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La Corte EDU sull'uso di armi protettive durante manifestazioni pubbliche in Germania
(CEDU sez. II, sentenza 20 maggio 2025 ric. n. 44241/20)

La decisione della Corte EDU ha riguardato il caso di un cittadino tedesco, condannato per aver indossato una visiera di plastica con la scritta "*Smach Capitalism*" durante una manifestazione pubblica, in violazione dei §§ 17a(1) e 27(2) § 1 della Legge sulle assemblee e i cortei pubblici (*Versammlungsgesetz*), che vieta il porto di armi protettive durante le assemblee pubbliche all'aperto. Il ricorrente ha lamentato la violazione del diritto alla sua libertà di riunione e di espressione ai sensi degli articoli 10 e 11 della Convenzione.
La Corte EDU ha deciso il caso unicamente sulla base dell'articolo 11, sebbene in combinato disposto con l'articolo 10 della Convenzione, verificando anzitutto se vi fosse stata un'interferenza con il diritto alla libertà di riunione pacifica. All'uopo essa ha ribadito che un individuo non cessa di godere del diritto alla libertà di riunione pacifica a seguito di episodi di violenza sporadica o di altri atti punibili commessi da altri nel corso della manifestazione se l'individuo in questione mantiene un atteggiamento pacifico nelle proprie intenzioni o nel proprio comportamento. E che l'onere di provare le intenzioni violente degli organizzatori di una manifestazione incombe alle stesse autorità. Nel caso di specie, i Giudici di Strasburgo hanno constatato l'assenza di prove sufficientemente adeguate, atte a dimostrare la natura non pacifica della manifestazione e della condotta del ricorrente. In ragione di ciò, l'irrogata condanna penale si è tradotta in una "interferenza non necessaria in una società democratica", non essendo stato adeguatamente bilanciato il diritto del ricorrente alla libertà di riunione con l'obiettivo legittimo di prevenire disordini e violenza, con conseguente violazione dell'articolo 11 § 1 della Convenzione.

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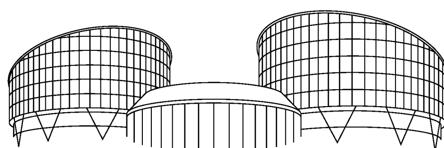

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF Omissis v. GERMANY
(Application no. 44241/20)

JUDGMENT
STRASBOURG
20 May 2025

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 Omissis v. Germany,
The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Arnfinn Bårdsen, *President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Anja Seibert-Fohr,
Davor Derenčinović,
Juha Lavapuro, *judges*,
and Dorothee von Arnim, *Deputy Section Registrar*,
Having regard to:
the application (no. 44241/20) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr XXX ("the applicant"), on 1 October 2020;
the decision to give notice to the German Government ("the Government") of the complaints concerning Articles 10 and 11 of the Convention;
the parties' observations;
Having deliberated in private on 29 April 2025,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the criminal conviction of the applicant for wearing a plastic visor at a demonstration in breach of a general prohibition of carrying protective weapons (*Schutzwaffen*) at public outdoor assemblies in Germany. The applicant relied on Articles 7, 10 and 11 of the Convention.

THE FACTS

2. The applicant was born in 1985 and lives in Munich. He was represented by Mr M. Breuer, a lawyer practising in Munich.
3. The Government were represented by one of their Agents, Ms N. Wenzel, of the Federal Ministry of Justice.
4. The facts of the case may be summarised as follows.

I. THE DEMONSTRATION

5. On 18 March 2015 the newly built building of the European Central Bank (ECB) headquarters was opened in Frankfurt am Main. A broad alliance of organisations and parties, called Blockupy, organised and called for various protests during that day in Frankfurt, including peaceful blockades and a demonstration.
6. The applicant participated in a demonstration on the morning of 18 March 2015, which included peaceful blockades, under the slogan "colourful, loud – but peaceful" (*bunt, laut – aber friedlich*). For about three hours, he wore a piece of transparent plastic sheeting (relatively hard but flexible and thinner than Plexiglas), which he had fastened with a rubber band so that it covered his forehead and eyes. Several participants of the demonstration wore a similar visor. The applicant had written

the words "smash capitalism" on his visor. During the demonstration the police officers present neither warned nor fined the applicant nor requested that he remove the visor.

