

IN THE EUROPEAN COURT OF HUMAN RIGHTS

L'affaire Communauté genevoise d'action syndicale (CGAS) c. Suisse
(Application no. 21881/20)

**Written Submissions on behalf of
AMNESTY INTERNATIONAL**

*Pursuant to the Section Registrar's notification dated 30 November 2022 that the President of the Grand Chamber
had granted permission under Rule 44 § 3 of the Rules of the European Court of Human Rights*

15 JANUARY 2023

A. INTRODUCTION

1. This written submission is provided by Amnesty International (hereinafter 'Amnesty') pursuant to the leave to intervene as a third party in the Court's proceedings granted by the President of the Court under Rule 44 § 3 of the Court. With this brief, Amnesty will assist the Court by submitting an analysis of relevant international human rights law and standards focusing on the right to freedom of peaceful assembly as guaranteed by Article 11 of the European Convention on Human Rights (ECHR) and the accompanying obligations of Contracting states during a global public health emergency.
2. Amnesty recognises the acute and formidable challenges facing state authorities to protect a range of human rights during public health emergencies. In this context, international human rights law underscores the obligations of states to guarantee the right to life¹ and the right to health (including preventing and controlling the spread of infectious diseases).² In its General Comment No. 14, for example, the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) has explained that the obligations in relation to the right to health are non-exhaustive,³ which should include states' individual and joint efforts regarding "the implementation or enhancement of ... strategies of infectious disease control."⁴ State obligations emanating from the rights to life and to health, however, co-exist with state obligations to guarantee other fundamental rights, including to protect and facilitate the exercise of the right to freedom of peaceful assembly and to put in place an effective domestic legal framework that enables the realisation of this right.⁵
3. Just as it is important to recognise that the act of assembling *simpliciter* is an activity that may exacerbate the risk of transmitting a virus in general circulation (such that there is an intrinsic connection between 'assembly' and the nature of the threat presented by Covid-19 to public health) so too is it imperative to avoid assumptions about the nature of assemblies and the particular risks that they may or may not pose. This is especially so given that assemblies may take many different forms and that measures can be put in place to reduce the risks to public health.⁶
4. It is also vital to recognise the critical importance of procedural safeguards that may serve to differentiate, for example, narrowly targeted restrictions resulting from parliamentary consideration and subject to judicial review, from sweeping proscriptions introduced by executive order which are immune from judicial scrutiny.
5. This brief develops these two interrelated substantive and procedural strands of argument concerning, respectively: (i) the nature of restrictions and the application of the principles of necessity and proportionality, particularly in relation to the activities of Trade Unions (elaborated in Part B below), and (ii) the imperative of procedural safeguards – and the manner in which states have provided for and exercised domestic scrutiny and oversight – in the regulation of human rights during public health emergencies (Part D below). In Part C, we set out a number of illustrative decisions from European domestic courts in which Covid-19 related restrictions on the right to freedom of peaceful assembly were subjected to necessity and proportionality analysis, noting in particular the factors deemed relevant by these courts to such an assessment.
6. The interrelation of these substantive and procedural points (as explained in Part B and D of this brief) is critical to the way in which the Court construes its supervisory jurisdiction. Recognising that

¹ It is well established in the jurisprudence of this Court that Article 2(1) European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) obligates States to take appropriate steps to safeguard the lives of those within their jurisdiction. See for example European Court of Human Rights (ECtHR), *Osman v. The United Kingdom*, Application 87/1997/871/1083, Grand Chamber judgment, 28 October 1998, hudoc.echr.coe.int/eng?i=001-58257, para. 115; *Tănase v Romania*, Application 41720/13, Grand Chamber judgment, 25 June 2019, hudoc.echr.coe.int/eng?i=001-194307, para. 134. This Court has also stated that: "the scope of the positive obligations imputable to the State in the particular circumstances ... depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation" (*Budayeva and Others v Russia*, Applications 15339/02, 11673/02, 15343/02, 20058/02, 21166/02, 20 March 2008, hudoc.echr.coe.int/eng?i=001-85436, para. 137).

² *International Covenant on Economic, Social and Cultural Rights* (ICESCR), Article 12(2)(c).

³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 14*: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, paras 7 and 13.

⁴ CESCR, *General Comment 14* (previously cited), para. 16.

⁵ In relation to the interpretation of the states' positive obligations under Article 11 ECHR, this Court has noted that 'the State's compliance with their positive obligations under the Convention ... should be assessed in the light of the subject matter of the assembly.' See ECtHR, *Berkman v Russia*, Application 46712/15, 1 December 2020, para. 55 (emphasis added).

⁶ For example, collective handclapping from either doorsteps or balconies – in compliance with physical distancing requirements – might be regarded as an act of 'assembling' (notwithstanding the degree of physical separation between participants).

the Court must be careful not to overstep the principle of subsidiarity,⁷ interferences with human rights must nonetheless be subject to a minimum level of scrutiny if they are not to be deprived of all substance. As such, states must not be afforded *carte blanche* to either restrict or undermine the exercise of human rights, including during public health emergencies.

B. RESTRICTIONS ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND THE PRINCIPLES OF NECESSITY AND PROPORTIONALITY IN THE CONTEXT OF A PUBLIC HEALTH EMERGENCY

7. As documented by Amnesty International and other human rights organisations, during the first weeks and months of the Covid-19 pandemic (from March 2020), many Council of Europe member states implemented measures restricting human rights, including the right to freedom of peaceful assembly, to varying degrees and often disproportionately.⁸ On several occasions, Amnesty criticised excessive restrictions on assemblies during the Covid-19 pandemic, including those implemented in Switzerland.⁹ A memorandum written for the Parliamentary Assembly of the Council of Europe highlighted that:

“Freedom of assembly ... appears to have been particularly hard-hit by anti-Covid measures. It seemed logical, initially, to restrict mass gatherings in order to slow the spread of a contagious illness. But in many cases such restrictions were blanket, absolute prohibitions with no exceptions allowed, even for socially distanced peaceful demonstrations. A blanket ban on gatherings is especially problematic in this context, as it affects opposition movements in some cases and is very much open to abuse by the authorities. As a result, a blanket ban on demonstrations with no exceptions may undermine, in a disproportionate manner, a key component of civic expression.”¹⁰

