



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Mass protests

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments and decisions delivered by the Court. This particular Guide analyses and sums up the case-law under different Articles of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”) relating to mass protests. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court’s judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and, more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle “imposes a shared responsibility between the States Parties and the Court” as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

* The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. The present Guide analyses the Court’s case-law and summarises the relevant Convention principles concerning the issue of mass protests, understood as a form of large-scale assembly or demonstration.
2. In the Court’s case-law, not every assembly constitutes a protest, although a protest is the most commonly restricted type of assembly and therefore most frequently constitutes the subject of applications to the Court under Article 11 and/or 10 of the Convention. Although the Court did not lay down in its case-law a strict definition of what constitutes “mass protests”, it has examined different forms of assemblies amounting to “mass protests” (see for instance, *Navalnyy v. Russia* [GC], 2018; *Alekseyev v. Russia*, 2010; *Shapovalov v. Ukraine*, 2012; *Virabyan v. Armenia*, 2012; *Frumkin v. Russia*, 2016, § 148; *Işıkırık v. Turkey*, 2017).
3. The present Guide provides an overview of the Court’s case-law related to participants’ rights under Articles 10 and 11 and other Articles of the Convention (as well as Articles 2, 3, 5 and 6) in different phases of the protest, including the organisation, participation and, where applicable, subsequent prosecution. The cases cited in the Guide do not necessarily all concern “mass protests”: however, they contain legal principles and reasoning which are particularly relevant in the context of “mass protests”.

I. Freedom of assembly (Article 11)

Article 11 of the Convention¹

“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.”

A. Applicability

4. According to the Court’s case-law, the right to freedom of peaceful assembly is a fundamental right in a democratic society, thus it should not be interpreted restrictively (*Kudrevičius and Others v. Lithuania* [GC], 2015, § 91; *Taranenko v. Russia*, 2014, § 65).
5. The right of freedom of peaceful assembly covers both private meeting and meetings in public places, whether static or in the form of a procession. The right can be exercised by individual participants and by the persons organising the gathering (*Djavit An v. Turkey*, 2003, § 56; *Barraco v. France*, 2009, § 41; *Yılmaz Yıldız and Others v. Turkey*, 2014, § 41).
6. Moreover, the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established by paragraph 2 of Article 11 (*Sáska v. Hungary*, 2012, §§ 21-23).

1. See *Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association*.

7. However, Article 11 of the Convention only protects the right to “peaceful assembly”. It does not cover a demonstration where the organisers and participants have violent intentions (*Navalnyy v. Russia* [GC], 2018, § 98, and *Ter-Petrosyan v. Armenia*, 2019, § 53). The protection under Article 11 therefore applies to all gatherings except those where the organisers and participants have violent intentions, incite violence or otherwise reject the foundations of a democratic society (*Fáber v. Hungary*, 2012, § 37; *Gün and Others v. Turkey*, 2013, § 49; *Taranenko v. Russia*, 2014, § 66). This may concern even gatherings which involve obstructive or disruptive conduct in so far as there were no violent intentions or behaviour or call for violence (*Laurijsen and Others v. the Netherlands*, 2024, §§ 54-59)

8. As regards the issue of violence, the Court has explained 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 (*Primov and Others v. Russia*, 2014, § 155).

9. In this connection, in *Shmorgunov and Others v. Ukraine*, 2021, § 491, concerning the Maidan protest in Ukraine, the Court explained that in order to establish whether an applicant may claim the protection of Article 11, it takes into account the following factors: (i) whether the assembly intended to be peaceful or whether the organisers had violent intentions; (ii) whether the applicant had demonstrated violent intentions when joining the assembly; and (iii) whether the applicant had inflicted bodily harm on anyone (see also *Çiçek and Others v. Turkey*, 2022, § 136).

10. On the facts in *Shmorgunov and Others*, §§ 495-505, the Court considered it important to note that there were ample indications that the rapid recourse by the authorities to excessive and at times brutal force against the protesters, including instances of unjustified detention (in breach of Articles 3 and 5 of the Convention), appeared to have disrupted the initially peaceful conduct of the protest and resulted in, if not contributed to, an escalation of violence. In particular, the Court found that the protesters who had initially intended to stage a round-the-clock peaceful vigil but were met with disproportionate force by the police, enjoyed the protection of Article 11 irrespective of the fact that they engaged in an obstructive protest occupying a space in the capital’s central square. Moreover, although some protesters took part in protests which involved substantially more violent clashes between the police and the protesters, the Court considered that their protest was protected by Article 11 since there was no evidence demonstrating that during their participation in the protests those applicants had intended to commit or engaged in acts of violence or offered any resistance to the police (see also *Lutsenko and Verbytskyy v. Ukraine*, 2021, §§ 112-114).

11. In this context, it should also be noted that in *Dareskizb Ltd v. Armenia*, §§ 52-63, concerning demonstrations which produced a very tense situation that could be considered as amounting to a serious public order situation, the Court rejected the Government’s reliance on Article 15 to derogate from some of the Convention rights – notably Articles 10 and 11 (*Ibid*, §§ 45-46). It found, in particular, that the Government failed to demonstrate convincingly, and to support with evidence their assertion, that the demonstrations, which, moreover, were apparently confronted with a heavy-handed police intervention, could be characterised as a public emergency “threatening the life of the nation” within the meaning of Article 15 of the Convention.

12. Further, for example, in *Annenkov and Others v. Russia*, 2017, §§ 122-129, although there were two instances of conflicts, including a fight between certain protesters and security guards employed by a private company, the applicants’ conduct was not established to be of a violent character. Nothing showed that the applicant himself participated in this fight or otherwise behaved violently. The Court did not consider that the impugned conduct, for which some of the applicants were held responsible, was of such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention. In *Ekrem Can and Others v. Turkey*, 2022, §§ 82-85, while noting that the applicants’ protest action in the courthouse had caused disturbance to the public order and the normal operation of the court

proceedings, the Court laid emphasis on the fact that there was no violent intention or violent conduct on the part of the applicants.

13. By contrast, in *Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, § 284, the first applicant was found guilty of leading a number of individuals to break through the police cordon, and the witnesses confirmed that he had the intention to do so. Given that the breaking of the cordon led to the escalation of violence at a crucial moment and triggered clashes, the Court considered the first applicant's deliberate acts to fall outside the notion of "peaceful assembly" protected by Article 11. It therefore dismissed the first applicant's complaint as incompatible *ratione materiae* with the provisions of the Convention.

14. As regards the question of whether the organisers and participants "rejected the foundations of a democratic society", the Court has considered in *Makarashvili and Others v. Georgia*, 2022, §§ 91-93 and 103, concerning the protesters' blockage of access to Parliament building, that given the autonomous concept of "peaceful assembly", this question should not be equated with that of lawfulness under the domestic law. In the case at issue, while the impugned gathering blockaded Parliament building and aimed to obstruct the legislative process by way of a form of protest, it was meant to express political ideas and enhance the democratic processes in the country. Thus, having regard to the close link between freedom of assembly guaranteed in Article 11 and the freedom of expression guaranteed by Article 10, the Court accepted that the gathering at issue, even if it used an obstructive form of protest, should not necessarily be regarded as constituting a rejection of the foundations of a democratic society. However, the Court considered that the intentional action aimed at obstructing the ordinary course of life in order to seriously disrupt the activities carried out by Parliament would have implications for any assessment of "necessity" to be carried out under the second paragraph of Article 11. In that latter regard, as regards two applicants who had blocked the road during the attempts by the police to reopen access to Parliament building, the Court found that custodial sanctions were not disproportionate.

15. In *Drozd v. Poland*, 2023, § 63, the Court found that a one-year ban on informal civic movement members on entering Parliament, imposed for displaying a banner during a peaceful demonstration outside its grounds, amounted to an interference with their freedom of expression. On the facts of that case, the Court found a violation of Article 10 mainly on the basis of a lack of adequate procedural safeguards in relation to the imposition of the ban in question.

16. Unincorporated organisations may also complain under Article 11. In *Hyde Park and Others v. Moldova (no. 3)*, 2009, § 5-16, at the time of the unauthorised demonstration giving rise to the application, the applicants' organisation was registered. The organisation later decided to discontinue its registration due to alleged pressure and intimidation by the State. The Court considered that Hyde Park's capacity to pursue the proceedings was not affected by the fact that it was unincorporated.

17. Peaceful assemblies cover various forms and types. The Court found Article 11 to be applicable to assemblies of an essentially social character:

- "Flash mob" (*Obote v. Russia*, 2019);
- Gathering of an organisation at a private café (*Emin Huseynov v. Azerbaijan*, 2015);
- Bi-communal meetings (*Djavit An v. Turkey*, 2003);
- Cultural gatherings (*The Gypsy Council and Others v. the United Kingdom* (dec.), 2002);
- Religious and spiritual meetings (*Barankevich v. Russia*, 2007);
- Press conference, procession and a sit-in in the context of a protest (*Hakim Aydin v. Turkey*, 2020, § 50);
- Non-violent courthouse protest (*Ekrem Can and Others v. Turkey*, 2022);

18. However, the Court has found that Article 11 is not applicable in the case of a refusal to grant citizenship to a leader of a protest movement against the Government's language policy, since the

refusal did not weaken the applicant’s resolve to speak out and participate in debates on matters of public interest (*Petropavlovskis v. Latvia*, 2015, §§ 75-87).

19. Furthermore, according to the Court’s case-law, classification and regulation of a demonstration under national law have no bearing on the applicability of Article 11. These are only relevant after the Court concludes that a demonstration falls into the scope of protection, for the ensuing question of the State’s negative obligations (whether a restriction on the protected freedom is justified under Article 11 § 2) as well as for an assessment of the State’s positive obligations (whether the latter has struck a fair balance between the competing interests at stake) (*Navalnyy v. Russia* [GC], 2018, § 99).

20. Lastly, it should be noted that the case-law of the Court laid down a distinction on whether a certain matter falls to be examined under Article 10 or 11.² One of the distinctive criteria noted by the Court is that in the exercise of the right to freedom of assembly the participants would not only be seeking to express their opinion, but to do so together with others (*Primov and Others v. Russia*, 2014, § 91). Moreover, in *Éva Molnár v. Hungary*, 2008, § 42, the Court emphasised that one of the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest. The protection of the expression of personal opinions, secured by Article 10, is one of the objectives of the freedom of peaceful assembly enshrined in Article 11 of the Convention.

21. Thus, the Court examined under Article 10 the prosecution of those calling for support for unauthorised protests by way of issuing an internet post (*Elvira Dmitriyeva v. Russia*, 2019, § 77-90). In *Butkevich v. Russia*, 2018, § 122, the Court found it appropriate to examine the application of a journalist prosecuted and convicted for not co-operating with the police while covering a G4 summit under Article 10, taking into account the general principles it had established in the context of Article 11 of the Convention. Similarly, in *Bumbeş v. Romania*, §§ 69-70, the Court considered that a spontaneous short protest action staged by an environmental activist, in which in total of four persons participated, predominantly concerned expression, which was more appropriately examined under Article 10 interpreted in the light of Article 11 of the Convention.

22. On the other hand, when the thrust of the applicant’s complaint concerns a conviction for holding peaceful assemblies, the Court examines the complaint under Article 11 alone (*Kudrevičius and Others v. Lithuania*, 2015, § 85). In this context, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis* taking precedence for assemblies (*Ezelin v. France*, 1991, § 35; *Schwabe and M.G. v. Germany*, 2011, § 101; *Hakim Aydın v. Turkey*, 2020, § 41).

23. In *Ekrem Can and Others v. Turkey*, 2022, § 68, concerning a courthouse protest, the Court found that the case should be examined under Article 11 (considered in the light of Article 10) given that the applicants’ complaint concerned not only the fact that they had been prevented from making a statement but predominantly the police intervention in respect of their protest action, resulting in their forcible removal from the courthouse.

24. In *Peradze and Others v. Georgia*, 2022, § 33, concerning a demonstration against a construction project where the applicants held banners with a lewd slogan and where they were sanctioned on account of the content of the banners that they had been holding during the demonstration, the Court considered that the case should be examined under Article 11, considered in the light of Article 10 of the Convention.

B. Forms of interference

25. The Court has held that the term “restrictions” in paragraph 2 of Article 11 must be interpreted as including both measures taken before or during the public assembly, and those – such as punitive

2. See Section I.B [Guide on Article 11- Freedom of Assembly and Association](#).

measures – taken after it (*Ezelin v. France*, 1991, § 39). The forms of interference indicated below are most commonly present in the context of mass protests.

1. Refusal to authorise an assembly

26. The Court did not consider the institution of preliminary administrative procedures (a requirement to notify or to seek an authorisation) as running counter to principles embodied in Article 11 of the Convention, as long as they do not represent a hidden obstacle to the freedom of peaceful assembly protected by the Convention (*Éva Molnár v. Hungary*, 2008, § 37).