7. Before the start of that demonstration, from around 5 a.m. until midday, groups of individuals willing to commit acts of violence also gathered in the Frankfurt district of Ostend, where the ECB's headquarters are located and where the demonstration in which the applicant participated took place. These groups blocked a number of streets, erected barricades and then set them on fire. They also damaged a large number of cars, some of which they also set on fire. They threw stones and bottles at police officers and some attacked bystanders, firefighters and emergency medical services. Other activities included damaging property, setting fire to police vehicles and inflicting bodily harm on police officers.

II. THE CRIMINAL PROCEEDINGS

8. On 28 June 2016 the Frankfurt am Main District Court issued a penalty order against the applicant. The order imposed a fine of 40 daily rates at 10 euros (EUR) each. The penalty order stated that on 18 March 2015 the applicant, as a participant in a demonstration, had temporarily worn a plastic visor over his face for the purpose of protecting himself against police measures, such as the use of pepper spray.

9. After the applicant objected to the penalty order and a hearing was held on 3 May 2017, the District Court convicted the applicant and sentenced him to a cumulative penalty of 60 daily rates at EUR 30 each, taking into account a previous conviction with a related penalty of 50 daily rates.

10. The court considered that the wearing of the plastic visor was a violation of sections 17a(1) and 27(2) § 1 of the Act on Public Assemblies and Processions (*Versammlungsgesetz*) (see paragraphs 17 and 18 below), which prohibits the carrying of protective weapons at public outdoor assemblies. Referring to documentation of the legislative process (see paragraph 19 below), the court defined protective weapons as "objects that are used for defence against attacks and are usually given this purpose at the time of manufacture". Examples given in the documentation from the legislative process included "protective shields, self-made armour or equipment for police and/or military use (e.g. steel helmets [and] NBC protective gas masks) or [items used in the] martial arts" (see paragraph 19 below). The District Court stated that the plastic visor, despite its simple construction, was designed to be such a protective weapon as it was capable of "preventing the eyes from being directly exposed to liquids or gases, in particular to pepper spray, and thus ensuring or at least prolonging the ability of the wearer of the plastic visor to defend himself in the event that such coercive measures are used by the police". The court further found that the visor had been designed for that purpose, since no other "civil" use of such a visor was imaginable.

11. With regard to the inscription "smash capitalism" on the plastic visor, the court held that the purpose of the visor was not solely the expression of an opinion. Therefore, the inscription did not affect the nature of the visor as a protective weapon. The applicant could have worn the visor on the back of his head, which would have allowed him to show the inscription, but the visor would not have constituted a protective weapon.

12. The applicant appealed against that decision and the Frankfurt am Main Regional Court reduced the penalty to 10 daily rates on the grounds that the previous conviction, taken into account by the District Court, had already been served. The Regional Court otherwise found the applicant guilty of carrying a protective weapon in violation of the Act on Public Assemblies and Processions.

13. As regards the interpretation of the term "protective weapon", the Regional Court stated:

> "Protective weapons are not weapons in a technical sense. They are objects that are used for defence against attacks and are usually given this purpose at the time of manufacture. The plastic sheet used by the defendant with the inscription 'smash capitalism' constitutes a

protective weapon according to this definition. The sheet served to defend against pepper spray attacks in the context of coercive police measures, and not just to exercise the freedom of expression; this purpose was already assigned to it when it was manufactured, as follows from the inscription 'smash capitalism'."

14. The court also rejected the possibility that the applicant had made a mistake and should thus be exempted from punishment. The fact that the police officers at the demonstration had not pointed out that it was a criminal offence to carry a protective weapon was irrelevant. Given the applicant's role as a spokesperson for the Stop G7 alliance and his long-standing involvement in the demonstration scene, the Regional Court did not consider that he had made a mistake; in any event, any such mistake would have been avoidable, as he could have asked the police officers present before the demonstration for clarification on the legality of wearing the plastic visor.