8. International human rights law and standards remain in force even during times of crisis, including public health emergencies. International human rights instruments are drafted in such a way as to accommodate a range of situations that allow for the restriction of certain human rights as long as these have a proper legal basis, pursue a legitimate aim (such as the protection of public health), are necessary and proportionate, are not applied in an arbitrary manner, and do not discriminate against specific groups.¹¹ Moreover, limitations should always be subject to the possibility of challenge and remedy.¹²
9. Elaborating on these core principles, the UN Committee on Economic, Social and Cultural Rights (CESCR) has clarified that while States may legitimately impose certain restrictions on human rights to protect public health, such restrictions must be in accordance with the law, compatible with the nature of the rights protected, in the interest of legitimate aims pursued, strictly necessary, be of limited duration and be subject to review.¹³ The CESCR has specified that the least restrictive alternative must be adopted where several types of limitation are available.¹⁴ In the context of a public health emergency, this requires the relevant authorities to consider the availability of other less restrictive means that might enable the exercise of other rights, including the right to freedom of peaceful assembly, while still protecting public health – such as requiring participants to maintain physical distancing or to wear face coverings. As discussed further below, however, blanket bans on assemblies preclude any consideration by the authorities of such alternatives.

⁷ As set out in the preamble to the Convention pursuant to Article 1 of [Protocol No. 15](#) to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁸ See for example Amnesty International, [Amnesty International Report 2020/21: The state of the world's human rights](#) (Index: POL 10/3202/2021), 2021, p.42. See also: European Union Agency for Fundamental Rights, [Protecting Civic Space in the EU](#), 2021, p. 27; UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Report: [Protection of human rights in the context of peaceful protests during crisis situations](#), 16 May 2022, UN Doc. A/HRC/50/42, paras. 18-19.

⁹ See for example, Amnesty International, [Poland: COVID-19 is no excuse to crack down on protests](#) (Index: EUR 37/2421/2020), 29 May 2020; Amnesty International, [Arrested for protest: Weaponizing the law to crackdown on peaceful protesters in France](#) (Index: EUR 21/1791/2020), March 2020; Amnesty International, [COVID-19 crackdowns: police abuse and the global pandemic](#) (Index: ACT30/3443/2020), December 2020; Amnesty International, [Amnesty International Report 2020/21: The state of the world's human rights](#) (Index: POL 10/3202/2021), 2021, p. 344.

¹⁰ Parliamentary Assembly of the Council of Europe (PACE), Rapporteur Margreet De Boer, Explanatory Memorandum: [The impact of the Covid-19 restrictions for civil society space and activities](#), 9 November 2022, Doc 15654, paras. 18-19.

¹¹ UN Commission on Human Rights, 41st Session: [Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights](#) (Siracusa Principles), 28 September 1984, UN Doc. E/CN.4/1984/4, Principles 5-10.

¹² [Siracusa Principles](#), Principle 8.

¹³ CESCR, [General Comment 14](#) (previously cited), paras. 28-29.

¹⁴ CESCR, [General Comment 14](#) (previously cited), para. 29.

10. The UN Human Rights Committee, in its General Comment No. 37, has emphasised that “the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it.”¹⁵ The Human Rights Committee has emphasised that restrictions on peaceful assembly must not be “discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect”.¹⁶ The Human Rights Committee has recognised that “the protection of ‘public health’ may exceptionally permit restrictions to be imposed for example where there is an outbreak of an infectious disease and gatherings are dangerous.”¹⁷
11. Adopting a similar approach to the CESC, the Human Rights Committee has affirmed that “[t]he authorities should first seek to apply the least intrusive measures”,¹⁸ explaining further that: “... restrictions ... must also be the least intrusive among the measures that might serve the relevant protective function. Moreover, they must be proportionate, which requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering. If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.”¹⁹ Again, the imposition of blanket restrictions (which offer no scope for discretionary variation and may also lack any opportunity for review) do not allow for such a value assessment to be undertaken.
12. The Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR (“Siracusa Principles”) establish that “[p]ublic health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.”²⁰ Any restriction of the exercise of human rights must be provided for by legal rules that are “clear and accessible to everyone”.²¹ States imposing such limitations carry the burden to demonstrate that the limitations are necessary and proportionate to the legitimate aim.²²
13. Many Council of Europe member states sought to derogate from specific provisions of the Convention during the Covid-19 pandemic.²³ While the introduction of emergency measures can exceptionally be justified under international human rights law to protect public health and other legitimate concerns,²⁴ such derogations are subject to strict conditions, including that they must be narrowly tailored (that is, the least intrusive and restrictive available); must be reasonable, temporary of limited duration (for example, accompanied by “sunset” Clauses that limit them to a set period); subject to parliamentary and independent oversight; and regularly reviewed to ensure that the measures are always necessary and proportionate and motivated by legitimate public health objectives, and that there is no “slow slide” of exceptional powers into the ordinary law.²⁵ However, the Human Rights Committee has explained that the existing possibility for States to restrict some rights within the boundaries of the Convention itself, including the right to freedom of peaceful assembly, should generally be sufficient in emergency situations and therefore no derogation from the provisions in

¹⁵ UN Human Rights Committee (HRC), [General Comment 37 on the right of peaceful assembly \(Art. 21\)](#), 17 September 2020, UN Doc CCPR/C/GC/37, para. 36.

¹⁶ HRC, [General Comment 37](#) (previously cited), para. 36.

¹⁷ HRC, [General Comment 37](#) (previously cited), para. 45.

¹⁸ HRC, [General Comment 37](#) (previously cited), para. 37.

¹⁹ HRC, [General Comment 37](#) (previously cited), para. 39.

²⁰ [Siracusa Principles](#), Principle 25.

²¹ [Siracusa Principles](#), Principle 17.

²² [Siracusa Principles](#), Principle 20.

