Chapter 13

Rights of Assembly and Association

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ABSTRACT

This study presents the rules of the European Convention on Human Rights (ECHR), which are the European standard for the regulation of the rights of association and assembly. ECHR served as an important model for the Central European states to develop their national legislation during the regime change. The study presents the essence of the rules by interpreting the text of the Convention in its grammatical sense and outlines the limits of the rules based on the case law of the Strasbourg Court of Human Rights. The analysis of the case-law reveals that the Central European framework is divided into several smaller regions, where minority rights and religious issues still play a significant role, and their exercise is often closely linked to the exercise of the rights of association and assembly. Further, the study not only focuses on the past and the present but seeks to illustrate the likely trends in future legal developments.

KEYWORDS

right of association, right of assembly, Strasbourg Court, human rights, Central Europe

1. Introduction

In jurisprudence, the rights of association and assembly are closely linked, like the twin brothers, Castor and Pollux, in Roman mythology. These rights share the similar regulatory regime and appear together in legal documents. Though these rights are at the heart of European legal culture as a fundamental right and a right to political freedom, attempts to codify them date back to antiquity. They later appeared not only in European states but also, through colonisation, in all countries globally and were standardised in the constitutions of many countries and in the international catalogues of fundamental rights. In the following, the content of the rights of assembly and association will be examined in the light of the text of the European Convention on Human Rights (hereinafter: ECHR), the basic document of modern European fundamental rights law. Thus, we will briefly discuss the codification history of the ECHR text, which is of regulatory significance and review the (Strasbourg) case law based on the ECHR text.

Endre Domaniczky (2026) 'Rights of Assembly and Association' in Paczolay, P. (ed.) *The European Convention on Human Rights A Central and Eastern European Perspective.* Miskolc–Budapest: Central European Academic Publishing, pp. 391–418. https://doi.org/10.71009/2026.pp.tecohr_13

2. Interpretation of the Text of the Convention

The relevant text of ECHR is as follows:

> 'Article 11 – Freedom of assembly and association
> (1) Everyone has the right to the freedom of peaceful assembly and to the freedom of association with others, including the right to form and 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.'

Article 15 – Derogation in time of emergency

> (1) In time of war or other public emergencies threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
> (3) Any High Contracting Party availing itself of this right of derogation shall fully inform the Secretary General of the Council of Europe of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.
> Article 16 – Restrictions on political activities of aliens
> Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.'

2.1. Title of the Section on Freedom of Assembly and Association

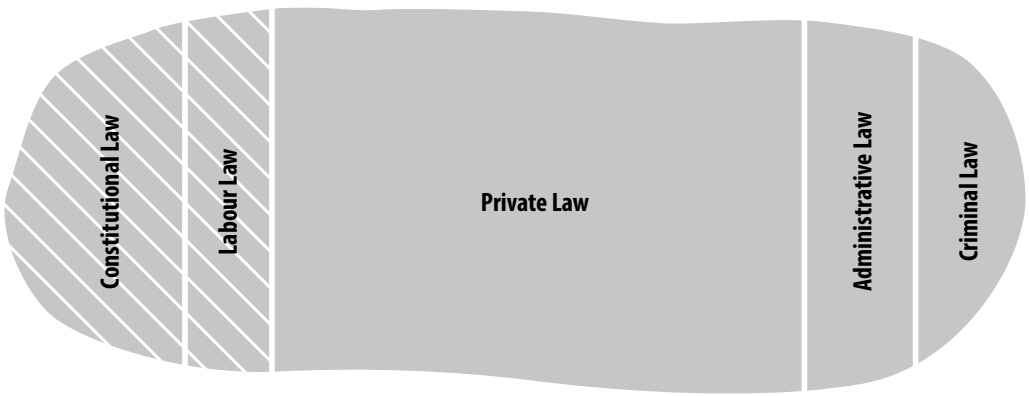
It is clear from the title of Article 11 that the ECHR aims to regulate the rights of assembly and association as *freedoms*. In other words, it approaches the content of these two rights from the perspective of the relationship between the state and individuals. Although the title may appear to have been influenced by the wording of the Universal Declaration of Human Rights (which also speaks of the freedoms of assembly and association), the wording of the article suggests that the ordering of the two rights is deliberate, since the peaceful assembly of the members is a precondition for the exercise of the right of association. In a conventional sense, the right of

assembly can be seen as a "precursor" of the right of association, since members must meet to hold a general assembly of members to exercise their right of association, or they must form and operate an organisation. Therefore, the two freedoms are closely linked, and this relationship is sufficient justification for their common regulation. However, there is also a fundamental difference in the relationship between the two freedoms, namely in the purpose for which they are exercised. When they exercise the right of assembly, individuals assemble for a specific purpose, whereas to exercise the right of association, they assemble to form a common will in a form recognised by law.

2.2. Scope of the Section on Freedom of Assembly and Association

Article 11on the rights of assembly and association has a broad scope as a right of freedom. This means that the section covers concepts enshrined in constitutional law and includes provisions on trade unions, a form of associations in labour law. However, it excludes completely from its scope the rules and forms[1] of association law, which exist in the field of private law. In other words, although the ECHR contains rules on the rights of assembly and association in a single section, the regulation focuses on the right of association, which has regimes in constitutional law, labour law, private law, administrative law, and criminal law and rules relevant to the right of association as a right of freedom.

Figure 1. The location of the right of association rules in the different branches of law (the ECHR rules only extend to the redacted parts of the right of association)[2]



1 The case of for-profit organisations, such as the forms of business corporations defined in different legal systems, and "mule formations" that straddle the boundary between private and public law, such as the public foundations that proliferate from time to time in the vicinity of government are examples of this.
2 Source: Author's own work.

Notably, the rights of assembly and association belong to the family of fundamental communication rights with freedom of expression at its core. The fundamental rights of communication aims to enable 'an informed participation by the individual in social and political processes.'[3] Indeed, when freedom of expression – or a related fundamental right – is violated,

> 'social justice, human creativity and the potential for human fulfilment are impaired. The damaging consequences are felt not only in the life of the individual but also in the life of the whole society. Such experiences usually lead to a dead end in the development of humanity, with much suffering. The free expression of ideas and views, the free expression of even unpopular or idiosyncratic ideas, is a prerequisite for the existence of a developing and truly living society'.[4]

The rights to assembly and association are usually considered as one of the civil and political rights of the first generation of freedoms and are codified in this sense in this section. As freedoms, they give rise both to an entitlement of individuals to actively exercise their rights, and to an obligation of the state to refrain from unjustified interference. Although the exercise of these two rights is linked to the collective (associative) human activity, the Convention itself protects only individuals and their actions.