15. The applicant lodged an appeal on points of law and on 13 August 2019 the Court of Appeal rejected it.

16. On 18 March 2020 the Federal Constitutional Court refused to accept for examination a constitutional complaint lodged by the applicant, without providing reasons (file no. 2 BvR 1796/19). The decision was received by the applicant's representative on 30 March 2020.

RELEVANT LEGAL FRAMEWORK

17. Section 17a(1) of the Act on Public Assemblies and Processions prohibits the carrying of protective weapons or objects, suitable for use as protective weapons and, in the circumstances, intended to ward off law-enforcement measures used by a holder of sovereign power, while present at or travelling to public outdoor assemblies, processions or other outdoor public events. Subsection 3 of the provision exempts religious services and processions, pilgrimages, funerals, processions of wedding parties and traditional folk festivals from the prohibition. It also permits the competent authority to grant further exemptions where there is no reason to fear a threat to public safety or order. In accordance with subsection 4 of the provision, the competent authority is permitted to issue orders to enforce the prohibition and in particular to exclude persons from the event who violate these prohibitions.

18. Section 27(1) of the Act on Public Assemblies and Processions concerns the criminal liability of violations of the above-mentioned prohibition and reads, in so far as relevant, as follows:

> "...
>
> Any person who,
>
> 1. contrary to section 17a(1), carries protective weapons or objects that are suitable for use as protective weapons which, in the circumstances, are intended to defend against enforcement measures by a holder of sovereign power, while [present] at or travelling to public outdoor assemblies, processions or other outdoor public events,
>
> ...
>
> [shall] incur a penalty of imprisonment for a term not exceeding one year or a fine."

19. During the legislative process introducing the prohibition of protective weapons into German law in 1985 the Legal Committee of the German Parliament stated the following in its report (BT-Drs. 10/3580, p. 4):

> "Protective weapons are objects that are used for defence against attacks and are usually given this purpose at the time of manufacture. Protective weapons are therefore primarily protective shields, self-made armour or equipment for police [and/or] military use (e.g. steel helmets [and]

NBC protective masks) or [items used in the] martial arts. These items pose a threat to public safety and order at assemblies and processions, regardless of whether they are intended to be used as a means of warding off law-enforcement measures in individual cases; participants who carry such protective weapons demonstrate an obvious willingness to use violence on account of their martial appearance and, according to findings in the field of crowd psychology, have an aggression-stimulating effect on the crowd. It therefore appears necessary to include the carrying of protective weapons in subsection 1 without the need for a specific intention to use them.

In the opinion of the committee majority, it is ensured that the use of protective weapons as mere symbols solely for the expression of opinion is not covered by the legal prohibition in paragraph 1."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

20. The applicant complained that his criminal conviction for wearing a plastic visor at a peaceful assembly and the reasoning of the criminal courts had violated his rights to freedom of assembly and to freedom of expression. He relied on Articles 10 and 11 of the Convention, which read, in so far as relevant, as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, ..."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, ...

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. ..."

A. Admissibility

21. The Government pointed out that the applicant had sent his application more than six months after his representative had received the final decision of the Federal Constitutional Court.
22. The applicant clarified in his application that his representative had attempted to deliver the application in person to the Court on 30 September 2020, but had been unable to do so, as he had only arrived at night, there had been no mailbox, and the security guard post had not been staffed. He had therefore returned to Munich and mailed the application the next day.

23. The Court notes that the six-month period applicable at the relevant time started to run on 31 March 2020, the day after the applicant's representative received the final decision. Ordinarily, this period would have expired six calendar months later, on 30 September 2020 (see *Otto v. Germany* (dec.), no. 21425/06, 10 November 2009). However, invoking its interpretive jurisdiction under Article 32 of the Convention, the Court held that, in light of the global pandemic, the method of calculating the six-month rule had to be adapted to the exceptional circumstances. In particular, if the six-month period either commenced or was due to expire during the period defined in the President of the Court's decisions (16 March to 15 June 2020), the rule under Article 35 § 1 should be considered exceptionally suspended for a total of three calendar months (see *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, §§ 49-59, 1 March 2022, and *Makarashvili and Others v. Georgia*, nos. 23158/20 and 2 others, § 47, 1 September 2022).
24. In the present case, since the six-month period began on 31 March 2020 and the original expiry date (30 September 2020) fell within the relevant suspension window, the Court concludes that the applicant had an additional three months until 30 December 2020 to submit the application. Since the application was introduced on 1 October 2020, the Court finds that the application cannot be considered to have been lodged out of time within the meaning of Article 35 § 1 of the Convention, in the light of the exceptional circumstances outlined above.
25. The Court further notes that the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