²³ Amnesty International, [Amnesty International Report 2020/21: The state of the world's human rights](#) (Index: POL 10/3202/2021), p. 42, noting that: “[a] record number of countries (10 at mid-year) derogated from provisions of the European Convention on Human Rights, several for extended periods of time.” See also, Council of Europe, [Informal Chronology of Derogations under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms](#) (1 January 2000 – 6 March 2022); Council of Europe, [Draft CDDH report on member States' practice in relation to derogations from the European Convention on Human Rights in situations of crisis](#), CDDH- SCR(2022)R2 Addendum, para. 71 (regarding derogation notifications specifically mentioning Article 11 ECHR).

²⁴ For example, under Article 15 ECHR and Article 4 International Covenant on Civil and Political Rights (ICCPR).

²⁵ UN Human Rights Committee (HRC), [General Comment 29 on states of emergency \(Art. 4\)](#), 31 August 2001, UN Doc. CCPR/C/21/Rev.1/Add.11.

question would be justified by the exigencies of the situation.²⁶ Furthermore, even in the context of states of emergency, as the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasised, States should “conduct a case-by-case assessment of each assembly and seek ways to facilitate it, and assess, based on evidence, whether lesser restrictions could achieve the pursued objective.”²⁷

14. As noted above, blanket bans are inimical to conducting such case-by-case assessment. During the Covid-19 pandemic, many countries imposed blanket bans on gatherings without allowing the relevant authorities to engage in an assessment of necessity and proportionality based on the specific circumstances of each assembly. Given that blanket bans would be in contravention of international human rights law and standards – as already pointed out by this Court²⁸ and by, *inter alia*, the UN Human Rights Committee,²⁹ the OSCE/ODIHR,³⁰ and the UN Special Rapporteur on the rights to peaceful assembly and of association³¹ – Amnesty International considers that this case provides the Court with an opportunity to further elaborate upon the characteristics that might constitute a ‘blanket ban’ and to thereby explain both *when* the term is applicable (particularly in the context of a public health emergency when *some* form of ban may indeed have been justified) and *why* such blanket bans cannot be regarded as a proportionate restriction.³²
15. While the term ‘blanket ban’ (or ‘blanket legal restrictions’) *may* describe a complete ban of *all* assemblies (precluding any kind of assembly by any group at any time in any place), the term does not refer exclusively to, and does not necessarily imply such a comprehensive or total ban. Rather, a blanket ban is any form of limitation which prevents certain types or categories of assembly from taking place, for example assemblies of particular groups, assemblies at particular times, and/or assemblies in particular places.³³ Furthermore, a blanket approach to regulation is one characterised by the absence of discretionary power sufficient to enable case-by-case consideration of the particular facts at hand. A blanket ban should therefore be considered by this Court as a measure that adopts a one-size-fits-all (i.e. undifferentiated or routine) approach to regulation; fails to appropriately assess, and thus to distinguish between, different situations, intentions, activities, conduct or consequences (including the risk that each poses to public health); and fails to allow for legitimate exceptions where these might be justified.³⁴

²⁶ HRC, [General Comment 29](#), para. 5. Similarly, UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, [Protection of human rights in the context of peaceful protests during crisis situations](#) (previously cited), para. 8.

²⁷ UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, [Protection of human rights in the context of peaceful protests during crisis situations](#) (previously cited), para. 79(b).

²⁸ ECtHR, *Barseghyan v. Armenia*, Application 17804/09, 21 September 2021, hudoc.echr.coe.int/eng?i=001-211814, para. 54.

²⁹ HRC, [General Comment No. 37](#) (previously cited), paras. 38 and 55.

³⁰ European Commission for Democracy through Law (Venice Commission), OSCE/ODIHR, [Guidelines on Freedom of Peaceful Assembly](#) (3rd Edition), CDL-AD(2019)017rev (2020), para. 133: “Blanket legal restrictions – for example, banning all assemblies during certain times, or from particular locations or public places that are suitable for holding assemblies – constitute excessive restrictions violating the right to freedom of assembly. Restrictions which impose bans on the time or location of assemblies as a rule, and then allowing exceptions to this rule, invert the relationship between freedom and restrictions by turning the right to freedom of peaceful assembly into a privilege. For that reason, blanket bans may fail the proportionality test because they fail to differentiate between different ways of exercising the right to freedom of assembly and preclude any consideration of the specific circumstances of each case.”

³¹ UN Special Rapporteur on the Rights to Freedom of Peaceful assembly and of Association, Report, 21 May 2012, UN Doc. A/HRC/20/27, para. 39; UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly, written submission on the discussion in preparation for a General Comment on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights, Geneva, 20 March 2019, https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/GC37/SR_FreedomPeacefulAssemblyandassociation.docx, page 17, concluded that blanket bans are “intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peaceful assembly”.

³² The concept of a ‘blanket ban’ on the right of peaceful assembly is not expressly addressed in the Court’s [Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association](#) (updated on 31 August 2022). Paragraph 22 of the Guide (referring to the prohibition on holding public events at certain locations) merely emphasises the importance of bans being narrowly tailored. Paragraph 74 states that there should be a “[n]arrow margin of appreciation for a general ban on assembly” and emphasizes, *inter alia*, that “a general ban on demonstrations can only be justified if there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures.”

³³ ECtHR, *Ibrahimov and Others v Azerbaijan*, Applications 69234/11, 69252/11 and 69335/11, judgment, 11 February 2016, hudoc.echr.coe.int/eng?i=001-160430 [central areas of a capital city]; ECtHR, *Chumak v Ukraine*, Applications 44529/09, judgment, 6 March 2018, hudoc.echr.coe.int/eng?i=001-181382, para.54 [pickets in any street or square in the city]; HRC, [General Comment No. 37](#) (previously cited), para. 55: “As a general rule, there can be no blanket ban on all assemblies in the capital city, in all public places except one specific location within a city or outside the city centre, or on all the streets in a city.”

