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

FIFTH SECTION

CASE OF CHEREMSKYY v. UKRAINE

(Application no. 20981/13)

JUDGMENT

Art 11 • Freedom of peaceful assembly • Lack of clear legal basis for prohibition for an indefinite period on applicant to hold a peaceful assembly • Legal provisions not meeting "quality of law" requirements

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 December 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cheremskyy v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Georges Ravarani, *President*,
Lado Chanturia,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the application (no. 20981/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Maksym Petrovych Cheremskyy ("the applicant"), on 13 March 2013;

the decision to give notice to the Ukrainian Government ("the Government") of the complaint concerning an alleged violation of the applicant's right to freedom of assembly under Article 11 of the Convention and to declare the remainder of the application inadmissible;

the applicant's observations;

Having deliberated in private on 14 November 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the allegedly unlawful interference with the applicant's right to freedom of assembly under Article 11 of the Convention.

THE FACTS

2. The applicant was born in 1972 and lives in Kharkiv. He was represented by Mr Y. Borysenko, a lawyer practising in Kharkiv.

3. The Government were represented by their acting Agent, Ms O. Davydchuk, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. On 11 August 2012 the applicant informed the local police in Kharkiv of his intention to hold a peaceful assembly, under the banner of "Ukraine for fair elections", from 12 August 2012 onwards, for an indefinite period of time, in Shevchenko Park in Kharkiv city centre. The police transmitted the applicant's notice to the Kharkiv City Council (hereinafter "the Council").

6. There is no information of whether the applicant actually attempted to hold the demonstration on 12 August 2012 as he declared to the authorities.

7. On 13 August 2012 the Executive Committee of the Council decided that the assembly that the applicant planned to hold should not be permitted and requested the local court to prohibit it.

8. On the same day the Kharkiv District Administrative Court allowed the request and prohibited the assembly. The court noted that the matters under examination were regulated by the Temporary Regulations on the procedure for organising and holding meetings, rallies, street marches and demonstrations in the city of Kharkiv, which were binding under section 73 of the Local Self-Government in Ukraine Act (see paragraphs 13 and 14 below respectively), and that the procedure as set out in those regulations for the examination by the local authorities of the applicant's notification had been observed. The court based its decision to ban the assembly on the following grounds: (a) the notice sent by the applicant did not provide clear details of the assembly; (b) the notice had not been sent a reasonable time in advance (it was dated 11 August 2012 and had been received by the Council on 13 August 2012, whereas the assembly had been scheduled for 12 August 2012); (c) the applicant planned to hold an assembly for an indefinite period of time; (d) the applicant had chosen the city centre as the location for the assembly, not far from areas with significant levels of road traffic; and (e) the proposed location of the assembly was a place where the people of Kharkiv liked to rest and take part in leisure activities. The court further noted that "there was no evidence to prove that the assembly was not contrary to the interests of the inhabitants of Kharkiv". Moreover, the assembly could pose a risk to their health and life, as well as their right to move about safely in the city. The court also stated that "the material in the case file [did] not demonstrate that there [was] no possibility of a violation of the rights and freedoms of people [not participating in the assembly]".

9. On 17 September 2012 the Kharkiv Administrative Court of Appeal dismissed the applicant's appeal. The court noted that the time and place of the assembly coincided with the time and place of the Honey Fair and the Flower Show, which were to take place from 14 to 23 August 2012 in the same park. The holding of the assembly at the same time and place as those events could lead to a breach of public order and a threat to safety, because the applicant's assembly could spontaneously be joined by an unknown number of people. If this were to happen, the number of participants in the applicant's assembly would increase and the assembly would become unmanageable, all of which would hinder the movement of people and vehicles.

10. On 15 November 2012 the Higher Administrative Court rejected a request by the applicant for leave to appeal on points of law.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine

11. The relevant provisions of the Constitution read, in so far as relevant, as follows:

Article 39

"Citizens have the right to assemble peacefully without arms and to hold meetings, rallies, marches and demonstrations, after notifying the executive authorities and bodies of local self-government beforehand.