2.3. Eligibility

The definition of eligible persons is broad; though it includes everyone at first glance, "everyone" is used here in a narrow sense. The right of freedom applies only to those who belong to the political community – those who actively exercise it.[5] Within this category, we can think primarily of natural persons and, in some cases, other legal persons. The state and its organisations in various forms are excluded from this.[6] However, certain categories of public employees and foreigners are subject to restrictions (i.e. they may be excluded by the decision of the contracting parties), according to the text of the Convention.[7] An intermediate category is that of minors, where the right of a parent or legal guardian may arise in certain cases (such as incapacity). Similarly, the category of persons with limited capacity requires case-by-case consideration.

3 Hungarian Constitutional Court Decision 30/1992 (26/05.) point 2.1.
4 Ibid.
5 Therefore, at a theoretical level, the question, for example, of the legality of the exercise of the rights of persons barred from participating in public affairs and the scope of the restriction(s) involved exist. For example, according to the current Hungarian Criminal Code, a person banned from participating in public affairs may not be a leading officer of a civil organisation (Point (i), para. 2 Art. 61 of Act C of 2012), but the legal institution itself was already recognised in the first modern Hungarian Criminal Code (Act No V. of 1878).
6 Cf. the examples in the footnotes 47–48.
7 Article 11 para. 2 sentence 3, and Article 16 ECHR.

2.4. Forms of Action

The Section on Freedom of Assembly and Association in the Convention requires individuals' active participation. The text also specifically mentions two forms of conduct in relation to trade unions: forming (i.e. participation in the establishment of the organisation) and *joining* (i.e. participation in the work of an existing organisation), which apply to all forms of organisation.

Regarding the rights of assembly and association, the section generally protects the conduct connected with the exercise of the fundamental right. *Implicitly,* in the case of an assembly, this *implies* not only participation but also the arrangement of participation, i.e. all the activities through which the exercise of the right of assembly can be realised (which are best captured by the terms "initiative" and "participation"). The regulatory regime is similar to the right of association, in that the two basic forms of activity – "forming" and "joining" – re named in the text. However, it should cover all activities that can be covered by the terms of initiative and participation.

Though the convention does not specify it, it follows from the wording of Section 1 of Article 11 that the cases of association based on voluntary choice are covered – *not public bodies* based on compulsory membership.[8]

However, the legislator has already made two restrictions in the characterisation of "the activity": in the case of the right of assembly, it states that only the "peaceful" exercise of rights is protected. In the case of the right of association, it says only that 'freedom of association with others' is protected, which leaves room for regional regulatory regimes. In other words, the legislator emphatically refrains from laying down a threshold in national law for the minimum number of founders or other administrative rules closely linked to the exercise of the right of association. Thus, it leaves this task to the national regulatory regimes and stresses that the Convention is intended to protect only the freedom and its exercise without considering differences between the national regulatory regimes relating to the exercise of this fundamental right.

2.5. Conditions for the Restriction of Rights

Since the rights of assembly and association are not among the unrestricted fundamental rights, the legislator sets strict conditions for restrictions.[9] The majority of these are hard and fast rules; some of them discretionary, allowing for derogations; several restrictions require individual discretion.

8 In this case, the existence of the scope of eligibility is already questionable (see above, under "*Eligibility*"), since their establishment is usually laid down by law, which determines the objectives and activities of the organisation.

9 This purposive interpretation is also emphasised in the specific points of the Convention: 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.' (ECHR, Art. 17), and 'The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.' (ECHR, Art. 18).

Therefore, it can be said that the Convention has specified detailed rules not only on the granting of rights but also on the limitation of these rights.

Two rules establish the general framework of the restriction: the 'exercise of these rights *are* prescribed by law', by legislation at the top of the national and legislative hierarchy. The exercise of these rights may be subject only to such restrictions as 'are necessary in a democratic society...'

While the first condition is logical and generally accepted, the second condition is derogatory and its meaning may vary from case to case, since the legislator imposes a double legal test on restrictive measures. In general, and by the standards of a democratic society, restrictions must be necessary. It is clear that both elements require individual assessment: a.) of the necessity of the restriction; and b.) the standards of a democratic society. However, the content of these standards does not necessarily require a case-by-case examination, as the court may decide to identify it with concepts such as the rule of law and thus standardise it. However, this requires a decision by the legal practitioner. In other words, it does not follow from the text per se.

The legislator also sets out specific titles for the restriction. Restrictions may only be imposed: a.) on interests of national security or public safety; b.) for the prevention of disorder or crime; c.) for protection of health; d.) for protection morals; e.) for the protection of the rights and freedoms of others. Though the text does not specifically explain these concepts, the phrase "democratic society" indicates the criteria by which the content of these rights may be interpreted by case law. As mentioned above, judicial practice may play a key role in the interpretation of these concepts, and in the light of the Court's decision,[10] the meaning of these concepts may change over time and become standardised as a result of other international conventions.[11]

2.6. Exceptions

For the sake of clarity, the Convention makes an addition to the rules on limitations. Although these may appear to be interpretative provisions containing the clarification of rules, they are cumulative norms similar to those outlined in the first sentence of Section 2 of Article 11.

The Convention authorises the contracting parties to restrict (a) the free exercise of the rights of assembly and association (b) by law (c) for the members of the armed forces, the police and the public administration. Although the list under (c) seems long because both the concepts of "armed forces" and "administration" leave some room for national legislation, it must be interpreted with the help of the case law of the courts.

10 "Court" means the European Court of Human Rights in this article.

11 The Court referred to this in its explanation of the *living instrument doctrine* (most recently in *Demir and Baykara v. Turkey* (2008)), when it stated that 'the Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies.' ([2008] ECHR 1345. 146.).

A similar exception is made to a separate section in Article 16, though in the rules on restrictions on the political activities of foreigners (aliens).

2.7. Other Restrictive Empowerments

Further, the Convention (Art. 15) includes the rights of assembly and association among the rights that may be restricted in time of emergency. However, even in this exceptional situation, the legislator does not allow the contracting parties to restrict the right unconditionally.

In addition to the rules of necessity and proportionality, the relevant section contains a test of those rules, as it provides that in a given case only 'a derogation to the extent strictly required by the exigencies of the situation' (in other words, to the extent strictly required by the necessity of the situation) may be lawful, and only if it does not conflict with other international legal obligations of the contracting party concerned.

The text also defines the scope of the emergency as (a) war; or (b) 'other public emergency threatening the life of the nation' – categories that can be filled in and clarified over time by case law.