³⁴ See, for example, ECtHR, *Ibragimova v Russia*, Application 68537/13, judgment, 30 August 2022, hudoc.echr.coe.int/eng?i=001-218921, para. 37 [ban on wearing of any kind of mask without meteorological, medical or other exceptions].

16. International human rights law and standards regard blanket restrictions on peaceful assemblies to be presumptively disproportionate.³⁵ As the UN Human Rights Committee has stated, '[a]ny restrictions on participation in peaceful assemblies should be based on a differentiated or individualised assessment of the conduct of the participants and the assembly concerned'.³⁶ Blanket bans are therefore never acceptable as they prevent the authorities from conducting a case-by-case assessment of the restrictions or evaluating specific circumstances and assessing their necessity and proportionality.³⁷ It is notable in this regard that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association specifically highlighted the Chamber judgment in this case, welcoming the fact 'that anti-COVID-19 measures imposing blanket bans on assemblies for a lengthy period, backed by severe penalties, were disproportionate to the aims pursued and violated the right to freedom of peaceful assembly'.³⁸
17. When assessing if any given restriction meets the principles of necessity and proportionality, it is further critical to identify the various factors that may be relevant to any such case-by-case assessment. These might include: the existence of a sunset clause;³⁹ heightened accommodation for political or opinion-forming assemblies;⁴⁰ relevant exemptions for, *inter alia*, Trade Union activities;⁴¹ limits on the number of participants in assemblies; enabling static assemblies but not marches; conditions regarding physical distancing;⁴² and/or the nature of any penalties for breaching regulations. In assessing the proportionality of the measures in place, the German Federal Constitutional Court, for example, has held (albeit in cases not specifically related to the right of peaceful assembly) that temporal limitation of the challenged provisions and the numerous, non-exhaustive exceptions to the planned measures were decisive.⁴³ With regard to the ban on religious services, for example, the Court found that the very serious restriction on religious freedom required a continuous review on the basis of a strict proportionality test and informed by the very latest research findings.⁴⁴
18. In our view, the imposition of criminal sanctions and the possibility of imprisonment are heavily disproportionate as sanctions to be applied to a case of a violation of a ban against assemblies. They both have a 'chilling effect' on the exercise of the right to freedom of peaceful assembly. There is a recognition that state conduct can violate an expressive right through disincentivising the exercise of the right by creating a risk to those who wish to exercise it.⁴⁵ It is worth noting the Court's own assessment that "[chilling] effect, which works to the detriment of society as a whole, is likewise a

³⁵ HRC, [General Comment 37](#) (previously cited), para. 38.

³⁶ HRC, [General Comment 37](#) (previously cited), para. 38.

³⁷ See, for example, European Commission for Democracy through Law (the Venice Commission), *The Compilation of Venice Commission Opinions Concerning Freedom of Assembly*, [CDL-PI\(2014\)0003](#) (2014), examples at pp. 20- 24.

³⁸ UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Protection of human rights in the context of peaceful protests during crisis situations* (previously cited), para. 20, and corresponding footnote 15 referring to *Communauté genevoise d'action syndicale (CGAS) v. Switzerland*.

³⁹ For example, in the German context, the Federal Chancellor and the heads of government of the Länder agreed that coronavirus statutory instruments should contain a sunset clause limiting their impacts in time. Federal Assembly, Germany, Erweiterung der beschlossenen Leitlinien zur Beschränkung sozialer Kontakte, 22 March 2020, [Besprechung der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder vom 22.03.2020 \(bundesregierung.de\)](#).

⁴⁰ HRC, [General Comment 37](#) (previously cited), para. 32.

⁴¹ See UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Checklist – FoAA during public health emergencies*, [ohchr.org/sites/default/files/Documents/Issues/FAssociation/Checklist.pdf](#): "Restrictions of movement and gatherings have exemptions to ensure civil society actors, particularly journalists, trade unions, legal professionals, human rights defenders, and organisations providing humanitarian assistance and social services, can continue to operate during the emergency, consistent with health protocols and guidelines."

⁴² Amnesty was critical, for example, of restrictions in France, where 85 people were fined in three incidents for participating in small protests in May and June despite wearing face coverings and/or maintaining physical distance. See further: Amnesty International, [Arrested for protest: Weaponizing the law to crackdown on peaceful protesters in France](#) (Index: EUR 21/1791/2020), March 2020.

⁴³ BVerfG, Beschluss der 1. Kammer des Ersten Senats, 9 April 2020, 1 BvR 802/20, [bverfg.de/e/rk20200409_1bvr080220.html](#), para. 13; BVerfG, Beschluss der 3. Kammer des Ersten Senats, 7 April 2020, 1 BvR 755/20, [bverfg.de/e/rk20200407_1bvr075520.html](#), para. 11; Occupational freedom (Art. 12 German Federal Constitution): BVerfG, Beschluss der 2. Kammer des Ersten Senats, 28 April 2020, 1 BvR 899/20, [bverfg.de/e/rk20200428_1bvr089920.html](#).

⁴⁴ BVerfG, Beschluss der 2. Kammer des Ersten Senats, 10 April 2020, 1 BvQ 28/20, [bverfg.de/e/qk20200410_1bvq002820.html](#); BVerfG, Beschluss der 2. Kammer des Ersten Senats, 10 April 2020, 1 BvQ 31/20, [bverfg.de/e/qk20200410_1bvq003120.html](#).

