



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

FIFTH SECTION

CASE OF CENTRAL UNITARIA DE TRABALLADORES/AS v. SPAIN

(Application no. 49363/20)

JUDGMENT

Art 11 • Freedom of assembly • Ban on demonstration organised by the applicant trade union for 1 May 2020, during the early stages of the COVID-19 pandemic • Interference neither a blanket ban nor content-based • Interference “prescribed by law” and pursued legitimate aims of protecting health and rights and freedoms of others • COVID-19 pandemic qualified as exceptional and unforeseeable circumstances • Interference imposed in context of pressing social need of protecting individual and public health • In particular case-circumstances decisions based on acceptable assessment of the facts and on relevant and sufficient reasons • Fair balance struck between competing interests at stake • Wide margin of appreciation not overstepped • Interference “necessary in a democratic society”

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 October 2024

FINAL

17/01/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Central Unitaria de Traballadores/as v. Spain,

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

Mattias Guyomar, *President*,

Lado Chanturia,

Stéphanie Mourou-Vikström,

María Elósegui,

Kateřina Šimáčková,

Mykola Gnatovskyy,

Artūrs Kučs, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 49363/20) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Central Unitaria de Traballadores/as (C.U.T., “the applicant trade union”), on 30 October 2020;

the decision to give notice to the Spanish Government (“the Government”) of the complaints under Articles 10 and 11 of the Convention concerning the prohibition of a demonstration planned by the applicant trade union and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 17 September 2024,

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

INTRODUCTION

1. The application concerns the authorities’ decision to ban a demonstration organised by the applicant trade union for 1 May 2020, during the COVID-19 pandemic. The applicant trade union relied on Articles 10 and 11 of the Convention.

THE FACTS

2. The applicant trade union is registered under Spanish law, was set up in 1998 and has its headquarters in Vigo. Its statutory aim is to defend the rights and interests of workers in Galicia. It was represented by Mr B. González Pérez, a lawyer practising in Pontevedra.

3. The Government were represented by Mr L.E. Vacas Chalfoun, co-Agent of Spain to the European Court of Human Rights.

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

I. BACKGROUND INFORMATION

5. The global context pertaining to the spread of the coronavirus disease 2019 (“COVID-19”) and the response to its spread in 2020 is summarised in the case of *Communauté genevoise d’action syndicale (CGAS) v. Switzerland* [GC] (no. 21881/20, §§ 64-74, 27 November 2023). On 11 March 2020 the World Health Organisation (WHO) declared COVID-19 a pandemic.

6. On 31 January 2020 COVID-19 was detected for the first time on Spanish territory. The number of confirmed cases grew quickly in February and March 2020. According to the Government (referring to WHO data as cited by the British Broadcasting Corporation (BBC)), by mid-March 2020 Spain had become the worst-affected European country after Italy.

7. By Royal Decree no. 463/2020 of 14 March 2020 (see paragraph 38 below) the Spanish Government declared a “state of alarm” in the face the COVID-19 pandemic; the state of alarm was to last for an initial period of fifteen days and applied to the whole of Spain. The Royal Decree introduced, among other measures, limitations on freedom of movement (see paragraph 39 below). The duration of the state of alarm was subsequently extended on six occasions, with each extension being approved by the Congress of Deputies (as required by Article 116 of the Constitution, see paragraph 33 below).

8. The numbers of confirmed COVID-19 cases and deaths in Spain continued to grow, so on 29 March 2020 Royal Decree-Law (*Real Decreto-ley*) no. 10/2020 (dealing with recoverable paid leave for employees not providing essential services) was issued. The Government introduced tougher restrictions, including a suspension of all non-essential activities until 9 April 2020, in order to reduce the population’s mobility. As of 14 April 2020, the restrictions were eased, allowing some non-essential workers (such as, for instance, those in the construction and manufacturing industries) to return to work, subject to compliance with strict safety guidelines.

9. According to the Government, on 2 April 2020 the authorities recorded 950 deaths caused by COVID-19 in one day.

10. Data published by the Coordination Centre for Alerts and Health Emergencies of the Ministry of Health (*Gobierno de España, Centro de Coordinación de Alertas y Emergencias Sanitarias (2020), Actualización n°86*) showed that by 25 April 2020 about 206,000 cases had been confirmed in Spain (meaning that Spain had the highest number of confirmed cases in Europe at the material time), and about 22,900 COVID-19-related deaths had been registered in the country. By the same date 9,116 cases had been confirmed in Galicia, and 388 deaths registered.

11. As of 26 April 2020 children under the age of fourteen were allowed to go out on short walks with adult members of their household. On 28 April 2020 the Government announced a gradual four-phase “de-escalation” plan. The initial phase, which was to start on 2 May 2020, included, among other

things, allowing individuals to leave their places of residence for short walks and to engage in individual sports. According to the Government, that plan had been officially introduced on 8 May 2020 by Royal Decree no. 514/2020 and was implemented gradually, with progress depending on the evolution of epidemiological, health, social, economic and mobility indicators in the specific regions.

12. In May 2020 several COVID-19-related restrictions were gradually lifted or eased across the country. On 17 May 2020 the daily death toll fell below 100 for the first time since the beginning of the pandemic.

13. The state of alarm remained in force until 21 June 2020.

II. THE APPLICANT TRADE UNION'S NOTIFICATION OF A DEMONSTRATION AND THE AUTHORITIES' REPLY

14. On 20 April 2020 the Secretary General of the applicant trade union, acting on its behalf, submitted a notification to the Government Sub-Delegation in Pontevedra declaring its intention to hold a convoy-demonstration in Vigo, a city whose population at the relevant time was approximately 200,000, on 1 May 2020, International Workers' Day. Participants in the demonstration were to take part in their own cars. It was to begin at 11 a.m. in Plaza de España, one of the central squares of Vigo, would follow specific streets in the city centre, and end up one and a half hours later in front of an administrative building (the *Xunta*) on Concepción Arenal Street. The applicant trade union noted that the right to freedom of assembly had not been suspended by Royal Decree no. 463/2020 declaring the state of alarm in Spain and stressed the fundamental role of trade unions during the health crisis "from the labour perspective". Acknowledging the seriousness of the epidemiological situation, the applicant trade union stated that the demonstrators would participate in individual cars, would take appropriate protective measures and would be identified by the trade union. The applicant trade union further expressed its readiness to take any other measures that might be suggested by the authorities.

15. On 21 April 2020 the Government Sub-Delegation in Pontevedra ("the Sub-Delegation") informed the applicant trade union that, given the public health emergency caused by the COVID-19 pandemic, the authority was "unable to provide a criterion for holding [the demonstration]" ("*no puede trasladarle un criterio sobre su celebración*"), let alone evaluate the impact the demonstration could have on public order, or the potential disruptions of public order or other kinds of disruptions affecting the safety of people or property. The authority noted in addition that Royal Decree no. 463/2020, as in force at the relevant time, did not list movement "for the purpose set out in the notification lodged by the [applicant trade union]" among the activities exempted from the general limitation on movement ("*limitación general para circular*"). Nevertheless, it finished by stating that

“the regulations in force on the date the event [was] scheduled to take place were to be observed”.

III. COURT PROCEEDINGS

A. Proceedings before the High Court of Justice of Galicia

16. On 22 April 2020 the applicant trade union lodged an appeal (supplemented on 27 and 28 April 2020) against the above prohibition with the High Court of Justice of Galicia (*Tribunal Superior de Xustiza de Galicia*) following a special procedure relating to the right of assembly (set out in section 122 of Law no. 29/1998, see paragraph 36 below). It emphasised that, as had been set out in the notification, each participant was to take part in the demonstration in an individual car without leaving it at any time; that the participants would take appropriate measures to prevent the transmission of the infection, including by using masks and gloves; and that only persons identified in advance by the trade union would participate in the demonstration. It requested that the Sub-Delegation’s decision be declared null and void, or annulled, and that the demonstration be allowed to take place. Claiming a violation of the right to demonstrate (Article 21 of the Spanish Constitution) and stating, without further details, that the disputed prohibition had had an adverse (collateral) effect on its right to freedom of association (Article 28 of the Constitution), the applicant trade union argued as follows:

(i) The prohibition of the demonstration lacked a legal basis as the right to freedom of assembly had not been suspended during the state of alarm.

(ii) The decision lacked the reasoning expressly required by section 10 of the Right of Assembly Act, such as well-founded reasons to fear that public order would be disturbed (the trade union cited, in particular, the Constitutional Court’s case-law summarised in paragraph 44 below). The Sub-Delegation’s reply hadn’t even mentioned the right to demonstrate, let alone contained any analysis of the proposed demonstration or an explanation of why it had been impossible to adopt any alternative measures.

(iii) The ban was disproportionate and unnecessary. There had been no technical or health-related reason for the interference. The applicant trade union had undertaken to ensure the respect of safety measures by the participants and had been open to any further suggestions of the authorities. Some of the measures proposed by the organisers were stricter than those required by various protocols in force (for instance, the wearing of a mask and gloves was not required for travel using cars). However, the Sub-Delegation had imposed a ban on the demonstration without considering other options such as proposing a change to its date, place, duration or route. Travelling to work was authorised at the material time. The authorities themselves had organised symbolic convoys of ambulance vehicles in

recognition of the work of essential workers. They had also tolerated a concentration of ambulance vehicles, held on 28 March 2020 in Corunna, to express gratitude to a famous businessman, A.O., for donations made by his foundation to the domestic health system. Furthermore, on 25 April 2020 a demonstration by a convoy of trucks had been authorised in the town of Ourense in the same region. Thus, the disputed decision was discriminatory and inconsistent with other decisions of the authorities.

