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La CEDU sulla libertà di riunione
(CEDU, sez. III, sent. 6 ottobre 2020, ric. n. 41462/17)

La Corte EDU si è pronunciata sulla libertà di riunione. La ricorrente, che ha preso parte ad una manifestazione a Valladolid contro i tagli al bilancio e agli alti tassi di disoccupazione, ha sostenuto che le autorità hanno interferito con il suo diritto alla libertà di riunione pacifica (sancito dall'art. 11 Conv.). Questo perchè la polizia ha interrotto il raduno ed ha arrestato alcuni dei manifestanti usando una forza sproporzionata contro di lei e contro gli altri partecipanti. La ricorrente ha inoltre affermato che nessuno tra i manifestanti ha avuto atteggiamenti violenti.
Il governo spagnolo ha invece sostenuto che l'interferenza con il diritto alla libertà di riunione è stata necessaria - in quanto i manifestanti hanno ostacolato il movimento del traffico, disturbato l'ordine pubblico e causato una situazione pericolosa all'ingresso di un ristorante - ed a è stata adeguata e necessaria in una società democratica.
La Corte ha osservato che, nel caso di specie, le autorità hanno disperso la riunione nonostante fosse pacifica. Inoltre sembra che il disturbo causato dai manifestanti non abbia superato il livello di disturbo che segue normalmente all'esercizio del diritto di riunione pacifica in luogo pubblico.
La Corte ha evidenziato inoltre che secondo il giudice penale i manifestanti sono stati repressi violentemente nonostante il loro innocuo comportamento. Per questo motivo il metodo utilizzato dalla polizia per disperdere la manifestazione non è stato proporzionato. In riferimento alla ricorrente la Corte ha concluso che, non avendo questa commesso alcun atto riprovevole durante la manifestazione, c'è stata un'ingerenza sproporzionata nei confronti del suo diritto. In particolare la polizia con la sua azione repressoria, le ha impedito di continuare a partecipare alla riunione. Di conseguenza, vi è stata violazione dell'art. 11 Conv.

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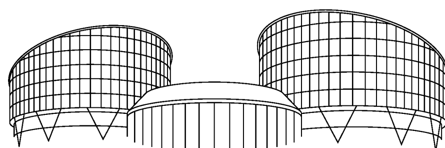

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VLADIMIR USHAKOV v. RUSSIA

(Application no. 15122/17)

JUDGMENT

STRASBOURG

18 June 2019

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 Vladimir Ushakov v. Russia,

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

Vincent A. De Gaetano, *President,*

Georgios A. Serghides,

Paulo Pinto de Albuquerque,

Helen Keller,

Dmitry Dedov,

Branko Lubarda,

Alena Poláčková, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 28 May 2019,

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

(palatino linotype, 11, intestazione comprensiva dei nomi del collegio centrata e il resto della sentenza giustificato, interlinea dell'intero file multipla – 1,15, rientri e spaziature "0")

THIRD SECTION

CASE OF LAGUNA GUZMAN v. SPAIN

(Application no. 41462/17)

JUDGMENT

Art 11 • Freedom of peaceful assembly • Applicant injured during forceful police dispersal of informal gathering after demonstration • Gathering intended as peaceful and conducted in peaceful manner up until point of dispersal • Disruption to ordinary life caused by protest not exceeding level of minor disturbance that follows from normal exercise of the right to peaceful assembly in public place • Protestors' behaviour and harmless placards and slogans not justifying disproportionate force deployed by the police • No suggestion that applicant in particular committed any reprehensible act • Unjustified use of force against applicant and disproportionate interference

STRASBOURG

6 October 2020

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 Laguna Guzman v. Spain,

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

Paul Lemmens, *President,*

Georgios A. Serghides,

Alena Poláčková,
María Elósegui,
Gilberto Felici,
Erik Wennerström,
Ana Maria Guerra Martins, *judges,*
and Milan Blaško, *Section Registrar,*
Having regard to:
the application (no. 41462/17) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Ms Montserrat Laguna Guzman ("the applicant"), on 29 May 2017;
the decision to give notice of the application to the Spanish Government ("the Government");
the parties' observations;
Having deliberated in private on 15 September 2020,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns an alleged breach of Article 11 of the Convention as a result of the injuries suffered by the applicant during the forceful dispersal of a demonstration. The applicant instituted criminal proceedings against the police officers who had allegedly injured her in the course of the dispersal.

