

THE FREEDOM OF ASSEMBLY AND ASSOCIATION UNDER THE ECHR WITH SPECIAL REGARD TO CENTRAL EUROPE



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Abstract

The freedom of assembly and association represents one of the foundations of every democratic society. State authorities have a duty to take all adequate measures in relation to lawful demonstrations or other forms of assembly in order to ensure their peaceful organisation and the security of citizens. The freedom of association also includes the right to form, join and refuse to join an organisation. This freedom is realized through political parties, trade unions, minority organisations, etc. These freedoms are not absolute and the States may impose certain restrictions on their enjoyment. These restrictions must be prescribed by law, which is necessary in a democratic society, and they must pursue a legitimate aim. The restrictions can be imposed for the protection of public order, rights and interests of others and they must be proportionate to the aims pursued. Moreover, these freedoms are closely related to other rights and freedoms enshrined in the Convention, like the freedom of expression, which also have a significant role in modern democratic societies.

Keywords: freedom of assembly, freedom of association, ECHR, human rights

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1. Introduction

Modern democratic society recognizes human rights and freedoms as one of the key elements of its very existence. In the second half of the 20th century, the international human rights treaties have become the foundations of internationalisation of human rights protection. The States have allowed a certain interference in their sovereignty by international courts and tribunals founded by the relevant Conventions. Among these human rights, the freedom of peaceful assembly and association appeared as one of the most important element of democratic society. It is guaranteed in international human rights instruments such as the Universal Declaration on Human Rights,¹ the International Covenant on Civil and Political Rights² and the International Covenant on Economic, Social and Cultural Rights.³ Also, certain regional human rights conventions envisage these freedoms. The most important is the European Convention on Human Rights and Fundamental Freedoms (hereinafter referred to as the “Convention”),⁴ but it is worth mentioning another European instrument proclaimed at the level of the European Union – the Charter of Fundamental Rights of the European Union (hereinafter referred to as the “Charter”).⁵ Also these freedoms are included in the American Convention of Human Rights and the African Charter on Human and Peoples’ Rights.⁶ The freedom of assembly and association is defined in a similar manner in these international instruments.⁷

1 United Nations, 1948, Article 20.

2 United Nations, 1966a, Articles 21 and 22.

3 United Nations, 1966b, Article 8.

4 Council of Europe, 1950, Article 11.

5 European Union, 2000, Article 12.

6 Organization of American States, 1969, Articles 15 and 16, African Union, 1981, Articles 10 and 11.

7 Article 11 of the Convention includes the definition that “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 [...]”. Article 12 of the Charter envisages that “Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right to everyone to form and to join trade unions for the protection of his or her interests.” In Article 21 of the International Covenant on Civil and Political Rights it is stated that “The right of peaceful assembly shall be recognized [...]” and in Article 22 “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests [...]”. In the American Convention on Human Rights, the freedom of assembly and the freedom of association are also regulated in two Articles. In Article 15 it is stated that “The right of peaceful assembly, without arms, is recognized [...]” and in Article 16 it is stated that “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes [...]”. The restrictions and limitations of these freedoms are envisaged in every cited Article except in Article 12 of the Charter. In Article 11 of the Convention and Article 12 of the Charter, both freedoms are regulated together, unlike in the other two mentioned international instruments, where they are subject to separate provisions. Regarding the substance, in all four instruments peaceful assembly is protected and the possibility to join trade unions is mentioned in the first three instruments. From this brief analysis, we could conclude that the definition of these two freedoms is almost the same in all four mentioned international instruments.

This paper will focus on the European system of human rights protection, namely the one before the European Court of Human Rights. Article 11 of the Convention comprises of two rights – assembly and association which will be explained separately. Additionally, the relationship with the other rights and freedoms enshrined in the Convention will also be analysed.

2. The Freedom of Peaceful Assembly

2.1. Definition of Assembly

The Court has refrained from defining the notion of assembly or from formulating a detailed list of criteria which would define it. Assembly is approached to the purpose of its participants and it should be treated differently from random assembly of individuals where everyone follows his or her own goal. For example, the long-lasting occupation of a space, which is peaceful, even when it is contrary to domestic law, can be regarded as peaceful assembly, like in the case of occupation of one church in Paris.⁸

In its jurisprudence, the Court has stressed that Article 11 protects the right to “peaceful assembly” and do not cover demonstrations where participants and organizers have violent intentions which result in public disorder,⁹ or when they incite violence or in some other way reject the foundations of democratic society.¹⁰ The burden to prove the violent intentions of the organizers lies on the authorities.

