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**DIVISION DE LA RECHERCHE
RESEARCH DIVISION**

Article 11
The conduct of public assemblies
in the Court's case-law

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INTRODUCTION

1. Correlation between Articles 10, 11, 13 and 14 concerning freedom of expression

1. Freedom of assembly under Article 11 of the Convention has been pleaded in only a relatively small percentage of the cases before the Court. However, as there is a close relationship between this freedom and freedom of expression under Article 10, sometimes there is a possibility of claiming a breach of alternative freedoms on the same set of facts that may, in some part, explain the lack of cases on Article 11. Thus, in *Ezelin v. France* (26 April 1991, § 37, Series A no. 202), the Court stated that “*notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11.*” The link between Article 10 and Article 11 is particularly relevant where authorities have interfered with the right to freedom of peaceful assembly in reaction to views held or statements made by participants in a demonstration or members of an association (see, for example, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 85, ECHR 2001-IX).

2. Article 13 of the Convention is also important in the area of freedom of assembly, to the extent that the absence of a remedy for alleged interferences with freedom of peaceful assembly and association are likely to engage Article 13, which provides a right to an effective remedy. In *Plattform “Ärzte für das Leben” v. Austria* (21 June 1988, § 25, Series A no. 139), the Court ruled that “*Article 13 secures an effective remedy before a national “authority” to anyone claiming on arguable grounds to be the victim of a violation of his rights and freedoms as protected in the Convention; any other interpretation would render it meaningless.*”

3. There can also be a link with the prohibition on discrimination in Article 14. Thus in *Danilenkov and Others v. Russia* (no. 67336/01, ECHR 2009), the Court found that it was “*crucially important that individuals affected by discriminatory treatment should be provided with an opportunity to challenge it and to have the right to take legal action to obtain damages and other relief.*” Therefore, the States are required under Articles 11 and 14 of the Convention to set up a system that would ensure real and effective protection against discrimination found to exist in that case.

2. *Scope of the right to freedom of peaceful assembly*

4. Freedom of peaceful assembly under Article 11 is broadly interpreted to include the organisation of, and participation in, marches or processions (*Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, Decisions and Reports (DR) 21, p. 138), static assemblies or sit-ins (*G. v. Germany*, no. 13079/87, Commission decision of 6 March 1989, DR 60, p. 256), and both public and private events, whether formal or informal. In *Rassemblement jurassien et Unité jurassienne v. Switzerland* (no. 8191/78, Commission decision of 10 October 1979, DR 17, p. 93), the Commission noted that Article 11 protects both “private meetings and meetings in public thoroughfares”. However, although Article 11 will cover any gathering of persons for a common economic or political purpose, it is unlikely to be applicable to gatherings that are purely social or sporting in character.

5. On the other hand, the Court has now made it clear that Article 11 is unlikely to guarantee the right to hold a meeting in privately owned public space against the wishes of the owner. In *Appleby and Others v. the United Kingdom* (no. 44306/98, ECHR 2003-VI), the applicants were prevented from distributing leaflets concerning a local political matter in the premises of a privately owned shopping centre. They claimed that the State had a positive obligation to guarantee their rights of freedom of expression and freedom of peaceful assembly. Analysing the claim under Article 10, the Court found that the applicants had not proven that they were, as a result of the refusal of the private company, effectively prevented from communicating their views to their fellow citizens. They also had alternative ways of expressing their views outside the premises of this shopping centre.

6. In the admissibility decision of *Anderson v. the United Kingdom* (no. 33689/96, Commission decision of 27 October 1997), the European Commission of Human Rights focused on the purpose of the gathering of the applicants, rather than on where it took place (in a shopping centre). The applicants complained that the withdrawal of their licence to enter a shopping centre for an indefinite duration (because of their anti-social activities) constituted a violation of their right to peaceful assembly under Article 11. The Commission rejected their claim and stated as follows:

“There is, however, no indication in the above case-law that freedom of assembly is intended to guarantee a right to pass and re-pass in public places, or to assemble for purely social purposes anywhere one wishes. Freedom of association, too, has been described as a right for individuals to associate “in order to attain various ends” (No. 6094/73, Dec. 6.7.77, D.R. 9, p. 5, at p. 7; see also No. 8317/78, Dec. 15.5.80, D.R. 20, p. 44, at p. 98).... The Commission notes that the applicants had no history of using the Centre for any form of organised assembly or association. The Commission thus finds no indication in the present case that the exclusion of the applicants from the Centre interfered with their rights under Article 11 of the Convention.”

