence for frying eggs over the flame of a memorial in protest of veterans’ poor living standards – no violation of Article 10;
- *Stern Taulats and Roura Capellera v. Spain*, 2018 – fine with prison sentence in event of non-payment for burning a photograph of the royal couple to criticise the institution of the monarchy – violation of Article 10;
- *Mariya Alekhina and Others v. Russia*, 2018 – prison sentence for attempted performance of critical song from altar of cathedral as a response to ongoing political process – violation of Article 10;
- *Mătășaru v. the Republic of Moldova*, 2019 – prison sentence for installing sculptures of genitals with pictures of politicians and prosecutors – violation of Article 10;
- *Ibrahimov and Mammadov v. Azerbaijan*, 2020 – detention for painting anti-government graffiti on statue of former president as a form of political protest – violation of Article 10;
- *Baldassi and Others v. France*, 2020 – criminal fine for displaying shopping carts and distributing flyers advocating for a boycott of products from Israel – no violation of Article 7, violation of Article 10;
- *Handzhiyski v. Bulgaria*, 2021 – fine for placing Santa Claus accessories on communist leader’s statue in the context of political protest – violation of Article 10;
- *Tökés v. Romania*, 2021 – sanction imposed on a member of the European Parliament for displaying national-minority flags on the building housing his office without obtaining permission to advertise – violation of Article 10;
- *Genov and Sarbinska v. Bulgaria*, 2021 – fine for spray-painting monument of a controversial historical group during nation-wide political protests – violation of Article 10;
- *Karuyev v. Russia*, 2022 – prison sentence for spitting on a portrait of the recently re-elected President during a public ceremony – violation of Article 10;
- *Bumbeș v. Romania*, 2022 – fine for small gathering during which applicants silently handcuffed themselves to a government car park barrier and held up signs protesting a mining project – violation of Article 10 interpreted in light of Article 11;
- *Ibragimova v. Russia*, 2022 – fine for wearing a balaclava during a solo public demonstration to show support for the music group Pussy Riot – violation of Article 10;
- *Bouton v. France*, 2022 – suspended prison sentence and civil damages for a woman’s solo demonstration at the altar of a Catholic church, during which she appeared holding pieces of beef liver and with slogans painted on her bare chest, in protest of the church’s stance on abortion – violation of Article 10;
- *Borzykh v. Ukraine* (dec.), 2024, – a legislative ban on wearing the St. George’s ribbon – manifestly ill-founded.

Further references

Case-law guides:

- [Guide on Article 10 – Freedom of expression](#)
- [Guide on Article 11 – Freedom of assembly and association](#)

European Union:

- [European Parliament resolution of 20 October 2021 on the situation of artists and the cultural recovery in the EU \(2020/2261\(INI\)\)](#), Section 29

United Nations:

- [International Covenant on Civil and Political Rights](#), Articles 15 and 19
- [Convention on the Protection and Promotion of the Diversity of Cultural Expressions](#)
- [UNESCO Recommendation concerning the Status of the Artist](#), Section III.3

KEY CASE-LAW REFERENCES

- *Vajnai v. Hungary*, no. 33629/06, 8 July 2008 (violation of Article 10);
- *Donaldson v. the United Kingdom* (dec.), no. 56975/09, 25 January 2011 (inadmissible – manifestly ill-founded);
- *Fratanoló v. Hungary*, no. 29459/10, 3 November 2011 (violation of Article 10);
- *Tatár and Fáber v. Hungary*, nos. 26005/08 and 26160/08, 12 June 2012 (violation of Article 10);
- *Murat Vural v. Turkey*, no. 9540/07, 21 October 2014 (violation of Article 10);
- *Gough v. the United Kingdom*, no. 49327/11, 28 October 2014 (no violation of Article 10);
- *Shvydka v. Ukraine*, no. 17888/12, 30 October 2014 (violation of Article 10);
- *Semir Güzel v. Turkey*, no. 29483/09, 13 September 2016 (violation of Article 10);
- *Sinkova v. Ukraine*, no. 39496/11, 27 February 2018 (no violation of Article 10);
- *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, 13 March 2018 (violation of Article 10);
- *Mariya Alekhina and Others v. Russia*, no. 38004/12, 17 July 2018 (violation of Article 10);
- *Mățăsarșu v. the Republic of Moldova*, nos. 69714/16 and 71685/16, 15 January 2019 (violation of Article 10);
- *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, 13 February 2020 (violation of Article 10);
- *Baldassi and Others v. France*, nos. 15271/16 and 6 others, 11 June 2020 (violation of Article 10);
- *Handzhiyski v. Bulgaria*, no. 10783/14, 6 April 2021 (violation of Article 10);
- *Tökés v. Romania*, nos. 15976/16 and 50461/17, 27 April 2021 (violation of Article 10);
- *Z.B. v. France*, no. 46883/15, 2 September 2021 (no violation of Article 10);
- *Genov and Sarbinska v. Bulgaria*, no. 52358/15, 30 November 2021 (violation of Article 10);
- *Karuyev v. Russia*, no. 4161/13, 18 January 2022 (violation of Article 10);
- *Bumbeș v. Romania*, no. 18079/15, 3 May 2022 (violation of Article 10 interpreted in light of Article 11);
- *Kotlyar v. Russia*, nos. 38825/16 and 2 others, 12 July 2022 (Article 10 inapplicable);
- *Ibragimova v. Russia*, no. 68537/13, 30 August 2022 (violation of Article 10);
- *Bouton v. France*, no. 22636/19, 13 October 2022 (violation of Article 10);
- *Borzykh v. Ukraine* (dec.), no. 11575/24, 19 November 2024 (inadmissible – manifestly ill-founded).