



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

## Guide on Article 11 of the European Convention on Human Rights

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Freedom of assembly  
and association

Updated on 31 December 2020

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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 Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 11 of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”). Readers will find herein the key principles in this area and the relevant precedents.

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).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a *List of keywords*, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The *HUDOC database* of the Court’s case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court’s reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the *HUDOC user manual*.

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\*. 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 finalised are marked with an asterisk (\*).

## I. Freedom of assembly

### Article 11 of the Convention

“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.”

### HUDOC keywords

Freedom of peaceful assembly (11-1) – Freedom of association (11-1) – Form and join trade unions (11-1) – Not join trade unions (11-1) – Interests of members (11-1)

Interference (11-2) – Prescribed by law (11-2): Accessibility (11-2); Foreseeability (11-2); Safeguards against abuse (11-2) – Necessary in a democratic society (11-2): National security (11-2); Public safety (11-2); Prevention of disorder (11-2); Prevention of crime (11-2); Protection of health (11-2); Protection of morals (11-2); Protection of the rights and freedoms of others (11-2) – Members of armed forces (11-2) – Members of police (11-2) – Members of administration (11-2)

### A. Importance of the right to freedom of peaceful assembly and its link with the right to freedom of expression

1. The right to freedom of peaceful assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (*Djavit An v. Turkey*, § 56; *Kudrevičius and Others v. Lithuania* [GC], § 91).
2. In view of the fundamental nature of this right, the Court has been reluctant to accept objections that the applicants have suffered no “significant disadvantage” and to dismiss Article 11 complaints with reference to Article 35 § 3 (b) of the Convention (*Berladir and Others v. Russia*, § 34; *Öğrü v. Turkey*, § 18).
3. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association enshrined in Article 11 (*Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], § 37).
4. Notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10, where the aim of the exercise of freedom of assembly is the expression of personal opinions (*Ezelin v. France*, § 37) as well as the need to secure a forum for public debate and the open expression of protest (*Éva Molnár v. Hungary*, § 42).
5. The link between Article 10 and Article 11 is particularly relevant where the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration or members of an association (*Primov and Others v. Russia*, § 92; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, § 85).

## B. Classification of complaints under Articles 9, 10 and/or 11

### 1. Religious meetings: Articles 9 and 11

6. Where the nature of a meeting is primarily religious, both Article 9 and Article 11 may be engaged. Refusal to allow a service of worship in a town park was examined under Article 11 interpreted in the light of Article 9 on the basis that the assembly in question was to be held in a public place and fell under the rules established for assemblies (*Barankevich v. Russia*, § 15). On the other hand, a complaint about the disruption of a religious meeting held on private or rented premises was examined from the standpoint of Article 9 alone (*Kuznetsov and Others v. Russia*, § 53; *Krupko and Others v. Russia*, § 42; *Members of the Gldani Congregation of Jehovah’s Witnesses and Others v. Georgia*, §§ 143-144). Furthermore, in a case where the applicant religious organisation was refused planning to construct its place of worship by the mayor or judicial decisions the Court decided to examine the relevant complaints under Article 9 interpreted in the light of Article 11 (*The Religious Denomination of Jehovah’s Witnesses in Bulgaria v. Bulgaria\**, § 80)<sup>1</sup>.

7. In a case concerning the applicants’ criminal conviction under prevention of terrorism legislation for participating in a religious ceremony, which had consisted of a mere public manifestation of the applicants’ religious observance, the Court found that the situation in issue could be examined under various Convention provisions including Articles 7, 9 and 11 on which the applicants relied. However, it took the view that the principal question raised in that case fell to be examined solely under Article 9 (*Güler and Uğur v. Turkey*, §§ 12 and 26).

### 2. Assembly as a form of expression and expression of opinion during assembly: Articles 10 and 11

8. Whether a particular complaint falls to be examined under Article 10 or 11, or both, depends on the particular circumstances of the case and the gist of the applicant’s grievances (*Women On Waves and Others v. Portugal*, § 28). Complaints relating to an event in respect of which Article 11 does not apply either because it did not constitute an “assembly” or because the assembly was not “peaceful” have been examined under Article 10 in the light of Article 11 (*Steel and Others v. the United Kingdom*, §§ 92 and 113, where the Court left both questions open). A protest action in the form of forcible unauthorised entry into official premises may constitute a form of expression protected by Article 10, interpreted in the light of Article 11 (*Taranenko v. Russia*, § 69).

9. The Court has attached importance to the fact that those taking part in an assembly are not only seeking to express their opinion, but to do so together with others (*Primov and Others v. Russia*, § 91). Demonstrations carried out by a solo participant are therefore examined under Article 10, taking into account, where appropriate, the general principles established in the context of Article 11 (*Novikova and Others v. Russia*, § 91). One’s conduct which does not constitute the exercise of the right to freedom of “peaceful assembly” may constitute a form of expression protected by Article 10, as did a protest action in the form of forcible unauthorised entry into official premises (*Taranenko v. Russia*, § 69). Calling people through social networks to take part in an assembly falls within the scope of Article 10, interpreted where appropriate in the light of Article 11 (*Elvira Dmitriyeva v. Russia*, § 66).

10. Non-violent acts committed during an assembly are protected by Article 11. Roadblocks and other physical conduct purposely obstructing traffic and the ordinary course of life were considered to fall within the terms of Article 11 (*Barraco v. France*, § 39; *Lucas v. the United Kingdom* (dec.)), although the Court noted that such acts were not at the core of the freedom of peaceful assembly as protected by Article 11 of the Convention (*Kudrevičius and Others v. Lithuania* [GC], § 97).

<sup>1</sup> See the *Guide on Article 9 – Freedom of Religion*, section I.E

Installation of a banner on a wall during a demonstration was examined under Article 11 alone (*Akarsubaşı and Alçiçek v. Turkey*, §§ 31-33), as was the making of public statements to the press near judicial buildings in defiance of the legislative ban on doing so (*Öğrü v. Turkey*, § 13). Likewise, a series of protest actions including a press conference, a procession and a sit-in, all linked to a single campaign, was examined under Article 11 (*Hakim Aydın v. Turkey*, § 50). A penalty for shouting slogans and holding banners during a demonstration on account of their content is considered an interference with the right to freedom of peaceful assembly under Article 11 (*Kemal Çetin v. Turkey*, § 26).

11. On the other hand, actions obstructing activities of a particular nature fall to be examined under Article 10, or under both Articles 10 and 11. Thus, a protest aimed at physically impeding a hunt or the construction of a motorway constituted expressions of opinion within the meaning of Article 10 (*Steel and Others v. the United Kingdom*, § 92). In a case brought by Greenpeace activists who had maneuvered dinghies in such a manner as to obstruct whaling the Court proceeded on the assumption that Articles 10 and/or 11 could be relied on by the applicants, but did not consider it necessary in the circumstances to attribute the complaint to one or both provision(s) (*Drieman and Others v. Norway* (dec.)).

### C. Scope of the right to freedom of assembly

12. In view of its importance the right to freedom of assembly should not be interpreted restrictively (*Kudrevičius and Others v. Lithuania* [GC], § 91; *Taranenko v. Russia*, § 65). To avert the risk of a restrictive interpretation, the Court has refrained from formulating the notion of an assembly or exhaustively listing the criteria which would define it (*Navalnyy v. Russia* [GC], § 98).

13. The concept of “assembly” is an autonomous one; it covers, in particular, gatherings which are not subject to domestic legal regulation, irrespective of whether they require notification or authorisation or whether they are exempt from such procedures. Thus, the Court found Article 11 applicable to a peaceful “walkabout” gathering whereby groups of persons acted in a coordinated and purposeful way, to express a political message; the applicant did not consider them “marches” or “meetings” subject to notification under the applicable national law (*Navalnyy v. Russia* [GC], § 106). Likewise, the Court found that the gathering described by the applicant as a “flash mob” could be considered an assembly irrespective of whether it fell under the notions of “public event” or “static demonstration” set out in domestic law (*Obote v. Russia*, § 35), with reference to the autonomous concept of “assembly” under the Convention.

14. Assembly is defined, in particular, by a common purpose of its participants and is to be distinguished from a random agglomeration of individuals each pursuing their own cause, such as a queue to enter a public building. Thus a group of activists present outside a courthouse for the purpose of attending a court hearing in a criminal case of a political nature fell within the notion of “assembly” on the basis that by their attendance they meant to express personal involvement in a matter of public importance. The Court distinguished this unintended gathering from a situation where a passer-by becomes accidentally mixed up in a demonstration and is mistaken for someone taking part in it (*Navalnyy v. Russia* [GC], § 110).

15. Lengthy occupation of premises that is peaceful, even though it is clearly in breach of domestic law, may be regarded as a “peaceful assembly” (*Cisse v. France*, §§ 39-40; *Tuskia and Others v. Georgia*, § 73; *Annenkov and Others v. Russia*, § 123).

16. Even if the existence of an assembly is beyond doubt, the admissibility of an Article 11 complaint may be called into question in relation to a particular applicant if he or she denies before the Court having taken part in that assembly. There must be a clear and acknowledged link between the exercise of the freedom of peaceful assembly by the applicants and the measures taken against them (*Navalnyy and Yashin v. Russia*, § 52). In establishing such link the Court takes into account the



applicant's initial intention, the extent of actual involvement in the assembly and the content of the pleading before the national instances and the Court (*Agit Demir v. Turkey*, § 68; *Navalnyy v. Russia* [GC], §§ 109-111; *Zulkuf Murat Kahraman v. Turkey*, § 45, *Obote v. Russia*, § 35). The fact that the applicant was sanctioned for participating in the assembly is not in itself sufficient to bring the complaint within the ambit of Article 11 if the applicant had consistently claimed that he was mistaken for a participant (*Kasparov and Others v. Russia*, § 72).

17. Although there has been no case to-date concerning a negative right to freedom of assembly, the right not to be compelled to participate in an assembly may be inferred from its case-law (*Sørensen and Rasmussen v. Denmark* [GC], § 54; *Novikova and Others v. Russia*, § 91).

## 1. Form and type of assembly

18. This right covers both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it can be exercised by individual participants and by the persons organising the gathering (*Kudrevičius and Others v. Lithuania* [GC], § 91; *Djavit An v. Turkey*, § 56).

19. Although the primary purpose of Article 11 is to protect the right of political peaceful demonstration and participation in the democratic process, it would be an unacceptably narrow interpretation of that Article to confine it only to that kind of assembly, just as it would be too narrow an interpretation of Article 10 to restrict it to expressions of opinion of a political character (*Friend, the Countryside Alliance and others v. the United Kingdom* (dec.), § 50). Article 11 has thus been found to apply to assemblies of an essentially social character (*Emin Huseynov v. Azerbaijan*, § 91, concerning police intervention in a gathering at a private café; *Djavit An v. Turkey*, § 60, concerning the refusal of the authorities to allow the applicant to cross the “green line” into southern Cyprus in order to participate in bi-communal meetings), as well as to cultural gatherings (*The Gypsy Council and Others v. the United Kingdom* (dec.)); and religious and spiritual meetings (*Barankevich v. Russia*, § 15). Official meetings, notably parliamentary sessions, also fall within the scope of Article 11 (*Forcadell i lluis v. Spain* (dec.), § 24).

## 2. Freedom of forum

20. The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11 (*Sáska v. Hungary*, § 21). Therefore, where the location of the assembly is crucial to the participants, an order to change it may constitute an interference with their freedom of assembly under Article 11 of the Convention (*The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, § 103; *Lashmankin and Others v. Russia*, § 405).

21. However, Article 10, and by implication Article 11, does not bestow any freedom of forum for the exercise of that right. In particular, that provision does not require the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property, for instance, government offices or university premises (*Appleby and Others v. the United Kingdom*, § 47; *Taranenko v. Russia*, § 78; *Tuskia and Others v. Georgia*, § 72). Neither does Article 11 guarantee a right to set up a protest campsite at a location of one's choice, such as a public park, although such temporary installations may in certain circumstances constitute a form of political expression, restrictions on which must comply with the requirements of Article 10 § 2 of the Convention (*Frumkin v. Russia*, § 107).

22. A prohibition on holding public events at certain locations is not incompatible with Article 11, when it is imposed for security reasons (*Rai and Evans v. the United Kingdom* (dec.)) or, as the case may be in respect of locations in the immediate vicinity of court buildings, for protecting the judicial process in a specific case from outside influence, and thereby protecting the rights of others, namely

the parties to judicial proceedings. The latter ban should however be tailored narrowly to achieve that interest (*Lashmankin and Others v. Russia*, § 440; *Öğrü v. Turkey*, § 26).

### 3. Peaceful assembly

23. Article 11 of the Convention only protects the right to “peaceful assembly”, a notion which does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (*Kudrevičius and Others v. Lithuania* [GC], § 92).

24. Depending on the underlying facts and the nature of the complaints, the question whether an assembly was “peaceful” may be examined as a question of applicability of Article 11 (*Kudrevičius and Others v. Lithuania* [GC], §§ 97-99), or the existence of an interference (*Primov and Others v. Russia*, §§ 93-103), or both questions may be assessed globally (*Gülcü v. Turkey*, §§ 92-93 and 97; *Yaroslav Belousov v. Russia*, §§ 168-172). In all the aforementioned cases applicability was assessed at the merits stage, except for *Primov and Others v. Russia*, where applicability was treated at the admissibility stage (§§ 99 and 156). The question whether an assembly as such was peaceful is distinct from the assessment of the applicant’s conduct. This is assessed as a part of the proportionality analysis carried out in order to decide whether the measures complained of were “necessary in a democratic society”.

25. The burden of proving violent intentions on the part of the assembly organisers lies with the authorities (*Christian Democratic People’s Party v. Moldova (no. 2)*, § 23).

26. Even if there is a real risk that an assembly might result in disorder as a result of developments outside the control of those organising it, it does not as such fall outside the scope of Article 11 § 1, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision (*Schwabe and M.G. v. Germany*, § 103).