THE FACTS

CIRCUMSTANCES OF THE PRESENT APPLICATION

2. The applicant was born in 1967 and lives in Santovenia de Pisuerga. The applicant was represented by Mr J.A. Blanco Rodríguez, later replaced by Ms C. López Cedrón, lawyers practising in Valladolid.

3. The Government were represented by their Agent, Mr R.A. León Cavero, State Attorney.

4. On Sunday 2 February 2014 the applicant took part in a demonstration in Valladolid against budgetary cuts and high unemployment rates, among other social issues. The protest was organised by an association in favour of unemployed people's rights (Asociación parad@s en movimiento Valladolid).

5. The authorities had been notified in advance of the demonstration as required by Spanish legislation. The organisers themselves had requested the public-security resources needed to regulate road traffic and guarantee the proper progression of the demonstration.

6. The protest proceeded without incident until its official end. After that, a group of around fifty to sixty protesters continued marching in the streets of Valladolid city centre, mostly through pedestrian streets, and moved towards a square, Plaza de San Lorenzo. This protest was spontaneous and the authorities had not been informed of it.

7. On that same day, a political party was holding a congress in Valladolid. Some politicians were having lunch in a restaurant located in Plaza de San Lorenzo when the group of protesters gathered in the square.

8. The protesters stood in front of the restaurant holding a placard which read "stop the criminalisation of social protest" (*paremos la criminalización de la protesta social*) and denounced cases of corruption.
9. Immediately after the protesters stopped their march and stood in Plaza de San Lorenzo, the police approached them and asked the protesters to remove the placard they were displaying and to peacefully dissolve the protest and allow traffic to pass as normal.
10. Several police vans were parked in the roadways adjacent to the square. The police officers approached the protesters on foot. They were not wearing body armour or protective helmets, but they carried truncheons and their service pistols. They tried to remove the placard and held some of the protesters and pushed them away from the group in an attempt to dissolve the demonstration.
11. The protesters did not approach the entrance to the restaurant or enter its premises.
12. The protesters refused to put down the placard; the police then forced them to do so. They were forcefully separated, some of them tried to resist, and tension escalated. Some of the police officers' interventions included pushing protesters to the ground, hitting protesters with truncheons, or kicking them, even when they were already lying on the ground.
13. One of the protesters tried unsuccessfully to take an officer's gun out of its holster. He was subdued by the officer and arrested. Two other protesters were arrested for violent conduct or threats. A fourth protester's arrest was ordered but he managed to escape from the police. Two police officers were also injured.
14. The applicant was not among the protesters who were arrested. She was holding the placard in the first line of the demonstration when she was struck violently by a police officer. The applicant suffered injuries to her mouth and her hand. She claimed that while protecting her head with her hand, her hand had been hit with a truncheon, which in turn had caused her to injure her mouth. She was taken to hospital for medical care. According to the medical report, she had suffered a direct trauma to her left hand, and had an open cut, bruises, a fracture and inflammation in her head.
15. According to a medical report issued on 3 June 2014 by the Institute of Legal Medicine of Valladolid, the applicant's injuries had taken ninety days to heal, during which time she was not able to perform her usual activities. Another report, issued later, stated that the applicant's injuries had completely impeded her return to her usual activities. On 15 February 2016 the applicant was given the status of "permanently incapacitated to perform her usual activities" as a consequence of her injuries.
16. According to the police report, the protesters repeatedly tried to enter the restaurant and succeeded in interrupting the traffic in the square. It noted furthermore that the applicant had been among the six protesters who had had to be taken to hospital for treatment of injuries.
17. On 22 February 2014 criminal proceedings were brought before Valladolid investigating judge no. 4 against ten police officers for causing bodily harm and against some of the protesters for disobedience, resisting police officers and assault. The applicant appeared before the investigating judge on 4 April 2014 to give a statement as a witness and victim.