27. States are granted a wide margin of appreciation in establishing the modalities of the procedure, provided that any formal requirements attached to the procedure are “formulated with sufficient precision” and do “not represent a hidden obstacle to the freedom of peaceful assembly” under Article 11 (*Lashmankin and Others v. Russia*, 2017, § 422). Thus, for instance, legislation aimed at achieving balance between the conflicting interests of two opposing groups wanting to hold rallies at the same time and in the same place is not in itself contrary to Article 11 provided that it does not represent a hidden obstacle to the freedom of peaceful assembly (*Csiszer and Csibi v. Romania*, 2020, § 105).

28. However, automatic and inflexible application of time-limits for the notification of public assemblies and a long time lapse from the end of the notification time limit and the planned date of the assembly may lead to an unnecessary interference with freedom of assembly (*Lashmankin and Others v. Russia*, 2017, § 456).

29. As regards the requirement of “formulated with sufficient precision”, in *Primov and Others v. Russia*, 2014, §§ 121-128, the Court found that domestic law was ambiguous as to whether the five-day time-limit for lodging the notice referred to sending or receiving the notice and thus the organisers should have been excused for misinterpreting the law. In addition, the Court noted that the organisers had not waited until the eve of the event, but had posted the notice on the first day of the prescribed period, and so, had made a reasonable effort to comply with the very tough requirement of the law.

30. In *Uzunget and Others v. Turkey*, 2009, § 50, the Court found that the requirement to notify the authorities seventy-two hours prior to the event did not amount to a hidden obstacle to freedom of peaceful assembly as protected by the Convention.

31. The Court has also accepted that the contracting States can impose limitations on holding a demonstration in a given place for public security reasons (*Malofeyeva v. Russia*, 2013, § 136; *Disk and Kesk v. Turkey*, 2012, § 29). However, that also constitutes an interference which must be subject to the proportionality test.

32. For instance, in *Berladir and Others v. Russia*, 2012, §§ 47-51, the city administration gave authorisation to a demonstration but conditioned that it should be held at a different place and be shorter in duration, which the Court found to amount to an interference with the exercise of the applicants’ freedom of peaceful assembly.

33. The Court considered that, while a demonstration may be unlawful in the absence of notification or without prior authorisation, that unlawful situation should not encroach upon the essence of the right or justify an infringement of freedom of assembly (*Navalnyy v. Russia* [GC], 2018, §§ 99-100, and *Cisse v. France*, 2002, § 50).

34. Moreover, in some cases, a refusal to authorise an assembly may be an interference with the freedom of assembly even where the assembly takes place as planned (*Bączkowski and Others v. Poland*, 2007).

35. In the Court’s case-law, there are also instances where authorisations were revoked at the last minute. In *Makhmudov v. Russia*, 2007, §§ 55-56 and § 71, on the eve of a demonstration, the local authorities withdrew their permission for that assembly as it was expecting “an outbreak of terrorist

activities”. The Court confirmed that the revocation of the authorisation constituted an interference with the applicant’s freedom of peaceful assembly.

36. In *Hyde Park and Others v. Moldova (nos. 5 and 6)*, 2010, § 41, the applicants failed to comply with an order authorising the assembly and two of the applicants were arrested since the authorisation did not contain their names. The Court found an interference with the applicants’ freedom of peaceful assembly, as the arrests prevented them from participating in the demonstration.

2. Preventive arrest to ensure non-participation in an assembly and refusal of access

37. A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference with individual’s freedom of assembly. In *Schwabe and M.G. v. Germany*, 2011, § 102, on their way to a demonstration, the applicants were arrested and detained for the entire duration of a G8 summit. The Court found that the applicants had been prevented from taking part in their intended demonstrations against that summit. Similarly, the applicant’s arrest in an airport preventing him from boarding the flight and making him miss the rally he intended to attend constituted an interference with his right to freedom of assembly (*Kasparov v. Russia*, 2016, § 66-67).

38. In *Alici and Others v. Türkiye*, 2022, § 48, the Court found that the real motivation for the unjustified deprivation of liberty of the applicants on their way to a demonstration was to prevent them from taking part in the event. Similarly, in *Huseynli and Others v. Azerbaijan*, 2016, §§ 84-97, the Court found that the applicants’ dubious conviction and ensuing detention for offences related to breach of public order were in fact aimed at preventing them from participating in the opposition protests and amounted to an interference with their right to freedom of peaceful assembly.

39. In *Hakim Aydın v. Turkey*, 2020, § 50, the Court held that the applicant’s deprivation of liberty for participating in a protest action - including a press conference, a procession and a sit-in related to the use of language in university - amounted to an interference with Article 11.

40. Blocking of a public event venue, or even an entire area, on the grounds of the authorities’ perception of imminent violence constitutes an interference with the right to freedom of peaceful assembly (*Primov and Others v. Russia*, 2014, § 97)

3. Dispersal of an assembly and the use of force

41. Measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants amount to an interference with the right to freedom of peaceful assembly (see *Oya Ataman v. Turkey*, 2006, §§ 7 and 30; *Hyde Park and Others v. Moldova*, 2009, §§ 9, 13, 16, 31, 41, 44 and 48; *Primov and Others v. Russia*, 2014, § 97).

42. Police applying force against peaceful participants during the dispersal of an assembly or for maintaining public order constitutes an interference with the freedom of peaceful assembly (*Laguna Guzman v. Spain*, 2020, § 42; *Zakharov and Varzhabetyan v. Russia*, 2020, § 88).

4. Post demonstration sanctions

43. The term “restrictions” in paragraph 2 of Article 11 includes measures such as punitive measure taken after an assembly (*Ezelin v. France*, 1991, § 39). The Court has found that if there is a clear and acknowledged link between the exercise of the freedom of peaceful assembly by the applicants and the measures taken against them, their arrest, detention and the ensuing administrative charges will constitute an interference with their right guaranteed by Article 11 of the Convention (*Navalnyy and Yashin v. Russia*, 2014, § 52; see also *Ekrem Can and Others v. Turkey*, 2022, § 86).

44. In *Frumkin v. Russia*, 2016, § 138, the Court found that the guarantees of Article 11 continued to apply in respect of the applicant even after the assembly was officially terminated, notwithstanding

some clashes the participants had with the State agents. Thus, any measures taken against the applicant – in this case his arrest after the time slot originally authorised for the assembly – had to comply with the requirements of Article 11 (see also *Varoğlu Atik and Others v. Turkey*, 2020).

45. In *Kasparov and Others v. Russia*, 2013, § 86, four of the applicants who were arrested and charged with the administrative offence of breaching the regulations of holding a demonstration, denied that they had any intention of taking part in the assembly. Therefore, the Court considered that they did not make out a *prima facie* case of interference with their freedom of expression or freedom of assembly. The Court found their applications to be manifestly ill-founded (see also *Shmorgunov and Others v. Ukraine*, 2021, § 487).

46. By contrast, in *Zülküf Murat Kahraman v. Turkey*, 2019, § 45, where in the domestic proceedings the applicant denied participating in a demonstration, the Court found that a criminal conviction for participation in a demonstration constituted an interference with the exercise of his right to freedom of assembly. In particular, the Court considered that the applicant's criminal conviction had been indisputably directed at activities falling within the scope of freedom of assembly. The Court explained that to hold otherwise would be tantamount to requiring him to acknowledge the acts of which he had stood accused. In this connection, the Court also had regard to the right not to incriminate oneself and stressed that not accepting that a criminal conviction constituted an interference would lock the applicant, who denied any involvement in the acts at issue, in a vicious circle that would deprive him of the protection of the Convention (see also *Kazan v. Türkiye*, 2023, § 56, concerning an unintended gathering outside a courthouse).

47. It should also be noted that in *Nurettin Aldemir and Others v. Turkey*, 2007, §§ 34-35, although the applicants were acquitted of the charges, the Court found an interference based on the force used by the police to disperse the participants, as well as the subsequent prosecution, which could have had a chilling effect and discouraged the applicants from taking part in similar meetings.

C. Lawfulness

48. The expressions “prescribed by law” and “in accordance with the law” in Articles 8 to 11 of the Convention not only require that the impugned measure has a legal basis in domestic law, but also refer to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (*Rotaru v. Romania* [GC], 2000, § 52; *Maestri v. Italy* [GC], 2004, § 30; *Gorzelik and Others v. Poland* [GC], 2004, §§ 64-65; *Sindicatul “Păstorul cel Bun” v. Romania* [GC], 2013, § 153). Moreover, a breach of the requirement of lawfulness under Article 5 § 1 relating to the deprivation of liberty as a form of interference with Article 11 renders such interference unlawful (*Hakim Aydın v. Turkey*, 2020, § 51).

49. For instance, in *Djavit An v. Turkey*, 2003, §§ 64-68, there was no applicable law regulating the issuance of permits to Turkish Cypriots living in the “TRNC” to cross the “green line” into southern Cyprus in order to engage in peaceful assembly with Greek Cypriots and thus restrictions imposed to attend such assemblies were found to be unlawful within the meaning of Article 11 § 2 of the Convention (see also *Adalı v. Turkey*, 2005).

50. Similarly, in *Mkrtchyan v. Armenia*, 2007, § 43, §§ 39-45, the Court found that the applicant could not foresee his conviction and fine for participation in a street procession because there was no domestic legal provision clearly stating whether the rules contained in the former laws of the Soviet Union, including the Code of Administrative Offences under which he was convicted, had been in force in Armenia.

51. In *Lashmankin and Others v. Russia*, 2017, §§ 410-471, the Court found that a broad statutory discretion empowering the authorities to propose a change to the location, time, or manner of conduct of public assemblies did not meet the “quality of law” requirement, because the law lacked adequate and effective legal safeguards against its arbitrary and discriminatory use.

52. In *Navalnyy v. Russia* [GC], 2018, §§ 114-119, the Court found that the Russian regulatory framework governing public gatherings provided for a broad interpretation of what constituted a “gathering subject to notification” and allocated to the authorities excessively wide discretion in imposing restrictions on such gatherings through rigid enforcement by immediate arrest and deprivation of liberty, as well as sanctions of a criminal nature.

53. Similarly, in *Gafgaz Mammadov v. Azerbaijan*, 2015, §§ 54-57, the Court noted that the legislation provided broad powers to prohibit or stop a public assembly, and to restrict or change the place, route and/or time of a gathering, and to designate specific areas for assemblies. The Court had serious concerns about the foreseeability and precision of such legislation allowing for the possibility of public assemblies to be abusively banned or dispersed (see also *Huseynli and Others v. Azerbaijan*, 2016, and *Hakobyan and Others v. Armenia*, 2012, concerning preventive arrests of the applicants to prevent them from attending demonstrations).

54. However, in the Article 11 context also, the Court recognises that it is impossible to attain absolute precision in the framing of laws, particularly in fields in which the situation changes according to the prevailing views of society (*Ezelin v. France*, 1991, § 45). In particular, as the Court explained, the consequences of a given action need not be foreseeable with absolute certainty: experience shows this to be unattainable. While certainty is highly desirable, it may also bring excessive rigidity hampering the law’s ability to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (*Rekvényi v. Hungary* [GC], 1999, § 34; *Ziliberberg v. Moldova*, (dec.), 2004; *Primov and Others v. Russia*, 2014, § 125).

55. The Court has also explained that the role of adjudication vested in the national courts is to dissipate the interpretational doubts that remain. The Court’s power to review compliance with domestic law is limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (*Kruslin v. France*, 1990, § 29; *Kopp v. Switzerland*, 1998, § 59; *Vyerentsov v. Ukraine*, 2013, § 54).

D. Legitimate Aim

56. Article 11 § 2 of the Convention lists legitimate aims³ which an interference should pursue: national security or public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.

57. In the Court’s case-law, content-based restrictions on freedom of assembly are subject to stricter scrutiny than restrictions of a technical nature. It is very rare for a gathering to be legitimately banned in relation to the substance of the message which its participants wish to convey, especially so where the main target of criticism is the very same authority which has the power to authorise or deny the public gathering (*Navalnyy, v. Russia* [GC], 2018, § 86, and *Primov and Others v. Russia*, 2014, §§ 134-135).

58. In *Navalnyy, v. Russia* [GC], 2018, an opposition political leader was arrested seven times over two years. The Court found “converging contextual evidence” that the applicant’s allegation of being a particular target appeared coherent in the context of a general move to bring the opposition under control. The Court found the interference had pursued an ulterior purpose to “suppress that political pluralism which forms part of ‘effective political democracy’ governed by ‘the rule of law’, both being concepts to which the Preamble to the Convention refers”, but not legitimate aims provided for under Article 11 § 2. There was a violation of Article 18⁴ in conjunction with Article 5 and Article 11.