The concept of assembly covers gatherings irrespective of whether they require notification or authorisation. The key feature of an assembly is the common purpose of its participants, regardless if it is a private meeting or a meeting in public places.¹¹ It is not important whether the participants are in movement or they demonstrate without changing position. It is primarily envisaged to protect the right to peaceful political demonstrations and participation in a democratic process. However, this narrow interpretation would be unacceptable. The Court has determined that Article 11 can be applied in the cases of assemblies which are essentially of social character. It has applied this Article in relation to the intervention of the police at an assembly held in a private café in Baku where a group of Che Guevara fans gathered.¹²

8 Application no. 51346/99, *Cisse v. France*, Judgment of 9 April 2002, paras. 39–40.

9 Application no. 13079/87 *G. v. Germany*, Decision of 6 March 1989; Applications nos. 29221/95 and 29225/95, *Stankov and The United Macedonian Organisation Ilinden v. Bulgaria*, Judgment of 2 October 2001, para. 77.

10 Application no. 37553/05, *Kudrevičius and Others v. Lithuania*, Judgment of 15 October 2015, para. 92.

11 Zdraveva, 2021, p. 3.

12 Application no. 59135/09, *Emin Huseynov v. Azerbaijan*, Judgment of 7 May 2015, para. 91.

Moreover, official assemblies as parliament sessions fell under the scope of Article 11, according to the jurisprudence of the Court.¹³

This right includes also the right to choose the time, the place and the form of assembly, with the limitations established in Article 11(2). If the place of assembly is crucial for the participants, the order on its change may represent an interference in their freedom of assembly. That was the case in Bulgaria where the police prevented members and followers of Ilinden from holding the meeting at their chosen site. They were diverted to a different location.¹⁴

Even when there is a real danger that a certain assembly could lead to riots out of the control of the organizers, it is not outside the scope of Article 11(1) and, its limitation has to be in accordance with the requirements laid down in Article 11(2). That was the case in Germany during the demonstrations against the G8 summit.¹⁵ The individual continues to benefit from the protection of the right to freedom of peaceful assembly because of sporadic violence or other punishable acts committed by others during the demonstrations, if the individual stays calm in his or her intentions and behaviour.¹⁶

2.2. Obligations of States Regarding the Freedom of Assembly

The right to freedom of peaceful assembly includes positive and negative obligations of a State Party. States have to refrain from implementing unlawful indirect restrictions of the right to peaceful assembly in order to protect them from arbitrary interference of public authorities with this right. Moreover, they have to protect this right and States have positive obligations to provide efficient enjoyment of these rights.¹⁷ This is of special importance for persons holding unpopular positions or belonging to vulnerable minorities, like in the case of *Baczkowski and Others v. Poland* in which the applicants sought permission from the Warsaw municipal authorities to organize a march through the city and hold a series of meetings about discrimination against various minority groups and women. The municipal authorities refused permission for the march and some of the meetings. Although these decisions were quashed on appeal, the applicants complained that remedy had come too late because the dates planned for demonstrations had already passed. Parts of the related legislation was ruled unconstitutional before the Constitutional Court. Therefore, the interference was not “prescribed by law” and represented an unlawful interference in the freedom of assembly.¹⁸

13 Application no. 75147/17, *Forcadell i Lluís and Others v. Spain*, Decision of 7 May 2019, para 24.

14 Application no. 44079/98, *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, Judgment of 20 October 2005, para. 103.

15 Applications nos. 8080/08 and 8577/08, *Case of Schwabe and M.G. v. Germany*, Judgment of 1 December 2011, para. 103.

16 Application no. 11800/85, *Ezelin v. France*, Judgment of 26 April 1991, para. 53.

17 Application no. 37553/05, *Kudrevičius and Others v. Lithuania*, op.cit., para 158.

18 *Baczkowski and others v. Poland*, 2007, para 64., *Identoba and others v. Georgia*, 2015, para 99.

State authorities have a duty to take all adequate measures in relation to lawful demonstrations in order to ensure their peaceful organisation and the citizens' security. However, they cannot guarantee this absolutely and they have wide discretion in choosing the means they will use. In this field the obligation is to take the measures and not to achieve the results.¹⁹

Moreover, one of the obligations of a State is to take preventive security measures, for example to ensure the presence first-aid services at the site of demonstrations.²⁰ In addition, the duty to communicate with the organizers of the protests is an important part of positive obligations of the authorities to ensure the peaceful conduct of the assembly and to prevent riots and secure the safety of all persons involved.²¹