A further important – procedural – condition for a legal derogation is that the Contracting Party concerned must fully inform the Council of Europe of the derogation.[12] The notification cannot be formal, but must be comprehensive, including: (a) the measures taken by the party; and (b) the reasons for these measures; (c) the date of the repeal of these measures, and (d) a clause that 'the provisions of the Convention will again be fully implemented'.

Consequently, in an emergency, contracting parties are not obliged to give prior notice or to consult each other on the derogation to avoid further damage. However, from the outset, they must act in the knowledge that their actions will be subject to ex post scrutiny, including an examination of their legality (i.e. their compliance with the Convention).

3. Historical Overview of the Fundamental Rights Regulation

As already mentioned in Introduction, the rights of association and assembly are essential parts of the European legal culture. It is no coincidence that these rights are mentioned in the laws of the Twelve Tables, one of the earliest written sources of Roman law, which is the cradle of modern European legal thought.[13] These rights were also important in the organisational development of Christianity, which became

12 Here the Convention specifically names the Secretary General of the Council of Europe, which makes it clear that an effective declaration of law can only be made addressed to the Secretary General (Article 15, point 3, ECHR).

13 See Table VIII, points 26 and 27. The former provided for the prohibition of night-time "bankruptcies", the latter for the content of the rules of organisations with legal personality: Borzsák, 1993, p. 28.

the state religion of the Roman Empire from 380 AC onwards and an important part of European legal thought even without regulation.[14]

The two rights as freedoms only appeared during the Enlightenment (17th–18th centuries) through various American and French legal declarations and legislations (initially typically in constitutions). In the Central European region, two codifications (both still in force) had the greatest impact: (a) the Belgian Constitution of 1831 and (b) the Austrian Charter of Fundamental Rights of 1867,[15] which declared the rights of assembly and association. The impact of these codifications was felt even in areas where only temporary – procedural – regulation was applied for a long time mainly through lower-level legislation.

After the First World War, most of the new Central European states declared several civil and political rights in their constitutions, including the rights of assembly and association, but there was no time to develop a clear practice, as most of these states were occupied by Germany and then by the Soviet Union some two decades after their formation. The Soviet Union settled in the region for several decades, and the countries within its sphere of influence declared political rights and freedoms in their constitutions based on the Soviet model. However, these rights had limited practical application throughout. Most grass-roots associations were dissolved or partly reorganised in a controlled manner from above.[16]

Table 1. Constitutions in the Central and Eastern European countries in the Interwar Period[17]

Country	Constitutions made (year)	Regulating the right of assembly	Regulating the right of assembly
Albania	1928	yes (§ 199)	yes (§ 199)
Bulgaria	1879	yes (§ 82)	yes (§ 83)
Czechoslovakia	1920	yes (§ 113)	yes (§ 113–114)
Hungary[18]	No written constitution	by Regulations	by Regulations
Poland	1921	yes (§ 108)	yes (§ 108)
Romania	1866, 1923, 1938	yes	yes
Yugoslavia	1920, 1931	yes	yes

14 It is worth noting that the first country to make Christianity a state religion was *Armenia* in the early 4th century (traditional date is 301 AC), some eight decades before the Romans. Christianity also became a state religion very early (in the first half of the third century) in what are now *Georgia* and *Ethiopia*.

15 Full name: Basic State Law on the General Rights of Citizens. Freedoms of assembly and association were already guaranteed in the Austrian Constitution of 1849 (but this was repealed in 1851).

16 For more on the history of the regulation for Hungarian NGOs in the 20th century, see: Domaniczky, 2009, pp. 1–16 and Domaniczky, 2010, pp. 1–16.

17 Source: Author's own work.

18 On the Hungarian regulation on special legal order, see: Domaniczky, 2021, pp. 145–156.

The changes that began after 1989, some of which resulted in the formation of new states, thus included the recodification of civil liberties. However, this process did not generally return to legal history where it existed but, in line with Euro-Atlantic integration which was the main objective of the countries of the region, looked primarily to the international legal declarations of the second half of the 20th century and the practice that had developed in the application of these declarations. Thus, the latest trend in the theory and practice of the rights of assembly and association is that of standardising them and contributing content to the national catalogues of fundamental rights in line with international conventions. This process has been accelerated by the accession of the states in the region to international organisations (Council of Europe, European Union, EU), which has led to the harmonisation of law and practice in essence after the political decision and well before the accession. Thus, for three decades after the system change, a uniform jurisprudence has been created regarding the content of fundamental rights and their application, as well as case law based on it – organically based on previous jurisprudence and case law (of the Western European countries).

With regard to the rights of assembly and association, this basis establishes the framework for future interpretation and possible directions for legal development. Open questions in this respect may arise mainly through technical developments, which may lead to a reinterpretation of the concepts underlying legal institutions in extreme cases.[19]

4. Comparison of the Legislation with Other International Conventions

After the First World War, the victorious great powers decided to build a new world order. This meant, first and foremost, the establishment of a new balance of power and the alliance systems that would ensure it. Human rights were only tangentially addressed by the international organisations that were being established at the time, mainly in the form of bilateral commitments. Thus, while fundamental freedoms, including the freedoms of assembly and association, were enshrined in the

19 For example, if national rules on the right of association recognise the legality of electronic meetings of members, the associations can also be formed electronically. However, if the law recognises that a *group* – if the national law in question sets the number of members of that group higher to that of even *a crowd* – can be formed virtually, where is the point at which a virtual dimension of the exercise of the two freedoms is created, and how much of it is worthy of judicial protection? This was obviously a simplified example, but it illustrates that technological progress can bring about radical changes in the meaning of certain fundamental rights in a short span of time.

constitutions of an increasing number of states at the national level, the implementation and enforcement of these freedoms were often only partial.[20]

However, during the Second World War, the fundamental documents (the Atlantic Charter (1941), the Declaration by United Nations (1942) and the UN Charter (1945)) that formed the basis of the post-war world order contained references to fundamental (human) rights and their protection. These were consolidated in the Universal Declaration of Human Rights (1948), which already brought together in a single section the rights of assembly and association (Article 20). The Declaration emphasises the freedom of peaceful assembly and the right of association, while stressing the voluntary nature of the right of association.

Also in 1948, the International Labour Organisation (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organise was signed.[21]

The ECHR, drafted within the framework of the Council of Europe and adopted in 1950, builds primarily on these two earlier documents: the Universal Declaration of Human Rights of 1948 and Convention No. 87 of the International Labour Organisation, summarising their acquis in a single article (Art. 11). However, this is not the end of the development, as the ECHR serves as a model for the drafting of other international human-rights conventions.