3. See Section I.E (b) *Guide on Article 11- Freedom of Assembly and Association*.

4. See *Guide on Article 18- Limitation on use of restrictions on rights*.

59. The Court has found that demanding territorial changes in speeches and demonstrations did not automatically amount to a threat to the country's territorial integrity and national security. Thus, demanding fundamental constitutional and territorial changes could not automatically justify a prohibition of the relevant assemblies (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2001, § 97).

60. The Court has also held that the legitimate aim of “the prevention of disorder” must be interpreted narrowly (*Navalnyy v. Russia* [GC], 2018, § 122, concerning Article 11; *Perinçek v. Switzerland*, 2013, §§ 146-151, concerning Article 10). However, the Court has accepted that the restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others with a view to preventing disorder and maintaining the orderly circulation of traffic (*Éva Molnár v. Hungary*, 2008, § 34).

61. In *Ezelin v. France*, 1991, § 47, the applicant incurred a punishment because he had not dissociated himself from the unruly incidents which occurred during the demonstration. The authorities took the view that such an attitude was a reflection of the fact that the applicant, as an advocate, endorsed and actively supported such actions. The Court confirmed such interference to be in pursuit of the legitimate aim of “prevention of disorder”.

62. The Court, however, did not accept the existence of the legitimate aim of “prevention of disorder” in relation to events where the gatherings were unintentional and caused no nuisance (*Navalnyy v. Russia* [GC], 2018, §§ 124-126).

E. Necessity in a democratic society

63. An interference will be considered “necessary in a democratic society” for a legitimate aim if it answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are “relevant and sufficient” (*Coster v. the United Kingdom* [GC], 2001, § 104; *S. and Marper v. the United Kingdom* [GC], 2008, § 101; *Obote v. Russia*, 2019, § 40). However, in this context, the notion “necessary in a democratic society” does not have the flexibility of such expressions as “useful” or “desirable” (*Gorzelik and Others v. Poland* [GC], 2004, § 95).⁵ Moreover, breaches of other provisions of the Convention – such as Articles 3, 5 and 6 – in relation to the participation of an applicant in a peaceful assembly have been determinative of the Court's finding of whether the related interference with the Article 11 rights was “necessary in a democratic society” (*Navalnyy and Gunko v. Russia*, 2020, §§ 84-93; *Zakharov and Varzhabetyan v. Russia*, 2020, §§ 87-91).

64. The Court has explained that its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This means that it has to ascertain, in particular, whether the State exercised its discretion reasonably, carefully and in good faith. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered “necessary in a democratic society”, the Contracting States enjoy a certain but not unlimited margin of appreciation (*Coster v. the United Kingdom* [GC], 2001, § 105; *Ashughyan v. Armenia*, 2008, § 89; *Barraco v. France*, 2009, § 42; *Kasparov and Others v. Russia*, 2013, § 86).

65. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in Article 11 § 2 of the Convention, 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 (*Kudrevičius and Others v. Lithuania* [GC], 2015, § 144).

5. See Section I.E (c) *Guide on Article 11- Freedom of Assembly and Association*.

66. The assessment of this proportionality with respect to the most common types of interference in the context of mass protests is analysed in this section.

1. Refusal to authorise an assembly and dispersal of an unauthorised assembly

67. The Court has explained that the absence of prior authorisation and the ensuing “unlawfulness” of a protest do not give *carte blanche* to the authorities; they are still restricted by the proportionality requirement of Article 11 (see also *Bumbeş v. Romania*, 2022, §§ 94-96, concerning the application of these principles in the context of Article 10). Thus, it should be established why the demonstration was not authorised in the first place, what was the public interest at stake, and what risks were represented by the demonstration. The method used by the police for discouraging the protesters, containing them in a particular place or dispersing the demonstration is also an important factor in assessing the proportionality of the interference (*Primov and Others v. Russia*, 2014, § 119).

a. Refusal to authorise an assembly

68. A refusal to approve the venue of a public assembly solely on the basis that it takes place at the same time and location as another public event, in the absence of a clear and objective indication that both events could not be managed in an appropriate manner through the exercise of policing powers, was found to be disproportionate interference with the freedom of assembly (*Lashmankin and Others v. Russia*, 2017, § 422).

69. In *Öllinger v. Austria*, 2006, §§ 32-51, the applicant wanted to organise a meeting which coincided with an opposing group in terms of time and venue. The Court found the unconditional prohibition of a counter-demonstration a very far-reaching measure which would require particular justification, especially when the applicant envisaged a peaceful and silent means of expressing the opinion, and explicitly ruled out the use of chanting or banners.

70. In *Sáska v. Hungary*, 2012, §§ 15-23, the police counter-proposed that the applicant’s demonstration be confined to a certain venue. The Court concluded that the interference pursued the legitimate aims of public safety and protecting the rights and freedoms of others, but it was not necessary because another demonstration planned for exactly the same location was accepted by the authorities without alteration.

71. In *Mustafa Hajili and Others v. Azerbaijan*, 2022, §§ 35-36, where the assemblies in question had either not been authorised at all, or had not been authorised to be held at their planned locations and where refusals had not been based on such fundamental grounds as allegations that the organisers and participants had violent intentions, wanted to incite violence, or wanted to otherwise reject the foundations of a democratic society, the Court found that both the outright refusal and the refusals to authorise the assemblies at their planned locations constituted an interference with the applicants’ right to freedom of assembly.

72. A requirement of prior approval with respect to the size and manner of demonstration was examined in *Obote v. Russia*, 2019, §§ 34-46. The Court observed that the definition of a static demonstration under the Russian legislation was broad to the extent that a vast array of social situations might fall under it, and found that the applicant’s freedom of peaceful assembly was not outweighed by any interests of the State with a view to preventing disorder.

73. The Court also found that a condition for authorising an assembly stating that demonstrators should not carry any symbols of parties, political organisations or associations that were not State-registered did not respond to a “pressing social need” in the case of an applicant carrying unregistered communist symbols (*Şolari v. the Republic of Moldova*, 2017, §§ 25-39).

b. Dispersing an unauthorised assembly

74. The Court has stressed 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 (*Kudrevičius and Others v. Lithuania*, [GC], 2015, § 150, and *Obote v. Russia*, 2019, § 41; *Laguna Guzman v. Spain*, 2020, § 50).

75. The Court has accepted that there may be special circumstances when an immediate response might be justified, for example in a spontaneous demonstration. However, a dispersal of the demonstration solely due to the absence of prior notice, without any illegal conduct by the participants, may amount to a disproportionate restriction on freedom of peaceful assembly (*Bukta and Others v. Hungary*, 2007, §§ 35-36).

76. In *Navalnyy and Yashin v. Russia*, 2014, the Court found that the Government had failed to demonstrate a pressing social need to interrupt a peaceful “spontaneous march” after an authorised assembly has ended since the domestic courts made no attempt to verify the extent of the risks posed by the protestors or whether it was necessary to stop them. Thus, the police’s forceful intervention was disproportionate and not necessary for the prevention of disorder within the meaning of Article 11 § 2.

77. In *Oya Ataman v. Turkey*, 2006, the applicant organised an unlawful march. There was no evidence to suggest that they represented a danger to public order, apart from possibly disrupting traffic. The Court considered the police’s forceful intervention, involving the use of pepper spray, to be disproportionate and unnecessary for the prevention of disorder. The Court ruled that where demonstrators do not engage in acts of violence, public authorities need to show a certain degree of tolerance towards peaceful gatherings.

78. Moreover, where the demonstration was not held in a manner in compliance with the authority’s decision of authorisation – such as for instance in *Nurettin Aldemir and Others v. Turkey*, 2007, where the demonstration was held in an area not among the permitted ones – the Court reaffirmed that when demonstrators do not engage in acts of violence, the forceful intervention by the police officers was disproportionate and not necessary for the prevention of disorder.

79. In *Ibrahimov and Others v. Azerbaijan*, 2016, the Court observed that the authorities dispersed a peaceful demonstration with a limited number of participants shortly after it began. The Court found that the authorities did not adduce relevant and sufficient reasons justifying the dispersal of the demonstration.

80. By contrast, in *Primov and Others v. Russia*, 2014, the Court took into account the considerable number of protesters engaging in more than “marginal” and “sporadic” violence. The police force intervened to remove a roadblock erected by the demonstrators on a main road. The Court considered the use of special anti-riot equipment to be justified. However, the Court considered that where both sides – the demonstrators and the police – are involved in violent acts, it may be necessary to examine who started the violence (*Nurettin Aldemir and Others v. Turkey*, 2007, § 45).

81. In *Geylani and Others v. Türkiye*, 2023, §§ 122-127, the Court found a violent dispersal of an assembly disproportionate referring, *inter alia*, to its findings in relation to the use of water cannon, which led to a violation of Article 3 of the Convention under its substantive limb in respect of an applicant who suffered a serious injury.

2. Post-demonstration penalties

82. The Court has reviewed the necessity of convictions in relation to unauthorised assemblies. It has explained that it must assess the nature and severity of the penalties imposed with a view to examining the proportionality of an interference in relation to the aim pursued. In this connection, the Court stressed that a peaceful demonstration should not, in principle, be rendered subject to the

threat of a criminal sanction, and notably to deprivation of liberty. The Court therefore examines with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (*Ekrem Can and Others v. Turkey*, 2022, § 92; *Chkhartishvili v. Georgia*, 2023, § 60).

83. In *Shmorgunov and Others v. Ukraine*, 2021, §§ 492-493, the Court explained that when individuals are involved in acts of violence the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of assembly, and the imposition of a sanction for such reprehensible acts may be considered to be compatible with the guarantees of Article 11 of the Convention. However, according to the Court’s case-law, the imposition of lengthy prison terms for unarmed confrontation with the police, or throwing stones or other missiles at them without causing grave injuries, were considered in a number of cases to be disproportionate. In this connection, the Court reiterated that application of enforcement measures, such as the use of force to disperse the assembly, the participants’ arrests, detention and/or ensuing convictions may have the effect of discouraging them and others from participating in similar assemblies in future, and more generally in open political debate

84. In *Obote v. Russia*, 2019, the Court held that when finding the applicant guilty of an administrative offence, the domestic courts did not assess the level of disturbance the event had caused, if any. The Court considered that the domestic judicial bodies in the course of the administrative-offence proceedings did not strike a balance by giving preponderant weight to the formal unlawfulness of the presumed static demonstration.

85. Similarly, in *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, the Court found the conviction of the applicants for organising “mass disorder” following clashes during demonstration, without sufficient scrutiny of the event organiser’s own acts and intentions, to be in breach of Article 11. In this connection, in *Kemal Çetin v. Turkey*, 2020, § 47, the Court stressed that the criminal responsibility of the organisers of a protest could not be engaged if they did not participate directly in the impugned acts, if they did not encourage such acts or if they did not endorse the unlawful behaviour. In other words, the organisers cannot be held responsible for the acts of others if they did not participate explicitly (actively and directly) or implicitly (for example, by failing to intervene to stop the unacceptable behaviour) in such acts. Thus, the organisers of a protest can be exonerated from the criminal responsibility by their conduct. In *İmrek v. Turkey*, 2020, §§ 33-38, the Court laid a particular emphasis on the domestic courts’ duty to provide sufficient reasons for the conviction of organisers for acts committed by the participants in a demonstration.

86. The Court also reviewed the severity of post-demonstration penalties. In *Kudrevičius and Others v. Lithuania* [GC], 2015, the Court considered, amongst other factors, a sixty-day custodial sentence for which execution was suspended for one year to be proportionate. The only actual consequence of the applicants’ conviction was the obligation, lasting one year, to obtain authorisation if they wanted to leave their places of residence for more than seven days. The Court considered such inconvenience provoked by the applicants by blocking highways for approximately two days not disproportionate to the serious disruption of public order.

87. Similarly, in *Rai and Evans v. The United Kingdom* (dec.), 2009, concerning participation in an unauthorised demonstration, the Court considered the fines imposed on the applicants to be proportionate. The Court took into account a number of factors, including the applicants’ prior knowledge of the time-limit for applying for authorisation and the clear opportunity to make an application, the limitation of the authorisation requirement to designated security zones, the imposition of defined conditions strictly referable to public interest objectives, the conduct of the police in allowing the applicants to continue with their demonstration and giving them the opportunity to disband without sanction, as well as the modest, albeit criminal, sanctions ultimately imposed (see also *Csiszer and Csibi v. Romania*, 2020, §§ 118-122, concerning fines non-convertible into a custodial sentence).