27. Obstructing traffic arteries as part of a demonstration is conduct which is, by itself, considered peaceful. Although not an uncommon occurrence in the context of the exercise of freedom of assembly in modern societies, physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by Article 11 of the Convention. This state of affairs has implications for any assessment of “necessity” under the second paragraph of Article 11 (*Kudrevičius and Others v. Lithuania* [GC], § 97 with further references and examples). Likewise, occupation of public buildings is generally regarded as peaceful conduct, despite its unlawfulness and the disruptions it may cause (*Cisse v. France*, §§ 39-40; *Tuskia and Others v. Georgia*, § 73; *Annenkov and Others v. Russia*, § 126).

28. An assembly tarnished with isolated acts of violence is not automatically considered non-peaceful so as to forfeit the protection of Article 11. An individual does not cease to enjoy the right to freedom of 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 (*Ezelin v. France*, § 53; *Frumkin v. Russia*, § 99; *Laguna Guzman v. Spain*, § 35). The possibility of persons with violent intentions, not members of the organising association, joining the demonstration cannot as such take away that right (*Primov and Others v. Russia*, § 155).

29. In a number of cases where demonstrators had engaged in acts of violence, the Court held that the demonstrations in question had been within the scope of Article 11 but that the interferences with the right guaranteed by Article 11 were justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others (*Osmani and Others v. “the former Yugoslav*

*Republic of Macedonia*” (dec.); *Protopapa v. Turkey*, §§ 104-112, and other cases summarised in *Gülcü v. Turkey*, §§ 93-97).

30. To establish whether an applicant may claim the protection of Article 11, the Court takes into account (i) whether the assembly intended to be peaceful and 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 (*Gülcü v. Turkey*, § 97). If the initially peaceful assembly escalated into violence and both sides – demonstrators and police – became involved in violent acts, it is sometimes necessary to examine who started the violence (*Primov and Others v. Russia*, § 157). On the basis of these criteria the Court dismissed as incompatible *ratione materiae* the complaint of an applicant found guilty of deliberate acts contributing to the onset of clashes in a previously peaceful assembly (he was leading a group of people to break through the police cordon), noting the significance of this particular event among other factors causative of the escalation of violence at the assembly venue (*Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia*, §§ 282-285).

31. If on the basis of the foregoing criteria the Court accepts that the applicant enjoyed the protection of Article 11, it focuses the analysis of the interference on the proportionality of the sentence. The Court recognises 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 (*Gülcü v. Turkey*, § 116). Even so, 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 disproportionate (*Gülcü v. Turkey*, § 115; *Yaroslav Belousov v. Russia*, § 180; and *Barabanov v. Russia*, §§ 74-75).

## D. Positive obligations

32. The right to freedom of peaceful assembly comprises negative and positive obligations on the part of the Contracting State (*Öllinger v. Austria*, § 35).

33. States must not only refrain from applying unreasonable indirect restrictions on 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, there may in addition be positive obligations to secure the effective enjoyment of these rights (*Kudrevičius and Others v. Lithuania* [GC], § 158; *Djavit An v. Turkey*, § 57).

34. A positive obligation to secure the effective enjoyment of freedom of assembly is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation (*Bączkowski and Others v. Poland*, § 64). In cases concerning public events organised in support of the rights of sexual minorities the Court found that the positive obligation required the authorities “to use any means possible, for instance by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance as well as to warn potential law-breakers of the nature of possible sanctions” (*Identoba and Others v. Georgia*, § 99) and to “duly facilitate the conduct of the planned event by restraining homophobic verbal attacks and physical pressure by counter-demonstrators” (*Berkman v. Russia\**, § 55-57).

### 1. Obligation to ensure the peaceful conduct of an assembly

35. 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 citizens. However, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used. In this area

the obligation under Article 11 of the Convention is an obligation as to measures to be taken and not the results to be achieved (*Kudrevičius and Others v. Lithuania* [GC], § 159; *Giuliani and Gaggio v. Italy* [GC], § 251).

36. In particular, the Court has stressed the importance of taking preventive security measures such as, for example, 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*, § 39).

37. The duty to communicate with the leaders of a protest demonstration is an essential part of the authorities' positive obligations to ensure the peaceful conduct of an assembly, to prevent disorder and to secure the safety of all involved (*Frumkin v. Russia*, §§ 128-129). The Court has referred to the Venice Commission's Guidelines on Freedom of Peaceful Assembly, which recommends negotiation or mediated dialogue if a stand-off or other dispute arises during the course of an assembly as a way of avoiding the escalation of conflict (*Frumkin v. Russia*, § 129, referring to guideline 5.4, cited in § 80 of the same judgment).

## 2. Counter-demonstrations

38. A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. Participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate (*Plattform "Ärzte für das Leben" v. Austria*, § 32).

39. It is thus the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully (*The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, § 115).

40. The State has a positive obligation to protect the right to freedom of assembly of both demonstrating groups, and should find the least restrictive means that would, in principle, enable both demonstrations to take place (*Fáber v. Hungary*, § 43).

41. Where a serious threat of a violent counter-demonstration exists, the Court has allowed the domestic authorities a wide discretion in the choice of means to enable assemblies to take place without disturbance (*Alekseyev v. Russia*, § 75). The authorities must "duly address" any hate speech, such as statements with homophobic connotations uttered by counter-demonstrators (*Berkman v. Russia*\*, § 56).

42. A wide discretion is granted to the national authorities not only because the two competing rights do, in principle, deserve equal protection that satisfies the obligation of neutrality of the State when opposing views clash, but also because those authorities are best positioned to evaluate the security risks and those of disturbance as well as the appropriate measures dictated by the perceived risk (*Fáber v. Hungary*, § 42).

43. In the exercise of the State's margin of appreciation, violence at similar events in the past and the impact of a counter-demonstration on the targeted demonstration are relevant considerations for the authorities, in so far as the danger of violent confrontation between the two groups is concerned (*Fáber v. Hungary*, § 44).

44. However, the mere existence of a risk is insufficient for banning the event: in making their assessment the authorities must produce concrete estimates of the potential scale of disturbance in order to evaluate the resources necessary for neutralising the threat of violent clashes (*Fáber v. Hungary*, § 40; *Barankevich v. Russia*, § 33).

45. If every probability of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, § 107).

46. The unconditional prohibition of a counter-demonstration is a very far-reaching measure which would require particular justification, especially when that demonstration relates to an issue of public interest (*Öllinger v. Austria*, § 44).

## E. Restrictions on the right to freedom of assembly

### 1. Interference with the exercise of the right to freedom of assembly

47. The right to freedom of assembly is not absolute; it can be subject to restrictions in accordance with paragraph 2 of Article 11. An interference with the exercise of that right does not need to amount to an outright ban, legal or de facto, but can consist in various other measures taken by the authorities (*Kudrevičius and Others v. Lithuania* [GC], § 100).

48. The question whether there has been an interference – or, in terms of Article 11 § 2, whether a restriction has been placed on the exercise of this right – is closely linked to the question of the applicability of Article 11 (see Section “Scope of the right to freedom of assembly”).

49. The term “restrictions” in Article 11 § 2 must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards (*Ezelin v. France*, § 39). For instance, a prior ban can have a chilling effect on the persons who intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities (*Bączkowski and Others v. Poland*, § 66-68). In cases where the time and place of the assembly are crucial to the participants, an order to change the time or the place may constitute an interference with their freedom of assembly, as does a prohibition on speeches, slogans or banners (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, §§ 79-80 and 108-109).

50. A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference as well (*Djavit An v. Turkey*, §§ 61-62). So too do measures taken by the authorities during a rally, such as its dispersal or the arrest of those taking part in it, and penalties imposed for having taken part in (*Kasparov and Others v. Russia*, § 84; *Gafgaz Mammadov v. Azerbaijan*, § 50). 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*, § 42; *Zakharov and Varzhabetyan v. Russia\**, § 88).

51. There are two types of restrictions, each giving rise to a range of legal issues. The first type comprises conditions on the exercise of the right to freedom of assembly, in particular rules on the planning and conduct of an assembly imposed through mandatory notification and authorisation procedures. Restrictions of this type are mainly addressed to the assembly organisers (see Section “Prior notification and authorisation procedures”).

The second type of restrictions comprises enforcement measures such as crowd-control, dispersal of an assembly, arrest of participants and/or subsequent penalties. Such restrictions are aimed primarily at the assembly participants, whether actual, aspiring or past. The enforcement measures and the penalties may relate either to the breach of the rules on holding assemblies or specific offences committed in their course (see Section “Reprehensible conduct”).

52. Both types of restrictions on the exercise of the right to freedom of peaceful assembly may occur in connection with the same event (*Lashmankin and Others v. Russia*, § 407).



## 2. Justification of restrictions

53. An interference with the right to freedom of peaceful assembly will constitute a breach of Article 11 unless it is “prescribed by law”, pursues one or more legitimate aims under paragraph 2, and is “necessary in a democratic society” for the achievement of the aim or aims in question (*Vyerentsov v. Ukraine*, § 51).

### a. Prescribed by law

54. The expression “prescribed by law” 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 (*Kudrevičius and Others v. Lithuania* [GC], § 108-110). In particular, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (*Djavit An v. Turkey*, § 65). Experience shows, however, 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*, § 45). In particular, the consequences of a given action need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able 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 (*Galstyan v. Armenia*, § 106; *Primov and Others v. Russia*, § 125).

55. The role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain; the Court’s power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. Moreover, the level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (*Kudrevičius and Others v. Lithuania* [GC], § 110).

56. For domestic law to meet the qualitative requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (*Navalnyy v. Russia* [GC], § 113).

57. Accordingly, the domestic legal provisions allowing the executive to propose a change of location, time or manner of conduct of public events and lacking adequate and effective legal safeguards against arbitrary and discriminatory exercise of those powers were found not to meet the Convention “quality of law” requirements in *Lashmankin and Others v. Russia* (§ 430). In the same vein, the executive authorities’ wide discretion in deciding what behaviour constituted a “public event” subject to official notification in the absence of criteria distinguishing it from an informal gathering, led the Court to doubt that the administrative law-enforcement measures for non-compliance with the notification procedure were “prescribed by law” (*Navalnyy v. Russia* [GC], §§ 117-118).

58. Law-enforcement measures applied with reference to legal provisions which had no connection with the intended purpose of those measures could be characterised as arbitrary and unlawful. Thus, penalties for non-compliance with the lawful order of a police officer, or for hooliganism,

imposed to prevent or to punish participation in an assembly did not meet the Convention requirement of lawfulness (*Hakobyan and Others v. Armenia*, § 107; *Huseynli and Others v. Azerbaijan*, § 98).

### **b. Legitimate aim**

59. The requirement of a narrow interpretation of the exceptions to the right to freedom of assembly applies also to the legitimate aims enumerated in paragraph 2 of Article 11. In particular, “the prevention of disorder” – one of the most commonly cited permissible grounds for the restrictions placed on the exercise of the right to freedom of assembly – must be interpreted narrowly, in line with the expression “*la défense de l’ordre*” used in the French text (*Navalnyy v. Russia* [GC], § 120).

60. Apart from the prevention of disorder, the protection of the rights of others is also often cited as a legitimate aim. In fact these two aims are closely linked, as “restrictions on freedom of peaceful assembly in public places may serve to protect the rights of others with a view to preventing disorder and maintaining an orderly flow of traffic” (*Éva Molnár v. Hungary*, § 34). Since overcrowding during a public event is fraught with danger, it is not uncommon for State authorities in various countries to impose restrictions on the location, date, time, form or manner of conduct of a planned public gathering (*Primov and Others v. Russia*, § 130).

61. The Court would usually accept that the measures in question had pursued the aim of “prevention of disorder”, or “the protection of the rights of others”, or both, although if the cited aim is clearly irrelevant in the specific circumstances it may be rejected. The Court did not accept, in particular, the aim of prevention of disorder in relation to events where the gatherings were unintentional and caused no nuisance (*Navalnyy v. Russia* [GC], §§ 124-126). In the context of restriction on LGBT stationary demonstrations the Court has rejected a reliance on the aim of the “protection of morals” as discriminatory (*Bayev and Others v. Russia*, §§ 66-69, examined under Article 10).

62. Irrespective of whether the Court accepts that the authorities have pursued a legitimate aim or rejects the aims put forward by the Government, the Court may examine a complaint under Article 18 that the measures in question had pursued an ulterior purpose, such as political persecution (as a sole purpose or in addition to a legitimate one). In the majority of cases the Court found that the allegations under Article 18 raised no separate issue in relation to the complaints examined under Articles 5 and 11 (*Nemtsov v. Russia*, § 130; *Frumkin v. Russia*, § 173). However, if such allegations represent a fundamental aspect of the case, the Court may examine them separately (*Navalnyy v. Russia* [GC], § 164).<sup>2</sup>

### **c. Necessary in a democratic society**

63. 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 (*Barraco v. France*, § 42). It is, in any event, for the Court to give a final ruling on the restriction’s compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (*Galstyan v. Armenia*, § 114).

64. The measure in question must answer a “pressing social need” and be proportionate to the “legitimate aim”, and the reasons adduced by the national authorities to justify it must be “relevant and sufficient”. The national authorities must apply standards which are in conformity with the principles embodied in Article 11 and, moreover, base their decisions on an acceptable assessment of the relevant facts. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in paragraph 2 on the one hand, and those of the free

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2. See the *Guide on Article 18 – Limitation on use of restrictions on rights*.

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], § 142-144).

65. 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 as to the “necessity in a democratic society” of the related interference with Article 11 rights (*Navalnyy and Gunko v. Russia*,\* §§ 84-93; *Zakharov and Varzhabetyan v. Russia*,\* §§ 87-91).

#### **i. Narrow margin of appreciation for interference based on the content of views expressed during an assembly**

66. Freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote. Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it (*Kudrevičius and Others v. Lithuania* [GC], § 145; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, § 97). It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were it so a minority group’s rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention (*Alekseyev v. Russia*, § 81; *Barankevich v. Russia*, § 31).

67. Therefore a distinction must be made between content-based restrictions on freedom of assembly and restrictions of a technical nature.

68. Public events related to political life in the country or at the local level must enjoy strong protection under Article 11. Rare are the situations where a gathering may be legitimately banned in relation to the substance of the message which its participants wish to convey. The Government should not have the power to ban a demonstration because they consider that the demonstrators’ “message” is wrong. It is especially so where the main target of criticism is the very same authority which has the power to authorise or deny the public gathering. Content-based restrictions on the freedom of assembly should be subjected to the most serious scrutiny by this Court (*Navalnyy v. Russia*, [GC], § 134; *Primov and Others v. Russia*, §§ 134-135).