7. This decision indicates that Article 11 will only be used to protect assemblies that have ends or purposes which the Article was designed to protect. However, it also suggests that the rising prominence of private shopping centres as “*public*” spaces in modern life may require certain freedom of peaceful assembly rights in those “*private*” spaces.

8. If an assembly is peaceful, the fact that it is illegal alone will not remove it from the protection of Article 11. Intervention by the State in such circumstances would have to be justified under Article 11 § 2, i.e., the law by which the peaceful assembly is declared illegal would have to be judged by reference to Article 11 § 2. Thus a State is not able to pass laws prohibiting all or particular classes of assembly.

3. *Peaceful assemblies*

9. Article 11 protects only “*peaceful*” assemblies. The chief limitation on the scope of Article 11 is, therefore, the exclusion of assemblies where the participants or organisers have “*violent intentions that result in public disorder.*” In the case of *Christians against Racism and Fascism v. United Kingdom*, cited above, the Commission made clear that violence or disorder that is incidental to the holding of a peaceful assembly will not remove it from the protection of Article 11. It is the *intention* to hold a peaceful assembly that is significant in determining whether Article 11 is applicable, not the *likelihood* of violence because of the reactions of other groups or other factors. This notion of “*peaceful assembly*” is key to an understanding of freedom of assembly as a pillar of democratic society; gatherings intended to create disorder or threaten the rule of law are anathema to democratic society and so will not be protected by the Convention. However, rival groups prepared to use violence are not permitted effectively to stifle freedom of peaceful assembly.

10. In *G. v Germany*, cited above, the applicant participated in an anti-nuclear demonstration in front of the U.S. military barracks in Stuttgart. The demonstrators blocked the road that led to the barracks and the applicant failed to comply with a police order to leave the road. The applicant claimed that the subsequent police dispersal of the demonstration and his prosecution and conviction for failure to comply with the police order violated his right to freedom of peaceful assembly under Article 11. The German Government argued that this particular demonstration was not “*peaceful*” and that, therefore, Article 11 was not applicable. The Commission held that the notion of “*peaceful assembly*” does not include any demonstration where the organisers and participants have *violent intentions* that result in public disorder. Although the so-called “*sit-ins*” were illegal under German law, the Commission felt that, as the right to freedom of peaceful assembly is one of the foundations of a democratic society, it should not be interpreted restrictively. The applicant and the other

demonstrators had not been actively violent in the course of demonstration. Therefore the demonstration fell within the scope of Article 11. On this point, see also [Éva Molnár v. Hungary](#) (no. 10346/05, 7 October 2008), and the admissibility decision in [Lucas v. United Kingdom](#) (dec., no. 39013/02, 18 March 2003).

11. The foregoing case-law does not imply that the State *violates* Article 11 if it prohibits an assembly very likely to result in violence (even if the organisers or participants do not intend violence) but that it must justify such a prohibition by reference to Article 11 § 2. An assembly organised with the intention of violence, on the other hand, does not fall within the scope of Article 11 at all. In *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, cited above, the Court made clear that restrictions on assemblies by a State because of calls for the use of violence or rejection of democratic principles by the organisers, albeit with no violent intention for the assembly in question, must be consistent with the requirements under Article 11 § 2.

12. In the same *Stankov* case, the Court stated that “*an automatic reliance on the fact that an organisation has been refused registration as anti-constitutional cannot suffice to justify a practice of systematic bans on peaceful assemblies and it was therefore necessary in the present case to scrutinise the grounds invoked to justify the interference*”.

4. Positive obligations

13. 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. In such circumstances, the Court has held that the State has a positive obligation to protect those exercising their right to freedom of peaceful assembly from the threat of counter-demonstrations.

14. The case of *Plattform “Ärzte für das Leben” v. Austria*, cited above, concerned an association of doctors campaigning against abortion and seeking to bring about reform of the Austrian legislation on the matter. They held two demonstrations that were disrupted by counter-demonstrators despite the presence of a large police contingent. The Court acknowledged the existence of positive obligations under Article 11 by stating that “*genuine, effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11.*” The Court found that Article 11 (like Article 8) sometimes requires positive measures to be taken, even in the sphere of relations between individuals. In its judgment, the Court kept to the circumstances of the case and ruled that it “*does not have to develop a general theory of the positive obligations which may flow from the Convention*” (§ 31). The Court

thus left open whether the negative right to freedom of association is to be considered on an equal footing with the positive right.