⁴⁵ By way of example, the UN Human Rights Committee recognises that the existence and use surveillance technologies can have a chilling effect on the exercise of the right to freedom of peaceful assembly as they may dissuade participation, HRC, [General Comment 37](#), para. 10. A state bringing defamation proceedings but then not proceeding swiftly to trial thus leaving a journalist in limbo and presumably too scared to publish (General Comment 34 on Freedoms of opinion and expression (Article 19), UN Doc. CCPR/C/GC/34 (2011), para. 47).

factor which goes to the proportionality, and thus the justification, of the sanctions imposed on the present applicants.”⁴⁶ This Court has explained that a chilling effect may remain present after the acquittal or dropping of charges against protestors, since the prosecution itself could discourage them from taking part in similar meetings.⁴⁷

19. To meet the principles of necessity and proportionality, restrictions must also be time-limited and regularly reviewed. Given the uncertainties arising from the Covid-19 pandemic, it is unsurprising that there was considerable variation among countries during the public health emergency on the duration of restrictions imposed on the right of peaceful assembly. The duration of and processes for reviewing these restrictions ranged from those expressly limited in time (for example, with a sunset clause) to others that were introduced for an indefinite period.⁴⁸ As the OSCE/ODIHR has documented, “... initial responses imposed the most stringent limitations on the right to freedom of peaceful assembly, with more flexibility shown in subsequent waves of COVID-19 infections.”⁴⁹
20. A further factor that speaks to the necessity and proportionality of any restrictions on the right to freedom of peaceful assembly is their congruence (or otherwise) with activities that remain permissible during the relevant period. Consideration of this question is also important to ensure that limitations are not applied in an arbitrary manner and that they are not discriminatory.⁵⁰ It is suggested here that States must ensure a minimum level of congruence between the activities that are permitted and those that are not (including their purpose, and the individuals and groups affected) and thus in the justifications advanced when imposing restrictions. This selection must place a thumb on the scale of Convention rights.⁵¹ In this sense, measures restricting the rights to movement and liberty that consequently affect public protests must be applied consistently in comparison to other movements and activities which people are still allowed to continue, giving due weight to the importance of the right to freedom of peaceful assembly and the increased need of people to jointly raise their voices in particularly difficult times.⁵² Any disjuncture between the approach to political demonstrations and commercial activities, for example, may be evidence of a disproportionate interference.⁵³
21. International human rights mechanisms, including this Court, have further recognised the vital role played by trade unions in upholding workers’ rights.⁵⁴ In this regard, it is important for Unions to maintain visibility during crisis situations when members’ health and safety could be imperilled by poor working conditions. The important role of trade unions was also noted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, suggesting that in ensuring that legal measures in the context of Covid-19 respect human rights, *‘exemptions should be foreseen for civil society actors, particularly those monitoring human rights, trade unions, social services ... and journalists covering the management of the crisis.’*⁵⁵

⁴⁶ For example, ECtHR, *Cumpănă and Mazăre v Romania*, Application 33348/96, Grand Chamber judgment, 17 December 2004, hudoc.echr.coe.int/eng?i=001-67816, para. 114; ECtHR, *Bączkowski and Others v Poland*, Application 1543/06, judgment, 3 May 2007, hudoc.echr.coe.int/eng?i=001-80464, para. 67; ECtHR, *Novikova and Others v Russia*, Applications 25501/07 and 4 others, judgment, 26 April 2016, hudoc.echr.coe.int/eng?i=001-162200, para. 211; ECtHR, *Ibragimova v Russia*, judgment, (previously cited) para. 39.

⁴⁷ ECtHR, *Nurettin Aldemir and Others v. Turkey*, Application 32124/02 and 6 others, judgment, 18 December 2007, hudoc.echr.coe.int/eng?i=001-84054, para. 34.

⁴⁸ See further, OSCE/ODIHR, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, 2020, pp. 36- 37, footnotes 100-102, and p.108.

⁴⁹ OSCE/ODIHR, *The Impact of the COVID-19 Pandemic on the Right to Freedom of Peaceful Assembly*, 2022, p.12.

⁵⁰ *Siracusa Principles*, Principles 7 and 9.

⁵¹ For example, ECtHR, *Chumak v Ukraine*, Application 44529/09, judgment, 6 March 2018, hudoc.echr.coe.int/eng?i=001-181382, paras 53-55: ‘[P]ublic events related to political life should be given particular deference’ (citing ECtHR, *Primov and Others v Russia*, Application 17391/06, judgment, 12 June 2014, hudoc.echr.coe.int/eng?i=001-144673, para. 135).

⁵² For example, in ECtHR, *Dareskizb Ltd v Armenia*, Application 61737/08, judgment, 21 September 2021, hudoc.echr.coe.int/eng?i=001-211813 para. 76. The Court noted that “the exercise of the right to freedom of expression by media professionals assumes special significance in situations of conflict and tension.”

⁵³ See also, OSCE/ODIHR – Venice Commission *Guidelines on Freedom of Peaceful Assembly* (3rd Edition), para. 141.

⁵⁴ ECtHR, *Sindicatul “Păstorul cel Bun” v. Romania*, Application 2330/09, Grand Chamber judgment, 9 July 2013, hudoc.echr.coe.int/eng?i=001-122763, para 130. Members of the ILO have also recognized the vital role of employers’ and workers’ organizations in crisis response, taking into account the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

⁵⁵ OHCHR, *States responses to Covid 19 threat should not halt freedoms of assembly and association* – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule (Press release, 9 April 2020), emphasis added. See also HRC, *General Comment No. 37* (previously cited), para. 32 [“heightened level of accommodation and protection” for assemblies with a political message].

C. DECISIONS BY DOMESTIC EUROPEAN COURTS ASSESSING THE PRINCIPLES OF NECESSITY AND PROPORTIONALITY DURING THE COVID-19 PANDEMIC