69. In a democratic society based on the rule of law, the ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, § 97; *Sergey Kuznetsov v. Russia*, § 45).

70. The fact that a group of persons calls for autonomy or even requests secession of part of the country’s territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country’s territorial integrity and national security (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, § 97).

71. 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 (*Solari v. the Republic of Moldova*, § 39).

#### **ii. Narrow margin of appreciation for a general ban on assembly**

72. A State can, consistently with the Convention, adopt general measures which apply to pre-defined situations regardless of the individual facts of each case, even if this might result in individual hard cases (*Animal Defenders International v. the United Kingdom* [GC], § 106). However,



a general ban on demonstrations can only be justified if there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures. In this connection, the authority must take into account the effect of a ban on demonstrations which do not by themselves constitute a danger to public order. Only if the disadvantage of such demonstrations being caught by the ban is clearly outweighed by the security considerations justifying the issue of the ban, and if there is no possibility of avoiding such undesirable side effects of the ban by a narrow circumscription of its scope in terms of territorial application and duration, can the ban be regarded as being necessary within the meaning of Article 11 § 2 of the Convention (*Christians against Racism and Fascism v. the United Kingdom*).

### iii. Wider margin of appreciation for sanctioning intentional disruption of ordinary life and traffic

73. The intentional failure by the organisers to abide by these rules and the structuring of a demonstration, or of part of it, in such a way as to cause disruption to ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances constitutes conduct which cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest or the peaceful manifestation of opinions on such matters. The Contracting States enjoy a wide margin of appreciation in their assessment of the necessity in taking measures to restrict such conduct (*Kudrevičius and Others v. Lithuania* [GC], § 156).

74. However, acting within that margin the national authorities must apply standards which are in conformity with the principles embodied in Article 11 and base their decisions on an acceptable assessment of the relevant facts, failing which may entail a breach of Article 11 (*Körtvélyessy v. Hungary*, §§ 26-29; see also Section “Unlawful assembly”).

### iv. Chilling effect

75. In considering the proportionality of the measure account must be taken of its chilling effect. In particular, a prior ban of an assembly may discourage the participants from taking part in it (*Christian Democratic People’s Party v. Moldova*, § 77). A prior ban can have a chilling effect on the persons who intend to participate in a rally even if the rally subsequently proceeds without hindrance on the part of the authorities, for example 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 (*Bączkowski and Others v. Poland*, §§ 66-68). A chilling effect may remain present after the acquittal or dropping of charges against the protestors, since the prosecution itself could have discouraged them from taking part in similar meetings (*Nurettin Aldemir and Others v. Turkey*, § 34).

76. The subsequent enforcement measures, such as the use of force to disperse the assembly, the participants’ arrests, detention and/or ensuing administrative convictions may have the effect of discouraging them and others from participating in similar assemblies in future (*Balçık and Others v. Turkey*, § 41). The chilling effect is not automatically removed even if the enforcement measure is reversed, for example if the fines were later set aside by the courts (*The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, § 135). The chilling effect is often present in measures concerning political assemblies, in that their suppression would generally discourage the organisers and the participants from planning and attending protest rallies or indeed from engaging actively in opposition politics. Those measures may have a serious potential to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate. The chilling effect may be amplified if the enforcement measures target a well-known public figure and attract wide media coverage (*Nemtsov v. Russia*, §§ 77-78).

77. The use of force by the police for arresting assembly participants not engaged in any acts of violence may have a chilling effect on the applicants and others, discouraging them from taking part in similar public gatherings (*Zakharov and Varzhabetyan v. Russia*\*, § 90; *Navalnyy and Gunko v. Russia*\*, § 88).

#### v. Sanctions – nature and severity

78. The nature and severity of the penalties imposed are factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued (*Kudrevičius and Others v. Lithuania* [GC], § 146). Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification (*Rai and Evans v. the United Kingdom* (dec.)). A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction (*Akgöl and Göl v. Turkey*, § 43), and notably to deprivation of liberty (*Gün and Others v. Turkey*, § 83). Thus, the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (*Taranenko v. Russia*, § 87).

79. Thus a fine of EUR 3 imposed for participation in a demonstration without applying for authorisation was found to constitute a proportionate penalty (*Ziliberberg v. Moldova* (dec.)). Likewise, a fine equivalent to about EUR 500 for organising an unlawful assembly in a designated security sensitive area was found proportionate in the circumstances (*Rai and Evans v. the United Kingdom* (dec.)).

80. On the other hand, if the assembly was interrupted on the grounds that it lacked authorisation, the proportionality assessment will be focused on the authorities' conduct at the site of the assembly, not only on the penalty imposed on its participants in subsequent proceedings. The Court must be satisfied that in exercising the discretion afforded to the authorities by domestic law they acted in a manner compatible with the essence of the right to freedom of assembly, and, where relevant, with due recognition of the privileged protection under the Convention of political speech, debate on questions of public interest and the peaceful manifestation on such matters. In *Navalnyy v. Russia* [GC], the Court, having reached the conclusion that the manner in which the police dispersed the protestors had breached Article 11, held that in these circumstances it was immaterial whether the amount of the fine, EUR 25, was appropriate for a breach of the rules of conduct of public events (§ 133).

#### vi. Dispersal and the use of force

81. A decision to disperse an assembly must be justified by relevant and sufficient reasons (*Ibrahimov and Others v. Azerbaijan*, § 80; *Laguna Guzman v. Spain*, § 51). The non-compliance of the assembly with the formal requirements for holding it is not sufficient for its dispersal (see Section F (2): Unlawful assembly).

82. An interference with the freedom of an assembly involving its disruption, dispersal or the arrest of participants may only be justifiable on specific and averred substantive grounds, such as serious risks provided for by law (*Navalnyy v. Russia* [GC], § 137), and only after the participants had been given sufficient opportunity to manifest their views (*Éva Molnár v. Hungary*, §§ 42 and 43).

83. Irrespective of whether the police intervenes in response to the disruption of ordinary life caused by the assembly, such as the obstruction of traffic, or to curtail violent acts of its participants, the use of force must remain proportionate to the legitimate aims of prevention of disorder and protection of the rights of others (*Oya Ataman v. Turkey*, §§ 41-43; *Laguna Guzman v. Spain*, § 54).

84. A finding that the force used in respect of the applicants was unnecessary and excessive and thus contrary to Article 3 of the Convention can lead to a conclusion that it was “not necessary in a

democratic society” within the meaning of Article 11 § 2 of the Convention (*Zakharov and Varzhabetyan v. Russia*\*, § 90).

85. The use of such means of dispersal as subjecting the demonstrators to high-pressure water and tear gas, or driving at them in armoured vehicles require specific justification (*Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey*, § 108). It is particularly hard to justify the indiscriminate use of such means of dispersal as tear gas grenades in circumstances where the demonstrators and unrelated passers-by cannot be separated (*Süleyman Çelebi and Others v. Turkey (no. 2)*, § 111). Moreover, the use of force in the dispersal of an assembly may in certain circumstances amount to inhuman and degrading treatment contrary to Article 3 of the Convention (*ibid.*, § 79). The use of tear gas, in particular, must be subject to a clear set of rules, and a system must be in place that guarantees adequate training of law enforcement personnel and control and supervision of that personnel during demonstrations, as well as an effective ex post facto review of the necessity, proportionality and reasonableness of any use of force, especially against people who do not put up violent resistance (*İzci v. Turkey*, § 99).

86. 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*\*, §§ 53-55)<sup>3</sup>.

## F. Prior notification and authorisation procedures

87. It is not, in principle, contrary to the spirit of Article 11 if, for reasons of public order and national security a High Contracting Party requires that the holding of meetings be subject to authorisation (*Kudrevičius and Others v. Lithuania* [GC], § 147, with further references; *Oya Ataman v. Turkey*, § 37).

### 1. Aim of notification and authorisation procedures

88. Notification, and even authorisation procedures, for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering (*Sergey Kuznetsov v. Russia*, § 42). Organisers of public gatherings should abide by the rules governing that process by complying with the regulations in force (*Primov and Others v. Russia*, § 117).

89. An authorisation procedure is in keeping with the requirements of Article 11 § 1, if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting, and accordingly does not as such constitute interference with the exercise of the right (*Ziliberberg v. Moldova* (dec.)).

90. Prior notification serves not only the aim of reconciling the right of assembly with the rights and lawful interests (including the freedom of movement) of others, but also the aim of preventing disorder or crime. In order to balance these conflicting interests, the institution of preliminary administrative procedures appears to be common practice in member States when a public demonstration is to be organised (*Éva Molnár v. Hungary*, § 37; *Berladir and Others v. Russia*, § 42). It is important for associations and others organising demonstrations, as actors in the democratic process, to abide by the rules governing that process by complying with the regulations in force. However, regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (*Oya Ataman v. Turkey*, § 38; *Berladir and Others v. Russia*, § 39).

<sup>3</sup> See the *Guide on Mass Protests*, Section 4.C, concerning the relevant procedural obligation under Article 3

91. The Contracting States can impose limitations on holding a demonstration in a given place for public security reasons (*Malofeyeva v. Russia*, § 136; *Disk and Kesk v. Turkey*, § 29; see also Section “Freedom of forum”).

## 2. Unlawful assembly

92. Since States have the right to require authorisation, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirement. A system of authorisation would be rendered illusory if Article 11 were to prohibit sanctions for a failure to obtain such authorisations. The imposition of a sanction for participation in an unauthorised demonstration is thus considered to be compatible with the guarantees of Article 11 (*Ziliberberg v. Moldova* (dec.)), on condition that the sanction was provided for by law and was proportionate.

93. Failure to comply with a notification requirement or to obtain authorisation, overstaying the allocated time or spilling outside the designated area are grounds on which an assembly may be considered “unlawful”. The definition of “unlawful” assembly is based on the failure to comply with formal requirements, as opposed to an assembly which was “prohibited” by the authorities. The term “demonstration which has not been prohibited” has been used, although without equating it to a “lawful” or “authorised” demonstration (*Kudrevičius and Others v. Lithuania* [GC], § 149).

94. An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an infringement of freedom of assembly. While rules governing public assemblies, such as a system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself (*Cisse v. France*, § 50; *Oya Ataman v. Turkey*, §§ 37-39; *Gafgaz Mammadov v. Azerbaijan*, § 59).

95. In particular, where irregular demonstrators do not engage in acts of violence, the Court has required that the public authorities show a certain degree of tolerance towards peaceful gatherings so as the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (*Kudrevičius and Others v. Lithuania* [GC], § 150; *Oya Ataman v. Turkey*, §§ 41-42; *Bukta and Others v. Hungary*, § 34; *Navalnyy and Yashin v. Russia*, § 63).

96. Consequently, the absence of prior authorisation and the ensuing “unlawfulness” of the action do not give *carte blanche* to the authorities; they are still restricted by the proportionality requirement of Article 11 (*Primov and Others v. Russia*, § 119). Thus, it should be established why the demonstration was not authorised in the first place, what the public interest at stake was, and what risks were represented by the demonstration. The method used by the police for discouraging the protestors, containing them in a particular place or dispersing the demonstration, is also an important factor in assessing the proportionality of the interference (*ibid.*). A decision whether to disperse a political rally must be based on due recognition of the privileged protection under the Convention of political speech, debate on questions of public interest and the peaceful manifestation on such matters, and remain within the authorities’ narrow margin of appreciation in restricting political speech (*Navalnyy v. Russia* [GC], § 131).

97. The requirement that the public authorities show a certain degree of tolerance towards “unlawful” peaceful gatherings should extend to instances where the demonstration has been held at a public place in the absence of any risk of insecurity or disturbance (*Fáber v. Hungary*, § 47), if the nuisance caused by the protestors did not exceed that level of minor disturbance that follows from normal exercise of the right of peaceful assembly in a public place (*Navalnyy v. Russia* [GC], § 129-130). Moreover, it should extend to those assemblies that have caused a certain level of disruption to ordinary life, including to traffic (*Kudrevičius and Others*, § 155; *Malofeyeva*, §§ 136-37). The limits of tolerance expected towards an irregular assembly depend on the specific circumstances, including the duration and the extent of public disturbance caused by it, and on

whether its participants had been given sufficient opportunity to manifest their views and to leave the venue when such an order was given (*Frumkin v. Russia*, § 97).

98. The assessment of the disturbance actually caused by the assembly is all the more important in an ambiguous situation, such as gatherings not clearly falling under the domestic regulations. If there is doubt whether a particular event constitutes a form of assembly calling for notification or authorisation under the domestic law the authorities must adopt measures based on the degree of disturbance caused by the impugned conduct and not on formal grounds, such as non-compliance with the notification procedure. An interference with the freedom of an assembly involving its disruption, dispersal or the arrest of participants may only be justifiable on specific and averred substantive grounds, such as serious risks provided for by law (*Navalnyy v. Russia* [GC], § 134).

### 3. Spontaneous assembly

99. In special circumstances where a spontaneous demonstration might be justified, for example in response to a political event, to disperse that demonstration solely because of the absence of the requisite prior notice, without any illegal conduct on the part of the participants, might amount to a disproportionate restriction on their freedom of peaceful assembly (*Bukta and Others v. Hungary*, § 36; *Laguna Guzman v. Spain*, § 51).

100. This does not mean that the absence of prior notification of a spontaneous demonstration can never be a legitimate basis for crowd dispersal. The right to hold spontaneous demonstrations may override the obligation to give prior notification of 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 (*Éva Molnár v. Hungary*, §§ 37-38; *Budaházy v. Hungary*, § 34).

101. The domestic legal provisions and the judicial review must make allowance for special circumstances, where an immediate response to a current event is warranted in the form of a spontaneous assembly and justifying a derogation from the strict application of the notification or authorisation time-limits. The fact that domestic law admitted of no exceptions and left no room for a balancing exercise in accordance with the criteria laid down in the Court's case-law under Article 11 was found to be excessively rigid, in breach of this Article (*Lashmankin and Others v. Russia*, §§ 451-54).

## G. Reprehensible conduct

102. The very essence of the right to freedom of peaceful assembly would be impaired if the State did not prohibit a demonstration but imposed sanctions on its participants for the mere fact of attending it without engaging in reprehensible conduct (*Galstyan v. Armenia*, § 117; *Ashughyan v. Armenia*, § 93).