Demonstrations can distress or insult persons who oppose the ideas promoted in the demonstrations. However, the participants must have possibilities to have demonstrations without the fear that they will be exposed to physical violence of their opponents. That fear can prevent some groups from openly expressing their opinion on certain controversial issues related to community. The State has a positive obligation to protect the right to freedom of assembly of both groups that demonstrate and has to find the less restrictive measures which would enable that both demonstrations are held.²² When assessing the situation, the authorities have to take into consideration violence at similar events in the past as relevant and also the impact of counter-demonstrations on given demonstrations, when dealing with the danger of violent confrontation between two groups. That was the case in Hungary, where the Court found that the applicant who had not behaved violently and had not posed a threat to public order, should not have been sanctioned for merely displaying a flag during the demonstrations of two opposing groups.²³

2.3. Restrictions of the Right to Assembly

Prohibition of holding public events can be introduced for security reasons.²⁴ Also, that can be the case at the locations in the vicinity of court buildings, in order to ensure that judicial proceedings in a concrete case are free from the external influences. In that way, the rights of others are protected, especially parties to the proceedings. That prohibition must be precisely defined in order to achieve that goal.

A State Party can require that the holding of meetings be subject to authorisation. The purpose of this procedure is to allow the authorities to take reasonable

19 *Kudrevicius and Others v. Lithuania*, op.cit., para 159.

20 Application no. 74552/01, *Oya Ataman v. Turkey*, Judgment of 5 December 2006, para 39.

21 Application no. 74568/12, *Frumkin v. Russian Federation*, Judgment of 5 January 2016, paras 128–129.

22 Application no. 40721/08, *Fáber v. Hungary*, Judgment of 24 October 2012, para 43.

23 Ibid. para 44.

24 Applications nos. 26258/07 and 26255/07, *Rai and Evans v. the United Kingdom*, Decision of 17 November 2009.

and appropriate measures to guarantee a peaceful assembly or meeting.²⁵ The organizers must respect the regulations in force. However, in the absence of prior authorisation, the authorities are still restricted by the proportionality requirement of Article 11.²⁶

The subjection of meetings to an authorisation procedure does not normally encroach upon the essence of the right to freedom of assembly. That procedure enables the authorities to ensure the peaceful meeting and it does not constitute any interference in the exercise of the right.²⁷ This position has been confirmed in the subsequent jurisprudence of the Court.²⁸

There are some examples in the Court's jurisprudence regarding peaceful demonstrations. Therefore, the interference in traffic as a part of demonstrations is considered, *per se*, peaceful. Similarly, the occupation of public buildings is considered as peaceful behavior, despite its unlawfulness and the problems they may cause.²⁹

In certain cases in which the protesters participated in acts of violence, the Court held that the given demonstrations fell under the scope of Article 11, but that interference with the right guaranteed by Article 11 would be justified to prevent unrest or crime and protection of the rights and freedoms of others. When analysing the issue of interference in connection with Article 11, the Court focuses on the proportionality of the punishment. The Court accepts that State authorities enjoy a wide margin of appreciation when deciding on the need for interference in the freedom of assembly in cases when individuals are involved in violent acts. Therefore, the sanctions imposed for these acts can be regarded in accordance with the guarantees of Article 11 of the Convention. For example, in the case of *Gülcü v. Turkey*, a minor was convicted and detained for two years for membership of the Kurdish Workers' Party, an illegal armed organisation, after he participated in a demonstration in 2008. During the demonstrations, he threw stones at police officers. The Court noted that there was nothing to suggest that when joining the demonstration, he had violent intentions. Also, it noted that the extreme severity of the penalty – a total of seven years and six months imprisonment. The Court concluded that the severity of the sentences imposed to Mr Gülcü who was only 15 years old, was not proportionate to the legitimate aims pursued.³⁰

This right can be submitted to limitations in accordance with Article 11(2). The interference in the exercise of this right does not have to be a full prohibition, *de*

25 Application no. 37553/05, *Kudrevičius and Others v. Lithuania*, op. cit., para. 147.

26 Ibid., para 151; Application no. 17391/06, *Case of Primov and others v. Russia*, Judgment of 12 June 2014, para. 119.

27 Application no. 8191/78, *Rassemblement Jurassien and Unite Jurassienne v. Switzerland*, Commission (Plenary), Decision of 10 October 1979 on the admissibility of the application, para. 3.

28 Application no. 61821/00, *Ziliberberg v. Moldova*, Decision of 4 May 2004.

29 *Cisse v. France*, 2002, paras 39–40.