22. In this section Amnesty will highlight some decisions from European domestic courts, albeit not exhaustive, where proportionality and necessity were applied to assess restrictions on the right to freedom of peaceful assembly, noting in particular the factors relevant to the courts' analysis.
23. **France:** On 13 June 2020, the Council of State (France's highest administrative court) suspended a ban on public assemblies of more than 10 people.⁵⁶ The judges concluded that the prohibition was not proportionate to the objective of protecting public health, that it constituted a serious breach to the right to freedom of peaceful assembly and that the barrier measures were sufficient to protect demonstrators. On 14 June 2020, following the decision of the Council of State, the French Prime Minister issued a decree that established an exception to the prohibition of gatherings of more than 10 people for demonstrations that were authorised by the authorities and in which the implementation of barrier measures or of physical distancing rules could be ensured.⁵⁷ On 6 July 2020, the Council of State suspended the authorisation requirement.⁵⁸
24. **Slovenia:** In July 2021, Slovenia's Constitutional Court ruled that the government's decisions to prohibit public gatherings and limit the number of protesters were unconstitutional and represented a disproportionate infringement of human rights.⁵⁹
25. **Austria:** A rule imposing a maximum cap on the number of participants in an assembly in May 2020 was later declared illegal by the Constitutional Court as the Federal Minister of Health did not give precise reasons in the preparatory files of the ordinance as to why the respective measure was indispensable on public health grounds.⁶⁰ Separately, the Vienna administrative court ruled that the prohibition of a demonstration in January 2021 was unlawful. The Court reasoned that the decision by the regional police directorate of Vienna to prohibit these protests was based on a generic health and safety assessment by the health services, instead of an assessment specific to the announced demonstration. As such, the general assessment of health risks itself was held to be insufficient to justify the restriction.⁶¹
26. **Germany:** The city of Giessen in the state of Hesse prohibited an assembly despite proposals for detailed precautions on physical distancing by the organisers. Arguing that Hesse's coronavirus statutory instrument did not allow assemblies because of its contact limitation rules, the German Federal Constitutional Court held in April 2020 that Giessen's measure violated the right to freedom of peaceful assembly.⁶² The Court ruled that Hesse's statutory instrument did not mandate the imposition of a blanket ban on assemblies in open air and that the city ought to have exercised discretion in deciding whether the protest could be held under certain conditions (such as with physical distancing).⁶³
27. In a second case involving a coronavirus-related protest in Stuttgart, the city authorities had simply told the organiser that it currently could not process requests to hold protests or any sort of mass

⁵⁶ Conseil d'Etat, M. A., Ligue des droits de l'homme, Confédération Générale du travail et autres, Ordonnance du 13 juin 2020, Nos 440846, 440856, 441015, conseil-etat.fr/decisions-de-justice/dernieres-decisions/conseil-d-etat-13-juin-2020-manifestations-sur-la-voie-publique. See also "France lifts ban on gatherings of over 10 people", *Brussels Times*, 14 June 2020, brusselstimes.com/116690/france-lifts-ban-on-gatherings-of-over-10-people.

⁵⁷ Décret n° 2020-724 du 14 juin 2020 modifiant le décret n° 2020-663 du 31 mai 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire, legifrance.gouv.fr/jorf/id/JORFTEXT000041991876/.

⁵⁸ Conseil d'Etat, Confédération Générale du Travail et autres, Association SOS Racisme, Ordonnance du 6 juillet 2020, Nos 441257, 441263, 441384, conseil-etat.fr/decisions-de-justice/dernieres-decisions/conseil-d-etat-6-juillet-2020-obligation-d-obtenir-une-autorisation-avant-d-organiser-une-manifestation.

⁵⁹ Decision No 1/2003 of the Constitutional Court of 20 December U-I-50/21 of 17 April 2021, us-rs.si/odlocba-ustavnega-sodisca-st-u-i-50-21-z-dne-17-6-2021/.

⁶⁰ Verfassungsgerichtshof, 1 October 2020, V 428/2020, ris.bka.gv.at/Dokumente/Vfgh/JFT_20201001_20V00428_00/JFT_20201001_20V00428_00.html.

⁶¹ Verwaltungsgericht Wien, 24 March 2021, VGW-103/048/3227/2021, verwaltungsgericht.wien.gv.at/Content.Node/rechtsprechung/103-048-3227-2021.pdf.

⁶² BVerfG, Beschluss der 1. Kammer des Ersten Senats, 15 April 2020, 1 BvR 828/20, bundesverfassungsgericht.de/erkr20200415_1bvr082820.html; dw.com/en/top-german-court-coronavirus-restrictions-not-grounds-to-ban-all-protests/a-53153858, "Top German court allows protest against lockdown", *Deutsche Welle*, 16 April 2020, dw.com/en/top-german-court-coronavirus-restrictions-not-grounds-to-ban-all-protests/a-53153858.

⁶³ Amnesty International Report 2020/21, *The State of the World's Human Rights*, p. 169 (Germany), amnesty.org/en/documents/pol10/3202/2021/en/.

gatherings as these were prohibited under Baden-Württemberg's coronavirus statutory instrument. After appealing this decision through all relevant instances, the Federal Constitutional Court held that the action of the city violated the right to freedom of peaceful assembly.⁶⁴ Baden-Württemberg's statutory instrument contained a contact limitation rule but gave the authorities the possibility to grant exceptions for important reasons. As in the previous case, the authorities failed to recognise that they were able to exercise discretion in the process, through which they should take into consideration the importance of the right to freedom of peaceful assembly. In this regard, the Court held that any argument against holding a protest has to relate to the specifics of the case at hand and the authorities have to consider – if possible together with the petitioners – what alternative measures are available to balance the exercise of the right to freedom of peaceful assembly and the protection against infectious diseases.⁶⁵

28. A third case concerned a petition to hold Friday prayers at a mosque during Ramadan despite Lower Saxony's ban on religious gatherings in its statutory instruments.⁶⁶ The petitioner offered to implement a number of protective measures, including limiting the number of participants to 24 in a mosque that fits 300 worshippers and maintaining minimum distances of 1.5 metres. The petitioner also argued that the authorities should assess the possibility of opening a mosque in the same way that they considered allowing shops to operate. While the Federal Constitutional Court refused to order the authorities to allow for the opening of all mosques during the relevant time period, the Court held that an assessment of the infection risk depended on a range of factors, including the particular way in which services are held and the size and construction of the mosque. Given that limiting Friday services during Ramadan constituted a severe limitation on the right to freedom of religion and belief, the Court held that the current threat level and the strategy to fight the pandemic does not justify a general ban without providing for the possibility of an exception considering all the circumstances of a case and the possibility of ensuring through stipulations that the risk of infection does not increase in a relevant manner.⁶⁷
29. In a fourth case, the Berlin administrative court ruled on 28 August 2020 that a ban on a rally constituted a violation of the right to freedom of peaceful assembly because the authority had made a risk assessment that did not meet constitutional requirements and was not sufficiently concrete. Furthermore, it found that the authority had not taken into account that assemblies were generally permissible according to the Covid-19 ordinance of the federal state of Berlin.⁶⁸
30. **Bosnia and Herzegovina:** The Constitutional Court of Bosnia and Herzegovina held that curbs on movement did not satisfy the principle of proportionality, in part because "the possibility of introducing lighter measures ... was not considered; ... [the measures] are not strictly limited in time, and neither was an obligation established to regularly review them to ensure that they lasted only as long as was necessary."⁶⁹
31. All these cases illustrate the critical importance of domestic judicial scrutiny in ensuring that any restrictions imposed on the exercise of the right of peaceful assembly, including in the context of compelling and countervailing public health considerations, must survive necessity and proportionality-based scrutiny. As submitted in Section B above, this means that 'blanket-restrictions' which do not allow for such case-by-case analysis must be regarded as presumptively disproportionate. In the following section, judicial scrutiny by domestic courts is further highlighted as a vital procedural safeguard, the quality of which, in turn, ought to inform the standard of scrutiny applied by this Court.