Restrictions on the exercise of this right may be established by a court in accordance with the law – in the interests of national security and public order only – for the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons."

Article 92

"The following shall be determined exclusively by the laws of Ukraine:

(1) human and citizens' rights and freedoms; the guarantees of these rights and freedoms; the main duties of the citizen ..."

B. The Code of Administrative Justice, 2005

12. The relevant provisions of the Code of Administrative Justice, 2005, as worded at the material time, read as follows:

Article 182
Specificities of the procedure relating to administrative claims lodged by the authorities with a view to restricting the exercise of the right to peaceful assembly

"1. Bodies of executive power and bodies of local self-government, immediately upon receipt of notification of the holding of gatherings, meetings, rallies, demonstrations and so on, shall be entitled to bring a claim in the local Circuit Administrative Court seeking to ban such events or otherwise restrict the right to peaceful assembly (concerning the place or time of their holding, and so on).

2. A claim received on the date of the events, as defined in the first paragraph of this Article, or thereafter, shall be left unexamined.

3. The court shall immediately notify the claimant and the organiser(s) of the gatherings, meetings, rallies, demonstrations or other peaceful assemblies about the opening of the proceedings, and the date, time and place of examination of the case.

4. The administrative case concerning the restriction of the right to peaceful assembly shall be decided by the court within three days after the opening of the proceedings, or immediately where the proceedings are opened less than three days prior to the holding of the events in question.

5. The court shall allow the claimant's claims in the interests of national security and public order, where it establishes that the holding of gatherings, meetings, rallies, demonstrations or other assemblies may create a real risk of disturbances or crime, or endanger the health of the population or the rights and freedoms of other people. In its ruling, the court shall indicate the manner in which the exercise of the right to peaceful assembly is to be restricted.

6. The ruling of the court in cases concerning the restriction of the exercise of the right to peaceful assembly shall be enforced immediately.

7. Copies of the court's ruling shall be handed out immediately to the parties to the proceedings, or sent to them if they were not present during the delivery of the decision."

Article 183
Specificities of the procedure relating to administrative claims lodged with a view to eliminating restrictions on the exercise of the right to peaceful assembly

"1. The organiser(s) of gatherings, meetings, rallies, demonstrations or other peaceful assemblies shall be entitled to apply to the administrative court for the locality where the events are planned to be held with a claim for the removal of restrictions on the exercise of the right to peaceful assembly by the bodies of executive power or of local self-government that were notified of the holding of such events.

2. The court shall immediately notify the claimant and the defendant (the relevant body of executive power or body of local self-government) of the opening of the proceedings, and the date, time and place of examination of the case.

3. An administrative case concerning the removal of restrictions on the exercise of the right to peaceful assembly shall be decided by the court within three days after the opening of proceedings, or immediately where the proceedings are opened less than three days prior to the holding of the events in question or on the date that they are held.

4. The ruling of the court in an administrative case concerning the removal of restrictions on the exercise of the right to peaceful assembly shall be enforced immediately.

5. Copies of the court's ruling shall be handed out immediately to the parties to the proceedings or sent to them if they were not present during the delivery of the decision."

C. Local Self-Government in Ukraine Act, 1997

13. The provisions of the Local Self-Government in Ukraine Act, 1997, in so far as relevant to the present case, read as follows:

Section 38
Powers to ensure law, order, and the protection of rights, freedoms and legitimate interests of citizens

"1. The executive bodies of ... city councils shall have the following powers:

...

(b) delegated powers:

...

(3) resolving, in accordance with the law, issues concerning the holding of meetings, rallies, marches and demonstrations, or sports, entertainment and other mass events; securing public safety and order during the holding of such events ..."

Section 59
Acts of bodies and officials of local self-government

"...

6. The Executive Committee of the ... city ... council ... shall take decisions within the limits of its powers. The decisions of the executive committee shall be taken at its meetings by a majority vote from the general composition of the executive committee and shall be signed by the ... mayor ..."