30 Application no. 17526/10, *Gülcü v. Turkey*, Judgment of 19 January 2016, para. 116.

iure or *de facto*, but it can be comprised of various measures implemented by the authorities.³¹

The limitations should be interpreted in such a way to include the measures taken before, during or after the assembly. In the case of *Ezelin v. France*, punitive measures taken afterwards represented unlawful restrictions.³² In the case of *Djavit An v. Turkey*, a Cypriot national of Turkish origin was unable to obtain a permit from the Turkish authorities in Cyprus to visit the southern part of Cyprus in order to participate in various meetings. His permission had been refused for security reasons in the public interest and because he made propaganda against the State. The Court stated that the refusal to allow the applicant to travel to be present at a peaceful assembly, also represents an interference contrary to the Convention.³³

The Court reiterated in a case against Azerbaijan that restrictions of the Article 11 may also consist of various measures taken by the authorities during an assembly, like the dispersal of the rally or the arrest of participants, as well as penalties imposed for participating at an assembly.³⁴ In the given case, the demonstration was dispersed by the police and the applicant who participated in the demonstration was arrested and convicted.³⁵ The force, used by the police against peaceful participants for breaking the demonstrations or maintaining public order represents interference in the freedom of peaceful assembly.³⁶

The interference is justified if it fulfils certain conditions. First, it should be prescribed by law, then it pursues one or more legitimate aims and it is necessary in a democratic society. One of the necessary conditions is that interference must be prescribed by law, which requires that the disputed measure must have a legal basis in domestic law. Also, the quality of the given national law is important. It must be available to individuals and predictable with regard to its consequences.³⁷ The law cannot be absolutely precise, especially in the areas where the situation changes in accordance with the leading positions of the society.³⁸ The law must provide for a measure of legal protection from arbitrary interference of public authorities with the rights guaranteed by the Convention.

Exceptions to the right to freedom of assembly must be interpreted narrowly. This principle is also applied to legitimate aims listed in paragraph 2 of Article 11. The protection of the rights of others is frequently listed as a legitimate aim. It is closely connected to the prevention of riots. In the *Kudrevičius and Others v. Lithuania* case, the applicants claimed that their conviction for rioting had violated their right to freedom of assembly and expression. They also claimed that the law under which

31 Application no. 37553/05, *Kudrevičius and Others v. Lithuania*, op.cit., para. 100.

32 Application no. 11800/85, *Ezelin v. France*, Judgment of 26 April 1991, para. 39.

33 Application no. 20652/92, *Djavit An v. Turkey*, Judgment of 20 February 2003, paras. 61–62.

34 Application no. 60259/11, *Gafgaz Mammadov v. Azerbaijan*, Judgment of 15 October 2015, para. 50.

35 Ibid., para. 51.

36 Application no. 41462/17, *Laguna Guzman v. Spain*, Judgment of 6 October 2020, para. 42.

37 Application no. 37553/05, *Kudrevičius and Others v. Lithuania*, paras. 108–110.

38 *Ezelin v. France*, 1991, para. 45.

they had been convicted had not met the requirements under Article 7 of the Convention. The municipality in this case issued a permit to hold an assembly in the territory of a village close to the highway. The permit granted the right to organize a peaceful assembly in compliance with the Constitution and national law. The police received information about the demonstrator's possible intention to overstep the limits established in the permit. The farmers blocked highways which exceeded the allowed limitations. The argument of the Lithuanian Government was that the police had not received any prior notification of the demonstrators' intention to block these major roads. The applicants stated that they used a form of demonstration accepted in Europe, in situations where no other means of protecting the demonstrators' rights exist. In such circumstances the freedom of peaceful assembly prevails over any disturbances to traffic.³⁹ The respondent government maintained that the intervention pursued the legitimate aims of preventing disorder and the protection of the rights and freedoms of others. The applicants were convicted for having participated in protest actions, but for their specific criminal behaviour during the demonstrations. They had a negative influence on public life, which is not characteristic of regular peaceful assemblies. The Court held that interference with this freedom was not proportionate and that every demonstration provokes a certain level of disruption of ordinary life. The Court argued that the authorities were expected to show tolerance, although there were major disruptions of traffic in this case.⁴⁰

The Court refused to invoke the aim of "protection of moral" as discriminatory, in the cases of limiting LGBT demonstrations. It has stated that there is a clear European consensus about the recognition of individuals' right to openly identify themselves as sexual minority and to promote their own rights

The limitations to the freedom of assembly must be necessary in a democratic society. States Parties enjoy a certain but not unlimited margin of appreciation in applying this standard. In each individual case the Court will decide whether a certain limitation is in accordance with the Convention, by analysing circumstances of the case.

The concrete measure must be a reaction on the urgent social need and must be proportionate to a legitimate aim and the reasons which are listed by the national authorities to justify it must be relevant and sufficient. National authorities must apply standards which are in accordance with the principles envisaged in article 11.

The freedom of assembly protects demonstrations that can disturb or offend persons opposing to ideas or messages which the demonstration in question wants to promote. Every measure which interferes into freedom of assembly and expression, except in cases of inciting violence, puts democracy in danger.⁴¹

39 Hajas and Török, 2016, p. 681.

40 *Kudrevičius and Others v. Lithuania*, 2015.

