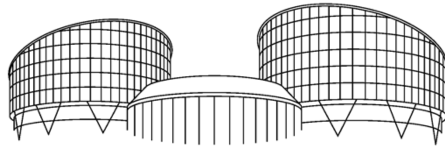

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BOGAY AND OTHERS v. UKRAINE

(Application no. 38283/18)

JUDGMENT

Art 5 § 1 • Deprivation of liberty • Unlawful detention of applicants for two to three hours at police station following participation in a demonstration protesting the use of animals in circus acts • Detention unrecorded no arrest reports having been drawn up • Registration of some applicants in the police station's log insufficient
Art 11 read in the light of Art 10 • Police inspection of the applicants' belongings in search of potentially dangerous objects justified • No evidence applicants attempted to use such objects found on them to cause harm or had plans to that effect • Burden on domestic authorities to prove violent intentions on the part of the demonstration organisers not discharged • Art 11 applicable • In case-circumstances, inspection an adequate tool of preserving the peaceful nature of the demonstration, of protecting the security of persons present and preventing the risk of violent provocations • Impugned measure "necessary in a democratic society"
Art 11 read in the light of Art 10 • Applicants' arrest and detention disproportionate and thus not "necessary in a democratic society" • Police's failure to consider less restrictive alternatives available

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 April 2025

FINAL

03/07/2025

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Bogay and Others v. Ukraine,

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

Mattias Guyomar, *President*,
María Elósegui,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 38283/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twelve Ukrainian nationals ("the applicants"), whose names and particulars are set out in the appended table, on 28 July 2018;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints under Articles 5 § 1, 10, 11 and 13 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 11 March 2025,

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

INTRODUCTION

1. The applicants participated in a demonstration dedicated to protesting the use of animals in circus acts. The case concerns the applicants' complaints that their rights under Articles 5 § 1, 10 and 11 of the Convention were breached on account of police actions which disrupted their demonstration and their further complaint under Article 13 that no effective domestic remedy was available to them in respect of their complaints.

THE FACTS

2. The applicants were represented by Mr M. Tarakhkalo and Ms Y. Kovalenko, lawyers practising in Kyiv. At the time the application was lodged the applicants were also represented by Ms O. Chilutyan, Mr O. Mytsyk and Ms V. Lebid. The first, third, fourth, seventh and ninth applicants were granted legal aid.

3. The Government were represented by their Agent, Ms M. Sokorenko, of the Ministry of Justice.

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

I. EVENTS OF 28 JANUARY 2018

5. At around 11 a.m. on 28 January 2018 the applicants, having notified the Lviv mayor's office of their intentions, started gathering for a demonstration near the Lviv Circus building to protest against the use of animals in circus acts. About fifty police officers were already on the scene.[1]

6. The demonstration began at around 11.00 a.m. It was peaceful, bringing together some thirty to forty participants (hereinafter "the demonstrators") who, according to the applicants, were members of an unregistered organisation, Environmental Platform (*Екологічна платформа*). According to the video evidence, one of the demonstrators told the media that members of Black Banner (*Чорний стяг*), described in media reports as an "anarchist" or "antiauthoritarian" group, also took part in the demonstration. The demonstrators held banners and shouted slogans through a loudspeaker. The entrance to the circus remained unobstructed.

7. Shortly after the start of the demonstration, a group of roughly twenty individuals, whom the applicants believed to be hooligans associated with far-right groups based on insignia they were wearing, approached the demonstrators and stood some distance away (hereinafter "the opposing group"). One of them threw a snowball at the demonstrators' banner. A police officer talked to that person and took him aside.

8. At about 11.30 a.m. police officers pulled the second applicant away from the rest of the demonstrators and searched him. In his sleeve, the police found a metal rod (*арматура*, a reinforcing bar used in concrete construction) measuring about 40 to 50 cm in length. A knife was also found on his person.

9. According to the video evidence provided by the applicants, the following events ensued: a member of the opposing group lit a smoke grenade some distance away. Police officers lined up between the two groups. The demonstrators started chanting "Antifa" and "Nazis, police, the same coalition" (*Нацисти, поліція, одна коаліція*). One demonstrator can be heard shouting "You Nazi [expletive]" at the opposing group. The police can be seen taking someone away, apparently a member of the opposing group.

10. Some demonstrators were informed that they would be searched for dangerous items. The applicants alleged that the announcement had not been made using a loudspeaker and had not been audible to all of them. Some of them (the eighth, tenth and twelfth applicants) stated in the domestic proceedings that they had heard the announcement. Shortly thereafter, the police surrounded the demonstrators and began to pull them out of the circle one by one and inspect their belongings for dangerous items.

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[1] According to the subsequent internal police investigation (see below), about seventy officers from the patrol police and from the special forces battalion were assigned to the operation overall.