Section 73
Binding force of acts and lawful demands of bodies and officials of local self-government

"1. Acts of the council, ... mayor, ... [or] the executive committee of the ... city council which are adopted within the limits of the powers granted to them shall be binding on all executive authorities located in the relevant territory, associations of citizens, enterprises, institutions and organisations, and officials, as well as citizens permanently or temporarily residing in the relevant territory ..."

D. Decision no. 543 of the Executive Committee of the Kharkiv City Council of 6 June 2007 on approval of the Temporary Regulations on the procedure for organising and holding meetings, rallies, street marches and demonstrations in the city of Kharkiv (hereinafter "Decision no. 543")

14. Decision no. 543 introduced the procedure for organising peaceful gatherings in the city of Kharkiv. It was adopted on the basis of section 38 and section 59 § 6 of the Local Self-Government in Ukraine Act. The Temporary Regulations approved by Decision no. 543, in their General Provisions, state that they had been drawn up "in accordance with the Convention", the Local Self-Government in Ukraine Act, the Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988 on the procedure for organising and holding meetings, rallies, street marches and demonstrations in the USSR ("the 1988 Decree" – the relevant extract of which can be found in *Vyerentsov v. Ukraine*, no. 20372/11, § 25, 11 April 2013), the decision of the Constitutional Court of Ukraine of 19 April 2001 in a case regarding timely notification of a peaceful assembly (see paragraph 15 below) and the Code of Administrative Justice (see paragraph 12 above). Under the Temporary Regulations, freedom of assembly could be restricted by a court in the interests of national security and public safety, for considerations of public health, for the prevention of crime and disorder, and for the protection of the rights of others. Notification of the intended event was to be submitted in writing and in good time, that is, not less than ten days prior to the planned date of holding the event. The

Temporary Regulations provided that the following were not permitted: the holding of mass gatherings within parks and other recreational areas, except in one particular park, namely Molodizhnyi; the simultaneous holding of any mass gatherings in a location where other mass events had been authorised; the holding of any demonstrations and pickets directly in front of the offices of institutions and organisations where this would interfere with the work of those institutions and organisations or would impede members of the public from visiting them; and the holding of mass gatherings prior to 8 a.m. or after 10 p.m.

E. Decision of the Constitutional Court of Ukraine of 19 April 2001

15. In its decision of 19 April 2001 in a case regarding the timely notification of a peaceful assembly, the Constitutional Court held, *inter alia*:

> "1. [T]he Ministry of the Interior of Ukraine applied to the Constitutional Court of Ukraine for an official interpretation of the provisions of Article 39 of the Constitution of Ukraine regarding timely notification to executive authorities or bodies of local self-government of planned meetings, rallies, marches or demonstrations.
>
> In this constitutional application it is noted that, under Article 39 of the Constitution of Ukraine, citizens have the right to assemble peacefully without arms and to hold meetings, rallies, marches or demonstrations following prior notification to the executive authorities or bodies of local self-government. However, it is stressed that the current legislation of Ukraine does not provide for a specific time-limit within which the executive authorities or bodies of local self-government are to be notified about such actions ...
>
> [T]he Constitutional Court holds as follows:
>
> 1. The provisions of the first part of Article 39 of the Constitution of Ukraine on the timely notification to the executive authorities or bodies of local self-government of planned meetings, rallies, marches or demonstrations relevant to this constitutional application shall be understood to mean that where the organisers of such peaceful gatherings are planning to hold such an event, they must inform the above-mentioned authorities in advance, that is, within a reasonable time prior to the date of the planned event. These time-limits should not restrict the right of citizens under Article 39 of the Constitution of Ukraine, but should serve as a guarantee of this right and at the same time should provide the relevant executive authorities or bodies of local self-government with an opportunity to take measures to ensure that citizens may freely hold meetings, rallies, marches and demonstrations and to protect public order and the rights and freedoms of others.
>
> Specifying the exact deadlines for timely notification with regard to the particularities of [different] forms of peaceful assembly, the number of participants, the venue, at what time the event is to be held, and so on, is a matter for legislative regulation ..."