17. In reply, the Sub-Delegation acknowledged the brevity of the reasons provided and argued that, whilst the right to freedom of assembly had indeed not been suspended, the protection of public health could justify the restriction of the right to demonstrate.

18. On 25 April 2020 a public prosecutor submitted that the appeal should be granted as there would be no effect on public health, given the proposed form of demonstration.

19. On 28 April 2020 the High Court of Justice of Galicia dismissed the applicant trade union's appeal. The first-instance court noted that the Sub-Delegation's reply was to be interpreted as a prohibition of the demonstration. It further considered that, although its confusing and defective wording could indeed create uncertainty, it had set out the relevant core reasons for the prohibition. According to the court, the Sub-Delegation had clearly referred to the state of alarm and the public health emergency underlying it, as well as to the general ban on circulation (that is, in essence, Article 7 § 2 of Royal Decree no. 463/2020); the court further considered that, given the health emergency, the demonstration could have given rise to a disproportionate disturbance to other rights and values protected by the Constitution – specifically public health. It concluded that, while a more explicit reply along with a deeper reflection on and a more careful weighing up of the legal interests at stake would have been desirable, the decision did not lack motivation. It further concluded that the procedure set out in section 10 of the Right of Assembly Act had been respected. The Sub-Delegation did not have to conduct further administrative proceedings, although it could have requested a report from the local health protection authority to support its decision.

20. The court further noted that Royal Decree no. 463/2020 had the status of law (*rango de ley*) and that, in the absence of a ruling by the Constitutional Court declaring it incompatible with the Constitution, the prohibition of the demonstration could be based on that decree. The court further found, in so far as relevant, as follows:

“[The court] does not see any reason to request a preliminary ruling by the Constitutional Court (*cuestión de inconstitucionalidad*), nor does it observe any irregularity in the [disputed] application of Royal Decree no. 463/2020. Even though the state of alarm is ... [the least intense of the three regimes] set out in Article 116 of the Constitution and in [Organic Law no. 4/1981, see paragraph 37 below], the present [situation], [falling under] section 4(b) of that Law ..., is the most serious imaginable, given the public health emergency caused by an international pandemic [declared by

the WHO] on 11 March 2020. [The pandemic] has caused [thousands of] deaths, [and numerous victims have been] hospitalised with serious illness or [have otherwise been] affected. [Those are] facts of absolute public knowledge that do not require proof within the meaning of section 281(4) of the Civil Procedure Act ...

When balancing the legal values at stake, the [court] cannot remain oblivious to the enormous magnitude of the effects caused by the pandemic ... [The court] cannot ignore the tragedies shown every day in the media. [It] acknowledges the monumental blow that COVID-19 has [already] dealt to Spanish public health, [quite apart from] the effects ... which will [manifest themselves] in future. The risk to public health, demonstrated by the ... loss of the lives of thousands of citizens and the hospitalisation of many more for [periods of] more than a month, and which has not yet been contained, led to the declaration of the state of alarm. [It] justifies the restriction of the movement of people, including in vehicles, as set out in Article 7 § 2 of Royal Decree [no.] 463/2020, in order to prevent the spread of the virus.

[The Constitutional Court has previously] ruled that the state of alarm could entail limitations and restrictions of the exercise of fundamental rights.

[The administrative decision in this case] is [in accordance with that position], as it does not suspend the fundamental right to assembly but rather, [in compliance with Article 7 § 2 of the Royal Decree ... and Organic Law no. 4/1981, see paragraph 37 below,] limits the circulation of vehicles to certain purposes, [which do not include the holding of the proposed demonstration], as an ideal and necessary [way] to protect public health. Therefore, the application ... of the state of alarm and the ... protection of public health – for which the public authorities are responsible under Article 43 § 2 of the Constitution – are incompatible with [the holding of the proposed demonstration].

...

[According to the Constitutional Court's established case-law], the right enshrined in Article 21 of the Constitution is not absolute or unlimited and can be subject ... to certain restrictions on the grounds expressly provided for in paragraph 2 of that provision, and where it is necessary to prevent a collision between the unlimited exercise of the right and other constitutional values.

In the present case, both the protection of public health (Article 43 § 2 of the Constitution) [and the public authorities' corresponding obligation] to take measures to prevent of the spread of the virus, and the right to life and physical integrity of other citizens (Article 15 of the Constitution) must take precedence over the right of assembly and demonstration (Article 21 of the Constitution) ... [The] balancing [of those rights] entails a limitation of the latter [to ensure an] orderly coexistence of citizens, in which the health of either the demonstrators themselves or of other citizens is not endangered. [The precautionary measures proposed by the applicant trade union were not sufficient] to allow the demonstration to take place.

...

... Article 11 § 2 of the [Convention], which [is] a guideline for interpretation of the rules relating to the fundamental rights recognised in the Spanish Constitution, ... also provides that the exercise of the right to assembly can be restricted ... to protect public health. In [the case of *Cisse v. France*, no. 51346/99, ECHR 2002-III, the Court] considered an order to evacuate a church to be proportionate in the case of a peaceful assembly which did not in itself directly disturb public order and the right to worship, but in where, nevertheless, the state of health of the participants had deteriorated and the sanitary circumstances were [wholly inadequate].

The World Health Organisation, in its latest document updating the COVID-19 strategy issued on 14 April [2020 (see paragraph 46 below), which is] clearly applicable to Spain, also advised the implementation of physical distancing and restrictions on the movement of the population – [which were exactly the measures] that justify [the disputed prohibition].

Therefore, since the restriction of the ordinary application of the rules governing the right to demonstrate is justified, the [applicant trade union’s argument that the disputed restriction could only apply in a state of emergency] cannot be accepted. [Apart] from the fact that ... [the decision is compatible with] the state of alarm, the extraordinary conditions [of] the international pandemic demonstrate the rationality of the contested decision. ... [The] enormous scale of the human tragedy resulting from [the pandemic] justifies the reinforced application of the temporary measures. In sum, the protection of public health (Article 43 § 2 of the Constitution), which [was an underlying reason for] the state of alarm, provides sufficient legal basis for the restriction [imposed by] the contested decision.”

21. The court assessed the potential effects of the demonstration as follows:

“[Both Article 21 § 2 of the Constitution and section 10 of the Right of Assembly Act] provide that demonstrations on public highways may be prohibited if there are well-founded reasons [to believe that] public order will be disturbed, endangering people and property. ...

If the demonstration took place under the proposed conditions, the [virus could be transmitted] ... before [participants] enter[ed their cars] or after exiting the[m], [as] it is not unimaginable that contacts could occur between the protesters themselves, or with members of civil protection or police forces, or even with other citizens before [the participants return to their places of residence]. ...

Moreover, if the demonstration takes place, [that would] logically entail a massive [influx and] outflow of citizens to highways before or after entering the[ir] vehicles, [not to mention] the possible [interaction] and contact with members of the civil protection and security forces who would have to supervise it. [Thus, given] the current state of scientific ignorance as to the origin and incidence of COVID-19, the fact that the [proposed demonstration would take] place in [cars] does not ... guarantee that the danger to persons will disappear. ...”

22. Regarding the alleged lack of proportionality of the restriction and the alleged misuse of power, the first-instance court referred to the principle that everything which is not forbidden, limited or suspended is tolerated (*tolerado*), but noted that circulation in cars with the purpose of holding a demonstration was not among the activities listed in Article 7 § 2 of the Royal Decree. Concerning the permission to travel to work, the court reiterated that the right to work was also a fundamental right protected by Article 35 of the Constitution. The court considered that it was not its task to conduct a judicial review of the Royal Decree or to compare the types of travel expressly allowed by the Decree that were pointed to by the applicant trade union.

23. As regards the applicant trade union’s reference to an alleged breach of its trade union rights (Article 28 of the Constitution), the court found that the complainant had failed to give reasons or details for that allegation. Furthermore, the contested decision concerned only the right to assembly,

and the applicant trade union had made use of the special procedure concerning protection of that right set out in section 122 of Law no. 29/1998 (see paragraph 36 below), but not the procedure for the protection of other fundamental rights set out in other provisions of that law. The court found that fundamental rights other than that referred to in section 122 could not be invoked by the complainant within the relevant procedure.