11. In the course of the subsequent internal investigation (see paragraphs 18-21 below) officer V., the commanding officer of one of the two police units in charge of law-enforcement operations at the event, explained that the police had surrounded the demonstrators to prevent a confrontation between them and the opposing group.[2] Since the second applicant had been discovered to be in possession of items that posed a threat to life and health, the police carried out a "surface inspection" ("pat down") under sections 31 and 34 of the National Police Act (see paragraphs 29-30 below). Items dangerous for life and health were found on many demonstrators, a circumstance corroborated by statements from a number of police officers (see paragraph 20 below).

12. All the applicants were searched. The police found a number of items such as knives and metal rods on some of them (see Annex). A number of similar items were also thrown to the ground by the demonstrators, where they were collected by the police (see paragraph 20 below). According to a public announcement published by the police shortly after the events, seven knives, fourteen metal rods, three hammers and four gas canisters had been found.

13. Several of the applicants (see Annex) were handcuffed, some with zip cuffs.

14. Twenty to twenty-five demonstrators (various documents in the file differ on the exact number), including all the applicants, were subsequently transferred in police cars and buses to the Halytskyi District police station where they remained for approximately two to three hours between 12.30 p.m. and 4 p.m. No administrative detention reports were drawn up. Most of the applicants were registered in the police station visitors' log (see Annex). A number of demonstrators refused to be registered in the log.

15. Administrative-offence reports in connection with petty hooliganism (Article 173 of the Code of Administrative Offences) were drawn up in respect of three of the applicants, indicating that the first applicant, "during a public event, [had been] in possession of a knife and [had] engaged in unlawful conduct", that the sixth applicant, "during a public event, [had been] in possession of a bat and [had] engaged in unlawful conduct", and that the eighth applicant had "used obscene language [and had] not respond[ed] to remarks".

16. A number of other demonstrators and the man apparently belonging to the opposing group who had lit the smoke grenade (see paragraph 7 above) were also charged with administrative offences.

17. In May 2018 the Lviv Halytskyi District Court discontinued the administrative proceedings against the sixth and eighth applicants on the ground that the relevant offences were time-barred. There was apparently no decision regarding the first applicant.

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[2] "З метою недопущення протистояння між вказаними вище групами осіб…"

II. INTERNAL POLICE INVESTIGATION

18. Following complaints made by the applicants to the Ukrainian Parliament Commissioner for Human Rights and a Member of Parliament in February 2018, an internal investigation was launched by the National Police of the Lviv Region.

19. Seventy-two police officers were questioned and video recordings from body and surveillance cameras, the visitors' log and police reports were examined. The applicants were asked to come to police headquarters to provide their comments and explanations. All but the twelfth applicant refused to come or failed to reply.

20. In their explanatory reports, some police officers noted that the justification for searching the applicants and otherwise intervening in the demonstration had been that the second applicant had been noticed concealing a long, solid object in his jacket sleeve. After he had been detained the other demonstrators had started disposing of metal objects and knives by throwing them to the ground. The police had surrounded them to carry out an inspection and to prevent the potential use (as weapons) of the items on the ground.

21. On 20 April 2018 the internal investigation made the following main findings:

(i) Police captain L., the senior inspector on duty at the police station on the day of the events, was found to have been in breach of duty, in particular, for having failed to ensure that the officers who had detained individuals in the course of the demonstration drew up administrative arrest reports, as required by the Code of Administrative Offences (see paragraph 28 below), and to properly examine the circumstances of the arrest and transfer of individuals to the station;

(ii) No irregularities were found in the actions of the police officers in connection with the surface inspections conducted under the relevant provisions of the National Police Act (see paragraph 30 below).

III. CRIMINAL INVESTIGATION

22. The applicants also filed separate criminal complaints in February 2018, alleging unlawful interference with the organisation of a demonstration and abuse of power (offences under Articles 340 and 365 § 2 of the Criminal Code respectively). Criminal proceedings were opened on 2 March 2018, following an investigating judge's order to launch an investigation.

23. In the period from 24 May to 1 June 2018 the applicants were questioned as victims, with the exception of the second applicant. The first applicant explained, in particular, that he had been searched and that his gas canister and knife had been seized, even though these items were not

prohibited. The second applicant stated that his pocket knife and a forty- to fifty-centimetre metal rod concealed in his sleeve had been seized. He explained that he had brought the metal rod to hoist banners. The same explanation was given by the tenth applicant regarding a fifty-centimetre metal rod found on his person and seized by the police. The twelfth applicant testified that she had had a thirty- to forty-centimetre metal rod in her backpack, which she had planned to bring to an animal shelter later that day. The applicants also stated that they had been photographed and fingerprinted at the police station.