41 *Kudrevičius and Others v. Lithuania*, 2015, para. 145.

In a democratic society based on the rule of law, an opportunity should be given to express ideas provoking the existing order, by peaceful means, implementing the right to freedom of assembly and on other legal ways.⁴²

The fact that a certain group calls for autonomy or even requires the separation of a part of a State, calling for fundamental constitutional and territorial changes, cannot automatically justify the prohibition of their assembly. Calling for territorial changes in speeches and at demonstrations does not represent automatically a threat to the territorial integrity of a State and national security.⁴³

The general prohibition of demonstrations can be justified only if there is a real threat that they would result in an unrest which cannot be prevented by imposing other less strict measures. The authorities must take into consideration the effect of the prohibition of demonstrations which do not represent a threat to public order. Only if there is no possibility of avoiding the unwanted effects of prohibition by a narrow limitation of its scope in terms of territorial change and duration, then the prohibition could be considered as necessary in accordance with Article 11(2) of the Convention.⁴⁴

The nature and severity of punishments are the facts that need to be taken into account in the assessment of the proportionality of interference in relation to the goal which needs to be achieved.⁴⁵ When the punishments imposed to demonstrators are of criminal nature, they require a certain explanation. For example, in the case of *Rai and Evans v. the United Kingdom*, the first applicant organized and together with the second applicant participated in a demonstration against the Iraqi conflict. They were arrested and convicted of having held an unauthorized demonstration. The first was sentenced to a fine of GBP 350 and was ordered to contribute to the prosecution costs in the sum of GBP 150, the second applicant was sentenced to a conditional discharge of twelve months and to contribute to the costs in the sum of GBP 100. The sanctions were not severe and the interference with the applicants' rights was not considered disproportionate.⁴⁶

In the above-mentioned case of *Cisse v. France*, the applicant and a group of aliens occupied St Bernard's Church in Paris with the intention to draw attention to the difficulties encountered by aliens regarding their immigration status in France. The police evacuated the building because of the poor sanitary conditions and the serious risks to health, peace and public order. Certain protesters were detained and deported. The Court found that the legitimate aim was pursued, i.e. the prevention

42 Application nos. 29221/95 and 29225/95, *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, Judgment of 2 October 2001, para. 97.

43 *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, 2001, para 97.

44 Application no. 8440/78, *Christians against Racism and Fascism v. United Kingdom*, Decision of 16 July 1980.

45 *Kudrevičius and Others v. Lithuania*, 2015, para. 146.

46 Application nos. 26258/07 and 26255/07, *Rai and Evans v. the United Kingdom*, Decision of 17 November 2009.

of disorder and that the interference was proportionate due to the circumstances of the case.⁴⁷

2.3.1. *Limitations of the Freedom of Assembly during the COVID-19 Pandemic*

During the COVID-19 pandemic, States restricted numerous human rights and freedoms. One of the freedoms that was limited is the freedom of assembly. For example, in Poland, the prohibition of assemblies during the COVID-19 pandemic was subject to many discussions. It was even addressed in a report of the Commissioner for Human Rights, in which it was stated that absolute prohibition of assemblies violates basic constitutional rights of individuals.⁴⁸ It was stated that less severe measures should be used. However, certain protests took place during the pandemic and there was an interference of State authorities when the participants could endanger health or life and public safety and order.⁴⁹

In the case of the *Communauté genevoise d'action syndicale (CGAS) v. Switzerland*, the applicant complained that it had been deprived of the right to organise public events and to participate in such events following the adoption of government measures to address the COVID-19 Pandemic. An Ordinance was enacted to prohibit public and private events. Failure to comply with this prohibition was punishable by a custodial sentence or a fine. After two months, the prohibition was relaxed and gatherings could have a maximum of 30 participants. Events involving more than 1,000 participants continued to be prohibited until the end of August 2020, and on June 2020, the ban on public events was lifted. The Court found a violation of Article 11, concluding that Switzerland overstepped the margin of appreciation and that interference was not necessary in a democratic society. The Court recognised the threat posed by COVID-19 to public health and society. However, in the light of the importance of the freedom of peaceful assembly in a democratic society and in particular of the topics and values promoted by the applicant association, the blanket nature and significant length of the ban on public events falling within the association's sphere of activities, and the nature and severity of the possible penalties, the Court concluded that the interference with the enjoyment of the rights protected by Article 11 had not been proportionate to the aims pursued. The Court also noted that the domestic courts had not conducted an effective review of the measures at issue during the relevant period.⁵⁰

47 Application no. 51346/99, *Cisse v. France*, Judgment of 9 April 2002, para. 53.

48 Syryt, Przywora and Dobrzeniecki, 2022, p. 64.

49 Ibid., p. 65.

50 Application no. 21881/20, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland*, Judgment of 15 March 2022.

2.4. Relationship between the Freedom of Assembly and Other Articles of the Convention

The right of assembly has to be interpreted in the light of Article 10 when the expression of a personal opinion represents the aim of realising the freedom of assembly.⁵¹ Moreover, the connection between the two Articles can be examined in the need to provide a forum for public debate, especially in situations where the interference of the authorities with the freedom of peaceful assembly represents a reaction to the positions or statements of participants in demonstrations or members of an association.