B. Proceedings before the Constitutional Court

24. On 29 April 2020 the applicant trade union lodged an *amparo* appeal against the first instance court's decision of 28 April 2020, arguing that there had been a violation of the right to freedom of assembly (Article 21 of the Constitution) and trade union freedom (Article 28 of the Constitution) on essentially the same grounds as summarised in paragraph 16 above. It also argued that the first-instance court had substituted its own assessment for the deficient reasoning contained in the Sub-Delegation's decision. In that assessment, the lower court had incorrectly "legally associated", or blended, the freedom of movement and the freedom of assembly, even though the latter had not been suspended (the trade union cited, in particular, the preamble to the Royal Decree; see paragraph 38 below). Therefore, contrary to the lower court's findings, the ban could not be based on the Royal Decree itself but had resulted from an incorrect interpretation of the exceptional mechanism of the state of alarm by the Sub-Delegation and by the first-instance court. The applicant trade union argued accordingly that the exercise of the right to demonstrate could only be subjected to the ordinary limitations as set out in the domestic law. Nevertheless, the first-instance court had assessed the potential impediments to the demonstration in a general and abstract manner, confining its analysis to a broad reference to the public health crisis – even though the applicant trade union had proposed several measures to prevent the spread of the virus, and had been ready to implement any other protective measures the authorities could have considered relevant in respect of the specific demonstration proposed by it. Furthermore, the applicant trade union pointed out that the previously introduced restrictions were being eased at the time of the complaint (see, notably, paragraph 11 above). Turning to the risks identified by the lower court, the applicant trade union argued, by way of comparison, that an authorisation to travel to work had been extended to workers of non-essential services as of 13 April 2020. That meant that millions of trips to work had been taking place daily, even when employees worked together in large workplaces. It was disproportionate to prohibit a demonstration conducted in cars, as that would imply a tougher restriction on the exercise of the right to freedom of assembly than on ordinary work-related circulation. It further argued that various similar events, such as convoys of ambulances and civil protection vehicles had *de facto* taken place across the country, even though those events had not been related to the provision of

essential services; moreover, such convoys had been organised by the authorities or at least had been tolerated by them. The applicant trade union argued that the restriction amounted to a tacit prohibition of the exercise of a fundamental right.

25. On 30 April 2020 the Constitutional Court declared the *amparo* appeal inadmissible in a decision (*auto*). The court disallowed the freedom of association complaint (Article 28 of the Constitution) owing to a failure to exhaust available remedies in the lower courts in a due procedure. Specifically, the court pointed out that the procedure chosen by the trade union was confined to the right to demonstrate, whereas it had not duly raised in its administrative complaints any specific arguments to sustain a violation of the right to freedom of association.

26. Addressing the issue of the general constitutional significance of the case, the Constitutional Court reiterated that it had already had an opportunity to address several relevant legal issues, such as: limitations on the exercise of certain fundamental rights in the context of the state of alarm (as opposed to their suspension), and the non-absolute nature of the right to assembly and its possible limitations for well-founded reasons. However, the issue in question in the present case was the application of those principles in the “specific and unusual situation” of the pandemic, which involved risks to the life and health of the population, and at the time when the confinement measures introduced by the Royal Decree were in force. The demonstration was supposed to take place during the pandemic “which [had] put [to the test] the [country’s] democratic institutions, society itself and [Spanish] citizens, making them essential elements of the fight against the health and economic crisis which had affected the entire country”. Although Spain had already suffered, for example, the 1918 pandemic, the Covid-19 pandemic was the first time the current Spanish democracy had had to face a challenge of such magnitude and impact, and to implement mechanisms to confront it. The Constitutional Court therefore regarded the case as an opportunity to examine the scope of the Royal Decree from the constitutional perspective in so far as the exercise of fundamental rights was concerned and to provide guidance for the application and interpretation of the relevant norms.

27. Having reiterated the requirement to give well-founded reasons for the interference, the Constitutional Court found as follows:

“Although the reasoning of the decision of the [Sub-Delegation], which is [manifestly] ambiguous and does not even make the prohibition entirely clear, could be questioned, it cannot be denied that there is sufficient reasoning in the judgment of [first instance court of 28 April 2020]. Therefore, any shortcomings in the reasoning of the administrative decision [were] remedied by the extensive reasoning of the judicial body ... [Its] sufficiency is not open to doubt.”

28. The Constitutional Court agreed with the applicant trade union that, unlike a state of emergency and a state of siege, a state of alarm did not allow the suspension of any fundamental rights. However, measures could be

adopted to limit or restrict the exercise of such rights. It further considered it impossible to decide within the proceedings at hand, even for dialectical purposes, “whether or not the [D]ecree declaring the state of alarm [entailed] an excessive limitation or even a suspension of the right to demonstrate [in itself and/or as a consequence] of the limitation of freedom of movement [set out in] Article 19 of the Constitution”. The court therefore endorsed the applicant trade union’s position that the prohibition in question “did not derive from the declaration of the state of alarm but from the interpretation of the scope of that exceptional mechanism” by the Sub-Delegation and subsequently by the first-instance court. Thus, the Constitutional Court found that its task was – “leaving aside the content of the Royal Decree” – to establish whether the limitation on the right to demonstrate in the specific case at hand had been compatible with the relevant constitutional requirements.

29. The Constitutional Court further found as follows:

“In the present case, the limitation of the exercise of the right [to demonstrate] has a purpose that not only has to be considered legitimate, but which is also [enshrined] in Articles 15 (guarantee of the physical integrity of persons) and 43 (protection of health) of the Constitution, which are closely connected that it is difficult to imagine them separately, especially in the current circumstances. [That is where the purpose of the restriction on the exercise of the right to demonstrate] converges with the justification for the declaration of the state of alarm. The reasons behind both are identical - [namely] to limit the impact that the spread of COVID-19 could have on people’s health, physical integrity, and right to life. [Given] the current state of scientific research, which progresses [daily or even hourly], it is impossible to have any certainty as to the forms of transmission or the real impact of the spread of the virus. [Furthermore, there] is no scientific certainty as to the medium-term and long-term consequences [of the virus on] the health of [those affected by it]. Given this uncertainty, which [can hardly be measured] using the legal parameters ... usually based on the [principle of] legal certainty enshrined in ... the Constitution, the measures of social distancing, home confinement and a strict limitation of contacts and group activities are the only ones that have proved to successfully limit the effects of the pandemic, the dimensions of which have been unknown to date. [Those effects were] unknown and, of course, unforeseeable when [Law no. 4/1981 of 1 June 1981 was adopted].

In any event, it appears obvious that the prohibition of the demonstration ... [was aimed at] preventing the spread of a serious disease, [which] could lead to a collapse of the public healthcare services [if not contained].

...

The declaration of the state of alarm was not based on the protection of public order, but on the guarantee of the right to physical integrity and health of people. This is why we find ourselves in a scenario where limits to the exercise of rights ... are imposed by the need to prevent an excessive exercise of a right from coming into collision with other constitutional values, [namely those] of life, health, and the protection of the healthcare system whose limited resources must be adequately secured.”

30. Turning to the proportionality of the disputed measure, the Constitutional Court ruled as follows:

“[The trade union submitted that it had] suggested a series of measures (participation in private cars, one participant per vehicle [remaining in the car throughout], the wearing of masks and gloves, participation reserved to persons listed by the trade union) [that are much stricter] than those currently provided for in our legislation. [It argued, in particular, that the regulations in force concerning private means of transportation provide] that no more than one person can occupy a row of seats in a vehicle ... and [contain] no obligation to wear a mask or gloves [in a car] ...

[The proposed] measures [are intrinsically linked with] the very nature of the proposed demonstration ... [T]he organisers [have not] foresee[n] specific measures to control the transmission of the virus or to compensate for the foreseeable concentration of cars which could occur if there were to be a massive response to the call. ...

... [The] itinerary chosen by the organisers [would] impl[y] occupying the main ... road in Vigo for several hours, dividing the city in two and possibly limiting access to the hospitals located in the upper part of the city for people living in the area closest to the coast. [According to the Constitutional Court’s case-law (see paragraph 44 below)], for [a demonstration] to be prohibited there must be a total obstruction of ... routes that, owing to the volume of traffic ... and the characteristics of the area – normally the nerve centres of large cities – causes a collapse in traffic flow [leading to] vehicles being immobilised for a prolonged period of time, and access to certain areas or neighbourhoods of the city [being] obstructed because of the authorities’ inability to put in place alternative circulation routes. In these cases ... public order may be affected with danger to people or property if, for example, it is impossible to provide essential services that affect the safety of people or property, such as ambulance, fire, police or medical emergency services. ...

[In] the analysis of the [measure’s] proportionality, it cannot be overlooked that the form of demonstration chosen by the applicants – which they consider sufficient to avert the health risk, despite the findings to the contrary by the health authorities who advise against crowded gatherings, whether on foot or by car (as the content of the [state of alarm decree] cannot be understood in any other way) – generates other problems liable to have an impact on the safety of persons, which the applicants have not considered. The free movement of ambulance or emergency medical vehicles and free access to hospitals during a [public] health alert is an element that has to be considered. [Given the above], the restrictive measure can be considered proportionate.

The impact of the COVID-19 on the city of Vigo is not [a] negligible [factor for the proportionality analysis either]. According to the official data for 29 April 2020 ... there [were] 3,526 active COVID-19 cases in Galicia, of which ... 808 [were] in Vigo ... Therefore, Vigo is the second-ranked city in Galicia in terms of the number of identified active cases. This information is also extremely important for the assessment of the risk to people’s health that could result from the authorisation of the demonstration. [Adequate m]easures [were not proposed] to prevent transmission of the virus, to limit the number of people attending, to guarantee the free movement of medical vehicles, or to stagger the participants’ [dispersal once the demonstration was over]. [It is therefore] not impossible to imagine a concentration of people prior to the [event] and [during their subsequent] return to their places of [residence]. [That could] contribute to a possible exponential growth in [the number of infections], which cannot be avoided but by limiting the exercise of the right [of demonstration] in the [form] requested by the organisers.”

31. On 4 May 2020 the applicant trade union lodged an appeal (*suplicación*) against the decision of 30 April 2020. On 19 May 2020 the Constitutional Court dismissed the appeal.

IV. OTHER INFORMATION SUBMITTED BY THE PARTIES

32. On 30 April 2020 in unrelated proceedings a domestic first-instance court authorised a convoy-demonstration (with the participants in cars) planned by the members of the Vox political party in Madrid for 23 May 2020. The demonstration took place on the scheduled date.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

33. The relevant provisions of the Constitution of Spain read as follows:

Article 15

“Everyone has the right to life and to physical and moral integrity ...”