⁶⁴ BVerfG, Beschluss der 1. Kammer des Ersten Senats, 17 April 2020, BvQ 37/20, bverfg.de/e/gk20200417_1bvq003720.html

⁶⁵ BVerfG, Beschluss der 1. Kammer des Ersten Senats, 17 April 2020 (previously cited), paras 29 - 30.

⁶⁶ BVerfG, Beschluss der 2. Kammer des Ersten Senats, 29 April 2020, 1 BvQ 44/20, bverfg.de/e/gk20200429_1bvq004420.html

⁶⁷ BVerfG, Beschluss der 2. Kammer des Ersten Senats, 29 April 2020 (previously cited), paras 13 - 16.

⁶⁸ VG Berlin, Beschluss vom 28.08.2020, 1 L 296/20, 28 August 2020, openjur.de/u/2271527.html. See also OSCE/ODIHR, *The Impact of the COVID-19 Pandemic on the Right to Freedom of Peaceful Assembly*, Warsaw, 2022, osce.org/files/f/documents/b/1/525000.pdf, p. 23.

⁶⁹ 'Bosnia Court Rules Against Movement Curbs on Minors, Seniors', *Balkan Insight*, 22 April 2020, balkaninsight.com/2020/04/22/bosnia-court-rules-against-movement-curbs-on-minors-seniors/.

D. ROBUST SCRUTINY OF INTERFERENCES WITH THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN THE CONTEXT OF A PUBLIC HEALTH EMERGENCY

32. The quality and depth of domestic scrutiny is crucial to this Court's assessment of the necessity and proportionality of the restrictions imposed in this case. Such scrutiny can only be achieved when authorities at the domestic level ensure a combination of procedural safeguards, both legislative and judicial. These might include meaningful and effective participation of civil society in the law-making process; parliamentary debates addressing the necessity and proportionality of the measures; the provision by decision-makers of reasoned explanations for the exercise of discretionary powers to impose restrictions; and the availability of judicial review.
33. This Court has previously recognised that:
*"The obligation to provide reasons for a decision is an essential procedural safeguard under Article 6 § 1 of the Convention ... translates into specific obligations under Articles 10 and 11 of the Convention, by requiring domestic courts to provide "relevant" and "sufficient" reasons for an interference. This obligation enables individuals, amongst other things, to learn about and contest the reasons behind a court decision that limits their freedom of expression or freedom of assembly, and thus offers an important procedural safeguard against arbitrary interference with the rights protected under Articles 10 and 11 of the Convention."*⁷⁰
34. Procedural protections enjoyed by virtue of the right to freedom of peaceful assembly thus require a certain level of rigour and scrutiny on the part of domestic authorities in order to justify interferences as genuinely 'relevant and sufficient' and consequently to ensure an effective implementation of the right to freedom of peaceful assembly.⁷¹
35. During the Covid-19 pandemic, countries allowed for varying levels of parliamentary scrutiny of the various restrictions and regulations. As the OSCE/ODIHR noted, for example, "[t]he degree of parliamentary oversight of the transfer of powers and the possibility to challenge regulations on the freedom of assembly in court varied from strong to complete suspension. Examples include Serbia (suspension) and Bulgaria (oversight)."⁷² In some domestic court proceedings concerning challenges to Covid-19 regulations limiting human rights, the level of parliamentary involvement in their enactment was decisive. For example, the Constitutional Court of Kosovo declared that decision No. 01/15 of the Government of the Republic of Kosovo of 23 March 2020 was unconstitutional since the government cannot limit human rights (including the right of peaceful assembly) through decisions, unless a restriction of the relevant right is preceded by a law of the Assembly. Instead, the Court held, the government could only *implement* a law of the Assembly that limits a human right, and only then to the specific extent that the Assembly has authorised such restriction through the relevant law.⁷³
36. Amnesty urges the Court to relate the quality of the domestic parliamentary process with a theory of deepened subsidiarity (what Professor Matthew Saul describes as 'active subsidiarity'),⁷⁴ such that where domestic scrutiny and oversight is absent or deficient, scrutiny at the supra-national level must accordingly be more robust.⁷⁵
37. Consultation and participation of civil society is another crucial aspect to ensure adequate scrutiny of regulations that may limit the exercise of human rights. Regrettably, civil society organisations were rarely consulted in the process of designing or reviewing appropriate measures of response during the Covid-19 pandemic, and in several cases the processes through which such laws and regulations were passed was questionable.⁷⁶

⁷⁰ ECtHR, *Gülçü v. Turkey*, Application 17526/10, judgment, 19 January 2016, <https://hudoc.echr.coe.int/eng?i=001-160215>, para. 114.

⁷¹ ECtHR, *Mushegh Saghatelian v. Armenia*, Application 23086/08, judgment, 20 September 2018, hudoc.echr.coe.int/eng?i=001-186114, paras. 252-3.

⁷² OSCE, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic* (2020), osce.org/files/f/documents/e/c/457567_0.pdf, p. 108, fn. 479.