26. The applicant submitted that his criminal conviction for wearing a plastic visor at a demonstration had interfered with his right to freedom of peaceful assembly. As the interference had constituted a criminal conviction it had had a chilling effect. The interference had not had a legal basis, since the plastic visor could not have been considered a weapon, and it had not pursued a legitimate aim, as the plastic visor was incapable of protecting him against targeted and legitimate enforcement measures by the police, in particular the use of pepper spray.
27. Moreover, the criminal conviction had not been necessary in a democratic society. A criminal conviction as a sanction in the context of political acts should have only been used in exceptional circumstances. Those circumstances had, however, not existed, as he had not given any reason for enforcement measures to be used by the police against him, but had demonstrated peacefully. While criminal offences had been committed on that day in Frankfurt, this had neither taken place in the demonstration in which he had participated nor had he committed any.
28. Regarding Article 10 of the Convention the applicant submitted that Article 11 had to be considered in the light of Article 10 of the Convention. Moreover, he complained under Article 10 of the Convention that the Regional Court had relied on the inscription "smash capitalism" on the applicant's plastic visor in its reasoning when assessing whether the visor had constituted a protective weapon.

(b) The Government

29. The Government submitted that while a subsequent criminal conviction might in principle constitute an interference with the right to freedom of assembly, the applicant's conviction had not constituted an interference with Article 11 of the Convention, since the assembly on 18 March 2015

in Frankfurt had not been peaceful and Article 11 of the Convention therefore did not apply. The demonstration on 18 March 2015 had been marked by many acts of violence, such as attacks on police officers and bystanders and vandalism.

30. They further stated that, in the event that the Court concluded that the conviction had constituted an interference, this interference would have been justified. It had pursued the legitimate aims of preventing disorder and crime and protecting the rights and freedom of others. It had also been prescribed by law. Section 17a(1) of the Act on Public Assemblies and Processions set out a ban on carrying protective weapons, while section 27(2) § 1 regulated criminal sanctions for breaches of that ban. Even though there had been no court decision prior to the assembly on 18 March 2015 that directly addressed the question of whether a plastic visor had to be classified as a protective weapon, on the basis of the documentation of the legislative process the courts had come to the conclusion that the specific visor constituted a protective weapon. That conclusion had neither been unpredictable nor arbitrary but had been sufficiently foreseeable for the applicant, if need be with appropriate advice.

31. According to the Government's submissions, the applicant's criminal conviction had also been necessary in a democratic society and had fallen within the wider margin of appreciation enjoyed by the State, given the violent nature of the assembly. The demonstration on 18 March 2015 had been marked by countless acts of violence and had therefore posed a real and significant threat to public order. Notwithstanding the simple design of the plastic visor, it had represented a willingness to engage in violence or to protect oneself against any coercive measures by the police. Therefore, protective weapons, in particular if carried by multiple participants, had been able to fuel aggression irrespective of its design. Moreover, the degree of interference had to be categorised as relatively minor. The conviction had constituted a small fine, it had not penalised the applicant's mere participation at the demonstration and, as it had only been imposed after the assembly, it had not restricted his freedom of assembly during the assembly itself.