Article 21

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

2. In the event of gatherings on public highways (*en lugares de tránsito público*) and of demonstrations, prior notification shall be given to the authorities, who may ban them only when there are well founded grounds to expect a breach of public order involving danger to persons or property.”

Article 43

“1. The right to health protection is recognised.

2. It is incumbent upon the public authorities to organise and safeguard public health by means of preventive measures and the necessary benefits and services. In that connection the law shall establish the rights and duties of all concerned. ...”

Article 55

“1. The rights recognised in ... [Article] 21 may be suspended when a state of emergency or siege [martial law] is declared under the terms provided in the Constitution. ...”

Article 116

“1. An organic law shall regulate states of alarm, emergency and siege (martial law) (*los estados de alarma, excepción y sitio*) and the corresponding competences and limitations.

2. A state of alarm may be declared by the Government, by means of a decree decided upon by the Council of Ministers, for a maximum period of fifteen days. The Congress of Deputies shall be informed and must meet immediately for this purpose. Without its

authorisation the said period may not be extended. The decree shall specify the territorial area to which the effects of the proclamation shall apply. ...”

B. Right of Assembly Act

34. In accordance with the Right of Assembly Act (Organic Law no. 9/1983 of 15 July 1983), as in force at the material time, no gatherings should be subject to prior authorisation (section 3(1)) of the Act). The holding of gatherings on public highways and of demonstrations must be notified by the organisers in writing to a governmental authority (section 8 of the Act).

35. If the authorities consider that there are well-founded reasons to believe that public order may be disturbed such that there is a danger to persons or property, they may prohibit the gathering or demonstration or, where appropriate, propose a change in the date, place, duration or route of the gathering or demonstration. The decision must be adopted in a reasoned manner (section 10 of the Act). If the organisers do not accept the prohibition or other proposed modifications, they may lodge a contentious-administrative appeal with a competent court within forty-eight hours (section 11 of the Act).

C. Law no. 29/1998 regulating judicial proceedings in administrative matters

36. Under section 22 of Law no. 29/1998 of 13 July 1998 regulating judicial proceedings in administrative matters (*Ley reguladora de la Jurisdicción Contencioso-administrativa*), when the organisers of a demonstration object to its being prohibited or to any modifications to it that have been proposed (as provided for in the Right of Assembly Act), they may lodge an appeal with a competent court within forty-eight hours following the notification of the prohibition or modifications. The court may only maintain or revoke the proposed prohibition or modifications.

D. Organic Law no. 4/1981 of 1 June 1981

37. Organic Law no. 4/1981 of 1 June 1981 on States of Alarm, Emergency and Siege (Martial Law) provides that the government, in the exercise of the powers granted to it by Article 116 § 2 of the Constitution, may declare a state of alarm, in the whole national territory or its part, when serious alterations to normality (*alteraciones graves de la normalidad*) occur, such as, among other things, health crises, including epidemics and severe contamination situations (*crisis sanitarias, tales como epidemias y situaciones de contaminación graves*) (section 4(b) of the Law).

E. Royal Decree no. 463/2020

38. On 14 March 2020 the Spanish Government approved Royal Decree no. 463/2020 declaring a state of alarm for the management of the health emergency caused by COVID-19. The state of alarm, as defined in section 4(b) of Organic Law no. 4/1981 (see paragraph 37 above), came into effect in the whole territory of Spain for a period of fifteen days (Articles 1-3 of the Decree). The preamble of the Decree read as follows:

“On [11 March 2020 the WHO] upgraded the public health emergency caused by COVID-19 to an international pandemic. The rapid evolution of events on a national and international level requires the adoption of immediate and effective measures ... The extraordinary circumstances ... undoubtedly constitute an unprecedented health crisis of enormous magnitude owing to both the very high number of citizens affected and the extraordinary risk to their rights ... [The measures introduced by the Decree] form part of the Government’s determined action to protect the health and safety of citizens, to contain the spread of the disease and to strengthen the public health system. The extraordinary temporary measures [already adopted] ... must now be intensified without delay to prevent and contain the virus and mitigate its health, social and economic impact. ... The measures set out in [the Decree] are essential to addressing the situation, proportionate to its extreme seriousness and do not imply the suspension of any fundamental rights, in accordance with Article 55 of the Constitution.”

39. By virtue of the Royal Decree, face-to-face educational activities were suspended; shops and retail businesses were temporary closed (with some exceptions – and even then crowds were to be avoided and social distancing between individuals respected); and bars, restaurants, cafes, cinemas, museums, archives, libraries, monuments, shows and sports and leisure sites were also temporarily closed to the public. Attendance at places of worship and civil and religious ceremonies, including funerals, was conditional on the adoption of organisational measures aimed at avoiding crowds and respecting social distancing requirements. Article 7 (“Limits to freedom of movement”) of the Royal Decree read as follows:

“1. During the validity of the state of alarm, people may only circulate on public roads to carry out the following activities:

- (a) procurement of food, pharmaceuticals and basic necessities;
- (b) attending healthcare centres, services and establishments;
- (c) travel to the workplace for work or to provide professional or business services;
- (d) return to one’s place of habitual residence;
- (e) assistance and care for the elderly, minors, dependents, persons with disabilities or particularly vulnerable persons;
- (f) travel to financial and insurance institutions;
- (g) owing to force majeure or a situation of necessity; and
- (h) any other activity of a similar nature[, which must be] carried out individually unless [it is necessary to accompany] persons with disabilities or for any other justified reason.

2. Likewise, the circulation of private vehicles will be allowed on public roads to carry out the activities referred to in the previous paragraph or for refuelling at petrol stations or service stations.

3. In any case, the recommendations and requirements issued by the health authorities must be respected when travelling.”

40. The application of the state of alarm was subsequently extended on several occasions, each time with the approval of the Congress. In particular, the extensions applicable at the time of the events were ordered by Royal Decrees no. 487/2020 of 10 April 2020 and no. 492/2020 of 24 April 2020 extending the state of alarm until 26 April and 10 May 2020 respectively. The latter extension modified Article 7 of the initial Decree, introducing a provision authorising minors under the age of fourteen to accompany an adult responsible for their care when he or she carries out one or more of the activities provided for in Article 7 § 1¹.

F. Rulings by the Constitutional Court

1. Ruling no. 148/2021 of 14 July 2021

41. In April 2020 several deputies of the Vox parliamentary group brought an action in the Constitutional Court (*recurso de inconstitucionalidad*) contesting the constitutional validity of several provisions of Royal Decree no. 463/2020 and alleging a breach of various rights, including those to freedom of assembly and freedom of movement.

42. By its ruling no. 148/2021 of 14 July 2021 the Constitutional Court reiterated that a state of alarm could not be invoked to justify a suspension of fundamental rights, as such rights could only be suspended in states of “emergency” and “siege” (Article 55 § 1 and Article 116 § 2 of the Constitution). Regarding freedom of movement (Article 19 of the Constitution), the Constitutional Court found that the restrictions imposed by Article 7 of the Royal Decree had amounted to a temporary suspension of the right rather than its mere limitation. The state of alarm had turned the exercise of free movement into an exception, conditional upon its purpose (only for the performance of certain activities) and on its mode (individually, with further exceptions). That had involved a restriction of the freedom of movement which had been general in terms of its addressees and exceptionally intense in terms of its content. Therefore, it went beyond the scope of the Government’s powers during a state of alarm, as section 11 of Organic Law no. 4/1981 of 1 June 1981 only allowed the Government to limit the circulation of citizens at specified times and places. The Constitutional Court therefore found the provisions of Article 7 §§ 1, 3 and 5 of the Royal Decree to be incompatible with the Constitution.

¹ The numbering of the subsequent sub-sections changed accordingly.

43. Concerning the right to freedom of assembly, the Constitutional Court ruled as follows:

“Neither Royal Decree no. 463/2020 nor any of the subsequent [decrees] prohibit, expressly or implicitly, the exercise of the rights of assembly and demonstration, nor do they suspend them. The fact that these rights are not listed among the exceptions to the restriction of the freedom [of movement] provided for in Article 7 [of the Royal Decree], does not [mean] that th[ose] right[s] [are] suspended. ... The [legal] framework of the right to demonstrate during the state of alarm has not been modified, and it is ... the pandemic, and not an imposition of the Royal Decree in itself, that could determine its limitations. ... [In each case, it must be determined] whether [a decision to prohibit a] demonstration [meets] the criteria of proportionality ... The constitutional legitimacy of a prohibition [a given] demonstration does not derive from the Royal Decrees [concerning] the state of alarm, but directly from the legal effects of the collision between fundamental rights and constitutional values. Given the need to protect life and physical integrity and to avoid a collapse of the health system, fundamental rights and public freedoms are subject to possible restrictions or even [to their being suspended entirely] ... Given that in Spain there is no general prohibition on the right of demonstration or assembly ..., [and that] possible limitations on the exercise of the right [must be assessed] in the circumstances of [each] case ..., [the court considers] that Royal Decree no. 463/2020 has not entailed a violation of the fundamental rights recognised in Article 21 [of the Constitution].”