103. The authorities may take enforcement measures and impose penalties for specific offences committed in the course of an assembly. Interferences with the right to freedom of assembly are in principle justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others where demonstrators engage in acts of violence (*Giuliani and Gaggio v. Italy* [GC], § 251).

104. A criminal conviction for actions inciting to violence at a demonstration can be deemed to be an acceptable measure in certain circumstances (*Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.)).

105. Where there has been incitement to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need for an interference (*Schwabe and M.G. v. Germany*, § 113).



106. The intentional serious disruption, by demonstrators, to ordinary life and to the activities lawfully carried out by others, to a more significant extent than that caused by the normal exercise of the right of peaceful assembly in a public place, might be considered a “reprehensible act”. Such behaviour might therefore justify the imposition of penalties, even of a criminal nature. In particular, the almost complete obstruction of three major highways in disregard of police orders and of the needs and rights of road users constituted conduct which, even though less serious than recourse to physical violence, was found to be “reprehensible” (*Kudrevičius and Others v. Lithuania* [GC], § 173-174; see also *Barraco v. France*, §§ 46-47).

107. Peaceful participants may not be held responsible for reprehensible acts committed by others. The freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act (*Ezelin v. France*, § 53; *Galstyan v. Armenia*, § 115). This is true even when the demonstration results in damage or other disorder (*Taranenko v. Russia*, § 88). The organisers of the event should not be held responsible for the conduct of the attendees (*Mesut Yıldız and Others v. Turkey*, § 34; *Kemal Çetin v. Turkey*, §§ 50-51).

108. An assembly participant who took part in sporadic acts of violence may still enjoy the protection of Article 11, which means that the penalty imposed for this person’s acts must remain proportionate, having regard to his or her intentions at the moment of joining the assembly, the nature of the acts, the gravity of the consequences (in particular, whether he or she had inflicted injuries on others) and his or her impact on the deterioration of the assembly’s peaceful character. Thus a lengthy prison sentence for throwing a stone or another small object at the police at the height of clashes was found to be a disproportionate penalty in violation of Article 11 (*Gülcü v. Turkey*, §§ 110-117; *Yaroslav Belousov v. Russia*, §§ 177-182; see also Section “Peaceful assembly”).

## II. Freedom of association

### A. Importance of the right to freedom of association in a democratic society

109. The Court has on numerous occasions affirmed the direct relationship between democracy, pluralism and the freedom of association. Indeed, the way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned (*Gorzelik and Others v. Poland* [GC], § 88; *Sidiropoulos and Others v. Greece*, § 40).

110. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy (*United Communist Party of Turkey and Others v. Turkey*, § 25), associations formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy (*Gorzelik and Others v. Poland* [GC], § 92; *Association Rhino and Others v. Switzerland*, § 61).

111. The participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively (*Moscow Branch of the Salvation Army v. Russia*, § 61).

112. Freedom of association is particularly important for persons belonging to minorities, including national and ethnic minorities. Indeed, forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights (*Gorzelik and Others v. Poland* [GC], § 93).

113. Associations which engage in activities contrary to the values of the Convention cannot benefit from the protection of Article 11 by reason of Article 17 which prohibits the use of the Convention in order to destroy or excessively limit the rights guaranteed by it (*Hizb ut-Tahrir and Others v. Germany* (dec.), §§ 73-74, concerning a ban on the activities of an Islamist association for advocating the use of violence; *W.P. and Others v. Poland* (dec.), concerning a prohibition on forming an association whose memorandum of association had anti-Semitic connotations; *Ayoub and Others v. France*, concerning the dissolution of two extreme right-wing associations. See also the *Guide on Article 17 – Prohibition of abuse of rights*).

## B. Link with Articles 9 and 10 of the Convention

114. While the exercise of freedom of association may involve a number of Convention rights, Article 11 has a particularly close relationship with Articles 9 and 10 of the Convention.

115. The protection of personal opinions afforded by Articles 9 and 10 of the Convention in the shape of freedom of thought, conscience and religion and of freedom of expression is also one of the purposes of freedom of association as guaranteed by Article 11 (*Young, James and Webster v. the United Kingdom*, § 57, *Vörður Ólafsson v. Iceland*, § 46). Such protection can only be effectively secured through the guarantee of both a positive and a negative right to freedom of association (*Sørensen and Rasmussen v. Denmark* [GC], § 54).

116. Article 11 is thus applicable not only to persons or associations whose views are favourably received or regarded as inoffensive or as a matter of indifference, but also those whose views offend, shock or disturb (*Redfearn v. the United Kingdom*, § 56; *Vona v. Hungary*, no. 35943/10, § 57, ECHR 2013).

117. However, while Article 10 guarantees that even ideas diverging from those of a democratic system could be expressed in public debate provided that they did not give rise to hate speech or incite others to violence, Article 11 does not prevent the States from taking measures to ensure that an association does not pursue policy goals that are contrary to the values of pluralist democracy and in breach of the rights and freedoms guaranteed by the Convention (*Zehra Foundation and Others v. Turkey*, §§ 55-56, concerning dissolution of an association whose activities were aimed at establishing a Sharia state).

118. The implementation of the principle of pluralism is impossible without an association being able to express freely its ideas and opinions (*Gorzelik and Others v. Poland* [GC], § 91; *Zhechev v. Bulgaria*, § 36). The protection of opinions and the freedom to express them applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy (*Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], § 37).

## C. Scope and content of the right to freedom of association

### 1. The concept of association

119. The term “association” presupposes a voluntary grouping for a common goal (*Young, James and Webster v. the United Kingdom*, Commission’s report, § 167).

120. The concept of freedom of association is concerned with the right to form or be affiliated with a group or organisation pursuing particular aims. It does not concern the right to share the company

of others or to mix socially with other individuals (*McFeeley v. the United Kingdom*, Commission decision, § 114; *Bollan v. the United Kingdom* (dec.)).

121. For an association to fall under the protection of Article 11, it needs to have a private-law character. The term “association” has an autonomous meaning; the classification in national law has only relative value and constitutes no more than a starting-point (*Chassagnou and Others v. France* [GC], § 100; *Schneider v. Luxembourg*, § 70).

122. If Contracting States were able to classify, at their discretion, an association as “public” or “para-administrative”, and thus to remove it from the scope of Article 11, that might lead to results incompatible with the object and purpose of the Convention, which is to protect rights that are not theoretical or illusory but practical and effective (*Chassagnou and Others v. France* [GC], § 100).

123. Under the case-law of the Court, elements in determining whether an association is to be considered as private or public are: whether it was founded by individuals or by the legislature; whether it remained integrated within the structures of the State; whether it was invested with administrative, rule-making and disciplinary power; and whether it pursued an aim which was in the general interest (*Mytilinaios and Kostakis v. Greece*, § 35; *Herrmann v. Germany*, § 76; *Slavic University in Bulgaria and Others v. Bulgaria* (dec.)).

## 2. Public law institutions, professional bodies and compulsory membership

124. A public law institution founded by the legislature is not an association within the meaning of Article 11 (see, for example, *Slavic University in Bulgaria and Others v. Bulgaria* (dec.), regarding a public university; *Köll v. Austria* (dec.), concerning a tourism federation).

125. Professional associations and employment-related bodies similarly fall outside the scope of Article 11. As a rule, the object of these bodies, established by legislation, is to regulate and promote the professions whilst exercising important public-law functions for the protection of the public. They cannot, therefore, be likened to private-law associations or trade unions, but remain integrated within the structures of the State (*Popov and Others v. Bulgaria* (dec.)). Associations to which Article 11 has been found not to apply include the following:

- unions of medical doctors (*Le Compte, Van Leuven and De Meyere v. Belgium*, §§ 64-65; *Vialas Simón v. Spain*, Commission decision; *Popov and Others v. Bulgaria* (dec.));
- a council of veterinary surgeons (*Barthold v. Germany*, § 61);
- an association of architects (*Revert and Legallais v. France*, Commission decision);
- bar associations (*A. and Others v. Spain*, Commission decision; *Bota v. Romania* (dec.));
- notary chambers (*O.V.R. v. Russia* (dec.); *National Notary Chamber v. Albania* (dec.));
- work councils (*Karakurt v. Austria* (dec.));
- a chamber of trade (*Weiss v. Austria*, Commission decision)

126. The compulsory membership in such associations does not constitute an interference with the freedom of association (*Popov and Others v. Bulgaria* (dec.)). However, individuals must not be prevented from forming their own professional associations or joining the existing ones. The existence of an association with compulsory membership cannot thus have the object or the effect of limiting, even less suppressing, the right safeguarded by Article 11 (*Le Compte, Van Leuven and De Meyere*, § 65; *O.V.R. v. Russia* (dec.)).

## 3. Formation of an association and its legal recognition

127. The right to form an association is an inherent part of the right to freedom of association, even if Article 11 only makes express reference to the right to form trade unions (*Sidiropoulos and Others v. Greece*, § 40).



128. The ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning (*Gorzelik and Others v. Poland* [GC], § 91; *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, § 78).

129. A refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to an interference with the exercise of their right to freedom of association (*Sidiropoulos and Others v. Greece*, § 31; *Koretskyy and Others v. Ukraine*, § 39; *Özbek and Others v. Turkey*, § 35). Significant delays in the registration procedure similarly amount to such interference (*Ramazanova and Others v. Azerbaijan*, § 60; *Aliyev and Others v. Azerbaijan*, § 33).

130. The authorities' refusal to register a group directly affects both the group itself and also its presidents, founders or individual members (*Kimlya and Others v. Russia*, § 84).

131. An association should not be forced to take a legal shape it does not seek, as this would reduce the freedom of association of its founders and members so as to render it either non-existent or of no practical value (*Republican Party of Russia v. Russia*, § 105; *Zhechev v. Bulgaria*, § 56; *National Turkish Union Kungyun v. Bulgaria*, § 41). However, there is no right under Article 11 for associations to have a specific legal status (*Magyar Keresztény Mennonita Egyház and Others v. Hungary*, § 91).

132. Although informal associations also benefit from the protection of Article 11, a lack of legal personality may have an adverse effect on their functioning and activities (*The United Macedonian Organisation Ilinden and Others v. Bulgaria*, § 53; *Moscow Branch of the Salvation Army v. Russia*, § 73-74). However, where an informal association is able to carry out its essential activity, a refusal to register it may be compatible with Article 11 (*Lavisse v. France*, Commission decision; *Larmela v. Finland*, Commission decision; *Movement for Democratic Kingdom v. Bulgaria*, Commission decision).

133. The right guaranteed by Article 11 is not limited to the founding of an association; it protects an association for its entire life (*United Communist Party of Turkey and Others*, § 33).

#### 4. Autonomy of associations, internal management and membership

134. The organisational autonomy of associations constitutes an important aspect of their freedom of association protected by Article 11 (*Lovrić v. Croatia*, § 71). Associations have the right to draw up their own rules and administer their own affairs (*Cheall v. the United Kingdom*, Commission decision).

135. Freedom of association however does not preclude States from laying down rules and requirements on corporate governance and management and from satisfying themselves that they are observed. While it is legitimate for States to introduce certain minimum requirements as to the role and structure of an association's governing bodies, it is not the authorities' role to ensure observance of every single formality set out in an association's own charter (*Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, §§ 72 and 78).

136. Article 11 cannot be interpreted as imposing an obligation on associations or organisations to admit whosoever wishes to join. Where associations are formed by people, who, espousing particular values or ideals, intend to pursue common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their membership. For example, it is accepted that religious bodies and political parties can generally regulate their membership to include only those who share their beliefs and ideals (*Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, § 39).

137. The right to freedom of association does not comprise the right to become a member of a particular association (see *Cheall v. the United Kingdom*, Commission decision) nor the right to hold a specific office within an association (*Fedotov v. Russia* (dec.), no. 5140/02, 23 November 2004).

However, expulsion from an association could constitute a violation of the freedom of association of the member concerned if it is in breach of the association’s rules, arbitrary or entails exceptional hardship for the individual (*Lovrić v. Croatia*, §§ 54 and 72).

## 5. Negative freedom of association

138. As the freedom of association implies some measure of freedom of choice as to its exercise, Article 11 encompasses also a negative right of association, that is a right not to join or to withdraw from an association (*Sigurður A. Sigurjónsson v. Iceland*, § 35; *Vörður Ólafsson v. Iceland*, § 45).

139. The notion of personal autonomy is an essential corollary of the individual’s freedom of choice implicit in Article 11 (*Sørensen and Rasmussen v. Denmark* [GC], § 54).

140. An individual does not enjoy the right to freedom of association if in reality the freedom of action or choice which remains available to him is either non-existent or so reduced as to be of no practical value (*Chassagnou and Others v. France* [GC], § 114).

141. Although an obligation to join a particular association may not always be contrary to the Convention, a form of such an obligation which strikes at the very substance of the freedom of association guaranteed by Article 11, will constitute an interference with that freedom (*Young, James and Webster v. the United Kingdom*, § 55, and *Sørensen and Rasmussen*, § 56, concerning “closed shop” agreements making employment dependent on trade union membership; *Sigurður A. Sigurjónsson*, § 36, relating to an obligation imposed by law on taxicab drivers to be members of a specific organisation for taxicab operators; *Mytilinaios and Kostakis v. Greece*, concerning an obligation of winegrowers to be members of a union, §§ 53 and 65).

142. The obligation to contribute financially to an association, without formal membership, can resemble an important feature in common with that of joining an association and can constitute an interference with the negative aspect of the right to freedom of association (*Vörður Ólafsson*, § 48, concerning liability of a non-member to pay contribution to a private industrial federation; *Geotech Kancev GmbH v. Germany*, § 53, concerning an obligation of a non-member to contribute financially to a fund set up by private associations).

## D. Restrictions on freedom of association

143. Article 11 safeguards associations against unjustified State interference which commonly involves a refusal of registration or dissolution of an association, but may also take other forms hampering an association from carrying out its activities (e.g. through inspections or restrictions on financing) (see *Yordanovi v. Bulgaria*, §§ 62-63, for an overview of various forms of restrictions).