Without freedom of expression, it is difficult to imagine participating in debates and solving public problems or participating in elections. It is one of the most important foundations of a democratic society. The Court attached a great importance to the freedom of expression in political debates. Political expression can be defined as an expression of a person's will to participate in solving public problems or to express an attitude towards certain general interests.⁵²

In the case of a demonstration of primarily religious nature, the issue of violation of Articles 9 and 11 may arise. In case of the interruption of a religious assembly held at private places, the Court has decided only with regard to Article 9, like in the case of assault on a Congregation of Jehovah's Witnesses.⁵³ In a case in Bulgaria where the mayor or the national court refused to allow to this religious organisation to build its religious object, the Court decided to question relevant arguments on the violation of Article 9, interpreted in the light of Article 11.⁵⁴

There is a relation with Article 10 of the Convention because the assembly can be as a form of expression. Whether an application will be analysed according to Article 10 or Article 11 depends on the given circumstances of each specific case. For example, the Court has held that violent unauthorized intrusion in the official premises, as a protest action, can be regarded as a form of expression, protected by Article 10, interpreted in the light of Article 11.⁵⁵ That was established in a case against Russia and the Court decided that interference was not "necessary in a democratic society".

51 *Ezelin v. France*, para. 37.

52 Černý, 2020, p. 234.

53 Application no. 71156/01, *Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, Judgment of 3 May 2007, paras. 143–144.

54 Application no. 5301/11, *Case of the Religious Denomination of Jehovah's Witnesses in Bulgaria v. Bulgaria*, Judgment of 10 November 2020, para. 80.

55 Application no. 19554/05, *Taranenko v. Russia*, Judgment of 15 May 2014, para. 66.

3. The Freedom of Association

An association represents a voluntary grouping for a joined cause. It includes the right to establish or join a group or organisation which wants to achieve certain goals. The association must have private legal character to benefit from protection under Article 11. The criteria that identify an association as private or public are the following: whether it was founded by individuals or the State, whether it was integrated in State structures, whether it has been transferred administrative, discipline or regulatory powers and whether it strives to promote a cause in general interest.⁵⁶

Public institutions, founded by a legislative authority does not represent an association within the meaning of Article 11 of the Convention.⁵⁷ Also, professional associations and bodies related to employment, like associations of doctors, lawyers, chambers of commerce, do not fall under the scope of this Article. Their goal is to promote and regulate professions while at the same time they perform important public functions and they cannot be compared to private associations and trade unions.

The right to establish an association is one of the aspects of Article 11, although it explicitly mentions only the right to establish trade unions.⁵⁸ The refusal of national authorities to give legal personality to an association of persons represents an interference in the exercise of their right to freedom of association.⁵⁹

The right guaranteed by Article 11 of the Convention is not limited to the foundation of an association, but it protects the association during its existence, to carry on its political activities freely.⁶⁰ This right does not entail the right to become a member of a certain association, nor the right to perform a certain function in the association. However, the exclusion from an association could represent the violation of the freedom of association of a given member, if it is contrary to the rules of the association, or if it is arbitrary.⁶¹ This right includes certain measures of the freedom of choice with regard to its realisation that means the right not to be a member of an association or to leave it. In a case of *Vörður Ólafsson v. Iceland*, the Court stated that the statutory obligation of the applicant to make a financial contribution to a private law organisation that was not his own choice, represents an unlawful interference with his right to join an association.⁶²

56 Application no. 29389/11, *Mytilinaios and Kostakis v. Greece*, Judgment of 3 December 2015, para. 35.

57 Application no. 60781/00, *Slavic University in Bulgaria and Others v. Bulgaria*, Judgment of 18 November 2004.

58 *Sidiropoulos and Others v. Greece*, 1998, para. 40.

59 Application no. 40269/02, *Koretsky and Others v. Ukraine*, Judgment of 3 April 2008, para. 39.

60 Application no. 19392/92, *United Communist Party of Turkey and Others v. Turkey*, Judgment of 30 January 1998, para 33.