88. In *Berladir and Others v. Russia*, 2012, the Russian authorities did not ban the public gathering in question, but instead provided the organisers with a swift reply suggesting an alternative venue. The organisers failed, without any valid reason, to accept the authorities' proposal. The Court found that the applicants' failure to consider the proposal, at least partially, rendered more difficult the authorities' task of ensuring security and taking the necessary preparatory measures for the planned event, within relatively compelling time constraints. The Court considered it proportionate that the domestic courts concluded that the applicants' actions amounted to an administrative offence and imposed small fines on them.

89. By contrast, in *Hyde Park and Others v. Moldova (nos. 5 and 6)*, 2010, after arresting the peaceful demonstrators for failing to obtain authorisation for their assembly, the domestic authorities imposed a fine in the upper end of the statutory penalty scale (80% of the statutory maximum), which the Court found to be a disproportionate interference of the right to assembly.

90. In *Ekrem Can and Others v. Turkey*, 2022, §§ 93-94, the Court considered that one year and eight months' imprisonment was a particularly severe and disproportionate sanction for a non-violent courthouse protest. The Court also noted that the applicants had been held in pre-trial detention for more than one year and eight months (which it considered to be very long periods) for acts that fell within the purview of Article 11. The Court therefore found a violation of that provision.

3. Preventive arrest to ensure non-participation in an assembly

91. In *Schwabe and M.G. v. Germany*, 2011, the Court found the applicants' almost six-day detention, the equivalent of the entire duration of the G8 summit against which they intended to protest, to be a disproportionate measure to prevent the possible incitation of others to free demonstrators detained during the summit. The Court was of the view that there were other effective but less intrusive measures available to the authorities to achieve their aims, such as seizing the banners they had found in the applicants' possession. In this connection, the Court found a violation of Article 11 of the Convention.

F. Positive obligations

92. The right to freedom of peaceful assembly also imposes positive obligations on the contracting States (*Öllinger v. Austria*, 2006, § 35).⁶ States must not only refrain from applying unreasonable restrictions upon the right to assemble peacefully but also safeguard that right. Although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected (*Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, 2007, § 37; *Nemtsov v. Russia*, 2014, § 72), there are in addition positive obligations to secure the effective enjoyment of these rights (*Djavit An v. Turkey*, 2003, § 57; *Oya Ataman v. Turkey*, 2006, § 36; *Gün and Others v. Turkey*, 2013).

1. Protecting participants from violence

93. 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 (*Oya Ataman v. Turkey*, 2006, § 35; *Makhmudov v. Russia*, 2007, §§ 63-65; *Gün and Others v. Turkey*, 2013). However, they need not guarantee this absolutely and they have a wide discretion as to the choice of the means to be used (*Prototapa v. Turkey*, 2009, § 108). In this area the obligation under Article 11 of the Convention is an obligation as to the measures to be taken and not as to the results to be achieved (*Giuliani and Gaggio v. Italy* [GC], 2011, § 251; *Kudrevičius and Others v. Lithuania* [GC], 2015, § 159; *Plattform "Ärzte für das Leben" v. Austria*, 1988, § 34; *Fáber v. Hungary*, 2012, § 39).

6. See Section I. D. *Guide on Article 11- Freedom of Assembly and Association*.

94. Even where the intentions of demonstrators are not violent, public demonstrations may nevertheless pose a threat to public order when counter-demonstrators also assert their right to freedom of peaceful assembly. The Court held that the authorities have a positive obligation to protect a lawful demonstration against a counter-demonstration. Genuine and effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere (*Plattform “Ärzte für das Leben” v. Austria*, 1988, § 34).

95. In this context, the Court explained that it is the duty of contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully. The authorities are bound to take adequate measures to prevent violent acts directed against the participants in a rally, or at least limit their extent. Otherwise, States fail to discharge their positive obligation under Article 11 (*The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, 2005, § 115).

96. The Court has also held that the State has a positive obligation to protect the right to freedom of assembly of two demonstrating groups advocating conflicting ideas and should find the least restrictive means that would, in principle, enable both demonstrations to take place. The mere existence of a risk of clashes with a counter-demonstration is insufficient to ban the event. In making their assessment the authorities must produce concrete estimates of the potential scale of any disturbance in order to evaluate the resources necessary to neutralise the threat of violent clashes (*Fáber v. Hungary*, 2012, §§ 40 and 43).

97. In *Plattform “Ärzte für das Leben” v. Austria*, 1988, counter-demonstrators disrupted the applicant association’s mass and march. The Court noted that the two counter-demonstrations had been prohibited, a large number of policemen were deployed along the route, and they did not refuse the applicant association protection even after the applicant decided to change the route. The Court concluded that the authorities did not fail to take reasonable and appropriate measures.

98. By contrast, in *Frumkin v. Russia*, 2016, the Court found that the disruption to a peaceful demonstration was a consequence of the failure of the police to take “simple and obvious steps” to provide a reliable channel of communication with the organisers before the assembly, and found a violation of Article 11 of the Convention.

99. In *Identoba and Others v. Georgia*, 2015, given that the organiser of the march had specifically warned the police about the likelihood of abuse, the Court found the law-enforcement authorities to be under a compelling positive obligation to protect the demonstrators from violence. The Court considered that the fact that only a limited number of police officers were present and that they distanced themselves when the verbal attacks started had allowed the tension to degenerate into physical violence. Furthermore, instead of focusing on restraining the aggressive counter-demonstrators to allow the peaceful procession to proceed, the belated police intervention shifted onto the arrest and evacuation of some applicants. The Court concluded that the domestic authorities failed to provide adequate protection to the applicants from the attacks of private individuals during the march.

100. Similarly, in *Berkman v. Russia*, 2020, the Court found a violation of Article 11 in relation to the passivity of the police and failure to restrain homophobic verbal attacks and physical pressure by counter-demonstrators. In the case of *Promo Lex and Others v. the Republic of Moldova*, 2015, the applicants were attacked by several individuals during a demonstration. The police appeared only an hour and a half after the attack and took two already immobilised attackers into custody. The Court considered that the authority failed to take appropriate measures to protect the applicants from the attack.

101. Lastly, it should be noted that the Court stressed the importance of taking preventive security measures, such as ensuring the presence of first-aid services at the site of demonstrations, in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature (*Oya Ataman v. Turkey*, 2006).

2. Procedural obligation to investigate

102. The Court explained that where individuals act in a way that undermines Article 11 rights national authorities have the obligation to investigate violent incidents affecting the exercise of those rights (*Ouranio Toxo and Others v. Greece*, 2005, § 43).

103. In *Promo Lex and Others v. the Republic of Moldova*, 2015, the applicants were attacked by masked individuals, and alleged that the attack was filmed by plain-clothes officers. The authorities denied that they were police officers, but did not make any attempt to find out the attackers' identities. The Court further noted that, even though all six attackers were eventually identified, four were not convicted without any apparent reason. The Court also noted that, although one attacker admitted to having been paid for the attack, there was no evidence that the authorities attempted to find out who sponsored the attack. The Court considered that the State had failed to comply with their procedural obligation under Article 11 of the Convention.

104. In the event of a large-scale confrontation between protesters and law-enforcement officers involving violence on both sides the authorities are required to start the investigation of their own motion, to scrutinise the actions of, not only those protesters who had acted violently, but also those of the law-enforcement authorities (*Zakharov and Varzhabetyan v. Russia*, 2020, §§ 53-55).

G. Restrictions on discriminatory basis

105. Article 14 of the Convention⁷ guarantees the enjoyment of the rights and freedoms to be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The protection from discrimination may also be relevant in the context of protests.

106. For instance, in *Bączkowski and Others v. Poland*, 2007, the applicants were refused permission to organise an assembly on a commemorative date important to them in Warsaw, with the aim of drawing attention to discrimination against various minorities, including homosexuals. There was nothing in the texts of the decision refusing the applicants permission to indicate discrimination, but at the relevant time the mayor had publicly expressed strong personal opinions against homosexuality. The Court was of the view that "it may be reasonably surmised that [the mayor's] opinions could have affected the decision-making process in the present case, and, as a result, impinged on the applicants' right to freedom of assembly in a discriminatory manner". The Court found a violation of Article 14 in conjunction with Article 11.

107. In *Identoba and Others v. Georgia*, 2015, the Court found the State's failure to protect demonstrators from homophobic violence and to launch effective investigation, which the Court found to be in breach of Article 11 read in conjunction with Article 14 of the Convention. The authorities must duly facilitate the conduct of the planned event by restraining homophobic verbal attacks and physical pressure by counter-demonstrators (*Berkman v. Russia*, 2020, §§ 55-57).

7. See *Guide on Article 14 of the European Convention of Human Rights and on Article 1 of Protocol No 12 to the Convention- Prohibition of discrimination*.

II. Freedom of expression (Article 10)

Article 10 of the Convention

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Applicability

108. In general, in deciding whether a certain act or conduct falls within the ambit of Article 10, the Court makes an assessment of the nature of the act or conduct in question, in particular of its expressive character seen from an objective point of view, as well as of the purpose or the intention of the person performing the act or carrying out the conduct in question (*Murat Vural v. Turkey*, 2014, § 54). In this connection, Article 10 covers not only information and ideas which are widely held but also minority viewpoints and views that many people might find offensive (*Bédat v. Switzerland* [GC], 2016, § 48).

109. Protests constitute expressions of opinion within the meaning of Article 10. In *Steel and Others v. the United Kingdom*, 1998, although the protests took the form of physically impeding certain activities of which the applicants disapproved, the Court considered that they constituted expressions of opinion within the meaning of Article 10.

110. In *Sinkova v. Ukraine*, 2018, the applicant carried out what she considered to be an artistic performance (frying eggs on a memorial), had her actions filmed, prepared a statement explaining her position and posted the video with that statement on the Internet. The Court considered her action to be a protest against certain State policies and as falling within Article 10 of the Convention. Similarly, in *Olga Kudrina v. Russia*, 2021, § 49, the Court examined under Article 10 a political protest where the applicant hung a poster on the exterior wall of a hotel and threw political leaflets out of the window over people and journalists who had gathered below. In *Yezhov and Others v. Russia*, 2021, § 27, the Court examined under Article 10 a protest action against the government policies where the applicants, who formed part of a group of about thirty people, forced their way through identity and security checks into the relevant ministry’s premises and locked themselves in some of the offices, where they chanted slogans and distributed leaflets out of the windows.

111. In *Handzhiyski v. Bulgaria*, 2021, § 45, concerning the placement of Santa Claus accessories on a communist leader’s statue in the context of a political protest by a local opposition politician, the Court found Article 10 to be applicable as the applicant had sought to engage in political protest, and to “impart” his “ideas” about the government and the political party which supported it.

112. Article 10 applies not only to the content of information but also to the means of transmission or reception. Any restriction imposed on the means necessarily interferes with the right to receive and impart information (*Autronic AG v. Switzerland*, 1990, § 47; *Ahmet Yildirim v. Turkey*, 2012, § 50).

113. Thus, in this context, the Court has recognised the importance of the internet in the exercise of freedom of expression. In *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, 2009, § 27, the Court reiterated that in light of its accessibility and its capacity to store and communicate vast amounts of information, the internet plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general. User-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression (see also *Delfi AS v. Estonia* [GC], 2015, § 110).

114. Lastly, as already explained in Section I.A., it should be noted that in cases relating to public assemblies, there is a close link between the freedoms protected by Articles 10 and 11 of the Convention.

B. Forms of interference

115. According to the Court’s case-law, any measure taken by the authorities to restrict freedom of expression may constitute an interference with that freedom within the meaning of Article 10 § 2 of the Convention. The Court assesses this on a case-by-case basis. The forms of interference indicated below are most commonly present in the context of mass protests.

1. Blockage of Internet use

116. The Court has found that a blocking measure, based on the alleged illegality of the published content, constitutes a prior restraint. Although the Court confirmed in multiple cases that prior restraints on publication are not as such prohibited by Article 10, they have to be part of a legal framework ensuring both tight control over the scope of bans and effective judicial review to prevent possible abuses. Wholesale blocking that renders large amounts of information inaccessible, which substantially restricts the rights of Internet users and have a significant collateral effect, are not acceptable under Article 10 (*Ahmet Yildirim v. Turkey*, 2012, § 64).

117. In *Kablis v. Russia*, 2019, the Court found the blocking of the applicant’s social networking account and of three entries on his blog on the grounds that they contained calls to participate in a public event of which the location had not been approved by the town administration amounted to an interference with the applicant’s right to freedom of expression. For the Court, the fact that the applicant could create a new social networking account or publish new entries on his blog had no incidence on this finding.

2. Interference with media coverage

118. The Court has held that the media has a crucial role in providing information on the authorities’ handling of public demonstrations and the containment of disorder. According to case-law of the Court, the “watch-dog” role of the media representatives is of particular importance in such contexts, since their presence is a guarantee that the authorities can be held to account for their conduct vis-à-vis the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order (*Pentikäinen v. Finland* [GC], 2015, § 89). Thus, public measures preventing journalists from doing their work may raise issues under Article 10 (*Gsell v. Switzerland*, 2009, § 49 et seq.; *Najafli v. Azerbaijan*, 2012, § 68).