144. An interference with the right to freedom of association is justified if it satisfies the requirements of paragraph 2 of Article 11, that is, it was “prescribed by law”, pursued one or more legitimate aims and was “necessary in a democratic society”.

### 1. Prescribed by law

145. The expression “prescribed by law” requires firstly that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and foreseeable as to its effects. A law is “foreseeable” if it is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct (*N.F. v. Italy*, §§ 26 and 29). For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. The law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (*Maestri v. Italy* [GC], § 30).

146. The Court found that the condition of foreseeability was not satisfied where a judge could not realise that his membership in a Masonic lodge could lead to a disciplinary sanction being imposed on him (*N.F. v. Italy*, §§ 30-32; *Maestri v. Italy* [GC], §§ 43-42).

147. In *Koretskyy and Others v. Ukraine*, the authorities had refused to register a non-governmental association. The Court considered that the provisions of the domestic law regulating the registration of associations were too vague to be sufficiently “foreseeable” and granted an excessively wide margin of discretion to the authorities to decide whether a particular association could be registered (§ 48).

148. An issue with the “quality of law” requirement arose also in *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, where an association was dissolved on the basis of legislation which was couched in general terms and appeared to give a wide discretion to the Ministry of Justice to intervene in any matter related to an association’s existence, including its internal management (§§ 61-64).

149. In assessing the lawfulness of an interference, and in particular the foreseeability of the domestic law in question, the Court has regard both to the text of the law and the manner in which it was applied and interpreted by the domestic authorities (*Jafarov and Others v. Azerbaijan*, §§ 70 and 85, concerning an unlawful refusal to register an association).

## 2. Legitimate aim

150. Any interference with the right to freedom of association must pursue at least one of the legitimate aims set out in paragraph 2 of Article 11: national security or public safety, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others. Exceptions to freedom of association must be narrowly interpreted, such that their enumeration is strictly exhaustive and their definition is necessarily restrictive (*Sidiropoulos and Others v. Greece*, § 38).

## 3. Necessary in a democratic society

151. The notion of necessity includes two conditions: a) any interference must correspond to a “pressing social need”, and b) the interference must be proportionate to the legitimate aim pursued.

152. The term “necessary” does not have the flexibility of such expressions as “useful” or “desirable”. Exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. It is in the first place for the national authorities to assess whether there is a “pressing social need” to impose a particular restriction. The Court’s task is not to substitute its own view for that of the national authorities, but to review under the Convention decisions they delivered in the exercise of their discretion.

153. This does not mean that the Court’s supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith. It must look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (*Gorzelik and Others v. Poland* [GC], §§ 95-96; *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, § 49; *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, §§ 79-80).

### a. Extent of the Court’s review

154. The intensity of the Court’s scrutiny depends on the type of association and the nature of its activities. In view of the difference in the importance for a democracy between a political party and a non-political association, only the former is subject to the most rigorous scrutiny of the necessity of a restriction on the right to associate (*Vona v. Hungary*, § 58; *Les Authentiks and Supras Auteuil 91 v. France*, nos. 4696/11 and 4703/11, §§ 74 and 84, 27 October 2016). The national authorities benefit from a broader margin of appreciation in their assessment of the necessity of interference also in cases of incitement to violence against an individual, a representative of the State or a section of the population (*Les Authentiks and Supras Auteuil 91 v. France*, § 84; *Ayoub and Others v. France*, § 121). The Court has also recognised that an association whose leaders put forward a policy which does not respect the rules of democracy or which is aimed at its destruction and the flouting of the rights and freedoms recognised in a democracy can be subject to penalties (*Zehra Foundation and Others v. Turkey*, § 54). The State’s power to protect its institutions and citizens from associations that might jeopardise them must however be used sparingly (*Magyar Keresztény Mennonita Egyház and Others*, § 79).

### b. Severity of interference and the requirement of proportionality

155. The degree of interference cannot be considered in the abstract and must be assessed in the particular context of the case.

156. A *criminal conviction* represents one of the most serious forms of interference with the right to freedom of association, one of whose objectives is the protection of opinions and the freedom to express them, especially where political parties are concerned (*Yordanovi v. Bulgaria*, § 75, where the Court found unnecessary the institution of criminal proceedings against the applicants for attempting to set up a political party on a religious basis).

157. While States are entitled to require organisations seeking official registration to comply with reasonable legal formalities, such requirement is always subject to the condition of proportionality (*The United Macedonian Organisation Ilinden and Others v. Bulgaria (no. 2)*, § 40).

158. The *refusal to register an association* is a radical measure as it prevents the association from even commencing any activity (*Zhechev v. Bulgaria*, § 58; *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, § 80; *Bozgan v. Romania*, no. 35097/02, § 27, 11 October 2007).

159. The possibility for an association to re-apply for registration is a factor which may be taken into account in assessing the proportionality of the interference (*The United Macedonian Organisation Ilinden and Others v. Bulgaria (no. 2)*, § 30).

160. The refusal of registration of an association on account of its name being misleading and defamatory does not constitute a particularly severe interference; it is not disproportionate to require the applicants to change the proposed name (*APEH Üldözötteinek Szövetsége, Iványi, Róth and Szerdahelyi v. Hungary* (dec.); *W.P. and Others v. Poland* (dec.)).

161. States have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation (*Sidiropoulos and Others v. Greece*, § 40; *Moscow Branch of the Salvation Army v. Russia*, § 59). In the event of non-compliance by an association with reasonable legal formalities relating to its establishment, functioning or internal organisational structure, the States’ margin of appreciation may include a right to interfere - subject to the condition of proportionality – with freedom of association (*Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, § 72).

162. While it is legitimate for States to introduce certain minimum requirements as to the role and structure of an association’s governing bodies, the authorities should not intervene in the *internal organisational functioning of associations* to such a far-reaching extent as to ensure observance of

every single formality set out in an association’s charter (*Tebieti Mühafize Cemiyyeti and Israfilov*, § 78).

163. *Dissolution of an association* is a harsh measure entailing significant consequences, which may be taken only in the most serious of cases (*Association Rhino and Others v. Switzerland*, § 62, 11 October 2011; *Vona v. Hungary*, § 58; *Les Authentiks and Supras Auteuil 91 v. France*, § 84). States have a heightened duty to provide reasons justifying such a measure (*Adana TAYAD v. Turkey*, § 35). A dissolution order which is not based on acceptable and convincing reasons is liable to have a chilling effect on the applicant association and its individual members as well as on human rights organisations generally (*ibid.*, § 36).

While both the refusal to register an association and its dissolution are radical in their effects, the latter is a particularly far-reaching measure that could be justified only in strictly limited circumstances. The former has more limited consequences and can more easily be remedied through a fresh application for registration (*The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, § 94).

164. Where dissolution of an association is the only sanction available under the domestic law regardless of the gravity of the breach in question, greater flexibility in choosing a more proportionate sanction could be achieved by introducing into the law less radical alternative sanctions, such as a warning, a fine or withdrawal of tax benefits (*Tebieti Mühafize Cemiyyeti and Israfilov*, § 82; *Jehovah’s Witnesses of Moscow and Others v. Russia*, no. 302/02, § 159).

165. The mere failure to respect certain legal requirements on internal management of non-governmental organisations cannot be considered such serious misconduct as to warrant outright dissolution (*Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, § 82). However, where a public interest association is no longer capable of functioning in conformity with its aims for lack of financial means, its dissolution can be justified (*MİHR Foundation v. Turkey*, §§ 41-43). Even though dissolving an association on grounds of bankruptcy or prolonged inactivity may be regarded as pursuing a legitimate aim under Article 11 § 2, the decisions of the domestic authorities must be based on an acceptable assessment of the relevant facts (*Croatian Golf Federation v. Croatia\**, §§ 96 and 100).

166. In order to satisfy the proportionality principle in cases of dissolution, the authorities must show that there are no other means of achieving the same aims that would interfere less seriously with the right of freedom of association (*Adana TAYAD v. Turkey*, § 36; *Association Rhino and Others*, § 65; *Magyar Keresztény Mennonita Egyház and Others*, § 96). The Court has however recognised that there may be cases in which the choice of measures available to the authorities for responding to a “pressing social need” in relation to the perceived harmful consequences linked to the existence or activities of an association is unavoidably limited (*Gorzelik and Others v. Poland* [GC], § 105; *Ayoub and Others v. France*, §§ 119-120).

167. States are entitled to take *preventive measures* to protect democracy vis-à-vis both political parties and non-party entities. They cannot be required to wait until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention. Where the danger of that policy has been sufficiently established and imminent, a State may reasonably forestall the execution of such a policy before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country’s democratic regime (*Refah Partisi (the Welfare Party) and Others*, § 102; *Herri Batasuna and Batasuna*, § 81). Similarly, preventive measures can be applied to non-party entities, if a sufficiently imminent prejudice to the rights of others threatens to undermine the fundamental values of a democratic society (*Vona v. Hungary*, § 57).

168. For example, the Court has found the dissolution of a party or another association justified where it:



- strived for a State based on Sharia (*Refah Partisi (The Welfare Party) and others v. Turkey*; *Zehra Foundation and Others v. Turkey*; *Kalifatstaat v. Germany* (dec.);
- had links with a terrorist organisation (*Herri Batasuna and Batasuna v. Spain*);
- was involved in anti-Roma rallies and paramilitary parading (*Vona v. Hungary*);
- was involved in repeated acts of violence related to football matches (*Les Authentiks and Supras Auteuil 91 v. France*);
- had the characteristics of a private militia and was engaged in violence and public-order disturbances (*Ayoub and Others v. France*).

## E. Particular types of associations

169. Although Article 11 does not exclude any category of associations from its protection, the associations which prominently figure in the Court’s case-law are political parties, minority associations and religious associations, as key players in a democratic society. Trade unions, as the only type of association expressly mentioned in Article 11, will be treated separately in Part 3 below, because of their specific features and role.

### 1. Political parties

170. In view of the essential role of political parties in ensuring pluralism and the proper functioning of democracy, any measure taken against them affects both freedom of association and, consequently, democracy in the State concerned (*Republican Party of Russia v. Russia*, § 78). Therefore, the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties’ freedom of association (*United Communist Party of Turkey and Others v. Turkey*, § 46). However, a State may be justified under its positive obligations under Article 1 of the Convention in imposing on political parties the duty to respect and safeguard the rights and freedoms guaranteed by the Convention and the obligation not to put forward a political programme in contradiction with the fundamental principles of democracy (*Refah Partisi (The Welfare Party) and others v. Turkey*, § 103).

#### a. Refusal of registration and dissolution

171. Drastic measures, such as the dissolution of an entire political party or the refusal to register a party, may be taken only in the most serious cases (*Herri Batasuna and Batasuna*, § 78; *Linkov v. the Czech Republic*, no. 10504/03, § 45, 7 December 2006). These cases are those which endanger political pluralism or fundamental democratic principles (*Party for a Democratic Society (DTP) and Others v. Turkey*, § 101).

172. The Court has set out two conditions on which a political party may promote a change in the law or the legal and constitutional structures of the State: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles. Consequently, a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention’s protection against penalties imposed on those grounds (*Yazar and Others v. Turkey*, § 49).

173. An essential factor to be taken into consideration is whether a party’s programme contains a call for the use of violence, an uprising or any other form of rejection of democratic principles (*Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, § 54; *Freedom and Democracy Party (ÖZDEP) v. Turkey*, § 40). The programme of a political party however is not the sole criterion for determining its objectives and intentions; the content of the programme must be compared with the actions of the party’s leaders and the positions they defend. Taken together, these acts and stances

may be relevant in proceedings for the dissolution of a political party, as they can disclose its aims and intentions (*Refah Partisi (the Welfare Party) and Others*, § 101; *Herri Batasuna and Batasuna*, § 80).

174. In examining whether the refusal to register a political party or its dissolution on account of a risk of democratic principles being undermined met a “pressing social need”, the Court takes into account the following points: (i) whether there was plausible evidence that the risk to democracy was sufficiently imminent; (ii) whether the leaders’ acts and speeches taken into consideration in the case under review were imputable to the political party concerned; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a “democratic society” (*Refah Partisi (the Welfare Party) and Others v. Turkey*, § 104; *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, § 46).

175. In the case of *Refah Partisi (the Welfare Party) and Others v. Turkey*, the party had been dissolved by the Constitutional Court on the ground that it had become a “centre of activities against the principle of *secularism*”. In finding no violation of Article 11, the Court considered that the acts and speeches of Refah’s members and leaders had revealed the party’s long-term policy of setting up a regime based on sharia within the framework of a plurality of legal systems and that Refah had not excluded recourse to force in order to implement its policy. Given that those plans were incompatible with the concept of a “democratic society” and that the party had real opportunities of putting them into practice, the decision of the Constitutional Court might reasonably be considered to have met a “pressing social need”.

176. The Court also found no breach of Article 11 in the case of *Herri Batasuna and Batasuna v. Spain* where the applicant parties had been dissolved on the ground that they pursued a strategy of ‘tactical separation’ through *terrorism* and that there were significant similarities between them and the terrorist organisation ETA. The Court saw no reason to depart from the findings of the Spanish courts. In view of the situation that had existed in Spain for many years with regard to terrorist attacks, the links between the applicant parties and ETA could objectively be considered as a threat to democracy. Furthermore, the acts and speeches imputable to the applicant parties created a clear image of the social model that was envisaged and advocated by them, which was in contradiction with the concept of a “democratic society” and presented a considerable threat to Spanish democracy. Accordingly, the sanction imposed on the applicants corresponded to a “pressing social need” and was proportionate to the legitimate aim pursued.

177. In the absence of evidence of undemocratic intentions in the party’s programme or activities, drastic measures taken in respect of political parties have led the Court to find violations of Article 11.

178. In *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, where the authorities had refused registration of a party of *Communists*, the Court did not accept the Government’s argument that Romania could not allow the emergence of a new communist party to form the subject of a democratic debate. While it was prepared to take into account Romania’s experience of totalitarian communism prior to 1989, it considered that that context could not by itself justify the need for the interference, especially as communist parties adhering to Marxist ideology exist in a number of countries. As there was nothing in the party’s programme that could be considered a call for the use of violence or any other form of rejection of democratic principles or for the “dictatorship of the proletariat”, the programme was not incompatible with a “democratic society”.