2. Ruling no. 66/1995 of 8 May 1995

44. According to the Constitutional Court’s Ruling no. 66/1995 of 8 May 1995, “well-founded reasons” to believe that public order will be disturbed should exist to trigger the application of Article 21 § 2 of the Constitution. A mere suspicion of that there might be disruption is not sufficient to prohibit a demonstration. A decision-maker must possess sufficient objective evidence, based on the factual circumstances of each case, to enable any person in a normal situation to rationally conclude that a given demonstration will result in disturbances to public order. In any event, in case of doubt as to whether such effects could be produced, a systematic interpretation of the constitutional provision requires the application of the principle of *favor libertatis*, and thus the demonstration cannot be banned. The Constitutional Court further ruled as follows:

“Specifically, from the perspective of Article 21 § 2 of the Constitution, for [a demonstration to be prohibited], there must be a total obstruction of traffic routes such that, owing to the volume of traffic and the characteristics of the area – normally, the nerve centres of big cities – the flow of traffic collapses[,] vehicles are immobilised for a prolonged period of time, and access to certain areas or neighbourhoods of the city is obstructed, because of the authorities’ inability to put in place alternative routes. In such cases ... public order may be affected in such a way as to endanger people or property, if, for example, it [is] impossible to provide essential services that affect the safety of people or property, such as ambulance, fire, police or emergency services. ...

[If a competent governmental authority decides to prohibit a gathering for well-founded reasons, it must]: (a) state such reasons; (b) substantiate them ..., (c) justify why preventive measures cannot be taken to avert the risks and to allow effective exercise of the fundamental right. The ... authority must take appropriate measures to

ensure that assemblies take place at the scheduled place and time without endangering public order – for example, by means of diverting traffic to other routes or prohibiting the occupation of roads for excessively long periods of time ... The exercise of the right of assembly may be restricted only if it is impossible to take such preventive measures, or [they are insufficient to] achieve the intended purpose – for example, if they do not make the area concerned accessible, or if they are disproportionate – for example, where [the use] of possible alternative routes [generates] unreasonable delays or detours. ...

Even where there are well-founded reasons [to believe] that a demonstration is likely to disturb public order [in a manner] entailing danger to persons and property, the governmental authority, applying the proportionality criterion, [and] before prohibiting the demonstration, must use – where possible – its power [under section] 10 of Organic Law no. 9/1983 to propose modifications to the date, place or duration of the demonstration so that [it] can be held.”

II. RELEVANT INTERNATIONAL AND COMPARATIVE LAW MATERIAL

45. Relevant international-law and comparative-law material concerning COVID-19-related restrictions has been summarised in *Communauté genevoise d'action syndicale (CGAS)* (cited above, §§ 64-74).

46. The COVID-19 Strategy Update by the World Health Organization of 14 April 2020, in so far as it was cited by the domestic courts, advised that in countries in which community transmission had become established, or which were at risk of entering that phase of the epidemic, the authorities should immediately adopt and adapt population-level distancing measures and movement restrictions in addition to other public health and health system measures to reduce exposure and suppress transmission, including: (a) personal measures that reduce the risk of person-to-person transmission; (b) community-level measures to reduce contact between individuals, such as the suspension of mass gatherings, the closure of non-essential places of work and educational establishments, and reduced public transport; (c) measures to reduce the risk of the importation or reintroduction of the virus from high-transmission areas; and (d) measures to ensure the protection of health workers and vulnerable groups. According to the Update, targeted and time-limited implementation of those measures would potentially reduce mortality by flattening the trajectory of the epidemic and relieving some pressure on clinical care services.

47. Joint guidelines on freedom of peaceful assembly (CDL-AD(2019)017, third edition) issued by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) and the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe have been cited in *Pleshkov and Others v. Russia*, nos. 29356/19 and 31119/19, § 41, 21 November 2023.

THE LAW

ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

48. Relying on Articles 10 and 11 of the Convention, the applicant trade union complained that the prohibition of the demonstration it had planned for 1 May 2020 had violated its right to freedom of assembly as well as its right to freedom of expression, in so far as the applicant trade union had intended its demonstration to contribute to the debate concerning the “destruction of employment and labour rights” owing to the management of the COVID-19 crisis. It also referred to a breach of the right to freedom of association, without giving further details.

49. Having regard to its case-law and the nature of the applicant trade union’s submissions both at the domestic level and to the Court (see paragraphs 16 and 24 above and paragraphs 52 and 54-56 below), the Court, being the master of the characterisation to be given in law to the facts of a case (see, for instance, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that the complaints raised by the applicant trade union under Article 11 should be examined solely from the perspective of the alleged breach of the right to freedom of assembly.

50. The Court further notes that the freedom of assembly provided for in Article 11 is closely linked with the freedom of expression guaranteed by Article 10. One of the distinctive criteria noted by the Court is that in the exercise of the right to freedom of assembly the participants would not only be seeking to express their opinion, but to do so together with others (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 101, 15 November 2018, with further references). The Court will therefore examine the complaint under Article 11, interpreted where appropriate in the light of Article 10 (see, for example, *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 363-65, 7 February 2017, with further references). This is all the more appropriate in the present case, as, firstly, the applicant trade union did not cite the subject-matter of the demonstration in its initial notification to the Sub-Delegation in the same manner as it did in its application form, and, secondly, it only raised the argument concerning the purpose of the event in its application to the Court, without having done so at the domestic level (see paragraphs 14, 16 and 24 above). Article 11 reads as follows:

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

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article

shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. Admissibility

51. The Government submitted that the applicant trade union had failed to raise a complaint concerning the alleged violation of the freedom of expression at the domestic level, and that the complaint about the alleged breach of the right to freedom of association was manifestly ill-founded and had never been raised in an appropriate domestic procedure.

52. The applicant trade union did not comment on those submissions. It submitted observations pertaining to the alleged violation of its right to freedom of assembly.

53. Noting the scope of the complaint raised at the domestic level and before this Court in the application form and in the applicant trade union’s observations, as well as the domestic courts’ findings (see paragraphs 16, 23-25 and 52 above and 54-56 below), and having regard to its decision to consider the complaint only in so far as it concerns freedom of assembly under Article 11 (see paragraphs 48-50 above), the Court does not need to address the objection. The Court further notes that the complaint under Article 11 concerning the alleged breach of the freedom of assembly is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicant trade union

54. The applicant trade union argued that the interference in question had lacked a legal basis. As confirmed by the Constitutional Court in 2021, the right to freedom of assembly could not be, and had not been, suspended during the state of alarm then in place. Thus, the restrictions on the freedom of movement in force during the state of alarm had not covered the right to freedom of assembly. However, the Sub-Delegation had based its decision to prohibit the demonstration on the general prohibition of movement for purposes other than those set out in Royal Decree no. 463/2020, thereby confusing the two rights in such a manner as to unduly restrict the right to demonstrate. The Royal Decree had been subsequently declared incompatible with constitutional requirements by the Constitutional Court in so far as the restrictions on the freedom of movement were concerned.

55. The applicant trade union further argued that the interference had been neither proportionate to the aim pursued nor necessary in a democratic society. On 9 April 2020 the strictest phase of the lockdown had ended in Spain and a de-escalation plan had been presented by the Government in late

April 2020. Gatherings held for “non-dissident purposes” had been either authorised or tolerated by the authorities. Citing media reports, the applicant trade union referred to: (1) an event on 28 March 2020 (during the strict lockdown phase) involving eight ambulances in Corunna, which had not been dispersed; (2) a rally on 4 April 2020 of a dozen police vehicles in Ceuta, held to pay tribute to two retired colleagues who had fallen victim to COVID-19; and (3) a rally held on 25 April 2020 in Ourense, Galicia by a large convoy of trucks that had allegedly brought the town “to a standstill”, had been tolerated by the Government and had been *de facto* led by firefighters. The applicant trade union submitted that the aim of the ban on its event had been to prevent a demonstration “contrary to the interests of the Government”.

56. It argued that the Sub-Delegation had failed to give reasons for the ban, let alone to carry out a proportionality assessment. Subsequent judicial decisions had also fallen short of the requirement to conduct a genuine analysis of the measure’s proportionality. The courts had substituted their own assessment for the deficient reasoning contained in the Sub Delegation’s decision. However, in their assessments the courts had confined themselves to broad and abstract references to the need to protect public health, without considering the “chilling effect” of the prohibition. Despite the applicant trade union’s clearly-stated readiness to obey by any sanitary and hygiene measures that might have been proposed, the authorities had imposed a ban on the demonstration without considering any less stringent measure (such as, for instance, a proposal to change the route, a restriction on the number of participants or the number of vehicles involved, the establishment of lanes reserved for emergency services, or the application of stricter health standards, and so on). It further pointed to the lack of explanation as to why the demonstration had been prohibited while travel to places of work had been permitted. It noted that Spain had not made use of Article 15 of the Convention.

(b) The Government

57. While accepting that the disputed measure had constituted an interference, the Government argued that it had been lawful. Demonstrations had not been generally prohibited during the state of alarm. The interference was based on the Right of Assembly Act, which expressly stipulated that a demonstration could be prohibited, or a modification of its parameters suggested, if there were reasons to believe that individuals would be exposed to danger. The ban had pursued the legitimate aim of protecting public health in the context of a rapid spread of COVID-19 in Spain at the relevant time. That aim was consonant with paragraph 2 of Article 11 of the Convention providing that the right to assembly could be restricted to protect public safety, health and the rights and freedoms of others.