Table 2. Dates of the ECHR's ratification at the Central and Eastern European States[22]

Country	Year of ratification
Albania	1996
Bosnia and Herzegovina	2002
Bulgaria	1992
Croatia	1997
Czech Republic	2001 (1992)
Georgia	1996
Hungary	1992
Moldova	1997
Montenegro	2006 (2004)
North Macedonia	1997

20 For example, freedoms of assembly and association play a significant role in the exercise of minority rights, and it is sufficient to refer here only to cultural events (the right of assembly) and organisations established for cultural purposes (the right of association). Yet, at that time, some constitutions had already restricted the exercise of these rights by minorities (e.g. the Yugoslav Constitution of 1931) and others in subordinate legislation (e.g. acts and regulations).
21 This was supplemented by Convention No. 98 on the right to organise and collective bargaining, adopted in 1949.
22 Source: Author's own work.

Country	Year of ratification
Poland	1993
Romania	1994
Serbia	2004 (2011)
Slovakia	1992
Slovenia	1994
Ukraine	1997

At the international level, ECHR has influenced three main directions of development:

Conventions of the Council of Europe

Agreements of the European Economic Communities (EEC), now the EU, and Legislation under the aegis of the United Nations Regarding a.) The following conventions of the Council of Europe relating to the rights of assembly and association should be noted:

The European Social Charter (1961), which refers to the right to organise (Art. 5). The European Charter for Regional or Minority Languages (1992), which mentions the right of association among the cultural activities and facilities (Art. 12). The Framework Convention for the Protection of National Minorities (1995). Given that public participation and NGOs are one of the manifestations of this convention, it plays a key role in the implementation of the Convention and contains provisions on the rights of assembly and association (Art 7.).

Regarding b.) Among the conventions of the EEC/EU, the so-called European constitutional process, which started in 2000 with the adoption of the Charter of Fundamental Rights of the European Union, should be highlighted. The Charter was originally intended to be part of a European Constitution, but with the Treaty of Lisbon it became a separate document on an equal footing with the EU Treaties. Article 12 of the Charter, which is currently in force, covers both the freedoms of assembly and association. The text is clearly modelled on the relevant part of the ECHR but has evolved considerably in structure and content. The most important innovation is the naming of political parties within the section.

As far as EU is concerned, since the Treaty of Maastricht, all candidates for EU membership have been required to accede to the ECHR, which means that the ECHR is not only considered as an exemplary piece of legislation for the EU, but also as a kind of minimum human rights standard for all members and candidates.

Regarding c.) Among the conventions concluded under the aegis of the United Nations, it is worth mentioning the International Covenant on Civil and Political Rights (1966), which, as its preamble refers to, was drafted to develop the Universal Declaration of Human Rights and to expand and elaborate on the fundamental rights contained therein. Conversely, the International Covenant on Civil and Political Rights looked to the ECHR as a model for its structure but deviated from its regulatory

regime in several respects. The most significant difference is the separation between the rights of assembly and association (Articles 21–22), which is not only structural but also substantive, since the right of peaceful assembly is protected in a broader sense in the Covenant than in the ECHR. The two conventions also differ with regard to the right of association, since the International Covenant on Civil and Political Rights clearly refers to the provisions of ILO Convention No 87, which allows a wider scope of exercise than the ECHR in the case of the right to organise in relation to trade unions.

Lastly, all three organisations (Council of Europe, EU, United Nations) have established institutions with official or semi-official status to monitor the implementation and application of fundamental rights. In addition to the case-law of the Strasbourg Court, the reports and resolutions of the Venice Commission (VC), the European Commission against Racism and Intolerance (ECRI), the Commissioner for Human Rights (CHR), the European Union Agency for Fundamental Rights (FRA), the European Ombudsman (EUO), the Office for Democratic Institutions and Human Rights (OSCE ODIHR) and the United Nations Human Rights Committee (UNHRC) are significant in relation to the rights of assembly and association.

5. Presentation of the Relevant Case Law of European Court of Human Rights

As mentioned above (point 2), the meaning that can be attributed to Article 11 of the ECHR in everyday practice is based on the grammatical or logical interpretation of the law. However, the European Court of Human Rights (hereinafter: the Court) has developed its practice through a deeper, complex method involving both historical and teleological interpretation of the law, with a scientific depth through decades of slow and painstaking work on a case-by-case basis. A detailed analysis of its practice would go beyond the scope of this document. However, we shall attempt to highlight some of its features.[23] The Court has done considerable interpretative work on both (a) the right of assembly and (b) the right of association, in some cases extending the interpretative framework of the text, while in others strictly adhering to its narrow interpretation.

Regarding a.) The Court has ruled that the freedom of peaceful assembly as a basic principle is a fundamental right in a democratic society and must not be interpreted restrictively.[24] This idea, which is a broad interpretation of concepts, also permeates the relevant case law.[25] In order to ensure this broad interpretation, the Court has so

23 If you are interested in the deeper context of the Strasbourg case law on the freedoms enshrined in the ECHR, you can find a sepointte legal notice for each freedom on the Court's website.

24 *Djavit An v. Turkey* (2003), *Taranenko v. Russia* (2014), *Kudrevičius et al. v. Lithuania* (2015).

25 Cf. Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, 6–23.).

far '(...) refrained from formulating the notion of an assembly, which it regards as an autonomous concept, or exhaustively listing the criteria which would define it.'[26]

The Court considers the right of assembly as being closely linked, both doctrinally and based on the received applications, to other fundamental rights in the Convention, such as freedom of thought, conscience and religion (Art. 9.) and, in particular, freedom of expression (Art. 10.). In this respect, the Court has also emphasised that 'the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association(...)'.[27] Therefore, not only assemblies as defined under national law but also the forms of assembly not covered by national legislation may be subject to scrutiny and protection.[28] The most important characteristic is the participants' common purpose, which distinguishes an assembly from a random grouping of individuals.[29]

The Court has also moved towards a broad definition of the form of assembly, stating that both private assemblies and assemblies held in a public place are protected, regardless of how they are held (for example: marching or standing still somewhere).[30] The Court also stated that 'The right to freedom of assembly includes the right to choose the time, place, and manner of conduct of the assembly...' However, this right is not unlimited and can only be exercised within the limits set out in Sect. 2, Art. 11 of the Convention.[31]

The Court has carried out significant legal development work on two concepts: the *peaceful* nature of assembly and restrictions on the right of assembly. Regarding the former, it has consistently sought to develop the broadest possible interpretative framework. Accordingly, the Court has placed burden on authorities and on the State in both positive and negative terms.[32] Conversely, the Court considered that some behaviours fall within the concept of peaceful assembly which, in themselves,

26 *Navalny v. Russia* (2018).