119. For instance, in *Pentikäinen v. Finland* [GC], 2015, concerning the apprehension of a media photographer during a demonstration and his subsequent detention and conviction for disobeying the police, the Court found that, even if the impugned measures were not aimed at the applicant as a journalist but were the consequence of his failure to comply with police orders to disperse, the exercise of his journalistic functions had been adversely affected. Thus, the Court found that there has been “interference” with his freedom of expression.

120. In *Butkevich v. Russia*, 2018, the applicant was a journalist with a Ukrainian television channel who was convicted for disobeying police orders during a demonstration and subsequently sentenced to two days' detention. The applicant was attempting to take photographs of the demonstration, thus collecting information which he intended to impart by way of processing the photographs for dissemination. The Court considered that the authorities' arresting, detaining and prosecuting the applicant amounted to an interference under Article 10, as the gathering of information was an essential preparatory step in journalism as well as an inherent and protected part of press freedom.

121. The case of *Najafli v. Azerbaijan*, 2012, concerned a journalist who was beaten by the police while covering an unauthorised demonstration. The Court found that the physical ill-treatment by State agents of journalists carrying out their professional duties had seriously hampered the exercise of their right to receive and impart information. Irrespective of whether there was any actual intention to interfere with the applicant's journalistic activity, he was subjected to unnecessary and excessive use of force, despite his clear efforts to identify himself as a journalist at work. Therefore, the Court concluded there had been an interference with the applicant's rights under Article 10 of the Convention.

3. Sanctions for shouting/speeches made during protests

122. According to the Court's case-law, sanctions imposed for different forms of expression during protests constitute an interference with Article 10 of the Convention⁸.

123. For instance, in *Gül and Others v. Turkey*, 2010, § 35, the Court found that the applicants' conviction for shouting slogans in support of an armed, illegal organisation amounted to interference with their Article 10 rights (see also *Yılmaz and Kılıç v. Turkey*, 2008).

124. Similarly, in *Feridun Yazar v. Turkey*, 2004, the applicants were convicted for speeches they gave at an extraordinary congress of a political party, which was alleged by the authority to be showing support for an illegal armed organisation. The conviction was considered an interference with the freedom of expression under Article 10 of the Convention.

125. In *Manannikov v. Russia*, 2022, the Court examined under Article 10, relying also on Article 11 case-law, the display of a provocative banner by a counter-demonstrator distorting the main event's message and likely to cause unrest. It considered that the police order to remove the banner and the applicant's administrative conviction amounted to an interference with Article 10.

C. Lawfulness

126. In order to be permissible, any interference with the freedom of expression under Article 10 must above all be "prescribed by law".

127. In this connection, the Court has held that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects. The notion of "quality of the law" requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law; it thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities (*Magyar Kétfarkú Kutya Párt v. Hungary* [GC], 2020, § 93).

128. In *Kablis v. Russia*, 2019, § 93, the Court found the term "public events held in breach of the established procedure" in the relevant section of the Information Act to be too broad and vague to fulfil the lawfulness requirement, as any breach of the procedure for the conduct of public events, no

⁸ See also *Guide of Article 11* (section I(B)(2)) for examples of classification of different forms of conduct under Articles 10 and/or 11.

matter how small or innocuous, may already be sufficient for the Prosecutor General to block access to internet posts containing the calls to participate in that event.

129. By contrast, in *Murat Vural v. Turkey*, 2014, §§ 31 and 60, the applicant was convicted for the expressive conduct of pouring paint over statues of a founder of the country, Atatürk. The Court referred to the Turkish Law on Offences against Atatürk, and found that the law was sufficiently clear and met the requirements of foreseeability.

130. A general ban on members of the public accessing an assembly may also impact on journalists. In *Gsell v. Switzerland*, 2009, where the applicant, a journalist, was refused access to the annual meeting of the World Economic Forum (WEF) in Davos by the police due to numerous security measures that were in place after the police were informed that unauthorised demonstrations and disturbances were planned, the Court found that the ban imposed did not have any explicit legal basis and was thus contrary to the requirement of lawfulness under Article 10 § 2 of the Convention.

131. In *Ibrahimov and Mammadov v. Azerbaijan*, 2020, §§ 170-174, the Court found that the applicants' arrest and pre-trial detention formally related to drug charges was in reality aimed at punishing them for spraying graffiti on the statue of the former President of the country, which was a mix of conduct and verbal expression protected as a form of political expression covered by Article 10. The Court thus found that such ulterior actions by the authorities amounted to an interference with the applicants' freedom of expression and that such an interference was unlawful, grossly arbitrary and incompatible with the principle of the rule of law.

D. Legitimate Aim

132. The Court has explained that as enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (*Magyar Helsinki Bizottság v. Hungary* [GC], 2016, § 187; *Kablis v. Russia*, 2019, § 82).

133. Article 10 § 2 of the Convention lists nine legitimate purposes for which restrictions on freedom of expression can be justified: the protection of national security, the protection of territorial integrity, the protection of public safety, the prevention of public safety, the prevention of disorder or crime, the protection of health, the protection of morals, the protection of the reputation or rights of others, the prevention of the disclosure of information received in confidence, and the maintenance of the authority and impartiality of the judiciary. The legitimate aims that may be relevant in the context of mass protests are discussed below.

1. Protecting national security and preventing disorder or crime

134. In general, the Court has held that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate of questions of public interest. Where the views expressed do not comprise incitements to violence – in other words unless they advocate recourse to violent actions or bloody revenge, justify the commission of terrorist offences in pursuit of their supporter's goals or can be interpreted as likely to encourage violence by expressing deep-seated and irrational hatred towards identified persons – Contracting States must not restrict the right of the general public to be informed of them, even on the basis of the aims set out in Article 10 § 2, that is to say the protection of territorial integrity and national security and the prevention of disorder or crime (*Dilipak v. Turkey*, 2015, § 62).

135. However, in *Yılmaz and Kılıç v. Turkey*, 2008, since some of the slogans chanted in the demonstration in support of an illegal armed group had particularly violent connotations, the Court found that the authority pursued the legitimate aim of protecting national security and preventing disorder.

136. Similarly, in *Gül and Others v. Turkey*, 2010, the applicants shouted slogans with a violent tone. Although the Court noted that the applicants did not advocate violence, injury or harm to any person, the Court found the interference to have pursued the legitimate aim of protecting national security and public order.

137. In *Feridun Yazar v. Turkey*, 2004, the conviction of the applicants who allegedly showed support for an illegal armed organisation in a public speech given at an assembly was found to pursue the legitimate aim of the protection of territorial integrity.

138. On the legitimate aim of preventing disorder, the Court noted that the words used in the English text of Article 10 § 2 appear to have a narrower meaning than the French text. However, it clarified that the expressions “the prevention of disorder” and “*la défense de l’ordre*” in the English and French texts of Article 10 § 2 could best be reconciled by being read as having the less extensive meaning (*Perinçek v. Switzerland*, 2013, §§ 146-151).

2. Protecting the reputation or rights of others

139. In *Mătășaru v. the Republic of Moldova*, 2019, the applicant was convicted for demonstrating in front of the Prosecutor General’s Office with obscene sculptures, which were intended to draw attention to corruption and political control over the Prosecutor’s Office. The domestic courts found that his actions had been “immoral” and offensive for the senior prosecutors and politicians he had targeted. The Court accepted that the interference in question pursued the legitimate aim of protecting the reputation of others.

140. In *Mariya Alekhina and Others v. Russia*, 2018, members of a Russian feminist punk band attempted to perform a song from the altar of a cathedral. Although no service was taking place, a number of persons were inside the cathedral. The performance lasted slightly over a minute before the band was removed from the cathedral by the guards. The Court found that the interference pursued a legitimate aim of protecting the rights of others.

3. Protecting morals

141. In *Bayev and Others v. Russia*, 2017, §§ 66-69, the authority restricted LGBT static demonstrations relying on the aim of the “protection of morals”. The Court found that Article 10 § 2 did not serve to advance such a discriminatory aim, and such measures were likely to reinforce stigma and prejudice among minors and encourage homophobia.

E. Necessary in a democratic society

142. According to the Court’s case-law, the adjective “necessary”, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’ (*Pentikäinen v. Finland* [GC], 2015, § 87). In this connection, States enjoy a certain margin of appreciation in assessing whether and to what extent any interference with the exercise of freedom of expression is necessary, particularly as regards the choice of reasonable and appropriate means to be used to ensure that lawful activities can take place peacefully (*Chorherr v. Austria*, 1993, § 31). This margin goes hand in hand with supervision by the Court, which must ascertain that any such interference was proportionate to the legitimate aim pursued, with due regard to the importance of freedom of expression (*Steel and Others v. the United Kingdom*, 1998, § 101).

143. For instance, in *Steel and Others v. the United Kingdom*, 1998, concerning the actions of an applicant who walked in protest in front of an armed member of the shoot in order to physically prevent him from firing and an applicant who protested against some construction works by placing herself in front of machinery, the Court took into account the dangers and risk of disorder inherent in such protest activities and found that the actions of the police in arresting and detaining them before bringing them to court, and their imprisonment following refusal to be bound over, were proportionate.

144. By contrast, in *Mariya Alekhina and Others v. Russia*, 2018, the Court found that the applicants' attempt to perform a feminist song on the altar of a cathedral neither contained elements of violence, nor stirred up or justified violence, hatred or intolerance of believers. The Court noted that the domestic courts had failed to adduce relevant and sufficient reasons to justify the criminal conviction and the exceptionally serious two-year prison sentence, therefore finding that the sanctions had not been proportionate to the legitimate aim pursued and in breach of Article 10 of the Convention.

145. In cases where the content of an expression contains violent tones, the Court has looked into the existence of any indication of a clear and imminent danger. In *Gül and Others v. Turkey*, 2010, the Court considered that the well-known stereotyped political slogans which were shouted during lawful demonstrations could not be interpreted as a call for violence or an uprising. Thus, the Court found that the shouting of such slogans could not justify the applicant's lengthy criminal prosecution.

146. Similarly, in *Yılmaz and Kılıç v. Turkey*, 2008, slogans with violent connotations were chanted in a demonstration, but it had not been established that these had been chanted by the applicants themselves. Even though the Court found that the interference with the right to freedom of expression was justifiable by the prevention of disorder, especially in the particularly tense political climate that reigned in the country at the time, four years' imprisonment inflicted on the applicants was found manifestly disproportionate. On the other hand, in *Manannikov v. Russia*, 2022, concerning the display of a provocative banner by a counter-demonstrator in the middle of a crowd of his opponents, the Court did not consider that the order to remove the banner, which was given with a view to prevent unrest, had been disproportionate. The Court also did not consider that the applicant's administrative offence conviction and a EUR 14 fine had been excessive.

147. In *Feridun Yazar v. Turkey*, 2004, for three of the applicants, the Court observed that they were expressing themselves in their capacity as politicians, but not inciting the use of violence, armed resistance or uprising. Thus, an interference with their freedom of expression was unjustifiable. For the remaining applicant, the Court noted that the terms used in his speech cast doubt on his position regarding the use of force for secessionist purposes. Therefore, a criminal penalty could reasonably be regarded as meeting a "pressing social need". However, the Court noted that the nature and severity of the penalties imposed were disproportionate to the aim pursued.

148. In *Elvira Dmitriyeva v. Russia*, 2019, the applicant made calls on social media to participate in an event that was to be held at a venue disapproved by the authorities. The Court found that, given that the breach of the procedure for the conduct of public events was minor, did not create any real risk of public disorder or crime and did not potentially harm public safety or the rights of others, the applicant's conviction was not justified within the meaning of Article 10 § 2 of the Convention.

149. In *Mătășaru v. the Republic of Moldova*, 2019, concerning the public installation of sculptures that constituted an expression of both a political and artistic nature, the Court looked at whether the sanction imposed on the applicant had gone beyond what might have been necessary to restore balance between the various interests involved, namely the right to freedom of expression of the applicant against the right to dignity of the persons who were insulted. In making its assessment, the Court also noted the risk of a chilling effect on others who might be discouraged to exercise their freedom of expression.