179. The Court came to a similar conclusion in *Tsonev v. Bulgaria*, where the authorities had refused to register the Communist Party of Bulgaria, citing formal deficiencies in the registration documents and the alleged dangers stemming from the party’s goals and declarations. The Court found no indication that the party was seeking, despite its name, to establish the domination of one social class over the others. Nor was there any evidence that in choosing to include the word

“revolutionary” in the preamble to its constitution that it had opted for a policy that represented a real threat to the Bulgarian State. Moreover, there was nothing in the party’s declarations to show that its aims were undemocratic or that it intended to use violence to attain them.

180. By contrast, in *Ignatencu and the Romanian Communist Party v. Romania*, the refusal to register the applicant party was found to be justified. As the party claimed to be a successor of the Communist Party that had ruled the country during the period of totalitarian communism, the authorities had sought to prevent a possible abuse by the party of its position and to protect the rule of law and the fundamental principles of democracy. The Court considered that in the particular context of the case the reasons given by the authorities for the refusal of the party’s registration were relevant and sufficient and that the measure was proportionate to the legitimate aim of protecting national security and the rights and freedoms of others.

181. It should be noted that a political party’s choice of name cannot in principle justify a measure as drastic as dissolution, in the absence of other relevant and sufficient circumstances (*United Communist Party of Turkey and Other v. Turkey*, § 54, where one of the grounds for dissolving the party was that it had incorporated the word “communist” into its name).

182. In a number of cases, the Court has found a breach of Article 11 where a party’s programme was seen by the authorities as undermining the territorial integrity of the State and encouraging *separatism* for a population group. In its view, there can be no justification for hindering a political group that complies with fundamental democratic principles solely because it has criticised the country’s constitutional and legal order and sought a public debate in the political arena (*United Communist Party of Turkey and Other v. Turkey*, § 57). It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself (*Socialist Party and Others v. Turkey*, § 47; *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], § 41).

183. The mere fact that a political party calls for autonomy or even requests secession of part of the country’s territory is not a sufficient basis to justify its dissolution on national security grounds. In a democratic society based on the rule of law, political ideas which challenge the existing order without putting into question the tenets of democracy, and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through participation in the political process (*The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, § 61).

184. States are entitled – subject to the condition of proportionality – to require political parties to comply with *reasonable legal formalities* regarding their formation (*The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, § 83). In *Republican Party of Russia v. Russia*, the Court found that the applicant party’s dissolution for failure to comply with the requirements of minimum membership and regional representation was disproportionate to the legitimate aims cited by the Government. Even though the requirement for political parties to have a minimum number of members was not uncommon in Council of Europe member States, the threshold set under Russian law, which in 2001 had jumped from 10,000 to 50,000 members, was the highest in Europe. The Court considered that such a radical measure as dissolution on a formal ground, applied to a long-established and law-abiding political party, could not be considered “necessary in a democratic society”. A minimum membership requirement would be justified only if it allowed the unhindered establishment and functioning of a plurality of political parties representing the interests of various, even minor, population groups and ensuring them access to the political arena (§§ 119-120).

185. As regards the requirement of regional representation, its rationale was to prevent the establishment and participation in elections of regional parties, which were a threat to the territorial integrity of the country. In the Court’s opinion, there were means of protecting Russia’s laws, institutions and national security other than a sweeping ban on the establishment of regional parties which was introduced only in 2001. General restrictions on political parties became more difficult to



justify with the passage of time. Account had to be taken of the actual programme and conduct of each political party rather than a perceived threat posed by a certain category or type of parties (§§ 122 and 130).

## **b. Financing and inspections**

186. The Court has acknowledged the necessity of supervising political parties' financial activities for purposes of accountability and transparency, which serve to ensure public confidence in the political process. In view of the primordial role played by political parties in the proper functioning of democracies, the general public may be deemed to have an interest in their being monitored and any irregular expenditure being sanctioned, particularly as regards political parties that receive public funding (*Cumhuriyet Halk Partisi v. Turkey*, § 69).

187. Member States enjoy a relatively wide margin of appreciation regarding how they will inspect political parties' finances and the sanctions they will impose for irregular financial transactions (*Cumhuriyet Halk Partisi v. Turkey*, § 70).

188. Nevertheless, any legal regulations governing the inspection of political parties' expenditure, must be couched in terms that provide a reasonable indication as to how those provisions will be interpreted and applied (*Cumhuriyet Halk Partisi v. Turkey*, § 106).

189. The financial inspection should never be used as a political tool to exercise control over political parties, especially on the pretext that the party is publicly financed. In order to prevent the abuse of the financial inspection mechanism for political purposes, a high standard of "foreseeability" must be applied with regard to laws that govern the inspection of the finances of political parties, in terms of both the specific requirements imposed and the sanctions that the breach of those requirements entails (*Cumhuriyet Halk Partisi v. Turkey*, § 88).

190. Prohibiting political parties from receiving funds from foreign sources is not in itself incompatible with Article 11 of the Convention. This matter falls within the margin of appreciation of States, which remain free to determine which sources of foreign funding may be received by political parties. The prohibition on the funding of political parties by foreign States is however necessary for the preservation of national sovereignty (*Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, § 47).

191. The States' margin of appreciation may include a right to interfere with a party's internal organisation and functioning in the event of non-compliance with reasonable legal formalities. However, the authorities should not intervene to such a far-reaching extent as to ensure observance by a party of every single formality provided by its own charter. It should be primarily up to the party itself and its members, and not the public authorities, to ensure that formalities are observed in the manner specified in its articles of association (*Republican Party of Russia*, §§ 87-88, where the authorities' refusal to amend the State Register on the grounds of a breach of the party's internal procedure was found by the Court to be lacking a sufficient legal basis and not necessary in a democratic society).

192. The Court has found no justification for subjecting political parties to frequent and comprehensive checks on the membership situation and a constant threat of dissolution on formal grounds (§§ 115-116).

## **2. Minority associations**

193. The Court has recognised that freedom of association is particularly important for persons belonging to minorities, including national and ethnic minorities. Indeed, forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights (*Gorzelik and Others v. Poland* [GC], § 93).

194. The existence of minorities and different cultures in a country is a historical fact that a democratic society has to tolerate, and even protect and support, according to the principles of international law (*Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, § 59).

195. The preservation and development of a minority’s culture and mention of the consciousness of belonging to a minority cannot be said to constitute a threat to “democratic society”, even though it may provoke tensions (*Ouranio Toxo and Others v. Greece*, § 40). The emergence of tensions is one of the unavoidable consequences of pluralism, which is built on the genuine respect for diversity and the dynamics of ethnic and cultural identities (*ibid.*, § 35). The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (*Zhdanov and Others v. Russia*, § 163).

196. Territorial integrity, national security and public order are not threatened by the activities of an association whose aim is to promote a region’s culture, even supposing that it also aims partly to promote the culture of a minority (*Tourkiki Enosi Xanthis and Others v. Greece*, § 51).

197. The refusal of registration of an association asserting minority consciousness on the basis of mere suspicion as to the intentions of the association’s founders to undermine the country’s territorial integrity has been found by the Court disproportionate to the aim of protecting national security.

198. In *Sidiropoulos and Others v. Greece*, the domestic courts refused to register a Macedonian cultural association on the grounds that it intended to undermine the country’s territorial integrity. The Court found the association’s aims – the preservation and development of the traditions and culture of the Macedonian minority - perfectly legitimate. In its view, the inhabitants of a region in a country are entitled to form associations in order to promote the region’s special characteristics. The statement of the national courts that the association represented a danger to Greece’s territorial integrity had been based on a mere suspicion. Should the association, once registered, engage in activities incompatible with its declared aims or the law, it was open to the authorities to dissolve it. Consequently, the refusal to register the applicants’ association was disproportionate to the objectives pursued (§§ 44-47).

199. Similar considerations led the Court to find a breach of Article 11 where the authorities had refused to register an association of a Muslim minority (*Bekir-Ousta and Others v. Greece*, § 42-44; *National Turkish Union Kungyun v. Bulgaria*, §§ 44- 45). There was nothing to suggest that the associations advocated the use of violence or anti-democratic means.

200. In any event, the expression of separatist views and calls for autonomy or territorial changes do not in themselves amount to a threat to a country’s territorial integrity and national security (*The United Macedonian Organisation Ilinden and Others v. Bulgaria*, § 76). Nor can such a threat be implied by the use of certain words in an association’s name (*National Turkish Union Kungyun v. Bulgaria*, § 45).

201. By contrast, States have considerable latitude to establish the criteria for participation in elections. For example, a refusal to create a legal entity which would have become entitled to stand for election could be regarded as being necessary in a democratic society where the individuals were otherwise not prevented from forming an association to express and promote the distinctive features of a minority.

202. In *Gorzelik and Others v. Poland* [GC], the authorities refused to register an association characterising itself as an organisation of the Silesian national minority. They considered that the Silesians were not a national minority and registering the association as an “organisation of a national minority” would grant it electoral privileges which would place it at an advantage in relation to other ethnic organisations. The Court accepted that the national authorities had not overstepped their margin of appreciation in considering that there had been a pressing social need at the moment of registration to regulate the free choice of an association to call itself an “organisation of

a national minority”, in order to protect the existing democratic institutions and election procedures in Poland. The refusal had not been disproportionate to the legitimate aims pursued as it was mainly concerned with the label which the association could use in law, rather than with its ability to act collectively in a field of mutual interest (§§ 103-106).

203. In *Artyomov v. Russia* (dec.), the Court found justified the refusal to register as a political party an association openly declaring affiliation with a particular ethnic group (“Russian All-Nation Union”). The authorities had not prevented the applicant from forming an association to express and promote the specific aims embraced by it, but from creating a legal entity which, following its registration, would have become entitled to stand for election. In view of the principle of respect for national specificity in electoral matters, the Court did not find fault with the conclusions of the national courts that in modern-day Russia it would be perilous to foster electoral competition between political parties based on ethnic or religious affiliation.

204. The association’s name cannot, by itself, justify its dissolution, even if the name is liable to arouse hostile sentiments in the majority of the population, but where there is no concrete evidence of a real threat to public order (*Association of Citizens “Radko” and Paunkovski v. the former Yugoslav Republic of Macedonia*, § 75, concerning dissolution of an association which denied the existence of Macedonian ethnicity).

205. An application for an association’s dissolution for supporting the right to education in a mother tongue other than the national language was found to be in breach of Article 11 in *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*. Although the issue was capable of upsetting certain convictions of the majority population, the proper functioning of democracy required public debate in order to help find solutions to questions of general political or public interest. In the Court’s view, the aim of developing the culture of nationals having a mother tongue other than Turkish by providing education in that mother tongue, was not in itself incompatible with national security and did not represent a threat to public order (§§ 55-59).

206. Freedom of association involves the right of everyone to express, in a lawful context, their beliefs about their ethnic identity. However shocking and unacceptable certain views or words used might appear to the authorities, their dissemination should not automatically be regarded as a threat to public policy or to the territorial integrity of a country (*Tourkiki Enosi Xanthis and Others v. Greece*, § 51, where the first applicant association was dissolved, inter alia, for its views regarding minorities).

### 3. Religious associations

207. The right of believers to freedom of religion, which includes the right to manifest one’s religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society. The State’s duty of neutrality and impartiality excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (*Moscow Branch of the Salvation Army v. Russia*, §§ 58 and 92).

208. Where the organisation of the religious community is at issue, a refusal to recognise it also constitutes interference with the applicants’ right to freedom of religion under Article 9 of the Convention (*Moscow Branch of the Salvation Army*, § 71).<sup>4</sup>

209. However, there is no right under Article 11 in conjunction with Article 9 for religious organisations to have a specific legal status. Articles 9 and 11 of the Convention only require the

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4. See the *Guide on Article 9 of the Convention* for a detailed overview concerning the recognition, registration and dissolution of religious associations.

State to ensure that religious communities have the possibility of acquiring legal capacity as entities under the civil law; they do not require that a specific public-law status be accorded to them (*Magyar Keresztény Mennonita Egyház and Others v. Hungary*, § 91).

210. Particularly weighty and compelling reasons are required for refusing to re-register a religious community that has existed for many years (*Church of Scientology Moscow v. Russia*, § 96; *Moscow Branch of the Salvation Army*, § 96; *Jehovah's Witnesses of Moscow v. Russia*, § 180).

211. When the reasons for refusing registration have had no legal or factual basis, the Court has found that the authorities did not act in good faith and neglected their duty of neutrality and impartiality vis-à-vis the applicant's religious community (*Moscow Branch of the Salvation Army*, § 97; *Jehovah's Witnesses of Moscow v. Russia*, § 181; *Church of Scientology Moscow v. Russia*, § 97).

212. There is an obligation on the State's authorities to keep the time during which a religious community waits for conferment of legal personality reasonably short (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 79). However, the stipulation of a reasonable minimum period may be necessary in the case of newly established and unknown religious groups (*Magyar Keresztény Mennonita Egyház and Others v. Hungary*, § 111).

213. Denial of registration on the basis of the legal provision preventing all religious groups that had not existed in a given territory for at least fifteen years from obtaining legal-entity status is not justified (*Kimlya and Others v. Russia*, § 98-101).

214. The refusal of registration for failure to present information on the fundamental principles of a religion may be justified in the particular circumstances of a case by the need to determine whether the denomination seeking recognition presents any danger for a democratic society (*Cârnuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova* (dec.)).

215. It is legitimate to require an association seeking registration to distinguish itself from already existing associations in order to avoid confusion in the eyes of the public (*Metodiev and Others v. Bulgaria*, § 43; *“Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)” v. the former Yugoslav Republic of Macedonia*, § 111; *Bektashi Community and Others v. the former Yugoslav Republic of Macedonia*, § 71). However, the alleged lack of precision in the description of the religious association's beliefs and rites in its constitution has been found not capable of justifying the denial of the association's registration (*Metodiev and Others v. Bulgaria*, §§ 44-46).

216. The Contracting States have a margin of appreciation in choosing the forms of cooperation with the various religious communities (*İzzettin Doğan and Others v. Turkey* [GC], § 112). The freedom afforded to States in regulating their relations with churches also includes the possibility of modifying the afforded privileges by means of legislative measures. However, this freedom cannot extend so far as to encroach upon the neutrality and impartiality required of the State in this field (*Magyar Keresztény Mennonita Egyház and Others v. Hungary*, § 111).