F. Other relevant domestic law and practice

16. Other relevant domestic law and practice are summarised in *Vyerentsov* (cited above, §§ 25-40).

II. INTERNATIONAL MATERIALS

A. United Nations Human Rights Council

17. On 20 December 2012 the United Nations Human Rights Council published the Report of the Working Group on the Universal Periodic Review in respect of Ukraine (UN Doc. A/HRC/22/7). In that report, one of the recommendations made to Ukraine was to "implement a law on freedom of assembly that complies with applicable standards under Article 21 of the [International Covenant on Civil and Political Rights]", which recognises the right of peaceful assembly.

B. Parliamentary Assembly of the Council of Europe

18. In its Resolution 2116 (2016) on the urgent need to prevent human rights violations during peaceful protests, dated 27 May 2016, the Parliamentary Assembly of the Council of Europe noted:

> "The Assembly is also worried about the lack of legislation on freedom of assembly in certain countries (for instance in Ukraine, where there is no legislation with respect to a procedure for holding demonstrations)."

C. The Venice Commission and the OSCE/ODIHR

19. Between 2006 and 2011 the European Commission for Democracy through Law (Venice Commission), together with the Office for Democratic Institution and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR), issued four joint opinions on the draft legislation of Ukraine on freedom of assembly. None of the draft laws submitted for their assessment was eventually passed.

20. In October 2016 the Venice Commission adopted a Joint Opinion with the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe and the OSCE/ODIHR on two draft laws of Ukraine on guarantees for freedom of peaceful assembly (no. 854/2016). The Opinion noted the following in particular:

> "32. The Venice Commission, the Directorate and the OSCE/ODIHR delegation learned during their most recent visit in Kyiv that civil society appeared to be divided on the need to adopt of specific legislation on the right to freedom of peaceful assembly. The supporters of the 'no-law approach' claim that, civil society in Ukraine is still too weak to control the *Verkhovna Rada* and fear that in case specific legislation is adopted in Ukraine, the *Verkhovna Rada* could introduce negative amendments into the specific law during possible future political crises. For them, a safer method would be to amend the existing legislation in order to introduce regulations on freedom of assembly and to adopt some secondary legislation in this field. Others assert that the adoption of a specific law on public assemblies would provide greater clarity and precision regarding

the obligations of the State in this field, the grounds for restriction and the procedures to be followed.

33. In practice, in the absence of clear legislative regulations in this area, local authorities have issued specific (and widely varying) local rules in order to regulate the exercise of the right to freedom of assembly. According to certain civil society organisations, regulation of this right by local decisions is a widespread practice in Ukraine, which would contradict Article 92 of the Constitution which provides that human and citizens' rights and freedoms ... are determined '*exclusively by the laws of Ukraine*'."

D. Other international materials

21. Other international materials are cited and/or summarised in *Vyerentsov* (cited above, §§ 41-43).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

22. The applicant complained that the restriction of his freedom of assembly had not been based on law, had not pursued a legitimate aim and had not been necessary in a democratic society, in breach of Article 11 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

23. The parties made no comments on admissibility.

24. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

25. The applicant complained that the local authorities and the courts had prohibited his peaceful assembly on far-fetched assumptions and their decisions had not been based on law, had not pursued a legitimate aim and had not been necessary in a democratic society. The applicant noted that for

thirty years the government had not passed a law laying down clear and unambiguous rules for holding peaceful assemblies. Instead, the restrictions had been based on decisions taken at local government level, which had unjustifiably interfered with the freedom of peaceful assembly and had been applied selectively, as the same locations had been used for other mass gatherings.

26. The Government submitted no observations within the time-limit set.

1. Whether there was an interference

27. The Court reiterates that the right to freedom of assembly enshrined in Article 11 of the Convention is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively. As such this right covers both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it can be exercised by individual participants and by the persons organising the gathering (see, in this context, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015, with further references).