Criminal proceedings against police officers – the present application

18. On 23 and 31 May 2016 investigating judge no. 4 provisionally discharged (*sobreseimiento provisional*) the police officers under investigation and decided to continue the proceedings against four of the protesters (*auto de continuación del procedimiento por los trámites del procedimiento abreviado*). On 21 November 2016, after the charges had been presented by the public prosecutor, investigating judge no. 4 decided to address proceedings against four protesters (other than the applicant) and send them to the competent criminal judge for them to be examined on the merits (*auto de apertura del juicio oral*).

19. The defendants lodged appeals against the decisions of 23 and 31 May 2016 with the *Audiencia Provincial* of Valladolid. On 17 October 2016 the *Audiencia Provincial* confirmed the dismissal of the proceedings against the policemen. The *Audiencia Provincial* of Valladolid stated that the police intervention had been justified "not because the protesters [had] tried to enter [the restaurant], for which there [was] no evidence, but because the protesters [had been] holding a placard with which they [had] occupied a public road, preventing the movement of vehicles and people .... everything [had been] due to a police response to a situation of violence and disorder generated by people who [had] refused to abide by police orders to dissolve the demonstration and remove the placard ... [the individuals had refused to] identify themselves properly, kicked, struggled, insulted and pushed the police officers, who had had to repel that action, resulting in injuries on both sides. What differentiate[d] one action from another, obviously, [was] that the police [had] acted legitimately, while the demonstrators [had] opposed the actions of the police in an active and violent manner".

20. On 15 November 2016 the applicant lodged an *amparo* appeal. She argued that her right to a fair trial had been violated by the refusal of the investigating judge and the *Audiencia Provincial* to further enquire into the alleged offences committed by the police officers against her and other protesters. She also claimed that her rights to freedom of thought, of expression and of assembly and association had been violated.

21. On 22 February 2017 the Constitutional Court declared the appeal inadmissible as the applicant had not duly complied with the obligation to prove that her appeal was one of "special constitutional relevance".

OTHER RELEVANT FACTS THAT TOOK PLACE AFTER THE LODGING OF THE PRESENT APPLICATION

Criminal proceedings against protesters

22. On 19 April 2019, a hearing was held before Valladolid criminal judge no. 3 against three of the accused protesters (no information has been submitted about why the case against the fourth protester was not heard on the same day). By a judgment of 20 April 2018 given by the same judge, the three protesters were acquitted (two of them because the public prosecutor had withdrawn the charges against them, and the third one because no evidence had been found incriminating him).

23. The judgment stated that "the events [had taken] place when the police [had] tried to take the placard away from those holding it ... it [could] be seen [in the footage] that police officers were kicking people". The judge found that the attitude and behaviour of the protesters had not justified the indiscriminate use of force by the police against them. The judge furthermore pointed out that the protesters had not impeded the movement of traffic, threatened anyone or tried to enter the restaurant, and they had not attacked the police officers. He stated that "the right to freedom of

assembly [had been] violated when the only response after the [end of the official demonstration] ... [had been] to use force even when there [had] been no danger to the physical integrity of the people inside the restaurant". In his view, the protest had been violently dispersed without any prior warning to dissolve the demonstration or to put down the placard.

24. No criminal proceedings were ever initiated against the applicant.

Administrative proceedings and judicial administrative proceedings for compensation for the injuries suffered.

25. On 16 January 2017, the applicant brought an administrative claim against the Ministry of the Interior for liability for the injuries suffered. It was rejected in a decision of the Ministry of Interior dated 28 August 2017.