15. In this respect, the Court ruled that, even though a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote, the participants must be able to proceed without having to fear that they will be subjected to physical violence by their opponents. The Court made clear that, in a democratic society, the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. In other terms, a heckler's veto should not harm the speaker. Genuine, effective freedom of peaceful assembly is not limited to a duty on the part of the State not to interfere; but rather Article 11 sometimes requires positive measures to be taken, even with regard to relations between individuals. The duty of States under Article 11 to take measures to enable lawful demonstrations to proceed peacefully is not an absolute guarantee and States have a wide discretion in the choice of the means to be used. In other words, the obligation of States under Article 11 is "*an obligation as to measures to be taken and not as to results to be achieved*".

16. In *Christians against Racism and Fascism v United Kingdom*, cited above, the Commission found that the threat of disorder from rivals does not in itself justify interference with any peaceful assembly. However, the State may legitimately interfere with the opponents' freedom of assembly (i.e. without breaching Article 11) if they attempt to disrupt the demonstrators' peaceful assembly by organising an assembly of their own with the intention of creating disorder.

17. In [*The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*](#) (no. 44079/98, 20 October 2005), the applicants complained that the members and followers of their organisation were prevented from holding peaceful meetings on a number of occasions. The Court noted that, on one of the occasions when they did not interfere with the applicants' freedom of assembly, the authorities appeared somewhat reluctant to protect the members and followers of *Ilinden* from a group of counter-demonstrators. As a result, some of the participants in *Ilinden's* rally were subjected to physical violence from their opponents. The Court recalled that genuine, effective freedom of peaceful assembly could not be reduced to a mere duty not to interfere on the part of a State which had ratified the Convention; it was the State's duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully. The authorities were therefore bound to take adequate measures to prevent violent acts directed against the participants in *Ilinden's* rally, or at least limit their extent. However, it seemed that they, while embarking on certain steps to enable the organisation's commemorative event to proceed peacefully, did not take all the appropriate measures which could reasonably have been expected from them under the circumstances. The State therefore failed to discharge its positive obligations under Article 11.

18. The case of *Ouranio Toxo and Others v. Greece* (no. 74989/01, ECHR 2005-X) concerned the freedom of association rather than freedom of assembly; however, the reasoning of this case is also relevant for the purposes of the freedom of assembly. The applicant was a political party whose declared aims included the defence of the Macedonian minority living in Greece. In 1995 the party affixed a sign on the front of its headquarters in the town of Florina in the two languages spoken in the region, Greek and Macedonian. It included the word “*vino-zito*”, which means “*rainbow*” in Macedonian, but was also the rallying cry of forces who had sought to take Florina during the civil war in Macedonia. The sign prompted a negative reaction from the local church, the town council and local population and culminated on an attack on the premises, damage to the building and assault on those inside. The police did not intervene to stop the attack, despite being in close proximity, and the public prosecutor failed to investigate those responsible. However, criminal proceedings were brought against some of the applicants because, it was alleged, their sign incited discord. The applicants claimed a breach of their freedom of association under Article 11. The Court noted that the risk of causing tension within the community by using political terms in public did not suffice, by itself, to justify interference with freedom of association. The Court observed that the town council had clearly incited the town population to gather in protest against the applicants and some of its members had taken part in the protests. It considered that it would have been more in keeping with the values inherent in a democratic system for the local authorities to advocate a conciliatory stance, rather than to stir up confrontational attitudes. With regard to the conduct of the police, the Court found that they could reasonably have foreseen the danger that the tension would boil over into violence and clear violations of freedom of association. The State should therefore have taken adequate measures to avoid or, at least, contain the violence. However, they had not done so. The Court noted also the failure of the public prosecutor to investigate. The Court considered that in cases of interference with freedom of association by individuals, the competent authorities had a duty to take effective investigative measures. In those circumstances, the Court found that by both their acts and omissions the Greek authorities had violated Article 11.