28. The Court considers that the prohibition on the applicant's holding the peaceful assembly he planned to hold for an indefinite period constituted an interference with his rights guaranteed by Article 11 of the Convention, regardless of whether he actually attempted to commence it or not on the day before the ban was imposed.

2. Whether the interference was based on law

29. The Court reiterates that an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2, and is "necessary in a democratic society" for the achievement of those aims (see, among other authorities, *Kudrevičius and Others*, cited above, § 102).

30. The expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be accessible to those concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Also, the law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to interfere with the rights guaranteed by the Convention (see, among other authorities, *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 410-11, 7 February 2017).

31. In the present case, the courts referred in express terms to the provisions of domestic law cited in paragraphs 11 to 14 above. Those provisions, but also other pertinent law in force at the relevant time and the established case-law of the Constitutional Court, insofar as the courts may be understood as having had regard thereto, must be seen as having formed the legal basis of the impugned ban. The Court must examine, therefore, whether that legal basis met the Convention requirements of "quality of the law".

32. The Court reiterates that its power to review compliance with domestic law is limited, as it is in the first place for the national authorities to interpret and apply that law. The Court notes that it examined in detail the existing Ukrainian legal framework concerning the procedure for holding peaceful demonstrations in *Vyerentsov v. Ukraine* (cited above, §§ 51-57), a case which concerned events dating from 2010. It held in particular:

> "54. ... From the materials of the case and the applicant's submissions it is clear that there is no single view on the applicability of the 1988 Decree and the existence of a clear and foreseeable procedure for organising and holding peaceful demonstrations. The practice of the domestic courts also reveals inconsistencies in this sphere ... It is true that the Constitution of Ukraine provides for some general rules as to the possible restrictions on the freedom of assembly, but those rules require further elaboration in the domestic law. The only existing document establishing such a procedure is the 1988 Decree, whose provisions are not generally accepted as the valid procedure for holding demonstrations and which provides, as is confirmed in the practice of the domestic courts ..., for a different procedure from the one outlined in the Constitution. Indeed, whilst the Ukrainian Constitution requires advance notification to the authorities of an intention to hold a demonstration and stipulates that any restriction thereon can be imposed only by a court, the 1988 Decree, drafted in accordance with the Constitution of the USSR of 1978, provides that persons wishing to hold a peaceful demonstration have to seek permission from the local administration which is also entitled to ban any such demonstration. From the preamble of the Decree it is clear that it had been intended for a very different purpose, namely for only certain categories of individuals to be provided by the administration with facilities to express their views in favour of a particular ideology, this in itself being incompatible with the very essence of the freedom of assembly guaranteed by the Ukrainian Constitution and the Convention. As found by a domestic court ..., demonstrations under the 1988 Decree were considered on the basis of their compatibility with 'non-existent constitutions of non-existent subjects'. Therefore, it cannot be concluded that the 'procedure' referred to in Article 185-1 of the Code on Administrative Offences was formulated with sufficient precision to enable the applicant to foresee, to a degree that was reasonable in the circumstances, the consequences of his actions (see, *mutatis mutandis*, *Mkrtchyan* [*v. Armenia*, no. 6562/03, 11 January 2007]) ...
>
> 55. The Court further observes that, admittedly, the Resolution of the Ukrainian Parliament on temporary application of certain legislative acts of the Soviet Union refers to temporary application of Soviet legislation and no law has yet been enacted by the Ukrainian Parliament regulating the procedure for holding peaceful demonstrations, although Articles 39 and 92 of the Constitution clearly require that such a procedure be established by law, that is, by an Act of the Ukrainian Parliament. Whilst the Court accepts that it may take some time for a country to establish its legislative framework during a transitional period, it cannot agree that a delay of more than twenty years is justifiable, especially when such a fundamental right as freedom of peaceful assembly

is at stake. The Court thus concludes that the interference with the applicant's right to freedom of peaceful assembly was not prescribed by law."

33. The Court notes that no new legislation on freedom of assembly has been adopted in Ukraine since its above conclusions in *Vyerentsov* (ibid.) and, therefore, sees no reasons to depart from them in the present case.