217. Wherever the State, in conformity with Articles 9 and 11, decides to retain a system in which the State is constitutionally mandated to adhere to a particular religion, as is the case in some European countries, and it provides State benefits only to some religious entities and not to others, this must be done on the basis of reasonable criteria related to the pursuance of public interests (*Magyar Keresztény Mennonita Egyház and Others*, § 113).

## F. Positive obligations

218. A genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere (*Ouranio Toxo and Others v. Greece*, § 37). The national authorities may in certain circumstances be obliged to intervene in the relationship between private individuals by taking reasonable and appropriate measures to secure the effective enjoyment of the

right to freedom of association (*Wilson, National Union of Journalists and Others v. the United Kingdom*, § 41).

219. Whether the case is analysed in terms of a positive duty on the State or in terms of interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole (*Sørensen and Rasmussen v. Denmark* [GC], § 58).

220. It is incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to promote. Their members must be able to hold meetings without having to fear that they will be subjected to physical violence by their opponents. Such a fear would be liable to deter other associations or political parties from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right of association (*Ouranio Toxo and Others v. Greece*, § 37; *Zhdanov and Others v. Russia*, § 162).

221. The positive obligation to secure the effective enjoyment of the right to freedom of association is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation (*Bączkowski and Others v. Poland*, § 64).

222. In *Ouranio Toxo and Others v. Greece*, there was a breach of Article 11 on account, inter alia, of the omissions of the Greek authorities. In particular, the State had failed to take adequate measures to avoid or contain the violence which had broken out after a party defending the interests of the Macedonian minority had put out a sign at the party headquarters with the party's name written in Macedonian. The police could have reasonably foreseen the danger of violence against members of the party and clear violations of freedom of association, but had not intervened. Moreover, the public prosecutor had not considered it necessary to start an investigation in the wake of the incidents to determine responsibility. The Court emphasised that in cases of interference with freedom of association by acts of private individuals, the competent authorities have an additional obligation to undertake an effective investigation (§ 43).

223. The refusal to register associations set up to promote the rights of LGBT people on the ground, inter alia, that the associations might potentially become victims of aggression by person who disapproved of homosexuality was found to be in breach of Article 11 in *Zhdanov and Others v. Russia*. The Court considered that it was the duty of the Russian authorities to take reasonable and appropriate measures to enable the associations to carry out their activities without having to fear physical violence. Although the authorities had a wide discretion in the choice of means which would have enabled the associations to function without disturbance, they had decided instead to remove the cause of tension and avert a risk of disorder by restricting the freedom of association (§ 164). The refusal to register the associations also amounted to discrimination on grounds of sexual orientation, in breach of Article 14.

224. There is a positive obligation on the authorities to provide judicial review and safeguards against dismissal by private employers where the dismissal is motivated solely by the fact that an employee belongs to a particular political party (*Redfearn v. the United Kingdom*, § 43, where an employee was prevented from bringing a court action for unfair dismissal on the grounds of political affiliation during a one-year qualifying period).

225. States are required under Articles 11 and 14 of the Convention to set up a judicial system that ensures real and effective protection against discrimination on the ground of association membership (*Danilenkov and Others v. Russia*, § 124, where the domestic judicial authorities had refused to entertain the applicants' complaints on the grounds that the existence of discrimination could be established in criminal proceedings only).

226. There is a positive obligation incumbent on the State to put in place a system of recognition which facilitates the acquisition of legal personality by religious communities. Defining the notions of religion and religious activities have direct repercussions on the individual's exercise of the right to freedom of religion (*Magyar Keresztény Mennonita Egyház and Others*, § 90).

227. It is the duty of the Contracting State to organise its domestic state-registration system and take necessary remedial measures so as to allow the relevant authorities to comply with the time-limits imposed by its own law and to avoid any unreasonable delays in this respect (*Ramzanova and Others v. Azerbaijan*, § 65, where the Ministry of Justice had breached the statutory time-limits for the association's registration and the domestic law did not afford sufficient protection against such delays).



### III. Freedom to form and join trade unions

#### A. Scope of trade union rights

228. Article 11 presents trade-union freedom as one form or a special aspect of freedom of association, not as an independent right (*National Union of Belgian Police v. Belgium*, § 38; *Manole and “Romanian Farmers Direct” v. Romania*, § 57). Therefore, the elements of the freedom of association outlined above as well as the conditions for interfering with that freedom under Article 11 § 2 apply equally to trade unions in so far as relevant.

229. Trade-union freedom is an essential element of social dialogue between workers and employers, and hence an important tool in achieving social justice and harmony (*Sindicatul “Păstorul cel Bun” v. Romania* [GC], § 130).

230. Article 11 safeguards freedom to protect the occupational interests of trade-union members by trade-union action, the conduct and development of which the Contracting States must both permit and make possible (*Swedish Engine Drivers’ Union v. Sweden*, § 40; *Tüm Haber Sen and Çınar v. Turkey*, § 28). However, it does not guarantee trade unions or their members any particular treatment by the State. Under national law trade unions should be enabled, in conditions not at variance with Article 11, to strive for the protection of their members’ interests (*Sindicatul “Păstorul cel Bun” v. Romania* [GC], § 134). The words “for the protection of his interests” cannot be construed as meaning that only individuals and not trade unions may make a complaint under this provision (*Federation of Offshore Workers’ Trade Unions and Others v. Norway* (dec.)).

231. Workers’ representatives should as a rule, and within certain limits, enjoy appropriate facilities to enable them to perform their trade-union functions rapidly and effectively (*Sanchez Navajas v. Spain* (dec.)).

232. A policy restricting the number of organisations to be consulted by the Government is not incompatible with trade-union freedom (*National Union of Belgian Police v. Belgium*, §§ 40-41, where the applicant union was able to engage in other kinds of activity vis-à-vis the Government for the protection of the interests of its members).

233. Article 11 § 2 does not exclude any occupational group from the scope of that Article. At most the national authorities are entitled to impose “lawful restrictions” on certain of their employees in accordance with Article 11 § 2 (*Sindicatul “Păstorul cel Bun” v. Romania* [GC], § 145). Article 11 thus applies to everyone in an employment relationship (see *Sindicatul “Păstorul cel Bun” v. Romania* [GC], §§ 141 and 148, concerning members of the clergy; *Manole and “Romanian Farmers Direct” v. Romania*, § 62, as regards self-employed farmers).

234. The Convention makes no distinction between the functions of a Contracting State as holder of public power and its responsibilities as employer. Article 11 is accordingly binding upon the “State as employer”, whether the latter’s relations with its employees are governed by public or private law (*Schmidt and Dahlström v. Sweden*, § 33; *Tüm Haber Sen and Çınar v. Turkey*, § 29).

#### B. Essential elements and the Court’s approach

235. The right of association includes the following essential elements: the right to form or join a trade union, the prohibition of closed-shop agreements, the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members and, in principle, the right to bargain collectively with the employer (*Demir and Baykara v. Turkey* [GC], §§ 145 and 154; *Sindicatul “Păstorul cel Bun” v. Romania* [GC], § 135).

236. This list is non-exhaustive and subject to evolution depending on particular developments in labour relations. The Court will take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values (*Demir and Baykara v. Turkey* [GC], §§ 85 and 146; *Manole and “Romanian Farmers Direct” v. Romania*, § 67). It would be inconsistent with this method for the Court to adopt in relation to Article 11 an interpretation of the scope of freedom of association of trade unions that is much narrower than that which prevails in international law (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, § 76).

237. Two principles guide the Court’s approach to the substance of the right of association; firstly, the Court takes into consideration the totality of the measures taken by the State concerned in order to secure trade-union freedom, subject to its margin of appreciation; secondly, the Court does not accept restrictions that affect the essential elements of trade-union freedom, without which that freedom would become devoid of substance. While in principle States are free to decide what measures they wish to take in order to ensure compliance with Article 11, they are under an obligation to take account of the elements regarded as essential by the Court’s case-law (*Demir and Baykara v. Turkey* [GC], § 144).

## C. Refusal of registration

238. Although everyone in employment has the right to form a trade union, in certain situations the Court has found justified a refusal by the State to register a trade union.

239. In *Sindicatul “Păstorul cel Bun” v. Romania* [GC], an application for registration of a trade union formed by the priests of the Romanian Orthodox Church was refused by the national authorities for failure to comply with the requirement of obtaining the archbishop’s permission. In finding no violation of Article 11, the Court considered that the authorities had simply applied the principle of the autonomy of religious communities and declined to become involved in the organisation and operation of the Romanian Orthodox Church, thereby observing their duty of denominational neutrality under Article 9 of the Convention. The national authorities had to respect the opinion of religious communities on any collective activities of their members that might undermine their autonomy (§§ 159, 164-166).

240. In *Manole and “Romanian Farmers Direct” v. Romania*, a group of self-employed farmers were refused registration as a trade union, as that form of association in agriculture was only reserved for employees and members of cooperatives. The Court, taking into account the relevant international instruments, found that the exclusion of self-employed farmers from entitlement to form trade unions did not breach Article 11 of the Convention. Under the domestic legislation, the applicants had the right to form professional associations which enjoyed essential rights enabling them to defend their members’ interests in dealings with the public authorities, without needing to be established as trade unions.

## D. Sanctions and disincentives

241. An employee or worker should be free to join or not join a trade union without being sanctioned or subject to disincentives (*Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, § 39).

242. It is of the essence of the right to join a trade union that employees should be free to instruct the union to make representations to their employer or to take action in support of their interests. It is the role of the State to ensure that trade union members are not prevented or restrained from using the union to represent them (*Wilson, National Union of Journalists and Others v. the United Kingdom*, § 46, where employers used financial incentives to induce employees to surrender



important union rights, thereby undermining a trade union’s ability to strive for the protection of its members’ interests).

243. In order to guarantee meaningful and effective trade union rights, the national authorities must ensure that disproportionate penalties do not dissuade trade union representatives from seeking to express and defend their members’ interests (*Trade Union of the Police in the Slovak Republic and Others v. Slovakia*, § 55).

244. Criminal or disciplinary sanctions imposed on trade union members in connection with their activities are liable to deter them from legitimately participating in strikes or other actions in defence of their occupational interests, and have found to be unjustified (*Ognevenko v. Russia*, § 84; *Karaçay v. Turkey*, § 37; *Urcan and Others v. Turkey*, § 34; *Doğan Altun v. Turkey*, § 50).

## E. Right not to join a trade union

245. Although an obligation, imposed by law or an agreement, to join a particular trade union may not always be contrary to the Convention, a form of such an obligation which, in the circumstances of the case, strikes at the very substance of the freedom of association guaranteed by Article 11, will constitute an interference with that freedom (see *Young, James and Webster v. the United Kingdom*, § 55, for compulsion in the form of a threat of dismissal involving loss of livelihood; *Sigurður A. Sigurjónsson v. Iceland*, § 36, involving the risk of losing a professional licence).

246. The protection afforded by Article 11 does not extend only to those situations where the requirement to join a trade union is imposed after the recruitment of the individual or following the issue of a licence. An individual cannot be considered to have renounced his negative right to freedom of association in situations where, in the knowledge that trade union membership is a precondition of securing a job, he accepts an offer of employment notwithstanding his opposition to the condition imposed (*Sørensen and Rasmussen v. Denmark*, § 56). Acceptance of trade union membership as one of the terms of employment does not significantly alter the element of compulsion inherent in having to join a trade union against one’s will (*ibid.*, § 59).

247. Dismissal of a person as a result of his refusal to comply with the requirement to become a member of a particular trade union is a serious form of compulsion, striking at the very substance of the freedom of choice inherent in the negative right to freedom of association protected by Article 11 of the Convention (*Sørensen and Rasmussen v. Denmark*, § 61).

248. The use of closed-shop agreements in the labour market is not an indispensable tool for the effective enjoyment of trade union freedoms (*Sørensen and Rasmussen v. Denmark*, § 75).

## F. Trade unions’ right to regulate their internal affairs and choose their members

249. The right to form trade unions includes the right of trade unions to draw up their own rules, to administer their own affairs and to establish and join trade union federations (*Cheall v. the United Kingdom* (Commission decision)). Trade unions enjoy the freedom to set up their own rules concerning conditions of membership, including administrative formalities and payment of fees, as well as other more substantive criteria, such as the profession or trade exercised by the would-be member (*Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom*, § 38).

250. A trade union should be free to choose its members; there is no obligation under Article 11 for associations or organisations to admit whoever wishes to join. Where associations are formed by people, who, espousing particular values or ideals, intend to pursue common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their

membership (*Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom*, § 39). Trade unions are not bodies solely devoted to politically-neutral aspects of the well-being of their members, but are often ideological, with strongly held views on social and political issues (*ibid.*, § 50).

251. The right to join a union “for the protection of his interests” cannot be interpreted as conferring a general right to join the union of one’s choice irrespective of the rules of the union: in the exercise of their rights under Article 11 § 1 unions must remain free to decide, in accordance with union rules, questions concerning admission to and expulsion from the union (*Cheall v. the United Kingdom*, Commission decision; *Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom*, § 39, where a trade union was prevented from expelling a member due to the latter’s membership of a political party advocating views incompatible with its own, in breach of Article 11).

252. However, different considerations may come into play where the association or trade union has public duties imposed on it or receives state funding, so that it may reasonably be required to take on members to fulfil wider purposes than the achievement of its own objectives (*Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom*, § 40).

253. Nonetheless, for the right to join a union to be effective the State must protect the individual against any abuse of a dominant position by trade unions. Such abuse might occur, for example, where exclusion or expulsion was not in accordance with union rules or where the rules were wholly unreasonable or arbitrary or where the consequences of exclusion or expulsion resulted in exceptional hardship (*Cheall v. the United Kingdom* (Commission decision); *Johansson v. Sweden*, Commission decision; *Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom*, § 43).

## G. Right to bargain collectively

254. In *Demir and Baykara v. Turkey* [GC] of 2008 the Court reconsidered its case-law to the effect that the right to bargain collectively and to enter into collective agreements did not constitute an inherent element of Article 11 and it was not indispensable for the effective enjoyment of trade union freedom. Having regard to the developments in labour law and to the practice of Contracting States in such matters, it held that the right to bargain collectively with the employer had, in principle, become one of the essential elements of the “right to form and to join trade unions for the protection of [one’s] interests” set forth in Article 11 of the Convention, it being understood that States remained free to organise their system so as, if appropriate, to grant special status to representative trade unions (§§ 153-154).