19. In *Barankevich v. Russia* (no. 10519/03, 26 July 2007), the applicant, an Evangelical Protestant pastor, was refused permission to hold a service of worship which he intended to hold in a town park. The domestic courts dismissed his claim on the ground that the applicant's church was different from those of the majority of local residents and a service of worship could have led to discontent and public disorder. The Court emphasised the fact that the Evangelical Christian religion being practiced by a minority of Chekov's residents could not justify an interference with their rights. It was also without question that the religious assembly planned

by the applicant had been of a peaceful nature. Even assuming that there had been a threat of violence from a counter-demonstration, the domestic authorities had a wide choice of means which they could have used to facilitate the holding of the assembly without disturbance. The Court therefore found a violation of Article 11 interpreted in the light of Article 9.

5. Negative obligations: interference with the right of peaceful assembly

20. The States party to the Convention have, above all, the negative obligation to refrain from any interference with the rights protected in Article 11 unless this interference is in accordance with Article 11 § 2 (*Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 41, ECHR 2002-V). The negative obligation to refrain from arbitrary interference with the rights protected in Article 11 logically follows from the clause “no restrictions shall be placed upon...” of Article 11 § 2.

21. In its practice the Court has dealt with several different types of interferences with the right of peaceful assembly. There are basically four types:

- (1) refusal to authorise or permit the assembly;
- (2) dispersal;
- (3) evacuation from the place of assembly;
- (4) bans and post-assembly penalties (both administrative and criminal).

22. In *Nurettin Aldemir and Others v. Turkey* (nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, 18 December 2007), the applicants took part in demonstrations protesting against a draft bill proposed in the Turkish Parliament. These were forcibly ended by the security forces on the ground that the demonstrating in the specific location chosen for the protest was not permitted by law. The interference in the meetings and the force used by the police to disperse the participants, as well as the subsequent prosecution against the applicants, although unsuccessful, could have had a chilling effect and discouraged the applicants from taking part in similar meetings. Accordingly, a violation of the Article 11 was found.

23. In *Cisse v. France* (no. 51346/99, ECHR 2002-III), the applicant was a member of a group of aliens who had organised a collective action which culminated in the occupation of a church by a group of some two hundred illegal immigrants, some of whom went on hunger strike. By order of the police authorities the applicant and other protesters were evacuated. The Court did not share the Government's position that the fact that the

applicant had been an illegal immigrant sufficed to justify a breach of her right to freedom of association and assembly. Based on the fact that the hunger-strikers' health had deteriorated and sanitary conditions had become wholly inadequate, and having regard to the wide margin of appreciation left to States in this sphere, the Court found that the interference with the applicant's right to freedom of assembly was not disproportionate.

24. In *Öllinger v. Austria* (no. 76900/01, ECHR 2006-IX) the applicant, a parliamentarian, had notified the authorities that on All Saints' Day, 1 November 1998, at a certain time he would be holding a meeting at the Salzburg municipal cemetery in front of the war memorial, which could coincide with another gathering, held by people commemorating soldiers who had died in World War II, which the applicant thought to be unlawful. The purpose of the meeting organised by the applicant was to be a commemoration of the Salzburg Jews killed by the SS during World War II. The authorities prohibited the meeting on the ground that it would endanger public order and security. The Court found that the prohibition in issue was disproportionate to the aim pursued, the assembly was in no way directed against the cemetery-goers' beliefs or the manifestation of them near the place where the meeting should have been held. Moreover, the applicant expected only a small number of participants and envisaged peaceful and silent means of expressing their opinion.

25. Instead of ensuring its positive obligation to protect and secure the gathering, the domestic authorities imposed an unconditional prohibition on the applicant's assembly, which gave the Court reason to conclude that the authorities had given too little weight to the applicant's interest in holding the intended assembly and expressing his protest against the meeting of those commemorating the death of SS soldiers during World War II, while giving too much weight to the interest of cemetery-goers in being protected against some rather limited disturbances.

26. In *Galstyan v. Armenia* (no. 26986/03, 15 November 2007), the applicant was subjected to three days of detention for participating in a peaceful demonstration which was not prohibited by the Government. The Court ruled that by joining the demonstration, the applicant availed himself of his right to freedom of peaceful assembly and the conviction that followed amounted to an interference with that right, which was in breach of Article 11 § 2.