150. In *Handzhiyski v. Bulgaria*, 2021, §§ 45, 53 and 55, concerning symbolic expression by a politician through placing Santa Claus accessories on a communist leader's statue, the Court stressed that public monuments are frequently physically unique and form part of a society's cultural heritage. Measures, including proportionate sanctions, designed to dissuade acts which can destroy them or damage their physical appearance may therefore be regarded as "necessary in a democratic society", however legitimate the motives which may have inspired such acts. In a democratic society governed by the rule of law, debates about the fate of a public monument must be resolved through the appropriate legal channels rather than by covert or violent means. However, when it comes to acts – which, though capable of profaning a monument, do not damage the monument – the question whether it can be "necessary in a democratic society" to impose sanctions in relation to them becomes more nuanced. The Court explained that, in such situations, the precise nature of the act, the intention behind it, and the message sought to be conveyed by it cannot be matters of indifference. For instance, acts intended to criticise the government or its policies, or to call attention to the suffering of a disadvantaged group cannot be equated to acts calculated to offend the memory of the victims of a mass atrocity. The social significance of the monument in question, the values or ideas which it symbolises, and the degree of veneration that it enjoys in the respective community are also important considerations.

151. Lastly, as regards the journalistic activities in covering protests, in *Pentikäinen, v. Finland* [GC], 2015, concerning the apprehension of a journalist during a demonstration, the Court found that the applicant had not been prevented from carrying out his work as a journalist either during or after the demonstration. In particular, he had not been apprehended for his work as a journalist, as such, but for refusing to obey police orders to leave the scene of the demonstration. His equipment had not been confiscated and he had not been sanctioned. The Court thus found that the domestic authorities had based their decisions on relevant and sufficient reasons and had struck a fair balance between the competing interests at stake, and that they had not deliberately prevented or hindered the media from covering the demonstration. There was therefore no violation of Article 10 of the Convention.

III. Right to life (Article 2)

Article 2 of the Convention

- “1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
- (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

152. Article 2 of the Convention contains two substantive obligations: the general obligation to protect by law the right to life, and the prohibition of intentional deprivation of life, delimited by a list of exceptions. Article 2 also contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb.⁹ The Court has examined compliance with these obligations also in the context of mass protests.

A. Substantive aspect¹⁰

153. In *Giuliani and Gaggio v. Italy* [GC], 2011, the Court examined a situation where, in the context of a mass protest, the participants were launching an unlawful and violent attack against the vehicle of the law-enforcement agencies. Evidence showed that the firing officer had given a verbal warning before the victim picked up a fire extinguisher and raised it to chest height, which the Court considered to be reasonably interpreted as an intention to attack the vehicle. The Court acknowledged the officer’s honest belief that his own life and those of his colleagues were in danger, which justified the use of lethal force “in defence of any person from unlawful violence” within the meaning of Article 2 § 2 (a). The Court thus found no violation of the substantive limb of Article 2 of the Convention.

154. By contrast, in *Güleç v. Turkey*, 1998, § 71, the Court dealt with a situation where the applicant’s son was killed with a machine gun during a demonstration. The Court stressed that although the use of force might have been justified under Article 2, balance had to be struck between the aim and means (namely type of weapons deployed), even when the use of force was justifiable. The Court found it incomprehensible and unacceptable for State agents to be equipped only with lethal weapons, as in the case at hand.¹¹

155. Similarly in *Şimşek and Others v. Turkey*, 2005, §§ 104-133, the Court found a violation of the substantive aspect of Article 2 since the officers had shot directly at the demonstrators without first having recourse to less life-threatening methods, such as tear gas, water cannons or rubber bullets. In *Nagmetov v. Russia* [GC], 2017, § 45, the killing of a person after the firing of a tear-gas grenade directly at him also led to the finding of a violation of Article 2 (see also *Ataykaya v. Turkey*, 2014).

156. In *Boboc and Others v. the Republic of Moldova*, 2022, §§ 49-51, the Court found that the beating of a person by the police while he was lying on the ground, which resulted in his death, was in breach of Article 2 of the Convention. Similarly, in *Lutsenko and Verbytskyy v. Ukraine*, 2021, § 93, concerning

9. See *Guide on Article 2 of the European Convention on Human Rights: Right to life*.

10. See Sections II and III *Guide on Article 2 of the European Convention on Human Rights: Right to life*.

11. See further Office of the High Commissioner of Human Rights (August 2019), *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, § 1.1.

the events in relation to the authorities' strategy to stop the initially peaceful Maidan protest through excessive force, the Court found a violation of Article 2 in relation to the abduction, torture and death of the second applicant's brother at the hands of individuals acting under the control of the authorities.

157. Article 2 continues to protect the right to life of participants in a protest even after the protest ended. In *Gülşenoğlu v. Turkey*, 2007, the Court found a violation of Article 2 in connection with the killing of a protester who had been shot in the back of his head by the arresting officer after he had been brought to a police station.

158. In *Isaak v. Turkey*, 2008, §§ 110-115, the deceased took part in a demonstration and was beaten to death by a group of about 15-20 persons, including five uniformed policemen, when he was isolated and unarmed in the buffer zone. Since the deceased was an isolated demonstrator and unarmed at the time of the attack, the Court found that the use of force was not "absolutely necessary" and manifestly disproportionate to the aims pursued.

159. The Court also found violations of Article 2 where the excessive force was inflicted on the bystanders of demonstrations. In *Andreou v. Turkey*, 2009, the applicant was caught by a bullet in a violent clash between demonstrators and the armed force which resulted in a threat to her life. The Court noted that although the demonstrators had sticks and iron bars and were throwing stones at the police such firing could cause serious injuries to demonstrators and bystanders. The Court also attached weight to the eyewitnesses' testimony that the opening of fire was totally unwarranted and not even preceded by a warning shot. Furthermore, the Court found that the shooting of the applicant was not justified "in defence of any person from unlawful violence" or "absolutely necessary", as the applicant was not carrying weapons or behaving in a violent manner. The Court therefore found a violation of Article 2 of the Convention.

B. Procedural aspect¹²

160. In *Şimşek and Others v. Turkey*, 2005, the applicants' relatives were killed by officers in a demonstration. The Court found that the authorities had failed to provide a prompt and adequate investigation into the circumstances surrounding the killing, and that at no stage did the domestic courts examine the overall responsibility of the authorities for the deficiencies in the conduct of the operation and for their inability to ensure a proportionate use of force to disperse the demonstrators. Similarly in *Nagmetov v. Russia* [GC], 2017, the Court found a violation of the procedural limb based on the authorities' failure to exhaust all reasonable and practicable measures to provide assistance in identifying the shooter and in establishing other relevant circumstances.

161. In *Gülşenoğlu v. Turkey*, 2007, the police officer that shot the applicant's brother after arresting him in a demonstration had been convicted of homicide and was sentenced to twenty years' imprisonment twice by the first-instance court. However, the judgments were subsequently quashed by the Court of Cassation based on procedural shortcomings and defects. The Court considered that such a procedural response was neither prompt nor effective.

162. In *Association "21 December 1989" and Others v. Romania*, 2011, concerning a violent crackdown on anti-government demonstrations, the Court found a violation of the procedural aspect of Article 2 on the grounds that the victims' families were unable to gain access to the proceedings before an independent court. The Court also noted that there was no justification for the total lack of information provided to the applicants about the investigation despite their numerous requests.

12. See Section IV *Guide on Article 2 of the European Convention on Human Rights: Right to life*.

163. Similarly, in *Lutsenko and Verbytskyy v. Ukraine*, 2021, § 72, the Court found a violation of the procedural limb of Article 2 in relation to the Ukrainian authorities' failure to investigate effectively the death of the second applicant's relative in the context of the crackdown on the Maidan protest.

164. The Court has also found violations of Article 2 concerning the failure to identify and arraign those responsible for a killing after the lapse of a long period. In *Isaak v. Turkey*, 2008, 11 years had gone by; in *Pastor and Jiclete v. Romania*, 2011, there were more than 16 years between the opening of the criminal investigation and more than 11 years from the date the Convention entered into force for Romania; and in *Elena Apostol and Others v. Romania*, 2016; as well as *Ecaterina Mirea and others v. Romania*, 2016, 20 years had passed.

IV. Prohibition of torture or inhuman or degrading treatment (Article 3)

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Applicability

165. According to the Court's case-law, Article 3 is an absolute right. In other words, it cannot be derogated from in times of war or other emergency, and it is set out in unqualified terms. Ill-treatment within the terms of Article 3 is never permitted, even for public interest reasons. The need to fight terrorism or organised crime or to save someone's life cannot justify State conduct that would otherwise be in breach of Article 3 (*Gäfgen v. Germany* [GC], 2010, § 176).

166. The Court has held that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (*Bouyid v. Belgium* [GC], 2015, § 86). The assessment depends on all the circumstances of the case, such as:

- the duration of the treatment, the physical or mental effects, in some cases, the sex, age and state of health of the victim (*Jalloh v. Germany* [GC], 2006, § 67; *Svinarenko and Slyadnev v. Russia* [GC], 2014, § 114);
- the purpose for which the ill-treatment was inflicted (*Gäfgen v. Germany*, [GC], 2010, § 88);
- the intention or motivation behind, although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a violation of Article 3 (*V. v. the United Kingdom* [GC], 1999, § 71);
- the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions (*Selmouni v. France* [GC], 1999, § 104).

167. When ill-treatment attains such a minimum level of severity, it usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3. Such an assessment is subjective. It may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (*Bouyid v. Belgium* [GC], 2015, § 87).

168. The Court in its case-law considered treatment to be “inhuman” because it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (*Labita v. Italy* [(GC), 2000, § 120; *Ramirez Sanchez v. France* [GC], 2006, § 118). Treatment was held to be “degrading” when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his or her will or conscience (*Jalloh v. Germany* [GC], 2006, § 68).

169. According to *Gäfgen v. Germany* [GC], 2010, § 90, when classifying ill-treatment as torture, the Court attaches a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (*Selmouni, v. France* [GC], 1999, § 96). In addition to severity, there is a purposive element to torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating the victim¹³ (*Aksoy v. Turkey*, 1996, § 115).

170. However, where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, the Court has emphasised that the severity threshold cannot be taken to mean that there might be situations in which a finding of a violation is not called for because the severity threshold has not been attained. The Court stressed that any interference with human dignity strikes at the very essence of the Convention. Therefore, any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his or her conduct, whatever the impact on the person in question (*Bouyid v. Belgium* [GC], 2015, § 101). The Court has applied these principles also in cases concerning violent dispersal of assemblies (*Navalnyy and Gunko v. Russia*, 2020, §§ 41 and 48; *Zakharov and Varzhabetyan v. Russia*, 2020, §§ 62 and 71). The fact that the treatment in question took place in public in the presence of a large number of people and was reported in the media may be found to be an aggravating factor (*Navalnyy and Gunko v. Russia*, 2020, § 48).

171. Lastly, it should be noted that according to the Court’s case-law, not only actions of State agents could be imputed to the Contracting State, but also the actions of local apparatus can be imputable to the State exercising “effective control” of the area (*Djavit An v. Turkey*, 2003, § 22).

172. Similarly, the State bears a direct responsibility for actions taken by the individuals acting upon the instructions and/or under the control of the authorities or at least with their acquiescence or connivance (*Lutsenko and Verbytskyy v. Ukraine*, 2021, §§ 90-93).

B. Substantive aspect

173. In the context of the use of force for dispersal of public assemblies, in *Oya Ataman v. Turkey*, 2006, § 17, the Court examined the use of a tear gas, known as “pepper spray”, to disperse a group of demonstrators. The gas in question allegedly provoking physical unpleasantness such as tears and breathing difficulties. The Court referred to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13 January 1993 and concluded that the use of “pepper spray” was authorised for the purpose of law enforcement, including domestic riot control.

174. However, in *Abdullah Yaşa and Others v. Turkey*, 2013, § 43, the Court considered that its case-law on the use of potentially lethal force should, accordingly, apply in cases involving the use of tear gas grenades. It stressed that police operations, including the launching of tear-gas grenades, should not only be authorised but should also be sufficiently delimited by domestic law and that there should

13. See Article 1 of the *United Nations Convention against Torture*

be a system of adequate and effective safeguards against arbitrary action, abuse of force and avoidable accidents.

175. Furthermore, according to the Court's case-law, Article 3 of the Convention does not prohibit the use of force by police for the purpose of quelling mass unrest, particularly in dealing with a person on arrest: however, such force may be used only if indispensable and not excessive (*Muradova v. Azerbaijan*, 2009, § 109; *Necdet Bulut v. Turkey*, 2007, § 23; *Zakharov and Varzhabetyan v. Russia*, 2020, § 74).

176. In *Cestaro v. Italy*, 2015, the Court classified as torture the acts of members of the security forces beating up and abusing demonstrators following the clashes and unlawful damage which had occurred during a G8 Summit. Similarly, in *Mushegh Saghatelian v. Armenia*, 2018, the Court found a violation of Article 3 due to the Government's failure to provide a convincing explanation for the applicant's injuries recorded following his transfer from a police station where he was brought following a demonstration.