26. The applicant then appealed to the *Audiencia Nacional*. In a judgment of 27 March 2019, the *Audiencia Nacional* found that the State was liable for the conduct of the police agents who had intervened in the dispersal of the protest, that the police intervention had been disproportionate in its response to the group of protesters and in view of the force used against the applicant, and that the applicant had no legal duty to bear the damage caused to her purely because she had taken part in the protest. Among other evidence such as videos provided and the statements of two witnesses, the *Audiencia Nacional* took into account the judgment of 20 April 2018 given by Valladolid criminal judge no. 3 and reproduced that text in full. The administration was ordered to pay to the applicant 10,000 euros. The amount was fixed by the *Audiencia Nacional* taking into account the standard harmonised amounts for redress established as guidelines for cases such as the present one in domestic legislation, the seriousness of the injuries, the number of days needed to heal, the damage to her appearance and the sequelae.

RELEVANT LEGAL FRAMEWORK

27. The relevant provision of the Spanish Constitution reads as follows:

Section 21

"1. The right to peaceful unarmed assembly is recognised. The exercise of this right shall not require prior authorisation.

2. In the event of meetings in public places and of demonstrations, prior notification shall be given to the authorities, who may ban them only when there are well-founded grounds to expect a breach of public order, involving danger to persons or property."

28. The relevant provisions of Right of Assembly Act (Institutional Law 9/1983 of 15 July 1983), regulating the right of assembly provide as follows:

Section 3

"1. Meetings shall not be subject to prior authorisation.

2. The governmental authority shall protect meetings and demonstrations against those who attempt to prevent, disturb or undermine the lawful exercise of this right."

Section 5

"The government authority shall suspend and, if appropriate, dissolve the meetings and demonstrations in the following cases:

a) When they are considered unlawful under criminal law.

b) When disturbances of public order occur, endangering persons or property.

c) When paramilitary uniforms are worn by attendees.

Such resolutions shall be communicated beforehand to the attendees in the manner provided by law."

Section 8

"The holding of meetings in places of public transit and demonstrations must be communicated in writing to the corresponding governmental authority by their organisers or promoters ..."

29. The relevant provision of the Protection of Public Safety Act (Institutional Law 4/2015 of 30 March 2015) reads as follows:

Section 23

Assemblies and demonstrations

"1. The authorities to whom this Law refers shall adopt the necessary measures to protect the holding of assemblies and demonstrations, preventing the disruption of public safety. They will order the dissolution of assemblies in places of public transit and of demonstrations in the cases established in section 5 of Institutional Law 9/1983 of 15 July 1983, regulating the right of assembly. They will also disperse vehicles grouped together deliberately (*disolver las concentraciones de vehículos*) when these hamper, put in danger or hinder the traffic on those roads.

2. The intervention measures for the maintenance or reestablishment of public safety in assemblies and demonstration shall be gradual and proportionate to the circumstances of the case. The dissolution of assembles and demonstrations will constitute the last resort.

3. Before adopting the measures mentioned in the above section, the acting units of the Security Forces and Corps shall warn of such measures the persons affected, even orally should the urgency of the situation make it unavoidable. In cases of public safety risk being posed by weapons, explosive devices or blunt objects, or any other objects dangerous in some way, the Security Forces and Corps shall be able to dissolve the assembly or demonstration or remove the vehicles and obstacles without the need for a prior warning."

THE LAW

ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

30. The applicant complained of a violation of her right to freedom of assembly as established in Article 11 of the Convention, the relevant parts of which read as follows:

"1. Everyone has the right to freedom of peaceful assembly ...

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. ..."