32. With regard to Article 10 of the Convention the Government submitted that the domestic courts had taken into account that the visor had been inscribed with the words "smash capitalism". This inscription had not, however, transformed an unlawful protective weapon into a lawful object for expressing an opinion, since the applicant had not used the visor at the demonstration for the sole purpose of expressing his political opinion but also, according to his own account, to protect himself against the potential use of pepper spray. The applicant had not been convicted for expressing his opinion and had been free to express his opinion at the assembly in ways other than through an inscription on a protective weapon. In general, in the context of assemblies, Article 11 of the Convention had to be considered to be *lex specialis* and would take precedence over Article 10 of the Convention. Nonetheless, Article 11 of the Convention had to be interpreted in the light of the right to freedom of expression, as had been done by the domestic courts.

2. *The Court's assessment*

(a) The relationship between the right to freedom of expression and the right to freedom of association

33. The Court reiterates that in cases in which applicants have complained that they had been prevented from participating in and expressing their views during assemblies, including demonstrations, or that they had been punished for such conduct, it has taken several elements into account in determining the relationship between the right to freedom of expression and the right to freedom of assembly. Depending on the circumstances of the case, Article 11 of the Convention has often been regarded as the *lex specialis*, taking precedence for assemblies over Article 10 of the Convention (see, for instance, *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202, concerning a

disciplinary sanction imposed on the applicant, a lawyer, after having participated in a demonstration to protest against two court decisions; *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X, concerning the conviction of the applicant, an elected official, for having stirred up national hatred in a speech he had delivered at an assembly which he had organised; *Djavit An v. Turkey*, no. 20652/92, § 39, ECHR 2003-III, concerning the refusal of the Turkish and Turkish-Cypriot authorities to allow the applicant to cross the "green line" into southern Cyprus in order to participate in inter-community meetings; *Galstyan v. Armenia*, no. 26986/03, § 95, 15 November 2007, concerning a sanction of three days' detention for having participated in a demonstration; *Barraco v. France*, no. 31684/05, § 26, 5 March 2009, concerning the conviction of the applicant for having participated in a traffic-slowing operation organised as part of a day of protest by a trade union; *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 101, ECHR 2011 (extracts), concerning the applicants' detention, preventing them from taking part in demonstrations; and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 101 and 102, 15 November 2018, concerning the applicant's detention and conviction for having participated in a political rally).

34. In other cases, the Court, having regard to the specific circumstances of the case and the way in which the applicants formulated their complaints, has considered that the main focus of the applicants' complaints lay in the right to freedom of expression and has thus examined the cases under Article 10 of the Convention alone (see, for instance, *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 26, ECHR 2005-I, concerning a criminal sanction for having read out a statement during an assembly in front of a school; *Yılmaz and Kılıç v. Turkey*, no. 68514/01, § 33, 17 July 2008, concerning the applicants' criminal conviction for having participated in demonstrations in support of Abdullah Öcalan; and *Ibragimova v. Russia*, no. 68537/13, § 21, 30 August 2022, concerning the applicant's criminal conviction for using a balaclava during her solo demonstration).

35. The Court notes that the applicant submitted that his criminal conviction had also violated his right to freedom of expression, as the domestic courts had relied on the inscription "smash capitalism" on the applicant's plastic visor in its reasoning when assessing whether the visor constituted a protective weapon. It observes, however, that, as pointed out by the Government, the applicant was not convicted for expressing his opinion, but for wearing a "protective weapon", and that the District Court emphasised that the applicant could have expressed his opinion at the assembly in ways other than through a protective weapon (see paragraph 11 above). In so far as the Regional Court relied on the inscription in its judgment (see paragraph 13 above), the Court notes that it only did so to establish a link between the construction of the visor and its intended defensive use at the demonstration. The Court considers that there are no indications that the Regional Court punished the inscription itself in any way. Only the wearing of the "protective weapon" at the demonstration was punished by the domestic courts. The Court therefore concludes that there has been no separate interference with the applicant's right to freedom of expression. It will therefore examine this part of the application under Article 11 of the Convention alone. It notes, however, that the issue of freedom of expression cannot be entirely separated from that of freedom of assembly. Notwithstanding its autonomous role and particular sphere of application, Article 11 must therefore also be considered in the light of Article 10 of the Convention (see, *mutatis mutandis*, *Schwabe and M.G.*, cited above, § 101).