27 *Freedom and Democracy Party (ÖZDEP) v. Turkey* (1999); see also *Ezelin v. France* (1991); *Éva Molnár v. Hungary* (2008).

28 *Navalny v. Russia* (2018). For regulation of flash mobs, see: *Obote v. Russia* (2019).

29 *Navalny v. Russia* (2018).

30 For the interpretative framework, see: *Djavit An v. Turkey* (2003); *Barankevich v. Russia* (2007); *Friend, the Countryside Alliance and others v. United Kingdom* (2009); *Kudrevičius and others v. Lithuania* (2015); *Emin Huseynov v. Azerbaijan* (2015); *The Gypsy Council and others v. United Kingdom* (2002); *Forcadell i lluis v. Spain* (2019).

31 *Sáska v. Hungary* (2012); see also: *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (2005); *Lashmankin and Others v. Russia* (2017); *Mustafa Hajili and Others v. Azerbaijan* (2022); *Appleby and Others v. United Kingdom* (2003); *Rai and Evans v. United Kingdom* (2009); *Taranenko v Russia* (2014); *Frumkin v. Russia* (2016); *Lashmankin and Others v Russia* (2017); *Öğrü v Turkey* (2017), *Tuskia and Others v. Georgia* (2018); *Ekrem Can and Others v. Turkey* (2022).

32 For example, the Court has held that the burden of proving that the organisers of an assembly intended to use violence lies with the authorities (*Christian Democratic People's Party v. Moldova* (No. 2) (2010)). Similarly, the Court has emphasised in several judgments that States must protect individuals against arbitrary interference by public authorities. But there may also be positive obligations to secure the effective enjoyment of these rights (*Kudrevičius and Others v. Lithuania* (2015); *Djavit An v. Turkey* (2003)).

would not necessarily be peaceful in the ordinary sense of the word.[33] In other words, the most important limits to peaceful assembly under case law are the preparation of disorder or criminal offences[34] and the protection of the rights and freedoms of others.[35] Put differently, it must be examined on a case-by-case basis whether 'the assembly was peaceful in intent and whether the organisers had violent intentions; whether the applicant had violent intentions when joining the assembly; and whether the applicant caused bodily harm to anyone'.[36]

Regarding restrictions on the right to assemble, the Court made two important observations. First, the restriction does not necessarily consist of a single, well-defined measure, but may be a combination of different measures taken by the authorities.[37] Second, the restriction can only be justified if it meets a kind of three legality tests established by the Court:[38] being prescribed by law; having a legitimate aim; and the necessity of achieving that aim in a democratic society. In its judgements, the Court has elaborated in detail on all three elements of the legality test, and we would focus only on the basic delimitation issues. On the one hand, a restriction prescribed by law must be interpreted broadly and implies that the restrictive measure must be based on a rule of national law.[39] On the other hand, this national law must have the characteristics of a law – being so precisely worded that it is accessible to the persons concerned and being clear in its effects.[40] However, its legitimate aim is a narrowly defined category, which covers the prevention of disorder and the protection of the rights of others.[41] Lastly, regarding restrictions required in a democratic society, not only necessity but proportionality, appropriateness and the relevance of the measure must be assessed.[42] If sanctions are imposed, they must be particularly justified if they are of a criminal nature.[43]

33 *Kudrevičius and others v. Lithuania* (2015); *Laurijsen and others v. Netherlands* (2024). See also: *Plattform 'Ärzte für das Leben' v. Austria* (1988); *Cisse v. France* (2002); *Tuskia and others v. Georgia* (2018); *Annenkov and others v. Russia* (2017); *Makarashvili et al v Georgia* (2022), as well as *Ezelin v France* (1991), *Fáber v Hungary* (2012); *Primov et al v Russia* (2014); *Frumkin v Russia* (2016); *Laguna Guzman v Spain* (2020).

34 *Osmani and Others v. the Former Yugoslav Republic of Macedonia* (2001); *Giuliani and Gaggio v. Italy* (2011); *Schwabe and M.G. v. Germany* (2011).

35 *Osmani and Others v. the Former Yugoslav Republic of Macedonia* (2001); *Protopapa v. Turkey* (2019); *Gülcü v. Turkey* (2016).

36 *Gülcü v. Turkey* (2016); see also: *Shmorgunov and others v. Ukraine* (2021).

37 *Kudrevičius and others v. Lithuania* (2015).

38 *Vyerentsov v. Ukraine* (2013).

39 *Kudrevičius and others v. Lithuania* (2015).

40 *Kudrevičius and others v. Lithuania* (2015); *Djavit An v. Turkey* (2003); but see also: *Ezelin v. France* (1991); *Galstyan v. Armenia* (2007).

41 *Navalny v. Russia* (2018); as well as *Éva Molnár v. Hungary* (2008); *Bayev and others v. Russia* (2017).

42 See especially: *Kudrevičius and others v. Lithuania* (2015).

43 *Kudrevičius and others v. Lithuania* (2015); as well as *Rai and Evans v. United Kingdom* (2009); *Akgöl and Göl v. Turkey* (2011); *Gün and Others v. Turkey* (2013); *Taranenko v. Russia* (2014); *Ekrem Can and Others v. Turkey* (2022).

Regarding b.) – in the case of freedom of association – he Court has repeatedly pointed out a direct link between freedom of association and the exercise of democracy,[44] since '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'.[45] Although the right of association, especially through political parties established under the right of association, plays a fundamental role in ensuring democracy and pluralism, associations for purposes, such as cultural, religious or minority purposes, also play a crucial role in the realisation of democracy.[46] In other words, according to the Court, the freedom of association must deeply penetrate the fabric of society in order to be effective.

As with freedom of assembly, freedom of association is closely linked to the freedoms of thought, conscience and religion, and freedom of expression, as enshrined in Articles 9 and 10 of the Convention.[47] The Court has made considerable efforts to define the organisations covered by the freedom of association. The right of association is essentially based on the autonomy of private law; therefore, most of its rules are found in private law. Therefore, the Court insists that the protection of Article 11 of the Convention is reserved only to private-law organisations or to a well-defined circle of such organisations.[48] This does not include public institutions and professional bodies, for which the Court has developed its own criteria,[49] and has separated certain categories of organisation from the eligible group by means of negative definitions.[50]

The Court has also focused on defining the main characteristics of freedom of association. In this context, it stated that one of the most important attributes of the freedom of association is the possibility of forming a legal person for the purpose of acting jointly in a field of common interest.[51] However, associations cannot be forced

44 *Gorzelik and others v. Poland* (2004); *Sidiropoulos and others v. Greece* (1998).