Admissibility

31. The Government considered that the protest actions taken by the applicant had not fallen within the scope of Article 11 § 1 of the Convention. They claimed that the "tumultuous" gathering with the purpose of entering the restaurant had not corresponded to the legal objective of the demonstration, which had made the protesters' action illegal. The Government also claimed that the applicant and other people had hindered the movement of traffic while holding the placard, causing a dangerous situation at the entrance to the restaurant, and that the police officers, whose presence had been requested by the organisers of the demonstration themselves, had used force proportionately in order to allow renewed movement of road traffic only after having asked the

protesters to disperse. As a result, the protest could not be considered a "peaceful demonstration", and Article 11 of the Convention was not applicable to the present case.
The applicant contested the Government's arguments and insisted that none of the reports written by the police officers themselves mention her as being violent or having in some way confronted the police.
32. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Taranenko v. Russia*, no. 19554/05, § 65, 15 May 2014).
33. Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 77, ECHR 2001-IX). The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *Sergey Kuznetsov v. Russia*, no. 10877/04, § 45, 23 October 2008, and *Taranenko*, cited above, § 66).
34. In this connection, it should be noted that an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of a demonstration if the individual in question remains peaceful in his or her own intentions or behaviour (see *Primov and Others v. Russia*, no. 17391/06, § 155, 12 June 2014). Even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of the organisers, such a demonstration does not as such fall outside the scope of paragraph 1 of Article 11, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision (see *Taranenko*, cited above, § 66).
35. The Court observes that the present application relates only to the protest that took place after the termination of the official demonstration and concerns the proceedings brought before investigating judge no. 4 against the police officers. The Court observes that the applicant intervened in those proceedings in order to obtain the prosecution and eventual sentencing of the police officers involved. The proceedings terminated with the dismissal of the charges against the police officers. The Court observes that no proceedings have been instituted against the applicant. She was not arrested or detained, nor has she been held responsible of any impugned conduct in respect of the protest. Although not constituting the object of the present case, the Court notes that Valladolid criminal judge no. 3 stated in his judgment that the attitude and behaviour of the protesters had not justified the indiscriminate use of force by the police presence against them in the case at hand. That conclusion does not concern the applicant as such as she was not a party to the proceedings before investigating judge no. 3. However it permits the Court to conclude that there was no indication whatsoever that the applicant, as one of the protesters, engaged in actions that were violent or not peaceful (*Frumkin v. Russia*, no. 74568/12, § 137, 5 January 2016, and *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, §§ 282-86, 19 November 2019) or undermining the foundations of a democratic society.
36. This is sufficient for the Court to arrive at the conclusion that the applicant is entitled to invoke the guarantees of Article 11, which is therefore applicable in the present case. The Court notes that

the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

Merits

The parties' submissions

37. The applicant maintained that the authorities had interfered with her right to freedom of peaceful assembly by interrupting the gathering, arresting some of the protesters and pulling down the placard, as well as by using disproportionate force against her and other participants. She insisted that none of the reports written by the police officers themselves had referred to her as having been violent or aggressive or having in some way confronted the police. She further stated that none of the other protesters had had a violent attitude or had intended to enter the premises of the restaurant, and considered that the violence had started only with the police intervention. According to the applicant, the gathering had caused no disturbance which would have merited its dispersal until the police had forcefully intervened. She insisted on the seriousness of her injuries. In her view, the police intervention had been grossly disproportionate and in violation of Article 11 of the Convention.

38. The Government claimed that the interference with the applicant's freedom of peaceful assembly had complied with domestic law and had been necessary for the maintenance of public order. They claimed that the actions taken by the applicant and the other protesters prior to the police intervention had hindered the movement of traffic, disturbed public order and caused a dangerous situation at the entrance to the restaurant. They considered that the action taken had been proper and needed in a democratic society in order to allow renewed movement of road traffic, and that the police presence had been requested by the organisers of the originally notified demonstration themselves.

39. Lastly, the Government again argued that the injuries suffered by the applicant were not relevant to the issues at stake, since she had not submitted an application for an alleged violation of Article 3 but for the alleged violation of her right to protest peacefully as established in Article 11.

The Court's assessment

(a) Whether there was an interference

40. The Court reiterates that interference with the exercise of freedom of peaceful assembly does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly and those, such as punitive measures, taken afterwards (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 100, ECHR). For instance, measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 7 and 30, ECHR 2006-XIII) amount to interference.