(b) Whether there was an interference with the right to freedom of peaceful assembly

36. The Court notes the Government's argument that there was no interference with the right to freedom of assembly since the assembly had not been peaceful (see paragraph 29 above). It reiterates that in order to establish whether an applicant may claim the protection of Article 11 of the Convention, it takes into account (i) whether the assembly had been intended to be peaceful or

whether the organisers had had violent intentions; (ii) whether the applicant had demonstrated violent intentions when joining the assembly; and (iii) whether the applicant had inflicted bodily harm on anyone (see *Gülcü v. Turkey*, no. 17526/10, § 97, 19 January 2016, and *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 491, 21 January 2021). An individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour. The possibility of persons with violent intentions, not members of the organising association, joining the demonstration cannot as such take away that right (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 94, ECHR 2015, with further references). The mere fact that acts of violence occur in the course of a gathering cannot, of itself, be sufficient to find that its organisers had violent intentions (see *Gün and Others v. Turkey*, no. 8029/07, § 50, 18 June 2013, and *Karpyuk and Others v. Ukraine*, nos. 30582/04 and 32152/04, § 202, 6 October 2015).

37. Even if there is a real risk that a public demonstration may result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of paragraph 1 of Article 11 of the Convention (see *Schwabe and M.G.*, cited above, § 103). The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities (see *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, § 23, 2 February 2010).

38. The Court considers that, while the Government submitted information about acts of violence, attacks on police officers and bystanders and other criminal offences committed on that day in Frankfurt, it was not substantiated that these acts of violence had taken place at the demonstration, entitled "colourful, loud – but peaceful", in which the applicant had participated or that they had been intended by the organisers of that demonstration. The Government also did not argue that the applicant himself had demonstrated violent intentions when joining the assembly or had inflicted bodily harm on anyone. No indications of such intentions or actions on the part of the applicant were mentioned in the domestic judgments either.

39. While the Court takes note of the violence that took place on 18 March 2015 in Frankfurt and the criminal offences committed on that day by some protestors, it considers that the Government have not sufficiently established that the specific assembly in which the applicant participated had not been peaceful or that the applicant had not been peaceful.

40. The Court also notes that the Government accepted that a subsequent criminal conviction – even if an applicant had taken part in an assembly unhindered – might in principle constitute an interference with Article 11 of the Convention.

41. The applicant's criminal conviction thus interfered with his right to freedom of peaceful assembly under Article 11 § 1 of the Convention.

(c) Whether the interference was justified

42. Such an interference gives rise to a breach of Article 11 of the Convention unless it can be shown that it was "prescribed by law", pursued one or more legitimate aims as defined in paragraph 2 of that Article and was "necessary in a democratic society".

(i) "Prescribed by law" and legitimate aim

43. In determining whether the interference was "prescribed by law", the Court reiterates that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. While certainty is highly desirable, given the abstract character of criminal norms, it is impossible to attain absolute precision.

Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are general and whose interpretation and application are questions of practice. The role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain; the Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (compare *Kudrevičius and Others*, cited above, §§ 109 and 110).

44. The Court notes that the legal basis for the applicant's conviction was section 27(1) of the Act on Public Assemblies and Processions, which prescribes the criminal liability of violations of the prohibition of carrying protective weapons during public assemblies (see paragraph 18 above). While the Act on Public Assemblies and Processions was accessible, it is disputed by the applicant that the specific application of this provision, namely the classification of the plastic visor as a protective weapon, had been foreseeable.

45. While the Act on Public Assemblies and Processions itself does not contain a definition of "protective weapon", the documentation from the legislative process (see paragraph 19 above), which was also publicly accessible, does include such definition and lists examples of protective weapons. Referring to that definition, the domestic courts, while acknowledging the simple construction of the applicant's plastic visor, concluded, based on the purpose of the visor, that it constituted a prohibited "protective weapon" (see paragraphs 10 and 13 above). The Court considers that this interpretation by the domestic courts was neither arbitrary nor unpredictable. It also considers that the applicant could have asked for appropriate advice concerning the legality of the plastic visor either from a lawyer before the demonstration or a police officer during the demonstration.