45 Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, point 112).

46 *Gorzelik and Others v. Poland* (2004); *Rhino Association and Others v. Switzerland* (2011).

47 *Young, James and Webster v. United Kingdom* (1981); *Vörður Ólafsson v. Iceland* (2010).

48 *Chassagnou and others v. France* (1999); *Schneider v. Luxembourg* (2007).

49 According to the case-law of the Court, the following elements play a role in determining whether an association is a private or a public body: a.) whether it was founded by individuals or by the legislator; b.) whether it has remained integrated into the structures of the State; c.) whether it had administrative, rule-making and disciplinary powers; and d.) whether it pursued a public interest objective (*Mytilinaios and Kostakis v. Greece* (2015); *Herrmann v. Germany* (2011), *Slavic University in Bulgaria and Others v. Bulgaria* (2004); *Köll v. Austria* (2002).

50 For example, these forms are not included: doctors' unions, veterinary surgeons' councils, architects' associations, bar associations, notaries' chambers, works councils, chambers of commerce. For relevant case law, see *Le Compte, Van Leuven and De Meyere v. Belgium* (1981); *Vialas Simón v. Spain* (1992); *Popov and others v. Bulgaria* (2003); *Barthold v. Germany* (1985); *Revert and Legallais v. France* (1989); *A. and others v Spain* (1990); *Bota v Romania* (2004); *O.V.R. v Russia* (2001); *National Chamber of Notaries v Albania* (2008); *Karakurt v Austria* (1999); *Weiss v Austria* (1991).

51 *Gorzelik and Others v. Poland* (2004); *Hungarian Christian Mennonite Church and Others v. Hungary* (2014).

into certain legal forms, because this would reduce the freedom of the association of their founders and members to the extent that these associations would either not exist or would have no practical value.[52] However, the freedom to choose the legal form does not mean that associations have the right to have a special legal status.[53] The Court also considered it important to point out that not only the positive freedom of association (i.e. freedom to form or join an organisation) but also its negative freedom (i.e. freedom not to join or leave an organisation) may be protected under Article 11 of the Convention.[54]

As in the case of the right of assembly, the Court has also addressed the cases of restriction of this right in the case of the right of association. The Court has held that unjustified State interference generally takes the forms of refusal to register an association, of its dissolution, and of other activities which hinder its functioning, such as controls or financial restrictions.[55] However, such restrictions may be justified based on a *test of* legality developed under the Convention. As explained above regarding the right of assembly, the three elements of this test are: (a) being prescribed by law; (b) having a legitimate purpose; and (c) the necessity of a *democratic* society to achieve that purpose. The Court has developed in detail all three elements of the legality test in its judgments, and here we will merely draw attention to the basic delimitation issues. A restriction prescribed by law must be interpreted broadly and implies, on the one hand, that the restrictive measure must be based on a rule of national law. On the other hand, however, this national law must have the characteristics of a law, i.e. it must be precisely worded, known to the persons concerned and clear in its effects.[56] The *legitimate aim*, on the other hand, is a narrowly defined category, which must serve at least one of the legitimate aims defined in Sect. 2, Art. 11 of the Convention (interests of national security or public safety; prevention of disorder or crime, protection of health or morals; protection of the rights and freedoms of others).[57]

Finally, with regard to the restrictions *necessary* in a democratic society, it is worth noting that here not only necessity but also proportionality, appropriateness and relevance of the measure must be assessed.[58] Exceptions under this point should be interpreted narrowly, which is primarily a matter for national authorities. Here, the Court must review the decisions of the national authorities in the light of the Convention.[59] Of the relevant case-law, one delimitation issue is the scope of restrictive measures taken by the authorities to protect democracy. In this respect, the Court

52 *Republican Party of Russia v. Russia* (2011); *Zhechev v. Bulgaria* (2007); *Kungyun National Turkish Union v. Bulgaria* (2017).
53 *Hungarian Christian Mennonite Church and Others v. Hungary* (2014).
54 *Sigurður A. Sigurjónsson v. Iceland* (1993); *Vörður Ólafsson v. Iceland* (2010).
55 *Yordanovi v. Bulgaria* (2020); *Ecodefence and Others v. Russia* (2022).
56 *N.F. v. Italy* (2001); *Maestri v. Italy* (2004); *Koretskyy and Co. v. Ukraine* (2008); *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan* (2009); *Yefimov and Youth Human Rights Group v. Russia* (2021).
57 *Sidiropoulos and Others v. Greece* (1998).
58 Basically: *Kudrevičius and others v. Lithuania* (2015).
59 *Gorzelik and others v. Poland* (2004); *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania* (2005); *Hungarian Christian Mennonite Church and others v. Hungary* (2014).

has viewed that States have the right to take preventive measures to protect democracy, both against political parties and against other organisations. '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…'[60]

In addition to general rules on the right of association, based on its case-law, the Court has specified certain types of organisation which can be divided into two broad categories by form and activity. By form these organisations are a.) political parties and b.) trade unions. By activity they are a.) religious; and b.) minority organisations. Of these, only trade unions are normatively mentioned in the text of the Convention, while the role of political parties, religious and minority organisations – given that they are key actors in democratic society – has been highlighted by the Court's decisions.

In the case of political parties, the Court stressed that the measures taken against these parties, in view of their prominent role in the realisation of pluralism and democracy, affect both the freedom of association and democracy, and that the restrictive conditions must, therefore, be interpreted narrowly. With regard to the refusal to register and the dissolution of political parties, the Court has identified two criteria 'on which a political party may promote a change in the law or the legal and constitutional structures of the State. The first criterion is that the means used to that end must be legal and democratic. The second criterion is that the change proposed must be compatible with fundamental democratic principles.'[61] Whether a party's programme contains a call for 'the use of force, insurrection or any other form of rejection of democratic principles' must also be examined.[62] Further, factors such as statements by leaders must be examined to ascertain the true intentions of the party.[63] The Court has repeatedly addressed the issue of party funding and official controls in view of the increased public confidence in parties. In this context, the Court has ruled that financial control should not be used as a political tool and has

60 Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, point 174). From relevant case law, see in particular: *Refah Partisi (Welfare Party) and Others v. Turkey* (2003); *Herri Batasuna and Batasuna v Spain* (2009); *Vona v. Hungary* (2013), as well as *Zehra Foundation and Others v Turkey* (2018); *Kalifatstaat v Germany* (2006); *Les Authentiks and Supras Auteuil v France* (2016); *Ayoub and Others v France* (2020); *Internationale Humanitäre Hilfsorganisation v Germany* (2023).