177. In *İzci v. Turkey*, 2013, the applicant took part in a demonstration which ended in clashes between police and protesters. Video footage of the events examined by the Court showed police officers hitting a large number of demonstrators with their truncheons and spraying them with tear gas. Women who had taken refuge in shops were also dragged out by the police and beaten up. The Court found a violation of Article 3 given the excessive use of violence against the applicant, and her being sprayed with tear gas in circumstances where that was unnecessary.

178. In *Annenkov and Others v. Russia*, 2017, the Court found that the State authorities violated the right to peaceful assembly by violently arresting entrepreneurs occupying a local market in protest of its sale to a developer. The Court also found that the recourse to physical force in this context, resulting in relatively significant injuries, was not justified under Article 3 of the Convention.

179. In *Shmorgunov and Others v. Ukraine*, 2021, §§ 364-374, 392-396, 418-422, 429-433, and as regards the authorities' violent strategy to stop the initially peaceful Maidan protest, the Court found violations of Article 3 on the grounds, *inter alia*, of a lack of evidence to suggest that the recourse to physical force by the police against the applicants had been made strictly necessary by their conduct. In particular, the applicants had been subjected to beatings, including with rubber and/or plastic batons, which had been done publicly and accompanied by verbal abuse in some cases, which had amounted to ill-treatment and, in the case of two applicants, to torture (see also *Lutsenko and Verbytskyy v. Ukraine*, 2021, §§ 78-93; *Kadura and Smaliy v. Ukraine*, 2021, §§ 97 and 113).

C. Procedural aspect

180. Article 3 requires by implication that there should be some form of effective official investigation where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands, *inter alia*, of the police or of other similar authorities (*Bouyid v. Belgium* [GC], 2015, §§ 115-116; *Ostrovenec v. Latvia*, 2017, § 71). When the authorities resort to the use of force, there should be some form of independent monitoring of the action taken, including the issue of its proportionality, in order to ensure accountability for the force used. In ensuring such accountability, it must be verified whether the operation was properly regulated and organised in such a way as to minimise to the greatest extent possible any risk of serious bodily harm to individuals. A large-scale confrontation between protesters and law-enforcement officers, which involved violence on both sides, calls for a particularly thorough scrutiny of the actions of not only those protesters who acted violently, but also of the law-enforcement authorities. The Court stressed the need for a general inquiry into the origins and the circumstances of such confrontations, in order to enhance the effectiveness of the investigation into any individual complaints of ill-treatment (*Muradova v. Azerbaijan*, 2009, § 113-114) which must be opened on the authorities' own motion, even in the absence of individual

complaints lodged by the participants in the rally (*Zakharov and Varzhabetyan v. Russia*, 2020, §§ 53-55).

181. For instance, in *Najafli v. Azerbaijan*, 2012, concerning a journalist who had been beaten by the police while covering an unauthorised demonstration, the Court found that investigation had fallen short of the requirements of Article 3 for multiple reasons. The most serious defect was the question of the independence and impartiality of the investigation, as the task of identifying those responsible for the applicant's beating had been delegated to the same authority whose agents had allegedly committed the offence.

182. In *Cestaro v. Italy*, 2015, the applicant had been beaten and abused during a raid by the Italian police during a G8 Summit. Given the authorities' failure to identify the perpetrators of the ill-treatment and that the criminal charges in relation to the raid had become time-barred, the Court found a violation of the procedural limb of Article 3 of the Convention.

183. Similarly, in *Shmorgunov and Others v. Ukraine*, 2021, §§ 337-358, 377-391, 407-417, 425-428, concerning the violent dispersal of the Maidan protest, the Court noted that there had been significant shortcomings in the investigations into the events. The investigations, and the related proceedings, had not so far resulted in the establishment of the circumstances pertaining to the applicants' alleged ill-treatment, nor had they led to the identification of all those who had actually used force against the applicants. Moreover, as a result of delays and omissions, by the time investigations had intensified, some suspects and possible offenders appeared to have fled Ukraine and were thus out of the reach of the authorities. The Court therefore found violations of the procedural limb of Article 3 (see also *Lutsenko and Verbytskyi v. Ukraine*, 2021, §§ 61-73; *Kadura and Smaliy v. Ukraine*, 2021, §§ 94-96 and 107-112).

184. In *Mushegh Saghatelyan v. Armenia*, 2018, the Court noted that no investigative measures or assessments had been taken in relation to the applicant protester's alleged ill-treatment in the course of arrest and detention subsequent to a demonstration. The Court ruled that the authority had failed to carry out an effective investigation.

185. In *Annenkov and Others v. Russia*, 2017, some entrepreneurs (occupying a local market in protest against its sale to a developer) were beaten during their arrest. The Court noted defects in the domestic investigation, including the lack of an assessment on the medical evidence and the absence of a comparative assessment of the applicants' accounts of the events, which violated their right under Article 3 to an effective investigation.

186. In the context of mass protests an issue can arise with regard to the impossibility of identifying the police officers who allegedly used unjustified force against the protesters. In this respect, the Court has held that, where the authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly display some distinctive insignia, such as a warrant number. The display of such insignia would ensure their anonymity, while enabling their later identification and questioning in the event of challenges to the manner in which the operation was conducted (*Hentschel and Stark v. Germany*, 2017, § 91).

187. Thus, in *Hentschel and Stark v. Germany*, 2017, where the applicants complained about being beaten and about pepper spray being used on them by helmeted officers without any identifying insignia, the Court found that there had not been an effective investigation since the deployment of helmeted police officers without identifying insignia and any difficulties for the investigation resulting from it were not sufficiently counter-balanced by thorough investigative measures.

188. Similarly, in *İzci v. Turkey*, 2013, the domestic courts had admitted that the police officers had hidden their identity numbers and faces to avoid being recognised. The investigation by the national authorities failed to identify most of the officers, with only six of them being eventually convicted. The Court found a violation of the procedural obligations under Article 3 of the Convention.

V. Right to liberty and security (Article 5)

Article 5 of the Convention

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Deprivation of liberty¹⁴

189. In order to determine whether there has been a deprivation of liberty, the Court assesses a person’s concrete situation and a whole range of criteria such as the type, duration, effect and manner of implementation of the measure in question (*Medvedyev and Others v. France* [GC], 2010, § 73; *Creangă v. Romania* [GC], 2012, § 91; *De Tommaso v. Italy* [GC], 2017, § 80; *Guzzardi v. Italy*, 1980, § 92).

190. In this connection, an element of coercion is indicative of a deprivation of liberty within the meaning of Article 5 § 1 (*Gillan and Quinton v. the United Kingdom*, 2010, § 57), and *Foka v. Turkey*, 2008, §§ 74-79). However, the purpose of the measures taken by the authorities depriving individuals of their liberty does not matter at the stage of deciding whether there has been a deprivation of liberty (*Rozhkov v. Russia (no. 2)*, 2017, § 74). Even measures intended for protection, taken in the interest

14. See Section I *Guide on Article 5 of the European Convention of Human Rights: Right to liberty and security*.

of the person concerned, may still amount to a deprivation of liberty (*Khlaifia and Others v. Italy* [GC], 2016, § 71).

191. The principle that Article 5 § 1 is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4 has been confirmed in the context of mass protests. According to the Court’s case-law, the type, duration, effects and manner of implementation of the measure in question should also be considered. The Court has explained that members of the public were often called upon to endure temporary restrictions on freedom of movement in certain contexts, such as travel by public transport or on the motorway, or attendance at a football match. Such commonly occurring restrictions could not properly be described as “deprivations of liberty” within the meaning of Article 5 § 1, so long as they were rendered unavoidable as a result of circumstances beyond the control of the authorities, were necessary to avert a real risk of serious injury or damage, and were kept to the minimum required for that purpose (*Austin and Others v. the United Kingdom* [GC], 2012, § 59).

192. Moreover, the police had to be afforded a degree of discretion in taking operational decisions (*P.F. and E.F. v. the United Kingdom* (dec.), 2010, § 41). Article 5 could not be interpreted in a way that made it impracticable for the police to fulfil their duties of maintaining order and protecting the public, provided they complied with the underlying principle of Article 5, which was to protect the individual from arbitrariness (*Saadi v. the United Kingdom* [GC], 2008, §§ 67-74).

193. In *Austin and Others v. the United Kingdom* [GC], 2012, the Court considered the application of Article 5 § 1 of the Convention in respect of the “kettling” or containment of a group of people carried out by the police on public-order grounds. The Court considered that the police decided to make use of a measure of containment to control the crowd rather than having to resort to more robust methods, which might have given rise to a greater risk of injury to people within the crowd. The Court therefore found that Article 5 was not applicable. However, the Court stressed that, had it not remained necessary for the police to impose and maintain the cordon in order to prevent serious injury or damage, the coercive and restrictive nature of the measure might have been sufficient to bring it within Article 5 of the Convention (see also *Auray and Others v. France*,* 2024, §§ 65-74 and 84-95, where the Court confirmed the *Austin and Others* case-law, finding Article 5 inapplicable, but it examined the case under Article 2 of Protocol No. 4 and found a violation of that provision on the grounds of a lack of adequate legal basis for the application of the “kettling” technique).

194. As regards different forms of administrative arrests, the Court found, for instance, in *Elvira Dmitriyeva v. Russia*, 2019, § 95, that the applicant, who was arrested and detained at the police station for around four hours for drawing up administrative charge, had been deprived of liberty during that period of time (see also *Lashmankin and Others v. Russia*, 2017).

195. In comparison, the detention in *Shimovolos v. Russia*, 2011 was no more than 45 minutes. The Court had regard to the fact that the applicant had been brought to the police station under a threat of force and that he was not free to leave the premises without the authorisation of the police officers. The Court considered there to be an element of coercion which, notwithstanding the short duration of the arrest, was indicative of a deprivation of liberty within the meaning of Article 5 § 1.

196. The Court also found that an element of coercion in the exercise of police powers of stop and search is indicative of a deprivation of liberty, notwithstanding the short duration of the measure (*Krupko and Others v. Russia*, 2014, § 36; *Foka v. Turkey*, 2008, § 78; *Gillan and Quinton v. the United Kingdom*, 2010, § 57; *Shimovolos v. Russia*, 2011, § 50; *Brega and Others v. Moldova*, 2012, § 43).

197. For example, in *Gillan and Quinton v. the United Kingdom*, 2010, the Court noted that although the length of time during which each applicants were stopped and searched did not in either case exceed 30 minutes, during this period the applicants were entirely deprived of any freedom of movement, were obliged to remain where they were and submit to the search. If they had refused they would have been liable to arrest, detention at a police station and criminal charges. The Court

noted, without finally deciding on the applicability of Article 5, that this element of coercion was indicative of a deprivation of liberty within the meaning of that provision.

B. Lawfulness

198. The expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must, in addition, be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (*Giulia Manzoni v. Italy*, 1997, § 25).

199. The “in accordance with a procedure prescribed by law” requirement in Article 5 § 1¹⁵ applies in the context of mass protests:

- *Navalnyy and Yashin v. Russia*, 2014; *Elvira Dmitriyeva v. Russia*, 2019; and *Lashmankin and Others v. Russia*, 2017, (applicants escorted to a police station despite the absence of reasons for not drawing up administrative charges on the spot);
- *Mushegh Saghatelyan v. Armenia*, 2018, (the applicant’s detention exceeded the maximum - 72 hours without judicial order - permitted by law)
- *Hakim Aydin v. Turkey*, 2020, § 40, deprivation of liberty for an offence for which such measure could not be imposed.

200. The applicable law must also meet the standard of “lawfulness” set by the Convention, which requires that all law be sufficiently precise to allow the citizens to foresee, to a degree that is reasonable in the circumstances, the consequences which an action entails (*Steel and Others v. the United Kingdom*, 1998, § 54).

C. Justification grounds in Article 5 § 1

201. The Court has explained that the list of exceptions to the right to liberty under Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (*Buzadji v. the Republic of Moldova* [GC], 2016, § 84; *S., v. and A. v. Denmark* [GC], 2018, § 73).

202. Most commonly in the context of mass protests the justification grounds for the deprivation of liberty concern sub-paragraphs (b) and (c) of Article 5 § 1.¹⁶

203. For instance, in *Steel and Others v. the United Kingdom*, 1998, the first and second applicants were convicted and ordered to keep the peace, namely to avoid acting in a manner the natural consequence of which would be to provoke others to violence. The applicants’ subsequent refusal to comply with the court order led to imprisonment. Since the imprisonment was due to non-compliance with a court order, the Court considered the detention under Article 5 § 1 (b) of the Convention.

204. In *Schwabe and M.G. v. Germany*, 2011, the Court examined a detention aimed at preventing participation in a demonstration. The Court rejected the Government’s argument that the detention concerned Article 5 § 1 (b), as the “obligation prescribed by law” had to be real and specific, already incumbent on the person concerned (see also, *S., v. and A. v. Denmark* [GC], § 83).