255. The right to collective bargaining has not been interpreted as including a “right” to a collective agreement (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, § 85), or a right for a trade union to maintain a collective agreement on a particular matter for an indefinite period (*Swedish Transport Workers Union v. Sweden* (dec.)).

256. There is no requirement under the Convention that an employer enters into, or remains in, any particular collective bargaining arrangement or accede to the requests of a union on behalf of its members (*UNISON v. the United Kingdom* (dec.)).

257. A State’s positive obligations under Article 11 do not extend to providing for a mandatory statutory mechanism for collective bargaining (*Unite the Union v. the United Kingdom* (dec.), § 65 *in fine*; *Wilson, National Union of Journalists and Others v. the United Kingdom*, § 44).

258. The essence of a voluntary system of collective bargaining is that it must be possible for a trade union which is not recognised by an employer to take steps including, if necessary, organising industrial action, with a view to persuading the employer to enter into collective bargaining with it

on those issues which the union believes are important for its members' interests (*Wilson, National Union of Journalists and Others v. the United Kingdom*, § 46).

## H. Right to strike

259. The grant of a right to strike represents one of the most important of the means by which the State may secure a trade union's freedom to protect its members' occupational interests (*Schmidt and Dahlström v. Sweden*, § 36; *Wilson, National Union of Journalists and Others v. the United Kingdom*, § 45). The right is not absolute and may be subject to regulation under national law (*ibid.*; *Enerji Yapı-Yol Sen v. Turkey*, § 32). Restrictions imposed by a Contracting State on the exercise of the right to strike do not in themselves give rise to an issue under Article 11 of the Convention (*Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.)).

260. Although the right to take strike action has not yet been considered as an essential element of trade union freedom, strike action is clearly protected by Article 11 (*Association of Academics v. Iceland* (dec), §§ 24-27, providing an overview of the Court's case-law; *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, § 84). The Court has referred to a strike as the most powerful instrument available to a trade union to protect the occupational interests of its members (*Hrvatski liječnički sindikat v. Croatia*, § 49).

261. The prohibition of a strike must be regarded as a restriction on the trade union's power to protect the interests of its members and thus discloses a restriction on the freedom of association (*UNISON v. the United Kingdom* (dec.); *Hrvatski liječnički sindikat v. Croatia*, § 49; *Veniamin Tymoshenko and Others v. Ukraine*, § 77).

262. Secondary action (strike action against a different employer aimed at exerting indirect pressure on the employer involved in the industrial dispute) also constitutes part of trade-union activity and a statutory ban on such action interferes with a trade union's right under Article 11 (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, §§ 77-78).

263. While restrictions may be imposed on the right to strike of workers providing essential services to the population, a complete ban requires solid reasons from the State to justify its necessity (*Ognevenko v. Russia*, §§ 72-73, concerning a prohibition to strike imposed by law on certain categories of railway workers; *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.)), where the Court accepted the Government's reasons for stopping a strike of workers on oil drill platforms).

264. The right to strike does not imply the right to prevail (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, § 85).

265. The impact of any restriction on unions' ability to take strike action must not place their members at any real or immediate risk of detriment or of being left defenceless against future attempts to downgrade pay or other work conditions (*UNISON v. the United Kingdom* (dec.)).

## I. Positive obligations and margin of appreciation

266. The right to form and join trade unions protects, first and foremost, against State action (*Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom*, § 37). Although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights it protects, there may in addition be positive obligations on the State to secure the effective enjoyment of such rights (*Demir and Baykara v. Turkey* [GC], § 110).

267. The boundaries between the State's positive and negative obligations under Article 11 of the Convention do not lend themselves to precise definition but the applicable principles are similar. In

both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole (*Sindicatul “Păstorul cel Bun” v. Romania* [GC], § 132; *Tek Gıda İş Sendikası v. Turkey*, § 50).

268. In the area of trade-union freedom, in view of the sensitive character of the social and political issues involved in achieving a proper balance between the respective interests of labour and management, and given the high degree of divergence between the domestic systems in this field, the Contracting States enjoy a wide margin of appreciation as to how trade-union freedom and protection of the occupational interests of union members may be secured (*Vörður Ólafsson v. Iceland*, § 75; *Sindicatul “Păstorul cel Bun” v. Romania* [GC], § 133).

269. The breadth of the margin of appreciation depends on, among other things, the nature and extent of the restriction on the trade-union right at issue, the object pursued by the contested restriction, the competing rights and interests of other individuals in society who are liable to suffer as a result of the unrestricted exercise of that right and the degree of common ground between the member States of the Council of Europe or any international consensus reflected in the apposite international instruments (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, § 86).

270. If a legislative restriction strikes at the core of trade-union activity, a lesser margin of appreciation is to be recognised to the national legislature and more is required to justify the proportionality of the resultant interference, in the general interest, with the exercise of trade-union freedom. Conversely, if it is not the core but a secondary or accessory aspect of trade-union activity that is affected, the margin is wider and the interference is, by its nature, more likely to be proportionate as far as its consequences for the exercise of trade-union freedom are concerned (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, § 87; where the statutory ban on secondary strike action did go to the very substance of trade union freedom; see also *Tek Gıda İş Sendikası v. Turkey*, §§ 54-55, where large-scale dismissals of trade-union members struck at the very heart of the union’s activities).

271. In view of the wide variety of constitutional models governing relations between States and religious denominations in Europe, the State enjoys a wide margin of appreciation in this sphere, encompassing the right to decide whether or not to recognise trade unions that operate within religious communities and pursue aims that might hinder the exercise of such communities’ autonomy (*Sindicatul “Păstorul cel Bun” v. Romania* [GC], § 171).

272. The margin of appreciation has been considered reduced where the domestic law of a Contracting State permits the conclusion of closed-shop agreements between unions and employers which run counter to the freedom of choice of the individual inherent in Article 11 (*Sørensen and Rasmussen v. Denmark*, § 58) or where the interference with freedom of association is very far-reaching, such as the dissolution of a trade union (*Demir and Baykara v. Turkey* [GC], § 119; see also *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, § 86).

273. The State has a positive obligation to protect the individual against abuse of power by a trade union (*Cheall v. the United Kingdom*; *Johansson v. Sweden* (both Commission decisions)). While the State may intervene to protect a trade union member against measures taken against him by his union, it must strike a fair balance between the competing interests, its margin of appreciation playing only a limited role (*Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom*, §§ 45-49).

274. States have also a positive obligation to ensure effective judicial protection against discrimination on the ground of trade union membership (*Danilenkov and Others v. Russia*, §§ 124 and 136).

## IV. Restrictions on members of the armed forces, the police and the state administration

275. While the State is bound to respect the freedom of assembly and association of its employees, Article 11 § 2 *in fine* allows it to impose lawful restrictions on the exercise of these rights by members of its armed forces, police or administration (see *Demir and Baykara v. Turkey* [GC], § 96; *Tüm Haber Sen and Çınar v. Turkey*, § 29). The Court’s case-law to date has essentially concerned restrictions on the right of public servants to freedom of association rather than freedom of assembly.

276. The term “lawful” in the second sentence of Article 11 § 2 alludes to the same concept of lawfulness as that to which the Convention refers elsewhere when using the same or similar expressions, notably the expression “prescribed by law” found in the second paragraphs of Articles 9 to 11. The concept of lawfulness used in the Convention, apart from positing conformity with domestic law, also implies qualitative requirements in the domestic law such as foreseeability and, generally, an absence of arbitrariness (*Grande Oriente d’Italia di Palazzo Giustiniani v. Italy*, § 30; *Rekvényi v. Hungary* [GC], § 59).

277. The restrictions imposed on the three groups mentioned in Article 11 are to be construed strictly and should therefore be confined to the “exercise” of the rights in question. These restrictions must not impair the very essence of the right to organise (*Demir and Baykara v. Turkey* [GC], §§ 97 and 119).

278. Although the second sentence of Article 11 § 2 does not expressly refer to the requirement of necessity, the Court has found that lawful restrictions imposed on members of the armed forces, of the police or of the administration of the State must also meet a pressing social need and be “necessary in a democratic society ” (*Tüm Haber Sen and Çınar v. Turkey*, §§ 35-35; *Adefdromil v. France*, §§ 42-45; and *Trade Union of the Police in the Slovak Republic and Others v. Slovakia*, §§ 62 et seq.; compare and contrast with the earlier cases of *Council of Civil Service Unions v. the United Kingdom*, Commission decision, where the term “lawful” in the second sentence of Article 11 § 2 was found not to entail any requirement of proportionality, and *Rekvényi v. Hungary* [GC], § 61, where the question was left open).

### A. Administration of the state

279. The notion of “administration of the State” should be interpreted narrowly, in the light of the post held by the official concerned (*Grande Oriente d’Italia di Palazzo Giustiniani v. Italy*, § 31, where the offices concerned fell outside that notion as they were not part of the organisational structure of the regional authority; *Vogt v. Germany*, § 67, where the Court found it unnecessary to examine whether a teacher appointed to a permanent civil-service post fell within that notion as her dismissal for having persistently refused to dissociate herself from the German Communist Party was disproportionate to the legitimate aim pursued).

280. Municipal civil servants, who are not engaged in the administration of the State as such, cannot in principle be treated as “members of the administration of the State” and, accordingly, be subjected on that basis to a limitation of their right to organise and to form trade unions (*Demir and Baykara v. Turkey* [GC], § 97).

281. Since the role of civil servants in a democratic society is to assist the government in discharging its functions, the duty of loyalty and reserve assumes special significance for them. Such considerations apply equally to military personnel and police officers (*Trade Union of the Police in the Slovak Republic and Others v. Slovakia*, § 57).



Moreover, the freedom of association of civil servants can be restricted where it is deemed necessary to maintain their political neutrality (see *Ahmed and Others v. the United Kingdom*, §§ 53 and 63, where the Court found justified restrictions on the activities of senior local government officers within political parties of which they were members).

282. An absolute ban on forming trade unions imposed on civil servants is not compatible with Article 11 (*Tüm Haber Sen and Çınar v. Turkey*, §§ 36 and 40; *Demir and Baykara v. Turkey* [GC], § 120).

283. Although the principle of trade-union freedom could be compatible with the prohibition on the right to strike in respect of certain categories of public servants, this restriction cannot however extend to all public servants or to employees of State-run commercial or industrial concerns (*Enerji Yapı-Yol Sen v. Turkey*, § 32; *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain*, § 33).

284. Prohibiting members of a lawful association which is not suspected of undermining the constitutional structures from holding public offices is not justified under Article 11 § 2 (*Grande Oriente d'Italia di Palazzo Giustiniani v. Italy*, where freemasons were obliged to choose between their membership in a masonic lodge and applying for public office). Individuals should not be discouraged, for fear of having their applications for office rejected, from exercising their right of association on such occasions. Freedom of association is of such importance that it cannot be restricted, even in respect of a candidate for public office, so long as the person concerned does not himself commit any reprehensible act by reason of his membership of the association (§§ 25-26).

285. It is not incompatible with Article 11 to require public office holders to submit, in the interest of transparency, a declaration of membership of an association when it is intended to inform the public of possible conflicts of interest affecting public servants (*Siveri and Chiellini v. Italy* (dec.), where the applicant's dismissal for failure to submit the required declaration was considered to be justified).

286. Compulsory transfer of a civil servant to another town on account of his trade union membership does not fall within the scope of the proper running and management of the public service, and constitutes an unjustified interference with the civil servants' right to engage in trade-union activities (*Metin Turan v. Turkey*, §§ 30-31).

## B. The police

287. Members of the public are entitled to expect that in their dealings with the police they are confronted with politically neutral officers who are detached from the political fray. The desire to ensure that the crucial role of the police in society is not compromised through the corrosion of the political neutrality of its officers is one that is compatible with democratic principles (*Rekvényi v. Hungary* [GC], § 41). *The prohibition on membership of a political party* by police officers could thus be justified under Article 11 § 2 (*ibid.*, § 61).

288. Given their primordial role in ensuring internal order and security and in fighting crime, duties and responsibilities inherent in the position and role of police officers justify particular arrangements as regards the exercise of their *trade-union rights*. It is legitimate to require that police officers should act in an impartial manner when expressing their views so that their reliability and trustworthiness in the eyes of the public be maintained. Sanctioning trade union members to achieve this aim corresponds to a "pressing social need" (*Trade Union of the Police in the Slovak Republic and Others v. Slovakia*, §§ 67-70).

289. The *ban on strike* action imposed on a police trade union pursues the legitimate aim of preventing disorder, in view of the specific duties assigned to the police force and the potential consequences of interruption of its activities. The need for the police to provide a continuous service



and the fact that they are armed distinguishes them from other civil servants, justifying the restriction of their right to organise. The State is allowed a sufficiently wide margin of appreciation to regulate certain aspects of a police trade union's activities in the public interest, without however depriving the union of the core content of its rights under Article 11 (*Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain*, §§ 37-39).

## C. The armed forces

290. Given the role of the army in society, the Court has recognised that it is a legitimate aim in any democratic society to have a politically neutral army (*Erdel v. Germany* (dec.)).

291. Measures aimed at preserving the order and discipline necessary in the armed forces similarly pursue a legitimate aim. The concept of "order" as envisaged by Article 11 § 2, refers not only to public order but also to the order that must prevail within the confines of a specific social group, such as the armed forces, since disorder in that group can have repercussions on order in society as a whole (*Matelly v. France*, §§ 62 and 67; *Engel and Others v. the Netherlands*, § 98).

292. The Court has accepted that trade-union activity has to be adapted to take into account the specific nature of the armed forces' mission and that even significant restrictions can be imposed on the forms of action and expression of an occupational association and its members. However, such restrictions should not deprive them of the general right of association to defend their occupational and non-pecuniary interests (*Adefdromil v. France*, § 55; *Matelly v. France*, § 71).

293. A blanket ban on forming or joining a trade union by military personnel encroaches on the very essence of their freedom of association and is as such prohibited by the Convention (*Adefdromil v. France*, § 60; *Matelly v. France*, § 75).

## 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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