61 Application no. 38458/15, *Lovrić v. Croatia*, Judgment of 4 April 2017, paras. 54 and 72.

62 Application 20161/06, *Vörður Ólafsson v. Iceland*, Judgment of 27 April 2010, para. 45.

The freedom of association belongs to civil and political rights, and it consists of the right to form, join and refuse to join an association. It represents the right to establish a group or organisation that pursues a certain objective, or to affiliate with them.

The freedom of association is closely related to democracy and pluralism, and the way it is implemented by a State is of great importance for democracy.⁶³ In this sense, the political parties have a special role, as well as associations founded for other purposes, including the ones that protect cultural or spiritual heritage, that have different socio-economic purposes, which promote ethical or minority or religious positions. This freedom is of particular importance for persons belonging to national and ethnic minorities, in order to promote their identities and to protect their rights.⁶⁴

However, associations involved in activities contrary to the values of the Convention cannot benefit from the protection of Article 11. For example, the activities of an Islamic association were prohibited in Germany for inciting violence. It advocated the overthrow of non-Islamic governments and the establishment of an Islamic Caliphate. The Court rejected the application.⁶⁵

An association assumes the establishment of a permanent purpose. This right allows the individual to join any form of organisation, party or body through which he or she can participate in public and political activities.⁶⁶

3.1. Forms of Association

Associations having a significant role in the jurisprudence of the Court are political parties, minority and religious associations as the most important actors in a democratic society. Trade unions also constitute an important form of association and they are explicitly listed only in Article 11.

Political parties have an essential role in the functioning of a democracy. Every measure taken against them also affects the freedom of association and consequently democracy in a given country. Therefore, the exceptions listed in Article 11 need to be interpreted strictly. Only compelling and convincing reasons could justify restrictions on the freedom of association of such parties. The States have only a limited margin of appreciation in these situations.⁶⁷ The ultimate measures, for example the dissolution of the party or the refusal to register a party could be done only in the most serious cases in which the political pluralism or basic democratic principles

63 Application no. 44158/98, *Gorzelik and Others v. Poland*, Judgment of 17 February 2004, para. 88, Application nos. 57/1997/841/1047, *Sidiropoulos and Others v. Greece*, Judgment of 10 July 1998, para. 40.

64 *Gorzelik and Others v. Poland*, para. 93.

65 Application no. 31098/08, *Hizb ut-Tahrir and Others v. Germany*, Judgment of 12 June 2012.

66 Zdraveva, 2021, p. 3.

67 Application nos. 133/1996/752/951, *United Communist Party of Turkey and Others v. Turkey*, Judgment of 30 January 1998, para. 46.

were endangered. In the case of *Refah Partisi (the Welfare Party) and Others v. Turkey*, the party was dissolved by the Constitutional Court with the explanation that it has become a centre of activism against the principle of secularism. The Court did not establish the violation of Article 11 of the Convention, because it stated that the acts and speeches of the leaders and members of this party had revealed its long-term policy of establishing a regime based on Sharia in the legal pluralism and that the party had not excluded use of force for implementing its policy. These plans were not in accordance with the concept of “democratic society” and the party had real possibilities to implement them. Therefore, the Court stated that it could be reasonably considered that the decision of the Constitutional Court satisfied an “urgent social need”.⁶⁸

The freedom of association is of special importance for the members of minority groups. The establishment of an association for the purpose of expressing and promoting the identity of a minority can be essential for it, helping it to preserve and defend its rights and identity.⁶⁹ National courts in Greece have refused to register a Macedonian cultural society, claiming that it had the intention to affect the territorial integrity of Greece. The Court found that the aims of the society were completely legitimate, i.e. the protection and development of the Macedonian minority’s traditions and culture. There were no indications that the latter represented a threat to the territorial integrity of Greece.⁷⁰

3.2. *Restrictions of the Freedom of Association*

Interference with the right of association is justified if it fulfils the conditions laid down in Article 11 (2), i.e. if it is prescribed by law, pursues one or more legitimate aims and if it is necessary in a democratic society. These conditions are the same as in the cases of some other rights set forth in the Convention, and the right to assembly as well.

The disputed measure of a State that interferes with the right of association must have a legal basis in domestic law, which has to be accessible to a given person and predictable with regard to its consequences. The law is predictable if it is formulated precisely to enable an individual to adjust his or her behaviour. The given law has to provide a measure of legal protection from arbitrary interference of public authorities in the rights guaranteed by the Convention. The law must prescribe, clearly enough, the limits of each of such discriminatory authorisation and the ways of its realisation. In the case of *Koretskyy and Others v. Ukraine*, the Court held that the provisions of domestic law governing the registration of an association were insufficiently clear to

68 Application nos. 41340/98, 41342/98, 41343/98, *Refah Partisi (the Welfare Party) and Others v. Turkey*, Judgment of 13 February 2003.