58. They further argued that the measure was proportionate to the aim pursued and was necessary in a democratic society. The authorities had duly

weighted the risks in the specific circumstances of the case. The domestic courts had conducted a thorough analysis of the case and carefully balanced the rights and interests at stake. They had considered the available data about the spread of the infection and the uncertainty about the characteristics of the virus at the relevant time, and had found that the demonstration, if conducted, would have exposed both the participants and third parties to an excessively high risk of infection. They referred to a peak in the number of infections and deaths that occurred in Spain in April 2020 and to the high number of infections and deaths recorded in late April 2020 (see paragraph 10 above), to the recommendations of the health authorities, and to the lack of sufficient knowledge about the origin and incidence of COVID-19 at the time of the events, which occurred during the initial phase of the pandemic.

59. They noted that the applicant trade union had been able to submit detailed arguments in support of its position to the courts, which had been reviewed prior to the proposed date of the demonstration. The courts had not substituted their own assessment for the scarce reasoning of the Sub-Delegation and had not assumed the functions of the administration, but had exercised their duty to protect fundamental rights by way of balancing the right to freedom of assembly and the right to life and physical integrity, bearing in mind the specific risks to life and limb to which individuals were subjected in the context of the pandemic. They were not bound by the reasons given by the Sub-Delegation in that assessment and their findings were neither arbitrary nor manifestly erroneous.

60. The Government conceded that travel to work had been permitted during the state of alarm (even though up to mid-April 2020 it had been restricted to “essential” activities only). However, teleworking had been prioritised and several measures had been imposed to avoid accumulations of people, including in workplaces (in line with the WHO’s recommendations). They concluded that occasional journeys to workplaces, where measures had been taken to ensure adequate social distancing, could not be compared to a gathering for the purpose of demonstrating.

61. As regards the authorities’ alleged failure to consider solutions other than a ban, they stressed that the applicant trade union had not specified which solutions it had been referring to. The applicant trade union could be understood to have been arguing that its proposal to conduct the demonstration in individual cars had been sufficient to avert the risk of the COVID-19 spread. However, the courts had explained why even conducting the demonstration in that manner could not prevent a minimum level of interaction between the demonstrators before and after the event, as well as their having contact with the personnel in charge of running the event. Moreover, in the Government’s view, the possibility that the participants might leave their cars could not be ruled out – in fact that had actually happened during the demonstration of 23 May 2020 in Madrid that was cited by the applicant trade union in the application form.

62. As to the other public events referred to by the applicant trade union and, in particular, the judicial authorisation of 30 April 2020 granted to conduct a convoy-demonstration on 23 May 2020 in Madrid (see paragraph 32 above), they argued that a mere difference in the outcomes of the two unrelated proceedings was not indicative of a breach of legal certainty, especially given the novelty of the context. The judgment of the High Court of Galicia of 28 April 2020 had been given before the decision to authorise the event in Madrid, and had been the first concerning the sensitive matter of balancing the freedom of assembly and other fundamental rights in the context of the pandemic. In any event, the situation at the time had been evolving rapidly, and had differed from one region to another. The convoy-demonstration of 23 May 2020 in Madrid had taken place in a more favourable epidemiological context and in a different region. The event in Ourense had been spontaneous and had not been notified to the authorities. Other events had also been spontaneous and could not be compared to the convoy-demonstration proposed by the applicant trade union because of their brevity and the small number of participants involved. The event in March 2020 had involved eight ambulances and had lasted for two minutes. The event involving a small number of police cars had also lasted for no more than a few minutes.

63. Lastly, citing the case-law of the Court of Justice of the European Union (judgment of 10 April 2014 in *Acino v. Commission*, C-269/13 P, EU:C:2014:255, paragraph 58) and referring to the case of *Tătar v. Romania* (no. 67021/01, §§ 106-07, 27 January 2009) the Government argued that the State in its proportionality assessment had accommodated the requirements of the precautionary principle and had been bound by positive obligations to take adequate and reasonable measures to protect the lives and health of the population in the face of the medical uncertainties linked to the serious risk caused by the pandemic. They argued that the State enjoyed a wider margin of appreciation in the context of the present case.

2. *The Court's assessment*

(a) **The existence and the nature of the interference**

64. The Government conceded that the ban on the demonstration had interfered with the exercise of the applicant trade union's right to freedom of assembly. The Court sees no reason to hold otherwise. Such interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of the aim or aims in question (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 102, ECHR 2015).

65. It has been common ground between the parties both in the domestic proceedings (see paragraphs 16-17 above) and before the Court that the right to freedom of assembly set out in Article 21 of the Constitution was not

suspended during the state of alarm introduced in spring 2020. The same clearly follows from the domestic courts' analysis in the present case (see paragraphs 20 and 28 above) and, in so far as relevant, from the preamble to the Royal Decree (see paragraph 38 above) and from the Constitutional Court's assessment in its ruling of 14 July 2021 (see paragraph 43 above). The Court therefore accepts that the interference in the present case did not consist of a blanket ban on holding public events in the relevant period, but of a ban on a specific demonstration which the applicant trade union had intended to hold on 1 May 2020.

66. The Court further notes the applicant trade union's argument that the restriction was *de facto* related to the subject-matter of the demonstration. However, the Court discerns nothing in the case material to suggest that the interference was in any way related to the views held by the members of the applicant trade union or the subject matter of the prospective demonstration (indeed the subject matter was not clearly articulated in the notification - see paragraph 14 above). The applicant trade union's reference to a few other public events held in Spain in spring 2020 – which were, as demonstrated by the Government and not disputed by the applicant trade union, either not notified to the authorities (see paragraph 62 above) or authorised in a different region of Spain and held at a different stage of the pandemic (see paragraph 32 above) – is not sufficient to allow a different conclusion. Accordingly, the Court is unable to conclude that the restriction was a content-based one.

(b) Preliminary remark concerning the scope of the Court's assessment of the interference

67. The Court notes that on 21 April 2020 the Sub-Delegation gave a reply to applicant trade union's notification of the planned demonstration which the domestic courts subsequently interpreted as a prohibition of the demonstration (see paragraphs 19 and 27 above). That prohibition was subsequently reviewed, in reasoned decisions, by the courts at two levels of jurisdiction prior to the proposed date of the demonstration (on 28 and 30 April 2020, respectively). The Court has previously found on several occasions that, when it is called upon to address the complex and sensitive question of the balance to be struck between the various interests at stake for the purpose of verifying the necessity and proportionality of a given restrictive measure, it is essential that this balancing exercise has been carried out beforehand by the domestic courts (see, among others and in the context of the COVID-19 health crisis, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 161, 27 November 2023).

68. In line with the above approach, putting special emphasis on the fact that the applicant trade union was able to obtain the final decision before the intended date of the demonstration, and taking into account the scope and nature of the review of the Sub-Delegation's initial decision by the domestic

courts, the Court will consider, in its assessment, not only the wording of the reply of the Sub-Delegation, but also the subsequent assessment of the prohibition of the demonstration from the standpoint of lawfulness, legitimate aim and proportionality made by the domestic courts.

(c) Whether the interference was lawful

69. The general principles pertaining to the lawfulness of an interference have been summarised in *Navalnyy* ([cited above](#), § 115). In the context of restrictions on freedom of assembly, the Court requires that national law contain adequate and effective legal safeguards against arbitrary and discriminatory exercise of the wide discretion left to the executive (see *Lashmankin and Others*, cited above, §§ 428 and 430).

70. The Court notes at the outset that the Sub-Delegation's decision of 21 April 2020 prohibiting the demonstration referred, in broad terms, to the public health emergency caused by the COVID-19, as well as the Sub-Delegation's inability to evaluate the impact the demonstration could have on public order, or the impact of any such disruptions of public order or of any other nature on the safety of people or property. The authority also referred to the restrictions on the freedom of movement introduced by Royal Decree no. 463/2020 as in force at the material time.

71. The Court cannot but agree with the domestic courts' assessment of the wording of the above decision as perfunctory and ambiguous (see paragraphs 19 and 27 above). Furthermore, in so far as the decision contained a reference to the restriction of the freedom of movement contained in the impugned Royal Decree, the Court notes the relevance of the judgment of the Constitutional Court of 14 July 2021 (see paragraph 42 above), by which the relevant provisions of the Decree were found incompatible with the constitutional guarantees of freedom of movement.

72. The Court further notes, however, that the domestic courts, having criticised the wording of the decision, accepted that it had nonetheless stated the key underlying reason for the interference, namely the public health emergency caused by the spread of COVID-19 and the potential impact of the demonstration on public order, including the possibility of individuals being put in danger (see paragraphs 19 and 27 above). The domestic courts also stressed that the right to assembly had not been suspended at the material time. They accordingly proceeded to assess whether the interference was compatible with the domestic legal standards, albeit in the peculiar context of the early stages of the COVID-19 pandemic. In so doing, they relied, in particular, on Article 21 § 2 of the Constitution and section 10 of the Right of Assembly Act, and on the relevant constitutional doctrine concerning ordinary restrictions of the right to demonstrate (see paragraphs 20, 21, 26 and 28-30 above). Both of the legal provisions cited above clearly stipulate that a demonstration can be prohibited if there are well-founded reasons to believe that public order could be disturbed so as to endanger individuals or

property (see paragraphs 33 and 35 above). Notably, at final instance the Constitutional Court expressly articulated that its task was, “leaving aside the content of the Royal Decree”, to establish whether the limitation on the right to demonstrate in the case at hand had been compatible with the constitutional requirements concerning the freedom of assembly (see paragraph 28 above). Therefore, the Court is satisfied that the interference was based on Article 21 § 2 of the Constitution and section 10 of the Right of Assembly Act.