27. In *Bączkowski and Others v. Poland* (no. 1543/06, 3 May 2007) the authorities banned a planned march and several stationary assemblies. The appellate authorities, in their decisions of 17 June and 22 August 2005, quashed the first-instance decisions and criticised them for being poorly justified and in breach of the applicable laws. The decisions were taken after the dates on which the applicants had initially planned to hold the demonstrations. However, the assemblies had taken place on the planned dates. The applicants had taken a risk in holding them given the official ban

in force at that time. The assemblies were held without a presumption of legality, such a presumption constituting a vital aspect of effective and unhindered exercise of freedom of assembly and freedom of expression. The Court observed that the refusals to give authorisation could have had a chilling effect on the applicants and other participants in the assemblies. It could also have discouraged other persons from participating in the assemblies on the grounds that they did not have official authorisation and that, therefore, no official protection against possible hostile counter-demonstrators would be ensured by the authorities. Hence, the Court was of the view that, when the assemblies had been held the applicants were negatively affected by the refusals to authorise them. The legal remedies available to the applicants could not ameliorate their situation as the relevant decisions were given in the appeal proceedings after the date on which the assemblies were held. Therefore, the Court concluded that there had been an interference with the applicants' rights guaranteed by Article 11.

28. In *Alekseyev v. Russia* (nos. 4916/07, 25924/08 and 14599/09, 21 October 2010), the applicant submitted notices to the Moscow mayor's office on several different occasions announcing their intention to hold marches aimed at attracting public attention to the problems of LGBT people. They also undertook to cooperate with the law-enforcement authorities in ensuring safety and respect for public order by the participants and to comply with the regulations on restriction of noise levels when using loud speakers and sound equipment. Despite that, all they received were refusals to hold the marches. The mayor's decisions explained those refusals with the need to protect public order, health, morals and the rights and freedoms of others, as well as to prevent riots. The decisions specified that, as numerous petitions had been received against the marches, negative reactions - including violence - against the participants in the marches were likely, which in turn could lead to public disorder and mass riots.

29. In its judgment, the Court recalled that Article 11 protected non-violent demonstrations which might annoy or offend people who did not share the ideas promoted by the demonstrators. It also stressed that people had to be able to hold demonstrations without fearing that they would be physically aggressed by their opponents. At the same time, the mere risk of a demonstration creating a disturbance was not sufficient to justify its ban. If every probability of tension and heated exchanges between opposing groups during a demonstration resulted in the demonstration's prohibition, society would be deprived of hearing differing views on questions which offended the sensitivity of the majority opinion, and that ran contrary to the Convention principles. In the instant case, the Court found that the local authorities had repeatedly, over a period of three years, failed to adequately assess the risk to the safety of the participants and public order. Although counter protesters could have indeed taken to the streets to oppose the gay-

pride marches, the Moscow authorities should have made arrangements to ensure that both events proceeded peacefully and lawfully, thus allowing both sides to express their views without a violent clash. Instead, by banning the gay pride marches, the authorities had effectively approved of and supported groups who had called for the disruption of the peaceful marches, in breach of law and public order.

30. Moreover, the Court stressed that if the exercise of the right to peaceful assembly and association by a minority group were conditional on its acceptance by the majority, that would be incompatible with the values of the Convention. The purpose of the gay pride demonstrations had been to promote respect for human rights and tolerance towards sexual minorities; they had not intended to include nudity or obscenity, or to criticise public morals or religious views. Consequently, the bans imposed on the holding of gay-rights marches and pickets had not been necessary in a democratic society, and had been in violation of Article 11. The Court also found a violation of Articles 13 and 14 of the Convention.

31. In *Berladir and Others v. Russia* (no. 34202/06, 10 July 2012), the applicants wanted to hold a march in order to mark their opposition to the values of the participants in another public event which had rallied earlier against the flow of immigration in Russia. The Moscow city authorities allowed the applicants' gathering, however, at another venue. While they were dissatisfied with the authorities' selection of a new place, the event organisers did not challenge it but withdrew their application instead. A new application was filed for a demonstration next to the mayor's office to express disagreement with the authorities' position. The authorities again suggested the previously indicated venue. The applicants finally picketed the mayor's office on the same date as initially planned. The special security squad arrested some of the people who picketed, allegedly without giving them the time or opportunity to disperse after a verbal order to do so. The applicants were later found guilty of breaching the procedures for public gatherings, and fined.