69 Nemtoi, 2022, p.7.

70 Application nos. 57/1997/841/1047, *Sidiropoulos and Others v. Greece*, Judgment of 10 July 1998.

be considered predictable and that the authorities were given excessive discretionary powers to decide whether a certain association could be registered.⁷¹

Every interference with this freedom must have one of the legitimate aims established in Article 11(2), such as: national security or public safety, preventions of unrest or criminal, protection of health or morals and protection of rights and freedoms of others. These exceptions must be interpreted narrowly and restrictively.⁷² Moreover, every interference needs to be necessary in a democratic society, which means that every interference needs to respond to a pressing social need and that any interference must be proportionate to a legitimate aim protected. The exceptions to the freedom of association must be established strictly and only convincing reasons can justify the limitations of that freedom.⁷³ The Court determines in each case whether a given interference is proportionate to a legitimate aim and whether the reasons listed by national authorities in to justify it are relevant and sufficient. These decisions need to be based on an acceptable assessment of relevant facts. The level of interference cannot be considered in abstract terms and must be assessed in the circumstances of each individual case. Criminal conviction represents one of the most serious ways of interference with the right to freedom of association, which aims at protecting an opinion and the expression of that opinion, especially with regard to political parties.

There are restrictions to the freedom of association for public service employees (police, armed forces and the State administration), explicitly envisaged in Article 11, paragraph 2. The Court has stated that those restrictions should be construed strictly and should be confined to the “exercise” of the rights in question. These restrictions must not impair the very essence of the right to organize.⁷⁴ In its jurisprudence, the Court has found that lawful restrictions imposed on these three categories of persons must also meet a pressing social need and be necessary in a democratic society.⁷⁵

3.3. Relationship between the Freedom of association and Other Articles of the Convention

The protection of personal opinions, provided for in Articles 9 and 10 of the Convention is also one of the aims of the freedom of association.⁷⁶ The Court stated that the protection of the freedom of thought, conscience and religion could be effectively provided only by guaranteeing also the positive and negative right to freedom of

⁷¹ *Koretskyy and Others v. Ukraine*, para. 48.

⁷² *Sidiropoulos and Others v. Greece*, para. 38.

⁷³ Application no. 44158/98, *Gorzelik and Others v. Poland*, Judgment of 17 February 2004, paras. 95–96.

⁷⁴ Application no. 34503/97, *Demir and Baykara v. Turkey*, Judgment of 12 November 2008, para. 97.

⁷⁵ Application no. 11828/08, *Trade Union of the Police in the Slovak Republic and Others v. Slovakia*, Judgment of 25 September 2012, para 66.

⁷⁶ Application no. 20161/06 *Vörður Ólafsson v. Iceland*, Judgment of 27 April 2010, para. 46.

association.⁷⁷ Article 11 applies not only to persons and associations whose opinions are well accepted or considered inoffensive and do not cause any reaction, but also to the ones which could offend, shock or disturb.⁷⁸

The principle of pluralism cannot be realised if the association is not allowed to freely express its ideas and opinions.⁷⁹ That is the reason why the protection of an opinion and expression of that opinion is applied on political parties so they could perform their essential role of enabling the pluralism and proper functioning of democracy.⁸⁰

4. Conclusions

The freedom of assembly is a political right under which individuals can express their views and participate in political and social life. It is closely related to other rights and freedoms like the freedom of thought and the freedom of expression. Therefore, the Court often decided on these rights together.

The freedom of peaceful assembly and the freedom of association work in conjunction. They are autonomous rights differentiated by the fact that an association involves a group of people with permanent links, unlike an assembly. Moreover, associations establish a precise goal, and a meeting or an assembly does not aim at achieving a permanent goal.

The freedom of assembly and the freedom of association are not absolute. They can be limited if the requirements of legality, proportionality and necessity in a democratic society have been fulfilled. The Court's jurisprudence has been extensive regarding these conditions.

In the last few years, the COVID-19 pandemic had a strong influence on almost all human rights and specifically on the freedom of assembly. We are waiting for the judgments of the Court with regard to these circumstances. The urgent need to protect the rights and freedoms of others was a legitimate aim. However, the Court will establish how the States answered to that pressing social need, whether the restrictions had fulfilled all the criteria of the Article 11(2) of the Convention.

77 Application nos. 52562/99 and 52620/99, *Sorensen and Rasmussen v. Denmark*, Judgment of 11 January 2006, para. 54.

78 Application no. 35943/10, *Vona v. Hungary*, Judgment of 9 July 2013, para. 57.

79 *Gorzelik and Others v. Poland*, 2004, para. 91.

80 Application no. 23885/94, *Freedom and Democracy Party (ÖZDEP) v. Turkey*, Judgment of 8 December 1999, para. 37.

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