⁷³ 'Government decision restricting movement ruled unconstitutional', *Prishtina Insight*, 31 March 2020; Kosovo Constitutional Court, KO 54/20, judgment, gjk-ks.org/vendimet-nga-seancat-shqyrtuese-te-mbajtura-me-30-dhe-31-mars-2020/, 31 March 2020.

⁷⁴ Saul, Matthew, 'Shaping Legislative Processes from Strasbourg', 32(1) *European Journal of International Law*, 281-308 (May 2021).

⁷⁵ For example, ECtHR, *Anchugov and Gladkov v. Russia*, Applications 11157/04 and 15162/05, judgment, 4 July 2013, hudoc.echr.coe.int/eng?i=001-122260, paras. 109-110.

⁷⁶ UN High Commissioner for Human Rights, Report: [Civil society space: COVID-19: the road to recovery and the essential role of civil](#)

38. In addition, applicable laws and regulations have often been overly broad and vague, and little has been done to ensure the timely and widespread dissemination of clear information concerning these new laws, or to ensure that the penalties imposed are proportionate, or that their implications have been fully considered. Amnesty considers that each of these factors ought to bear upon the standard according to which compliance with these obligations is assessed.
39. Judicial oversight is similarly key in guaranteeing adequate scrutiny. As the OSCE/ODIHR has observed, “the right to effective remedy to challenge bans or restrictions on assemblies, and especially blanket bans, is an important safeguard against unjustified restrictions. This right should be in place even in times of public health emergencies when the judiciary may itself operate in a reduced mode for the same reasons. On several occasions, courts in effect upheld the right to peaceful assembly, striking down emergency regulations or individual orders, reinforcing the approach of a case-by-case assessment of public assemblies.”⁷⁷
40. Further support for the fundamental importance of judicial oversight in the context of a public health emergency can be drawn from the counter-terrorism context, where judicial scrutiny of emergency measures in matters of national security is of heightened importance. As the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted, “... States utilising counter-terrorism laws that result in states of emergency must maintain robust and independent judicial access and oversight. Judicial oversight is necessary at all phases of the emergency powers practice ...”⁷⁸ While domestic authorities should not be subjected to an impossible or disproportionate burden in this regard,⁷⁹ the involvement of domestic courts in reviewing restrictions in this context has nonetheless been regarded as an important factor in determining the standard applied by the European Court of Human Rights.⁸⁰

E. CONCLUSION

41. The present case will inevitably set the course for future judgments of this Court concerning restrictions on the right to freedom of peaceful assembly, particularly in the context of public health emergencies.⁸¹ Amnesty therefore urges the Court to hold as its baseline the established position that blanket bans (or blanket legal restrictions) on peaceful assemblies are presumptively disproportionate. In doing so, it would be helpful for the Court also to clarify what constitutes a blanket approach to regulation – namely, measures that adopt a one-size-fits-all approach to regulation without any scope for discretionary variation and which thus fail to appropriately assess or distinguish between, different situations, intentions, activities, conduct or consequences (including the risk that each poses to public health), and that fail to allow for exceptions where these would be justified. Furthermore, Amnesty emphasises that the supra-national scrutiny afforded by this Court is of particular importance in scrutinising restrictions imposed in the context of a public health emergency where domestic (legislative or judicial) procedural safeguards are either absent or diminished.

[society](#), UN Doc., A/HRC/51/13, para. 11. Also, Amnesty International, “[There is no help for our community’: The impact of States’ Covid-19 responses on groups affected by unjust criminalization](#)”. Also, Amnesty International, There is no help for our community: The impact of States’ Covid-19 responses on groups affected by unjust criminalization (Index: POL 30/5477/2022), May 31, 2022, [amnesty.org/en/documents/pol30/5477/2022/en/](#) and Amnesty International, [Daring to stand up for human rights in a pandemic](#) (Index: ACT 30/2765/2020), August 6, 2020, [amnesty.org/en/documents/act30/2765/2020/en/](#).

⁷⁷ OSCE, OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic (2020), [osce.org/files/f/documents/e/c/457567_0.pdf](#), p. 108.

⁷⁸ UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering Terrorism, Report: [Human Rights Challenge of States of Emergency in the Context of Countering Terrorism](#), 27 February 2018, UN Doc. A/HRC/37/52, para. 77. Also, Amnesty International, [Punished Without Trial: The Use of Administrative Control Measures in the Context of Counter-Terrorism in France](#) (Index: EUR 21/9349/2018), November 22, 2018, [amnesty.org/en/documents/eur21/9349/2018/en/](#).

⁷⁹ ECtHR, *Tagayeva v Russia*, Application no. 26562/07 and 6 others, judgment, 13 April 2017, [hudoc.echr.coe.int/eng?i=001-172660](#).

⁸⁰ ECtHR, *A and Others v UK*, Application 3455/05, Grand Chamber judgment, 19 February 2009, [hudoc.echr.coe.int/eng?i=001-91403](#), paras 173-4.

⁸¹ See, for example, (PACE), Rapporteur Margreet De Boer, [The impact of the Covid-19 restrictions for civil society space and activities](#), (previously cited), Part B, ‘Draft Recommendation’, para.1.5. See also, the following communicated cases concerning Articles 9, 10 and/or 11 ECHR: ECtHR: *Central Unitaria de Trabajadores/as v Spain*, Application 49363/20, communicated on 13 October 2021, [hudoc.echr.coe.int/eng?i=001-213143](#); *Petrova v Bulgaria*, Application 938/21, communicated on 26 August 2022, [hudoc.echr.coe.int/eng?i=001-219230](#); *Jarocki v Poland*, Application 39750/20, [hudoc.echr.coe.int/eng?i=001-214194](#); *Magdic v Croatia*, Application 17578/20, communicated on 17 November 2021, [hudoc.echr.coe.int/eng?i=001-210389](#); *Figel v Slovakia*, Application 12131/21, communicated on 12 December 2022, [hudoc.echr.coe.int/eng?i=001-222231](#).