32. The Court reiterated that reasonable national procedures requiring notification or authorization of public gatherings were not as such contrary to the Convention, provided that the purpose of such procedures was to allow domestic authorities to take the necessary preventive security measures in order to guarantee the smooth conduct of any assembly, and to prevent disorder or crime. Furthermore, since States were allowed to impose authorisation requirements to gatherings, they also had to be able to impose sanctions to people who take part in those events without complying with the authorisation requirements. In the particular circumstances of the case, the Court observed that the Russian authorities had not banned the applicants' gathering, but had swiftly suggested to them a different venue. However, without a valid reason, the applicants had not accepted that proposal. That had made the authorities' task of ensuring people's security

and of taking the necessary preparatory measures for the planned event more difficult. Accordingly, there had been no violation of Article 11 read in the light of Article 10.

6. Various aspects of possible interferences with freedom of assembly

33. Assemblies of a public character raise a number of practical issues that ought to justify at least a minimum amount of consultation with the authorities regarding time, location, traffic management and other factors. These issues may include safety, security and inconvenience or even economic loss to those affected by the peaceful assembly. Hence, certain forms of regulation, such as the requirement to give prior notice or obtain an authorisation or permit for an assembly, do not constitute an interference with the right to freedom of peaceful assembly and do not need to be justified under Article 11 § 2 (see *Rassemblement jurassien et Unité jurassienne v. Switzerland*, cited above).

34. The logic of allowing such regulation is reinforced by the fact that the authorities are obliged to guarantee that the peaceful assembly will not be disrupted – informing the authorities in due time of a planned demonstration allows them to secure the presence of police to protect the peaceful character of the demonstration. There is no case law establishing the standard of scrutiny with respect to authorisation. Anything beyond the requirement for a permit may constitute an interference with Article 11 rights that requires justification. A system of permits must not affect the right to hold a peaceful assembly altogether, unless there are clear violent intentions. If the conditions for permission are too broad or general or concern a wide category of assemblies or exclude one or more groups or individuals, they must be justified under Article 11 § 2.

35. In *Ezelin v France*, cited above (§ 39), the applicant – a French lawyer – availed himself of his freedom of peaceful assembly by joining a demonstration – targeted against two court decisions – for which prior approval had been given. During the demonstration, protesters threatened police officers with violent language and painted insulting and offensive graffiti on various administrative buildings. Afterwards, the applicant's Bar association disciplined him. The State claimed that there was no interference with the right to freedom of peaceful assembly since the applicant was able to take part in the demonstration unhindered and was able to express his convictions publicly in his professional capacity and as he wished. He was reprimanded only *after* the event and on account of personal conduct that was deemed to be inconsistent with the obligations of his profession. The Court disagreed; holding that the term “*restriction*” also includes measures – such as punitive measures – taken not before or during, but after a meeting.

7. Principle of legality and “legitimate aims”

36. In *Adalı v. Turkey* (no. 38187/97, 31 March 2005), the Court observed that there seemed to be no law regulating the issuance of permits to Turkish Cypriots living in northern Cyprus to cross the “green line” into southern Cyprus in order to engage in peaceful assembly with Greek Cypriots. Therefore, the manner in which restrictions were imposed on the applicant’s exercise of her freedom of assembly was not “prescribed by law”.

37. In *Cisse v. France*, cited above (§§ 44-46), the applicant was a member of a group of aliens without valid residence permits who decided to take collective action to draw attention to the difficulties they were having in obtaining a review of their immigration status in France. Their campaign culminated with a decision to occupy a church, in which the group took up residence for approximately two months. Neither the priest nor the parish council of the church objected to their presence and the religious services and various ceremonies proceeded as planned and without incident. The Court noted that the evacuation was ordered to put an end to the continuing occupation of a place of worship by persons, including the applicant, who had broken French law. The interference therefore pursued a legitimate aim, namely the prevention of disorder.

8. Prior notification and spontaneous demonstrations

38. In *Éva Molnár v. Hungary*, cited above, the applicant and a number of other individuals participated in an action of support of demonstrators who had previously blocked some important streets in Budapest. There was no prior notification to the authorities of both demonstrations as was required by Hungarian law. The police, facing an unmanageable situation with regulating the city circulation of transport, broke up with the demonstration. The applicant unsuccessfully appealed the actions of police before the national judiciary. The Court’s position in this case was that prior notification served not only the aim of reconciling, on the one hand, the right to peaceful assembly and, on the other hand, the rights and lawful interests (including the freedom of movement) of others, but also the prevention of disorder or crime. In order to balance these conflicting interests, the institution of preliminary administrative procedures is common practice in Member States when a public demonstration is to be organised, and that “such requirements do not, as such, run counter to the 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... The Court therefore considers that the right to hold spontaneous demonstrations may override the obligation to give prior notification to public assemblies only in special circumstances, namely if an immediate response to a current event is warranted in the form of a

demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete". This was not the position in the present case.