46. Moreover, the mere fact that, prior to the assembly on 18 March 2015, there had been no published court judgments directly addressing the question of whether a plastic visor should be classified as a protective weapon does not call into question the foreseeability of the ban of protective weapons. It is the role of the national courts to resolve doubts as to the interpretation of laws.

47. In the light of the foregoing, the Court concludes that the interference complained of was "prescribed by law" within the meaning of Article 11 § 2 of the Convention.

48. The Court observes that, according to the documents relating to the legislative process, a ban on protective weapons was considered necessary, since "participants who carry such protective weapons, by virtue of their martial appearance, display an obvious willingness to use violence and, according to findings in the field of crowd psychology, have an aggression-stimulating effect on the crowd" (see paragraph 19 above). The Court is therefore satisfied that the ban of protective weapons and the applicant's conviction pursued the aims of preventing disorder and crime and of protecting the rights and freedom of others, as submitted by the Government. These aims are as such legitimate under Article 11 § 2 of the Convention.

(ii) "Necessary in a democratic society"

49. The Court reiterates that the right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Kudrevičius and Others*, cited above, § 142, and *Mushegh Saghatelyan v. Armenia*, no. 23086/08, § 238, 20 September 2018).

50. 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 took. This does

not mean that it has to confine itself to ascertaining whether the 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, after having established that it pursued a "legitimate aim", whether it answered a "pressing social need" and, in particular, whether it was proportionate to that aim 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, § 143, and *Körtvélyessy v. Hungary*, no. 7871/10, § 26, 5 April 2016).

51. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued. Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty. Thus, the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Kudrevičius and Others*, cited above, § 146, and *Chernega and Others v. Ukraine*, no. 74768/10, § 221, 18 June 2019).

52. In the present case, the Court observes that, on 18 March 2015, several acts of severe violence and vandalism were committed in Frankfurt in the context of the protests against the opening of the European Central Bank's (ECB) headquarters. It can accept that, in principle, a ban on protective weapons may contribute to the prevention of disorder and violence where participants carrying such protective weapons demonstrate an obvious willingness to use violence and where their martial appearance, even if they remain peaceful, has an effect of inciting aggression, as is apparent from the documents relating to the legislative process (see paragraph 19 above).

53. However, the Court notes that, as the District Court found, the plastic visor used by the applicant was of simple construction (see paragraph 10 above). Relying on the documents relating to the legislative process (see paragraph 19 above), the Government argued that, notwithstanding this simple construction, the visor, and other similar visors which had been worn by several participants, had had an aggression-stimulating effect and had therefore constituted a threat to public safety. This aggression-stimulating effect had contributed to the violent acts that took place on that day in Frankfurt. In the Court's opinion, the national courts considered only whether the visor could protect the applicant from pepper spray and for what purpose the visor had been constructed. Apart from stating that no other "civil" use of such a visor was conceivable, the courts did not assess in their judgments whether the applicant's visor had posed a threat to public safety. The courts likewise did not refer to an aggression-stimulating effect, as asserted by the Government in reference to the legislative material, nor did they elaborate on whether they considered that the applicant, by wearing the visor, had demonstrated an obvious willingness to use violence. While a threat to public safety and order, as explained in the legislative documents, may be apparent for some objects and constructions falling under the definition of "protective weapons", such as the examples listed in the documentation, such as protective shields, martial arts equipment, steel helmets or NBC protective gas masks (see paragraph 19 above), very simple constructions would require a special assessment by the criminal courts. In the Court's view, the applicant's visor, which had been constructed with a piece of transparent plastic sheeting (relatively hard but flexible and thinner than Plexiglas) and a rubber band, falls into the latter category.

54. In this regard, the Court also notes that section 17a(3) of the Act on Public Assemblies and Processions permits the competent authority to grant exemptions from the ban on protective weapons where there is no reason to fear a threat to public safety or order (see paragraph 17 above).

In the present case, the national courts did not examine whether the conditions for such an exemption were met before imposing a criminal conviction on the applicant.