73. Consequently, and in the absence of any disagreement as to whether the above legal provisions were accessible and foreseeable in their application, the Court is satisfied that the interference was “prescribed by law” within the meaning of Article 11 § 2 of the Convention.

(d) Whether the interference pursued a legitimate aim

74. The Court accepts – and it is not disputed between the parties – that the interference pursued two aims within the meaning of Article 11 § 2 of the Convention, namely the protection of health and the protection of the rights and freedoms of others.

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

75. The general principles concerning the necessity of an interference with freedom of assembly have been summarised in the case of *Kudrevičius and Others* (cited above, §§ 142-60). Freedom of peaceful assembly is subject to a number of exceptions which, however, must be narrowly interpreted, and the necessity for any restrictions must be convincingly established. It is, in any event, for the Court to give a final ruling on a restriction’s compatibility with the Convention. This is to be done by assessing in the circumstances of a particular case whether, *inter alia*, the interference corresponded to a “pressing social need” and whether it was “proportionate to the legitimate aim pursued” (see, among other authorities, *Lashmankin*, cited above, § 412).

76. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “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, among

other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports of Judgments and Decisions* 1998-I; *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 70, ECHR 2006-II; and *Kudrevičius and Others*, cited above, §§ 142-46).

(i) *Margin of appreciation*

77. In determining whether an interference is “necessary in a democratic society”, the Court will take into account that a margin of appreciation is left to the national authorities, whose decision remains subject to review by the Court for conformity with the requirements of the Convention (see *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, 24 January 2017, and *Barraco v. France*, no. 31684/05, § 42, 5 March 2009). In delimiting the extent of the margin of appreciation in a given case, the Court must have regard to what is at stake therein (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 110, ECHR 2005-XI). It may also, if appropriate, have regard to any consensus and common values emerging from the practices of the States Parties to the Convention (see, for example, *Bayatyan v. Armenia* [GC], no. 23459/03, § 122, ECHR 2011, and *S.A.S. v. France* [GC], no. 43835/11, § 129, ECHR 2014 (extracts)). The Court further reiterates the fundamentally subsidiary role of the Convention mechanism. The national authorities have direct democratic legitimation and are, as the Court has held on several occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, the role of the domestic policymaker should be given special weight (see, for example, *Maurice v. France* [GC], no. 11810/03, § 117, ECHR 2005-IX; *S.A.S. v. France*, cited above, § 129; and, most recently, *Communauté genevoise d'action syndicale (CGAS)* [GC], cited above, § 138).

78. First and foremost, as regards what is at stake in the present case, the Court has previously held that healthcare policy matters come within the margin of appreciation of the national authorities, who are best placed to assess priorities, the use of resources and social needs. The Court has had occasion to state that the margin of appreciation afforded to the States in the field of healthcare must be a wide one (see *Communauté genevoise d'action syndicale (CGAS)* [GC], cited above, § 160; *Vavříčka and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 274, 8 April 2021; and *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 119, ECHR 2012 (extracts)). Equally, the respondent State's margin of appreciation will usually be wide if it is required to strike a balance between competing private and public interests or Convention rights (see, for example, *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I, with further references).

79. As regards the existence of a consensus within the Contracting States, the Court notes that the emergence of the COVID-19 pandemic led several member States of the Council of Europe to limit individual fundamental

rights, including the right of assembly in public areas. With particular regard to freedom of assembly, some member States decided to formally prohibit any gatherings in public areas, without providing for exceptions for demonstrations; in several other States, such gatherings remained authorised throughout the COVID-19 pandemic, subject however to limits on the number of participants, which were sometimes very low; in two States gatherings were not formally banned but certain previously planned demonstrations were in practice prohibited (see *Communauté genevoise d'action syndicale (CGAS)* [GC], cited above, §§ 71-73). It appears from the above that there was common ground among the member States of the Council of Europe regarding the need to take urgent measures to protect public health but that, at the same time, there was no European consensus concerning the form that those measures should take.

80. In addition, the Court has already found in paragraph 66 above that the interference in the present case was not a content-based one. The Court reiterates that while content-based restrictions on freedom of assembly should be subjected to the most serious scrutiny by this Court, the Contracting States must be allowed a wider margin of appreciation in relation to restrictions on the location, time or manner of conduct of an assembly when they are not based on the content thereof. That margin of appreciation, although wide, is not unlimited and goes hand in hand with European supervision by the Court, whose task is to give a final ruling on whether the imposed restrictions were compatible with Article 11 (see *Lashmankin and Others*, cited above, § 417; *Navalnyy*, cited above § 136; and *Pleshkov and Others v. Russia*, nos. 29356/19 and 31119/19, § 57, 21 November 2023).

81. Having regard to the above considerations and applying its well-established case-law principles, the Court takes the view that in the present case, which concerns the prohibition of a demonstration at a specific location and time in the context of the early stages of the COVID-19 pandemic, the margin of appreciation reserved to the authorities was a wide one (see, *mutatis mutandis*, *Vavříčka and Others*, cited above, § 280).

82. Where a wide margin of appreciation is afforded to the national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by the Convention (see *Lashmankin and Others*, cited above, § 417; and *Chapman v. the United Kingdom* [GC], no. 27238/95, § 92, ECHR 2001-I).

(ii) *Whether there was a “pressing social need”*

83. The Court notes that, as in previous cases of a similar nature, the limitations complained of were put in place within a very specific context,

namely a public health emergency (see *Fenech v. Malta* (dec.) no. 19090/20, § 11, 23 March 2021), and in view of significant health considerations concerning not only the applicant trade union but society at large. The COVID-19 pandemic threatened to have very serious consequences not just for health, but also for society, the economy, the functioning of the State institutions and the organisation of life in general, and was therefore a situation that qualified as exceptional and unforeseeable circumstances (see, in so far as relevant, *Terheş v. Romania* (dec.), no. 49933/20, 13 April 2021). In March 2020 many European countries declared public health emergencies and introduced special protection measures with a view to stemming the spread of the virus (see *Communauté genevoise d'action syndicale (CGAS)* [GC], [cited above](#), §§ 14-15). As the Government have submitted, and as the domestic courts consistently noted, knowledge about how the virus spread was still very limited at the time of the events. Such an urgent and unforeseeable situation led the majority of European States to order lockdowns of their populations. In order to contain the rapid spread of the virus, Spain, which was then one of the worst-affected States, introduced a state of alarm that was subsequently extended with the approval of the Congress of Deputies.

84. In view of the above, the Court accepts that the prohibition of the demonstration that the applicant trade union intended to hold on 1 May 2020 was imposed in the context of a pressing social need of protecting individual and public health.

(iii) The proportionality of the interference

85. The domestic courts found that the Spanish authorities had a positive obligation to protect public health through the application of preventive measures (Article 43 § 2 of the Constitution) against the spread of the virus, as well as to protect the life and physical integrity of citizens (Article 15 of the Constitution). That finding is consonant with the Court's case-law to the effect that the Contracting States are under a positive obligation, by virtue of the relevant provisions of the Convention, notably Articles 2 and 8, to take appropriate measures to protect the life and health of those within their jurisdiction (see *Vavříčka and Others*, [cited above](#), § 282, with further references).

86. When balancing the right to assembly against the right to life and physical integrity and the State's constitutional obligation to protect public health, the domestic courts highlighted "the enormous magnitude" of the effects the COVID-19 pandemic had had on the Spanish population and healthcare system at the relevant time. They stressed that the spread of the virus had not been contained, that the pandemic had already resulted in numerous deaths and hospitalisations, and referred to the limited knowledge about the effects of the disease in the medium- and long-term. They noted the rapid evolution of the pandemic and assessed its already observable effects

on the domestic healthcare system as a “monumental blow”. Mindful of the State’s wide margin of appreciation in healthcare matters, and noting the statistics revealing a particularly high number of confirmed COVID-19 cases in Spain and notably in Galicia, and thousands of registered COVID-19-related deaths in the country at the time in question (see paragraph 10 above), the Court does not find any reason to depart from that assessment.

87. Against that background, the courts found that in the particular circumstances of the case the obligation to protect the life and health of others and the obligation of the State to safeguard public health took precedence over the right of assembly (Article 21 § 2 of the Constitution). In doing so, they attached substantial weight to the protection of the health of the demonstrators themselves, as well as that of third persons (such as police officers and medical workers). The Constitutional Court stressed that the spread of the disease could potentially lead to a collapse of the public healthcare services (see paragraph 29 above). It relied on the latest available health indicators for Vigo, and the courts at two levels of jurisdiction assessed the route proposed by the organisers (see paragraph 30 and, in so far as relevant, paragraph 21 above), thus evaluating relevant local conditions. The courts addressed in detail the applicant trade union’s key arguments and gave reasons which were clearly relevant.

88. Being in mind the above, and in order to decide whether the reasons provided by the domestic courts were also sufficient, the Court will lastly turn to the authorities’ assessment of the specific form of the demonstration proposed by the applicant trade union, that is a convoy-demonstration with the participants in cars, and to the applicant trade union’s argument concerning the authorities’ failure to propose measures less strict than the prohibition of the demonstration.

89. The Court notes that the domestic courts addressed the specific parameters of the proposed demonstration from two different perspectives: (1) locational considerations pertaining to a potential severe disruption of transport and its potential impact on essential services (see paragraph 30 above); and (2) the general insufficiency of the measures proposed by the organiser of the event to prevent the spread of the virus (see paragraphs 20-21 and 30 above).