61 Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, point 179).

62 Ibid., point 180. See also: *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania* (2005); *Freedom and Democracy Party (ÖZDEP) v. Turkey* (1999).

63 *Refah Partisi (the Welfare Party) and others v. Turkey* (2003).

concluded that the prohibition of funding of parties by foreign states 'is not in itself incompatible with Article 11 of the Convention'.[64]

The Court also conducted an in-depth analysis of minority organisations. Although the Convention focuses on individual freedoms, in this case, it has moved towards the protection of collective rights based on case law, since 'forming an association in order to express and promote its identity may be instrumental in helping a minority community to preserve and uphold its rights.'[65] The Court has defined the scope of activities of a minority association that can be protected in a rather broad way. On the one hand, it stated that the existence of minorities and different cultures in a country is the 'historical fact that a democratic society has to tolerate, and even protect and support, according to the principles of international law.'[66] The preservation and development of minority culture and the mention of the consciousness of belonging to a minority community should not be a threat 'to a "democratic society", even if it may provoke tensions.'[67] Indeed, the emergence of tensions is primarily the result of pluralism, which the authorities must protect, not eliminate.[68] The Court also found that separatist views or the demand for territorial autonomy do not constitute a threat to a country's territorial integrity or national security.[69]

The Court considers that several fundamental rights meet in the case of religious organisations, too, and obligated the state to adopt a neutral and impartial approach. Here too, the Court has moved towards recognising the collective exercise of rights, as it stated in one of its judgments:

> 'while religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion" alone and in private or in community with others, in public and within the circle of those whose faith one shares. Since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, 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.'[70]

64 Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, point 198).
65 *Gorzelik and others v. Poland* (2004).
66 *Eğitim ve Bilim Emekçileri Sendikası v. Turkey* (2012).
67 Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, point 203).
68 *Ouranio Toxo and others v. Greece* (2005).
69 *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (2005).
70 *Salvation Army Moscow v. Russia* (2006).

This also means that 'particularly weighty and compelling reasons are required for refusing to re-register a religious community that has existed for many years'.[71] However, authorities must reasonably shorten the procedural time limits for obtaining legal personality. The Court has also held that where the refusal of recognition by the authorities is based on a ground relating to the internal organisation of the religious organisation, it also constitutes an interference with the applicants' right to freedom of religion based on Article 9 of the Convention.[72] However, the Court has been careful of defining the margin of manoeuvre of the State, even if the limits of this margin are rather narrow.[73]

Finally, a brief mention should be made of trade unions, which are clearly defined both in the Convention and in the relevant case law as a form of freedom of association, rather than as a right in its own right.[74] The Court stated relatively early on in this connection that the Convention protects the freedom of trade union members to defend 'their occupational interests (...) by trade-union action, the conduct and development of which the Contracting States must both permit and make possible.'[75] However, this does not mean that trade unions can claim any special treatment from the state.[76] The Court has also held that Sect. 2, Art. 11 of the Convention 'does not exclude any category of occupation from the scope of that article. At most, the national authorities are entitled[77] to impose "lawful restrictions" on a certain of their employees' in accordance with that Article.

In relation to trade unions, the right of association includes the essential elements of 'the right to form or join a trade union; the prohibition of private 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.'[78] The Court applies two principles to the substance of the right of association:

> 'firstly, the Court takes into consideration the totality of the measures taken by the State concerned...; 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

71 Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, point 218).
72 *Salvation Army Moscow v. Russia* (2006).
73 For example, the Court has ruled that Contracting States have a discretionary power to choose the forms of cooperation with different religious communities, including the right to modify privileges granted by the State; See: *Doğan and Others v. Turkey* (2016); *Hungarian Christian Mennonite Church and Others v. Hungary* (2014).
74 *National Union of Belgian Police v. Belgium* (1975); *Manole and 'Romanian Farmers Direct' v. Romania* (2015).
75 *Swedish Engine Drivers' Union v. Sweden* (1976).
76 *Sindicatul 'Păstorul cel Bun' v. Romania* (2013).
77 Ibid.
78 *Demir and Baykara v. Turkey* (2008); *Sindicatul 'Păstorul cel Bun' v. Romania* (2013).

> 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.'[79]

Examples include the right to freely join a trade union[80] or the case law regarding the refusal by the State to allow the formation of a trade union.[81] The Court has also gone into detail on the content of the founding and internal autonomy of trade unions. In doing so, it held that 'the right to form trade unions involves, for example, the right of trade unions to draw up their own rules, to administer their own affairs and to establish and join trade union federations'.[82] In the latter case, however, the membership must be voluntary for all parties.[83] Besides being free to choose their members,[84] these parties can establish their internal rules and regulations and decide on the level of membership fees.[85] Early on, the Court had viewed[86] that though the right to organize strikes is one of the most important safeguards of trade union freedom, it is also not absolute and, therefore, cannot be limited by the state.[87] Later, by way of a legal precedent going beyond its earlier practice, the Court also held that the right to collective bargaining should be considered an essential element in the formation and membership of trade unions.[88]

6. Short Overview of the Strasbourg Case Law for 16 Central European Countries

6.1. Trends

A vast majority of 16 Central European countries joined the Convention in the 1990s partly because it was a precursor to joining the EU. Then the EU membership was the most important foreign policy objective for most of these countries. Therefore, the Central European countries have sought to be early adopters of the Convention in their own interests both in adopting the legal framework and in developing case law. Partly for this reason and partly because by the 1990s the Court had already developed a wide-ranging practice in many areas and had a large body of case law to draw on, there is no *sui generis* Central European case law with its own character.

79 Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, point 246).
80 *ASLEF v. United Kingdom* (2007).
81 *Young, James and Webster v. United Kingdom* (1981); *Sigurður A. Sigurjónsson v. Iceland* (1993).
82 *Cheall v. United Kingdom* (1985).
83 *Yakut Republican Trade-Union Federation v. Russia* (2021).
84 *ASLEF v. United Kingdom* (2007).
85 Ibid.
86 *Schmidt and Dahlström v. Sweden* (1976).
87 *Wilson, National Union of Journalists and Others v. United Kingdom* (2002); *Enerji Yapı-Yol Sen v. Turkey* (2009).
88 *Demir and Baykara v. Turkey* (2008).