41. It has not been disputed between the parties that the facts of the present application do not relate, as such, to the duly notified demonstration organised by Asociación parad@s en movimiento Valladolid but to the gathering that took place afterwards, when some fifty to sixty participants continued marching spontaneously after the end of the demonstration. A situation of

tension and violence was then created and some of the people who participated in the gathering were injured, including the applicant, as were some police officers.

42. The Court notes that the applicant's conduct was not established to have been of violent character either during the official demonstration or at the informal gathering afterwards, but she was injured during the police dispersal of the latter. In such circumstances, the Court considers that the facts of the case disclose interference directly related to the applicant's exercise of her right to freedom of peaceful assembly under Article 11 of the Convention on account of the dispersal of the gathering.

43. It remains to be determined whether the interference was justified under paragraph 2 of Article 11 of the Convention.

(b) Whether the interference was lawful and pursued a legitimate aim

44. 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 the aim or aims in question (see, among other authorities, *Vyerentsov v. Ukraine*, no. 20372/11, § 51, 11 April 2013, and *Nemtsov v. Russia*, no. 1774/11, § 72, 31 July 2014).

45. As regards the requirement of lawfulness, the Court notes, firstly, that notification was given of the official demonstration of 2 February 2014 to the authorities as required by Spanish legislation (see paragraph 5 above) and it took place without any incidents until its official end. It was only after the end of the demonstration that a group of demonstrators spontaneously continued marching in the streets of Valladolid city centre.

46. The Court observes that the restriction imposed on the applicant's freedom of peaceful assembly was based on domestic legislation (section 5 of the Right of Assembly Act and section 23 of the Protection of Public Safety Act (see paragraphs 28 and 29 above)), the wording of which was clear. Therefore, the requirement of foreseeability was satisfied.

47. However, given the nature and scope of the applicant's grievances, and in view of its findings below regarding the proportionality of the impugned interference, the Court does not need to delve into matters relating to the legality of the interference and the pursuance of legitimate aims, namely whether the forceful terminating of the gathering intended to pursue the legitimate aims of the "prevention of disorder" and "protection of the rights and freedoms of others" because of the disruption to the movement of road traffic, as the Government stated. Therefore, the Court will examine whether the dispersal of the gathering was necessary in a democratic society, which in the specific circumstances will also take into consideration the issue of whether the interference pursued a legitimate aim (see, for a similar approach, *Ibrahimov and Others v. Azerbaijan*, nos. 69234/11 and 2 others, § 77, 11 February 2016).

(c) Whether the interference was necessary in a democratic society

48. The applicant submitted that the spontaneous gathering after the official demonstration had been peaceful and had been dispersed solely because of the police intervention. The Court notes that that fact was confirmed by Valladolid criminal judge no. 3 in his judgment (see paragraph 23 above).

49. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in

the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Kudrevičius and Others*, cited above, §§ 142-46).

50. The Court reiterates that while rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise traffic disruption and take other safety measures, their enforcement cannot become an end in itself. In particular, where irregular demonstrators do not engage in acts of violence, the Court has required that the public authorities show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Bukta and Others v. Hungary*, no. 25691/04, § 34, ECHR 2007-III; *Fáber v. Hungary*, no. 40721/08, § 49, 24 July 2012; and *Kudrevičius and Others*, cited above, §§ 147-54).

51. In the present case the Court observes that the authorities dispersed the spontaneous gathering despite the fact that it had been intended to be peaceful and had been conducted in a peaceful manner up to that point. This already calls into question the Government's assertion concerning the necessity of the dispersal. It has not been argued or demonstrated that it would have been difficult for the police to contain or redirect the protesters, or control the situation otherwise, protect public safety and prevent any possible disorder or crime. Nor has it been shown, either at the domestic level or before the Court, that the demonstration posed a high level of disruption of public order. It follows that the authorities have not adduced relevant and sufficient reasons justifying the dispersal of the demonstration (see *Ibrahimov and Others*, cited above, § 80).