39. In *Bukta and Others v. Hungary* (no. 25691/04, §§ 35-36, ECHR 2007-III), the applicants organised a demonstration in front of the Hotel Kempinski in Budapest protesting against Hungarian Prime Minister attending a particular reception. The police were not informed as was required by Hungarian law (the law required three days in advance notice, while the applicants learned about the reception in question a day before). Around 150 people gathered causing a sharp noise which led the police to disband the gathering. The Court noted that "*in the circumstances of the present case, the failure to inform the public sufficiently in advance of the Prime Minister's intention to attend the reception left the applicants with the option of either foregoing their right to peaceful assembly altogether, or of exercising it in defiance of the administrative requirements*". The Court concluded that "*in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly*".

40. In *Sergey Kuznetsov v. Russia* (no. 10877/04, 23 October 2008), the applicant and a few other people held a picket in front of a court in order to attract public attention to violations of the right of access to a court. The applicant having notified the authorities of the picket eight days beforehand, the police were ordered to maintain public order and traffic safety during the event. The applicant was subsequently fined for sending the picket notice too late, obstructing the passageway to the court building and distributing publications which alleged that the Regional Court was corrupt. The Court noted that the applicant had indeed submitted the picket notice eight days, instead of ten days as stipulated in the applicable regulations, before the event. It considered, however, that to be a merely formal breach of a time-limit. Moreover, that two-day difference did not prevent the authorities from making the necessary preparations for the picket. Secondly, no complaints had been received from visitors, judges or court employees about the alleged obstruction of entry to the courthouse and the applicant had cooperated with the authorities when asked to move. The Court found a violation of Article 11 interpreted in the light of Article 10.

9. *Principle of proportionality*

41. In *Öllinger v. Austria* (cited above, § 47), while finding that Austria failed to strike a fair balance between the concurring interests, the Court concluded that "*unconditional prohibition of a counter-demonstration [was]*

a very far-reaching measure”, requiring a “*particular justification*” and was “*disproportionate to the aim pursued*”.

42. In *Makhmudov v. Russia* (no. 35082/04, 26 July 2007), the applicant complained under Article 11 of the Convention that the authorities had prevented a peaceful assembly from being held under the pretence of a “*terrorist threat*” in that place, whereas that ground had not been invoked to cancel mayor-sponsored festivities two days later. The demonstration was organised by a non-governmental organisation which aimed to protect citizens’ rights in town planning and was to protest in particular against the planned construction of a luxury block of flats and to cast a vote of no confidence against the city authorities. Despite the refusal, the applicant – one of the assembly’s co-organisers – and a few dozen residents gathered on the square on 4 September. The police dispersed the crowd by force. The applicant was later taken out of a car by force and escorted to the district police station, where he was detained for the night and not given any food or drink. Over the following days the “*Day of the City*” was celebrated in Moscow and several public festivities sponsored by the Mayor took place despite the potential “*terrorist threat*”. The applicant was charged with disobeying lawful police orders and organising an unauthorised assembly. The proceedings were subsequently discontinued concerning the disobeying of a lawful order but the applicant was found to have breached the procedure for organising public assemblies.

43. The Court declared the applicant’s complaint under Article 3 inadmissible for non-exhaustion of domestic remedies. The Government had failed to produce any evidence of a “*terrorist threat*” which led the Court to conclude that the domestic authorities had acted in an arbitrary manner. It therefore found there had been no justification for the interference with the applicant’s right to freedom of association and held, unanimously, that there had been a violation of Article 11.

CONCLUSION

When it comes to the balancing of the applicants’ rights and those of their adversaries and opponents participating in a counter-manifestation, there is a close interrelation between negative and positive obligations of the State. Moreover, the prior authorisation systems, as such, has never been declared incompatible with Article 11 of the Convention; however, the State must provide rapid *a priori* remedies in order to be able to contest an unlawful refusal.

SELECTIVE BIBLIOGRAPHY

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