205. As regards Article 5 § 1 (c), in *Shimovolos v. Russia*, 2011, when the European Union-Russia Summit was scheduled to take place in Samara, the applicant’s name was registered as a human-rights activist in the “surveillance database”. The Court found the forty-five minute arrest of the applicant

15. See Section II *Guide on Article 5 of the European Convention of Human Rights: Right to liberty and security*.

16. See Section III *Guide on Article 5 of the European Convention of Human Rights: Right to liberty and security*.

at the Samara train station, with a view of preventing him to commit unspecified administrative and criminal offences, not justifiable under Article 5 § 1 (c) of the Convention.

206. In a series of cases against Ukraine concerning a deliberate strategy by the authorities to stop the initially peaceful Maidan protest through excessive use of force and deprivations of liberty, the Court found violations of Article 5 in relation to a lack of justification and/or arbitrariness in the deprivation of the applicants' liberty (*Shmorgunov and Others v. Ukraine*, 2021, §§ 463-478; *Kadura and Smaliy v. Ukraine*, 2021, §§ 126-132; *Dubovtsev and Others v. Ukraine*, 2021, §§ 77-82; *Vorontsov and Others v. Ukraine*, 2021, §§ 42-49). In the same context, in *Lutsenko and Verbytskyy v. Ukraine*, 2021, § 102, the Court found that there had been a complete negation of the guarantees of Article 5 § 1 in relation to the protesters' abduction and detention by individuals acting either upon the instructions and/or under the control of the authorities or at least with their acquiescence or connivance.

207. In *Navalnyy v. Russia* [GC], 2018, the applicant was arrested in irregular but peaceful gatherings on seven occasions. In one instance he was detained for an unstated number of hours before being brought before the court, and in another he was detained overnight before being brought before the judge. The Court found that the authority provided no explicit reasons for not releasing the applicant before the trial, and thus found a violation of Article 5 § 1 of the Convention.

208. In *Navalnyy v. Russia (no. 2)*, 2019, the domestic court ordered a pre-trial house arrest on the grounds that the applicant had breached the undertaking not to leave Moscow during the investigation, and considered there to be a risk of absconding. The Court noted that the applicant had in fact complied with the undertaking. The Court saw no reasonable explanation that his conduct had warranted a deprivation of liberty, and thus found the deprivation of liberty to be unlawful.

209. In *Krupko and Others v. Russia*, 2014, during an assembly, the four applicants cooperated with police officers to produce identity documents, answer questions and obey orders. They were not formally suspected of, or charged with any offence. The Court found no possibility for their arrest to be effected "for the purpose of bringing before the competent legal authority on reasonable suspicion of having committed an offence", and concluded that the deprivation of liberty was arbitrary.

210. However, in the case of *S., v. and A. v. Denmark* [GC], 2018, concerning the detention of football supporters for approximately eight hours without charge, the Court elaborated on the second limb of Article 5 § 1 (c) which permitted the arrest or detention of a person "when it is reasonably considered necessary to prevent his committing an offence". The Court held that as a matter of principle this provision provided for a possibility that the authorities detain an individual outside the context of criminal proceedings, provided that they complied with the underlying principle of Article 5 to protect the individual from arbitrariness.

211. It should also be noted that in *Kavala v. Turkey*, 2019, the Court confirmed that a state of emergency under Article 15 could not remove the requirement of "reasonable suspicion" for a detention based on Article 5 § 1 (c). A suspicion of the applicant "attempting to overthrow the constitutional order through force or violence" had to be justified by tangible and verifiable facts or evidence that was related to the offence in question. However, neither the decisions on detention nor the bill of indictment contained such information. Therefore, the Court found a violation of Article 5 § 1 of the Convention.

212. Lastly, in several cases concerning protests interferences with the right to liberty and security of the person were found to be based on an ulterior purpose, which gave rise to an issue under Article 18¹⁷ in conjunction with Article 5 of the Convention.

17. See *Guide on Article 18 of the European Convention on Human Rights: Limitation on use of restrictions on rights*.

213. For instance, in *Rashad Hasanov and Others v. Azerbaijan*, 2018, the applicants were civil society activists and board members of an NGO that organised protests against the Government. Shortly before one of the scheduled demonstrations, the applicants were arrested and charged with possessing narcotics and Molotov cocktails. The Court found a violation of Article 5 § 1 taken alone, as the prosecution authorities never demonstrated any evidence showing that the applicants had any connection with the Molotov cocktails in question, and thus providing a “reasonable suspicion” to justify their arrest and detention. These circumstances, seen against the background of the crackdown on civil society in Azerbaijan, led the Court to conclude that the actual purpose of the applicants’ detention was to silence and punish them for their active social and political engagement. The Court found a violation of Article 18 in conjunction with Article 5 of the Convention.

214. In *Ilgar Mammadov v. Azerbaijan*, 2014, the applicant went to the area in which a riot had taken place in order to obtain a first-hand account. Then, he wrote blog entries which criticised the authorities and gave his own account of what had happened during a riot, which was different to that of the Government. The applicant was then charged with criminal offences for organising or actively participating in actions causing a breach of public order and resistance to or violence against public officials, posing a threat to their life or health. The Court found that the criminal prosecution had an ulterior motive to silence or punish the applicant for having criticised the Government and for having attempted to disseminate what he believed to be true information which the Government was trying to hide, and concluded there to be a violation of Article 18 in conjunction with Article 5.

D. Safeguards for persons deprived of liberty

215. Article 5 § 3 of the Convention provides persons arrested or detained on suspicion of having committed a criminal offence – namely those covered by Article 5 § 1 (c) – with a guarantee against any arbitrary or unjustified deprivation of liberty (*Aquilina v. Malta* [GC], 1999, § 47, and *Stephens v. Malta (no. 2)*, 2009, § 52). In particular, this provision requires a prompt and automatic judicial control of a deprivation of liberty on suspicion of the commission of a criminal offence, as well as the right to trial within a reasonable time or to be released pending trial.¹⁸ In the case of preventive detention, if the person concerned is released after a short period of time, the purpose requirement of bringing the detainee before the competent legal authority should not as such constitute an obstacle to short-term preventive detention falling under the second limb of Article 5 § 1 (c) (*S., v. and A. v. Denmark* [GC], 2018, § 126).

216. As regards the second limb of sub-paragraph (c) of Article 5 § 1, the Court has held that the “purpose” requirement under Article 5 § 1 (c) – namely to bring an individual before the competent legal authority – also applies in this respect. However, this requirement should be applied with a degree of flexibility so that the question of compliance depends on whether the detainee, as required by Article 5 § 3, is intended to be brought promptly before a judge to have the lawfulness of his or her detention reviewed or to be released before such time. Furthermore, in the event of failure to comply with the latter requirement, the person concerned should have an enforceable right to compensation in accordance with Article 5 § 5. In other words, subject to the availability under national law of the safeguards enshrined in Article 5 §§ 3 and 5, the purpose requirement ought not to constitute an obstacle to short-term detention in circumstances involving issues of mass protests or events (*S., v. and A. v. Denmark* [GC], 2018, § 137).

217. Moreover, Article 5 § 4, which is the *habeas corpus* provision of the Convention, provides detained persons with the right to actively seek judicial review of their detention. It also secures to persons arrested or detained the right to have the lawfulness of their detention decided “speedily” by a court and to have their release ordered if the detention is not lawful.¹⁹

¹⁸ See Section IV. B *Guide on Article 5 of the European Convention of Human Rights: Right to liberty and security*.

¹⁹ See Section VI. B *Guide on Article 5 of the European Convention of Human Rights: Right to liberty and security*.

VI. Right to fair trial (Article 6)

Article 6 of the Convention

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

A. Applicability

218. Article 6 is applicable only in the determination of a person’s civil rights and obligations²⁰, or of any criminal charge against a person²¹. In the context of mass protests, issues principally arise under the criminal limb of Article 6 of the Convention.

219. For instance, in *Kasparov and Others v. Russia*, 2013, the Court found the administrative proceedings against marchers, arrested while protesting about parliamentary elections, to fall under the criminal limb of Article 6. It noted, in particular, that the offence of participating in an unauthorised demonstration was punishable under a provision which regulates offences against public order and was designed to regulate the manner in which demonstrations were held, and that the offence was of a general character as it was directed towards all citizens and not towards a given group possessing a special status. The Court noted that the applicants had been fined the maximum penalty under the applicable provision. More importantly, the fines payable were not intended as pecuniary compensation for damage but were punitive and deterrent in nature, a factor also characteristic of criminal penalties.

220. Similarly, in *Navalnyy v. Russia* [GC], 2018, the Court found that the administrative proceedings were criminal within the autonomous meaning of Article 6 § 1 as the offence concerned was generally indicative of an offence belonging to the criminal sphere and that in view of its duration (up to fifteen

20. See Section I *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (Civil limb)*.

21. See Section II *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (Criminal limb)*.

days) and manner of execution (administrative imprisonment) it attained the gravity of a criminal sanction.

221. In *Mikhaylova v. Russia*, 2015, the relevant provision provided maximum penalties of a fine (equivalent to EUR 28) and/or fifteen days' imprisonment. For the Court, this gave rise to a strong presumption that the charges against the applicant were "criminal" in nature, a presumption which could only exceptionally be rebutted, and only if the deprivation of liberty could not be considered "appreciably detrimental" given its nature, duration or manner of execution. The Court found no such exceptional circumstances in this case. The Court also noted that the procedural guarantees contained in the provision, such as the presumption of innocence, were indicative of the "criminal" nature of the procedure.

B. Guarantees of a fair trial

222. The Court has held that the general requirements of fairness contained in Article 6 apply to all criminal proceedings, irrespective of the type of offence in issue (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 252). This accordingly applies to cases concerning mass protests.²²

223. Thus, for instance, in *Gafgaz Mammadov v. Azerbaijan*, 2015, § 76, and *Huseynli and Others v. Azerbaijan*, 2016, the guarantee of adequate time and facilities for the preparation of a defence under Article 6 § 3 (b) was breached as a result of multiple deficiencies, including brief pre-trial procedures, the seclusion of the applicants from the outside world before the trial hearing, the lack of legal representation in pre-trial procedure and the failure to provide an administrative-offence report to the applicants. The Court found that the applicants in both cases were not given the opportunity to organise their defence and to acquaint themselves with the results of investigations carried out throughout the proceedings.

224. In *Karelin v. Russia*, 2016, §§ 69-84, the Court noted that the lack of a prosecuting party had an effect on the operation of the presumption of innocence during the trial and, by implication, on the question of the trial court's impartiality and vice versa.

225. Similarly, in *Elvira Dmitriyeva v. Russia*, 2019, the applicant complained about the presence of the police officers who had drawn up the administrative-offence report in the proceedings, as well as the trial and appellate courts having assumed the role of proving the accusation against her, in the absence of a prosecuting party. The Court found a violation of Article 6 § 1 and, notably, of the impartiality requirement.

226. In *Butkevich v. Russia*, 2018, the Court found a violation of Article 6 § 1 and 3 (d) on account of the lack of a prosecuting party in the context of oral hearings resulting in the determination of administrative charges, as well as the failure of the trial court to afford the defence an opportunity to question the arresting officers or anyone mentioned in the record, whom the Court regarded as witnesses.

227. In *Navalnyy v. Russia* [GC], 2018, the Court found a violation of Article 6 §§ 1 and 3 (d) as regards in six episodes since the domestic courts based their judgments solely on the account of events given by the police.

228. Similarly, in *Mushegh Saghatelyan v. Armenia*, 2018, the Court found a violation of Article 6 § 1 as the domestic courts unreservedly endorsed the police version of events, failed to address properly any of the applicant's submissions and had refused to examine the defence witnesses. The Court noted that Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses. However, the assessment is subject to the scrutiny of the Court.

²² See Section I *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (Criminal limb)*.

229. In *Kasparov and Others v. Russia*, 2013, the Court found that the lack of a reasonable opportunity for the applicants to present their version of the circumstances surrounding their arrest during a protest violated the principle of equality of arms and the right to a fair trial.

230. In *Olga Kudrina v. Russia*, 2021, §§ 38-41, the Court found a violation of Article 6 §§ 1 and 3 (d) in relation to a failure of the domestic courts to examine witnesses who could have shed light on the charges against the applicant concerning her participation in a protest. The Court considered that the relevance of the testimony of the witnesses was apparent in the applicant's case, even though she had not properly reasoned her request for the attendance and examination of these witnesses.

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights (“the Commission”).

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: “The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43”. In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (<http://hudoc.echr.coe.int>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the ‘Language versions’ tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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- [Abdullah Yaşa and Others v. Turkey](#), no. 44827/08, 16 July 2013
- [Adalı v. Turkey](#), no. 38187/97, 31 March 2005
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