However, owing to the characteristics of the development of law and the social order in Central Europe, some typical cases are more frequently found in case law from this region. In most of these countries, religion and churches play a much more important role than in Western Europe. A similarly striking feature in almost all countries is the existence of minorities who wish to practise their culture, traditions and language, often in the form of associations. Thus, several important cases concerning freedom of association, both religious and minority associations, have been brought before the Court in the states of this region.[89]

The majority of Central European countries have a different perception on the role of the state and the depth and scope of state intervention from those of countries in Western Europe. This is not necessarily a sharp contrast between Western and Eastern Europe, but rather a shift from the central to the periphery of Western Europe, where the role of the state is being strengthened mainly as a result of different historical developments. This divergence is clearly reflected in the Court's case-law, and one need only think of the large number of Turkish and Russian judgments on the freedoms of association or assembly.[90] The 16 Central European countries under examination in this case are somewhere in the middle between the two poles of the West and East. However, although the final aim of the Convention and the Strasbourg case law would be to establish a uniform interpretation of the law for the parties to the Convention, this does not imply the exclusive victory of one aspect but rather an objective of developing jurisprudence acceptable to all parties in the long run through mutual harmonisation. In the three decades following the regime change which began in 1989, this process is also perceptible, since the community of the legal scholars in the Central European States now regards both the Convention and the case-law which has emerged from it as a common minimum.

89 For religious organisations, see for example: *Cârmuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova* (2005); *Hungarian Christian Mennonite Church and Others v. Hungary* (2014); *Metodiev and Others v. Bulgaria* (2017); *Pećі Patriarchate Greek Orthodox Ohrid Archdiocese v. the former Yugoslav Republic of Macedonia* (2017). In relation to minority organisations, see for example: *Gorzelik and Others v. Poland* (2004); *'Radko' and the Union of Citizens of Paunkovski v. the former Yugoslav Republic of Macedonia* (2009); *National Turkish Union Kungyun v. Bulgaria* (2017); *The United Macedonian Organisation Ilinden and Others v. Bulgaria* (2006).

90 See for examples: Guide on Article 11 of the European Convention on Human Rights (29/02/2024 version, pp. 51–59).

6.2. Key Cases from the Court's Case-Law in the Region

Table 3. Key cases from the Court's case-law in the region[91]

Legal case	Country	Year	Fundamental right concerned
Gorzelik and others v. Poland	Poland	2004	Right of association
The United Macedonian Organisation Ilinden and Others v. Bulgaria	Bulgaria	2006	Right of association, Right of assembly
The Communist Party and Ungureanu v. Romania	Romania	2005	Right of association
Hungarian Christian Mennonite Church and Others v. Hungary	Hungary	2014	Right of association
Christian Democratic People's Party v. Moldova (No 2)	Moldova	2010	Right of assembly
Tuskia and others v. Georgia	Georgia	2018	Right of assembly
Vyerentsov v. Ukraine	Ukraine	2013	Right of assembly
Sindicatul 'Păstorul cel Bun' v. Romania	Romania	2013	Right of association

7. Conclusion

We have provided an overview of the ECHR provisions on the rights of assembly and association and the case law based on these provisions from a Central-European perspective. We have seen that both legal institutions have deep roots in legal history and that, as a right of freedom, have a history of several centuries. Although the legal institution is taxonomically linked to European legal systems, it became a universal fundamental right in the 19th and 20th centuries, and its regulation falls within the scope of minimum requirements in all legal systems.

Our investigation posed one of the basic questions: what has been the recent development in Europe, the birthplace of these rights, which in fact covers the period from the end of the Second World War to the present (1945–2024)? The answer has shown that the new world order, based on the victory of the Allied Powers in the war, has from the outset prioritised the safeguarding of human rights, understood as individuals' fundamental rights. The scope of these rights was defined in various international conventions, sometimes more extensively, sometimes more narrowly, and specific international legal agreements were made to protect them. One of these was the ECHR, signed in Rome, one of the cradles of ancient culture and law. An independent set of institutions was soon created to interpret and defend the rights guaranteed by the treaty, the most important of which was the European Court of Human Rights, set up in 1959. The Court's law-making role was greatly enhanced by the process of European economic integration, which also began after the Second World War and which, in half a century, politically unified large parts of the European continent. The founding fathers of European integration recognised that the success of political

91 Source: Author's own work.

integration largely depended on the success of legal unification. The case law of the Strasbourg Court was soon recognised by the European Community and later by the EU Court of Justice as a guide and as being fundamental in the field of human rights. The Court's case-law which became part of the judicial practice of Western European integration in its politically and economically nascent phase assumed a much greater role than originally envisaged. By the 1990s the case-law had become a benchmark for human rights at the global level. And the EU's practice of making the adoption of the ECHR a precondition for EU negotiations has contributed greatly to the unification of human rights law in European states.

The answer to the first basic question is therefore clear: although the ECHR regime started as a regional human rights system, its intertwining with European integration has multiplied its impact and its case law has become known and accepted worldwide. Further, with the EU's support, the ECHR has become a de facto minimum human rights standard on the European continent.

Our second basic question is: can this development be considered positive or negative for the states of the Central European region? The above sections show that the answer to this question is clearly positive at least in terms of the rights of assembly and association. We have seen that though the Central European states have long tried to regulate these two fundamental rights, historical conditions and the political situation did not favour this activity, which then became fully formalised after the German and then the Soviet occupation. After the regime change of 1989, the Central European states signed the ECHR and gave it the legal framework they had originally sought to develop, which would have taken decades to complete without their accession to the ECHR. There was the major question of how the Court would react to the somewhat different approaches and circumstances of the Central European states. However, the above analysis of the case law showed that the last decades have also brought positive changes in this respect.

In conclusion, there is the third fundamental question about the future: is the ECHR-based system capable of further development or has it already achieved its goal by unifying the human rights legislation of the European states? To answer this question, it is worth going back to the starting point. The ECHR was essentially created as a regional legal regime, which, because of European integration, has had a greater impact than expected, both within and outside Europe. However, this proved to be a temporary position, and from the end of the 2010s, the EU has been increasingly marginalised as an economic centre and as a model. Other continents, countries, and federal systems are emerging, and this shift may entail the strengthening of the role of other regional human rights regimes and their becoming models.[92] Conversely, the limited sustainability of the European human rights model based on individuals cannot be neglected. Increasingly scarce resources, slowing economic growth, and natural disasters requiring ever greater cooperation favour human rights regimes

92 See for example the growing role of ASEAN. ASEAN adopted its own human rights declaration in 2012, which differs from the ECHR in several respects.

that promote a moderately individualistic approach to human rights. In short, the weakening of Europe can also erode (international) faith in its own legal system. However, exhaustible natural resources are pushing back the limits to the individualistic development of human rights. Therefore, the future is not promising. However, in terms of the past, the Central European countries have utilised opportunities available to them in this field best.

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