34. The Court further notes that the Code of Administrative Justice, and its Article 182 in particular (see paragraph 12 above), provides for the procedure whereby the courts may impose restrictions on freedom of assembly "in the interests of national security and public order", to avert "a real risk of disturbances or crime" or the endangering of "the health of the population or the rights and freedoms of other people". In the Court's opinion, this wording, which reproduces similar wording in Article 39 of the Constitution and Article 11 of the Convention, merely confirms that the right to freedom of assembly is not an absolute right and may be restricted for the purposes enumerated therein. In any event, the domestic authorities and the courts in the present case based their decisions to restrict the applicant's right to freedom of assembly on the Temporary Regulations on the procedure for organising and holding meetings, rallies, street marches and demonstrations in the city of Kharkiv.

35. It is true that under Section 38 § 1 (b) (3) of the Local Self-Government in Ukraine Act, the legislator has delegated to local authorities powers to resolve issues concerning the holding of mass events and to secure public safety and order during the holding of such events (see paragraph 13 above). However, it does not appear that this delegation included rule-making powers on matters that required regulation by Act of Parliament. Despite this, the Temporary Regulations, an act of the Kharkiv municipality (see paragraph 14 above), purported to actually establish substantive rules and restrictions on organising and holding demonstrations in the city. In light of the requirements of Articles 39 and 92 of the Constitution such rule-making exercise by the local authorities on such important matter as freedom of assembly does not appear to have a legal basis in Ukrainian law and, therefore, the lawfulness of any restriction based on such an act of secondary legislation as the Temporary Regulations in question, is open to serious doubt.

36. The Court further observes that it does not appear that the domestic jurisprudence and the courts' decisions in the present case could be seen as having compensated for the lack of clear legal basis, in the applicable legislation, of the impugned restriction on the applicant's right to freedom of assembly. Indeed, the position taken by the Constitutional Court in its 2001 decision was that this can only be done by the adoption of legislation (see paragraph 15 above). Also, in the present case the local authorities and the courts focused on verifying whether the restrictions on the applicant's freedom of assembly were in accordance with the restrictions which had been introduced by the local authorities, ignoring the apparent lack of legal basis

for them to engage in such rule making themselves. In particular, the decision of the first-instance court suggests that it considered the Temporary Regulations to be binding and thus it limited itself to checking whether there were any procedural violations in their application (see paragraphs 8 and 13 above).

37. The Court also notes that, in absence of clarity regarding the criteria for imposing restrictions on the freedom of assembly, the local authorities and the courts made a number of assumptions (see paragraphs 8 and 9 above) that could be seen as rendering practically impossible any decision allowing the holding of a peaceful assembly. The Court is particularly concerned at the requirement placed on the applicant to prove that his assembly was not contrary to the interests of the local population (see paragraph 8 above). If this requirement is understood as referring to "interests" in the ordinary general sense of the word, it is important to emphasise that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by persons holding dissident views – as the authorities seem to have suggested in the case of the applicant – were made conditional on its being accepted by the majority (see, *mutatis mutandis*, *Barankevich v. Russia*, no. 10519/03, § 31, 26 July 2007). Moreover, such a requirement would seem to constitute an impossible task for anyone wishing to gather peacefully and express opinions, especially when such opinions are not favourable to those who are responsible for ensuring the right to peaceful assembly, and, moreover, appears to leave the issue of permission for any assembly in the city at the complete and unrestrained discretion of the local authorities.

38. In the light of the above, the Court considers the restriction of the applicant's right to hold an assembly was not based on legal provisions that met the Convention requirements of quality of the law.

39. Having reached this conclusion, the Court does not need to verify whether the other two requirements (legitimate aim and necessity of the interference) set forth in Article 11 § 2 have been complied with.

40. Accordingly, there has been a violation of Article 11 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

42. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government considered this claim unsubstantiated.

44. The Court awards the applicant the amount claimed in full in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

45. The applicant made no claim under this head. Accordingly, the Court makes no award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the interference with the applicant's freedom of assembly admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 7 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President