55. The Court further notes that the interference was a criminal sanction. While the monetary penalty was at the lower end of possible fines, it was nonetheless a criminal sanction and not an administrative fine. The Court also observes that no order under section 17a(4) of the Act on Public Assemblies and Processions (see paragraph 17 above) was made by the competent authority to enforce the prohibition of "protective weapons" during the demonstration, in particular, the applicant was not ordered to take off the visor. Neither did the courts explain why such an order would not have been suitable to prevent violence or disorder.

56. The Court reiterates that criminal sanctions require special justification and that, in principle, a peaceful demonstration should not be rendered subject to the threat of criminal sanctions (see, *mutatis mutandis*, *Navalnyy*, cited above, § 152). When considering the criminal liability of a demonstrator, criminal courts must take into account the right to freedom of assembly and decide whether a criminal conviction is proportionate and "necessary in a democratic society" within the meaning of Article 11 of the Convention. This requires the national criminal courts to assess the entire circumstances of the specific demonstration, the legitimate aims of the ban on "protective weapons" and the exemptions from the ban as provided by the relevant national law. The Court considers that the national courts, while they took into account the applicant's freedom of expression, they did not balance the applicant's right to freedom of assembly with the legitimate aim of preventing disorder and violence; nor did they assess the specific circumstances of the demonstration. In the particular circumstances of the case, the Court considers that the domestic courts failed to explain why the carrying of the simple visor constituted a threat to public safety which rendered the applicant's criminal conviction necessary in a democratic society.

57. The foregoing considerations are sufficient to enable the Court to conclude that the reasons adduced by the national courts to justify the applicant's criminal conviction were not sufficient. It therefore concludes that the interference cannot be considered "necessary in a democratic society".

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

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

59. The applicant also complained under Article 7 of the Convention that the domestic courts had exceeded the limits of acceptable interpretation when interpreting the term "protective weapon" and that the plastic visor he had worn was not prohibited by sections 17a(1), 27(2) § 1 of the Act on Public Assemblies and Processions. Article 7 of the Convention reads, in so far as relevant, as follows:

Article 7

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. ..."

60. The Court reiterates that the application was not lodged out of time within the meaning of Article 35 § 1 of the Convention (see paragraphs 23-24 above). In view of its findings under Article 11 of the Convention concerning the legal basis of the interference (see paragraphs 44-47 above), the Court finds this complaint, however, manifestly ill-founded and declares it inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 300 euros (EUR) in respect of pecuniary damage and EUR 1,000 in respect of non-pecuniary damage.
63. The Government submitted that they would leave the determination of appropriate compensation to the discretion of the Court. They noted, however, that in another judgment the Court had awarded EUR 100 in respect of a violation of Article 11 of the Convention.
64. Taking into account the procedural nature of the violation found and the minor gravity of the violation and in view of the specific circumstances of the case, the Court concludes that the finding of a violation constitutes in itself sufficient just satisfaction. It therefore finds it appropriate not to make an award in respect of non-pecuniary damage. The Court also considers that a reopening of the criminal proceedings would in principle be the most appropriate form of redress. It notes that, in accordance with Article 359 § 6 of the German Code of Criminal Procedure, the reopening of criminal proceedings is admissible if the Court has found a violation of the Convention and the criminal judgment was based on that violation. The Court therefore finds it appropriate not to make an award in respect of pecuniary damage, namely the monetary penalty.

B. Costs and expenses

65. The applicant claimed EUR 7,305.35 for the costs and expenses incurred before the domestic courts and he also claimed a reasonable amount for those incurred before the Court.
66. The Government submitted that they would leave the determination of reimbursement of costs to the discretion of the Court.
67. 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 were actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). Rule 60 of the Rules of Court states that an applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed and that the Chamber may otherwise reject the claims in whole or in part.
68. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,305.35 covering costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant. As the applicant has not made a specific claim for the costs and expenses before the Court and has not provided any detailed information in this regard, the Court rejects the unspecified claim for costs and expenses incurred before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 7 of the Convention inadmissible and the remainder of the application admissible;

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

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *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 7,305.35 (seven thousand three hundred and five euros and thirty-five 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;

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

Done in English, and notified in writing on 20 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Arnfinn Bårdsen
Deputy Registrar President