52. It appears that the nuisance caused by the applicant and her fellow protesters, on a Sunday morning and mostly concentrated on pedestrian streets, caused a certain disruption to ordinary life, but it did not in those specific circumstances exceed the level of minor disturbance that follows from normal exercise of the right of peaceful assembly in a public place (see *Kudrevičius and Others*, cited above, §§ 149, 164-75). In this regard the present case can hardly be distinguished from previous cases in which the Court has found that such tolerance should extend to instances where the demonstration has been held at a public place in the absence of any risk of insecurity or disturbance (see *Fáber*, cited above, § 47) or without danger to public order beyond the level of minor disturbance (see *Bukta and Others*, cited above, § 37).

53. It is not in dispute between the parties that the applicant sustained injuries on 2 February 2014. There also appears to be common ground between the parties that such injuries were inflicted during the police intervention to dissolve the protest, and that police officers were implicated in one way or another in this situation (see paragraphs 22 and 23 above).

54. The Court observes that the applicant has never been arrested or prosecuted for any violent actions during the protests, and her name was not even mentioned in the reports of the facts from the day. It further notes that the proceedings in respect of certain protesters ended with acquittals being issued by criminal judge no. 3, either for withdrawal of the charges against them or for lack

of evidence. In so far as that criminal procedure was relevant to the determination of the issues relating to some protesters' participation in the demonstration, and the way in which they were handled by the police, the Court notes that Valladolid criminal judge no. 3, after having examined evidence, concluded that the protesters had been violently repressed without any prior warning, despite the fact that they had not blocked traffic, that it had not been proved that they had been trying to enter the restaurant (see paragraph 23 above) where some politicians had been having lunch, and that they had not provoked the confrontation with the police officers. In view of the facts as established by criminal judge no. 3 in his judgment, the protesters' behaviour and the harmlessness of their slogans and placards did not justify the force deployed by the police. In the light of the above-mentioned circumstances, the method used by the police to disperse the demonstration was not proportionate.

55. Concerning in particular the applicant's involvement in the gathering and its dispersal, even assuming that the forceful terminating of the gathering pursued a legitimate aim and in so far as nothing in the materials before the Court suggests that the applicant committed any reprehensible act during the demonstration, the above findings on the unjustified use of force against her suffice for the Court to conclude that there was a disproportionate interference with her rights under Article 11 of the Convention. In particular, it entailed termination of her participation in the gathering (compare *Oya Ataman*, cited above, §§ 38-44).

56. There has accordingly been a violation of Article 11 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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."

58. The applicant did not claim any amount in respect of damage.

59. She claimed 2,539.80 euros (EUR) for the costs and expenses incurred, *inter alia*, before the ordinary domestic courts, and EUR 248.10 for the proceedings before the Constitutional Court and the Court (photocopying, postal expenses and a solicitor's invoice for the introduction of the *amparo* appeal (see paragraph 20 above). She submitted several invoices and documents to support her claim.

60. The Government considered that some of the costs and expenses claimed by the applicant had not been sufficiently proved as having been paid by the applicant, and that the amount claimed for the medical report concerning the applicant's injuries (EUR 1,210) was exaggerated.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the amounts claimed by the applicant for costs and expenses correspond mostly to administrative proceedings requesting compensation for the responsibility of the State, introduced after the present application before the Court (see paragraphs 25 and 26 above), and not to the criminal proceedings initiated against the police officers which constitute the object of the present application (see paragraph 18 above). Regard being had to the documents in its possession and the above

criteria, the Court accepts the claim for the proceedings before the Constitutional Court and the Court (see paragraph 59 above) and awards the applicant the sum of EUR 248.10.

62. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Declares the application admissible;

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

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 248.10 (two hundred and forty-eight euros and ten cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

4.*Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan BlaškoPaul Lemmens

RegistrarPresident