90. In so far as the disruption to traffic was concerned, the domestic courts found that the itinerary proposed by the applicant trade union implied the occupation of the key traffic arteries in Vigo “for several hours” and limiting access to certain hospitals (see paragraph 30 above). The Court considers that those arguments are undoubtedly relevant, especially in the context of the health crisis but, if taken alone, are not sufficient. Bearing in mind its subsidiary role, the Court notes nonetheless that it apparently remained open to the authorities, for instance, to suggest another route for the demonstration (which was supposed to last for no more than one hour and a half, see

paragraph 14 above), in order to avoid its blocking the main traffic arteries of the city and access to hospitals (see section 10 of the Right of Assembly Act cited in paragraph 35 above; see further the Constitutional Court's Ruling no. 66/1995 of 8 May 1995 cited in paragraph 44 *in fine*).

91. In the absence of any domestic findings on the matter, it is, however, not for the Court to speculate on the adequacy of such a solution, let alone on the applicant trade union's readiness to accept a proposal for an alternative route. Be that as it may, the Court considers that in this case the locational considerations cannot be addressed in isolation, but have to be assessed together with the second key reason underlying the ban, namely the alleged insufficiency of protection measures inherent to the proposed form of demonstration.

92. Indeed, the courts found that the form of demonstration chosen by the applicant trade union (which the latter considered sufficient to avert the risk of infection) could still have had an adverse impact on the safety of the participants and other persons as a result of (a) a massive influx of persons to the departure point of the convoy-demonstration and outflow of the participants after its termination; and (b) possible interaction both between the participants themselves and between the demonstrators and members of the security forces and medical services who would have to be present to ensure the peaceful running of the event and the safety of all concerned prior to, during and immediately after the demonstration (see paragraphs 21 and 30 above). The Court notes at this juncture that the applicant trade union, while proposing to limit participation in the event to "persons identified in advance by the trade union" (see paragraphs 14, 16 and 24 above), never specified, even approximately, a potential number of participants. It was never argued that the planned event was conceived as a small-scale one (unlike the small-scale events involving the police or ambulances cited by the parties, see paragraphs 55 and 62 above). Therefore, the domestic courts' analysis of the risks in a scenario where there was a "massive response to the call" to participate (see paragraph 30 and, in so far as relevant, 21 above) cannot be assessed as unreasonable.

93. The domestic courts found, in essence, that the type of demonstration suggested by the applicant trade union – that is, a convoy of individual cars – was in any event not sufficient to avert the risk of infection, irrespective of the route chosen. In doing so, they consistently stressed the then-existing "state of scientific ignorance as to the origin and incidence of COVID-19", referred to the minimisation of contacts as the only proven means of reducing the spread of infection (see paragraph 29 above) and cited the worrying COVID-19 statistics across the country and in the region at the material time, and highlighted the already existing pressure on the hospitals and public healthcare system as a whole.

94. It is not the Court's role – and the Court does not consider it appropriate – to assess retrospectively whether, at the time of their

examination of the case, the approach chosen by the domestic courts could be perceived as overly cautious. It notes nonetheless that in the face of unprecedented conditions, such as those which obtained in the first months of the COVID-19 pandemic, even an overly cautious approach in matters such as those at issue in the present case, cannot be seen, as such, as disproportionate to the legitimate aims pursued. At all events, in the present case the applicant trade union's arguments, including those pertaining to specific parameters of the proposed demonstration, were swiftly reviewed by the courts, which, acting within the limits of the margin of appreciation left to the respondent State, rejected them with reference to weighty public health considerations, which were specific to the early stage of the pandemic and relevant to the proposed demonstration. In the particular circumstances of the case and having regard to the domestic courts' detailed assessment of those circumstances, the Court finds that they cannot be considered to have failed to explore potential solutions for accommodating the demonstration that the applicant trade union had planned to hold on 1 May 2020, or, more generally, to have given insufficient reasons for the decision to prohibit the demonstration.

(f) Conclusion

95. In the light of the above, bearing in mind the authorities' wide margin of appreciation, as well as the exceptional factual context of the case related to early stages of the pandemic, the Court concludes that the authorities struck a fair balance between the legitimate aims of the "protection of health" and the "protection of the rights and freedoms of others" on the one hand, and the requirements of freedom of assembly on the other. They based their decisions on an acceptable assessment of the facts and on reasons which were relevant and sufficient. Thus, they did not overstep their margin of appreciation in the present case (see, *mutatis mutandis*, *Kudrevičius and Others*, cited above, § 182).

96. As the interference complained of was "necessary in a democratic society" within the meaning of Article 11 of the Convention, there has been no violation of that provision in the present case.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, admissible the complaint under Article 11 concerning an alleged violation of the applicant trade union's right to freedom of assembly;
2. *Holds*, by six votes to one, that there has been no violation of Article 11 of the Convention.

Done in English, and notified in writing on 17 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Mattias Guyomar
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Mourou-Vikström is annexed to this judgment.

M.G.
V.S.

DISSENTING OPINION OF JUDGE MOUROU-VIKSTRÖM

I cannot endorse the Chamber's finding that there has been no violation of Article 11 of the Convention in the present case.

As a preliminary consideration, two facts should be borne in mind:

1. The traditional May Day rallies in defence of workers' rights have far more than merely symbolic significance. Even though it was not disputed that the prohibition was unrelated to the trade-union character of the demonstration and was not secretly aimed at silencing protests, the result was nonetheless to prohibit assembly and therefore the exercise of fundamental social rights.
2. The health crisis was obviously a compelling reason to take measures and impose restrictions in order to protect public health, especially in the early stages of the epidemic. However, a discerning and individualised approach must be taken to any restrictions on fundamental rights. It is in times of crisis or emergency, and in so-called exceptional and temporary circumstances, that vigilance with regard to rights-infringements must be at its highest.

In this connection, the proportionality of the ban was problematic in the present case, where a blanket prohibition, without regard for alternative solutions, was privileged over the preservation of freedom of assembly.

The legal basis - a fundamental technical legal component of interference - also raised questions.

The legal basis

The Government's initial response to the applicant trade union's notification of a demonstration was ambiguous and referred directly to Royal Decree no. 469/20, simply pointing out that it made no mention of the 1 May demonstration as potentially forming part of the activities that were exempt from the restriction on movement. It was therefore easy to deduce that the 1 May rally, which consisted in a procession of cars, was covered by the general restriction on freedom of movement.

The same legal basis was cited by the High Court of Justice of Galicia, which clarified that the Royal Decree had the force of the law and based the prohibition of the 1 May rally on that Decree, in particular on Article 7 § 1, which established a general ban on circulation.

However, on 14 April 2021 the Constitutional Court declared paragraphs 1, 3 and 5 of the Royal Decree restricting freedom of movement to be incompatible with the Constitution.

It is therefore clear that both the initial government decision and the decision of the High Court of Justice of Galicia were based on a legal foundation that was fated to be declared unconstitutional.

As to the *amparo* appeal, it should be pointed out that it was dismissed by the Constitutional Court, which noted that, unlike a state of siege and a state of emergency, the state of alarm that had been declared in the context of the COVID-19 epidemic did not allow the suspension of freedom of movement. It also considered it impossible to decide whether the Decree had interfered with the freedom to demonstrate in itself or as a consequence of the limitation of freedom of movement.

In order to move beyond this issue, and aware of the vulnerability of the legal basis, the Constitutional Court considered that it was appropriate to “leave[e] aside ... the ... Decree” as a legal basis for the ban, which it then decided to include within the broader framework of “extraordinary measures” taken “in the context of a health crisis”.

It is thus appropriate to deduce from the above considerations, firstly, that the restrictions on freedom of movement and the exceptions provided for in the Decree were declared unconstitutional and, secondly, that the freedom to demonstrate, which is a fundamental right, could not be restricted under the “state of alarm”, a mechanism which authorised lesser restrictions on freedoms than the state of siege or the state of emergency.

The legal basis for interference therefore appears to have somewhat shifted or fluctuated throughout the various sets of proceedings. Well aware of the weakness of that basis, which resulted in a finding that the Royal Decree was unconstitutional, the Constitutional Court dropped it in favour of the ordinary law, as embodied in Article 21 of the Constitution on the right to peaceful assembly and in the Right of Assembly Act (Organic Law no. 9/1983 of 15 July 1983).

It should be noted that, in the event that there were well-founded reasons to believe that public order could be disturbed, the Right of Assembly Act provided that the authorities should propose alternative solutions, including changes in the date, duration or route of the demonstration. Whether any such arrangements were made was to be taken into consideration when examining the proportionality of the ban.

The proportionality of the ban

Whereas the legal basis is a technical and objective factor, proportionality considerations are linked to the attempt to achieve a proper balance, and necessarily, therefore, to a more subjective form of assessment.

In the present case, the organisers’ plans for the demonstration, which was only scheduled to last an hour and a half in total, were particularly tailored to public health concerns. Demonstrators were to participate in individual cars, and it was recommended that they use masks and gloves. In addition, it

seemed entirely possible to address the risk of transmission at the start of the procession or when the demonstrators dispersed, which had been adduced by the authorities.

The domestic authorities did not propose an alternate route for the demonstrators' motorcade or consider arrangements to allow ambulances and police vehicles through once the procession was underway.

It does not appear to have been impossible for such arrangements to be made, and this would not only have enabled the fundamental right to demonstrate to be preserved, but would also have averted the extremely pernicious deterrent effect that inevitably stems from such blanket prohibitions.