24. On 29 March 2019 the investigation was discontinued on the grounds that the constituent elements of an offence could not be established. The decision to discontinue the criminal proceedings was quashed by the investigating judge. The investigation was subsequently discontinued and reopened in the same way on three further occasions. As of 31 October 2023 the pre-trial criminal investigation was still pending.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. Code of Administrative Offences of 1984 (as amended)

25. Article 173 of the Code of Administrative Offences of 1984 (as amended) (hereinafter "the Code of Administrative Offences") defines "petty hooliganism" as "swearing in public, offensive behaviour or other similar actions which amount to a breach of the peace or disturb public order", which is punishable by a fine or by forty to sixty hours of public works, with retention of twenty per cent of the earnings for one to two months or by administrative detention for up to fifteen days.

26. Article 259 of the Code of Administrative Offences provides that an offender can be escorted to a police station for the purpose of drawing up an administrative-offence report when it is not possible to do so on the spot.

27. Article 260 of the Code of Administrative Offences provides that individuals may be placed under administrative arrest where necessary in order to: (i) halt the commission of an administrative offence where other preventive measures have proven ineffective; (ii) establish a person's identity; (iii) draw up an administrative offence report, unless this can be done on the spot; (iv) ensure the timely and orderly examination of cases of administrative offences and the execution of decisions in respect thereof.

28. Article 261 of the Code of Administrative Offences requires that a report be drawn up regarding administrative arrest, specifying, in particular, the time of and reasons for the arrest. Article 263 provides that administrative arrest cannot last longer than three hours.

B. National Police Act of 2015 (as amended)

29. Section 31 of the National Police Act of 2015 (as amended) ("the National Police Act") authorises the police to take a number of "preventive measures", including identity checks, "surface inspections", orders to leave a certain place and decisions to restrict access to a certain area.

30. Sub-section 1 of section 34 of the National Police Act defines "surface inspection" (*поверхнева перевірка*) as a preventive police measure consisting in the visual inspection of a person, thing or vehicle, or the pat-down of the surface of a person's clothing by hand or using special equipment.

Sub-section 2 provides that a police officer may stop and/or submit a person to inspection if there are sufficient grounds to believe that the person has an object the possession of which is prohibited or restricted or which poses a threat to his or her life or health or those of others.

Sub-section 7 provides that, if any traces of the commission of an offence are found in the course of an inspection, the police officer must ensure that they are examined and preserved according to the rules of criminal procedure.

II. RELEVANT INTERNATIONAL MATERIALS

A. United Nations Human Rights Committee's General Comment on the Right of Peaceful Assembly

31. The United Nations (UN) Human Rights Committee's General Comment No. 37 (2020) on the right of peaceful assembly reads, insofar as relevant:

> "38. Any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned. Blanket restrictions on peaceful assemblies are presumptively disproportionate."

B. Guidelines on Freedom of Peaceful Assembly

32. The Guidelines on Freedom of Peaceful Assembly developed by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE) and the Venice Commission (CDL-AD(2019)017rev, 15 July 2020, 3rd edition) read, in so far as relevant:

> "87. **Duty to distinguish between peaceful and non-peaceful participants.** Law enforcement officials must differentiate between peaceful and non-peaceful participants since only those who themselves take part in violence forfeit the legal guarantee of their right to assemble. State intervention should target individual wrongdoers, rather than all participants more generally... unless that is impossible due to the massive nature of the violence committed.
>
> ...

154. **Restrictions or prohibition of weapons and similar objects and substances.** Given that international human rights law protects only peaceful assemblies, participants in an assembly may be banned from carrying weapons and weapon-like objects. The authorities may establish control points to check whether participants carry weapons if there is sufficient evidence that they may do so. However, they should do so based on an individualized suspicion, without treating everyone attending the assembly as suspects, as this might have a chilling effect on those who want to exercise their right to assemble peacefully. ...

...

220. **Threshold for the arrest and detention of participants during an assembly**. The arrest and/or detention of participants during an assembly (for committing administrative, criminal or other offences) should meet a high threshold of probable cause in each individual case and particularly in cases involving mere administrative offences. Where feasible, it may often be more appropriate to delay the arrest of assembly participants for illegal acts that took place prior to or during an assembly until after the event is over. Moreover, only individuals directly involved in illegal acts should be targeted for arrest, and they should be released as soon as the reasons for their detention are no longer applicable... Detention should thus be used only if there is a pressing need to prevent the commission of serious criminal offences and where an arrest is absolutely necessary (e.g., due to violent behaviour)..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

33. The applicants complained that the police had deprived them of their liberty in breach of Article 5 of the Convention, which reads, insofar as relevant, as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so..."

A. Admissibility

1. The parties' submissions

34. The Government did not dispute that the police had taken the applicants to the police station. However, they had not been deprived of their liberty within the meaning of Article 5.

35. The Government stressed that they were unable to verify certain facts of the case owing to the destruction of certain police archives as a result of the Russian military attack on Ukraine in 2022. A number of the applicants had been recorded as "invited persons" in the police station visitors' log and the records concerning some of them were illegible on account of the poor quality of the copies preserved.

36. Referring to *Foka v. Turkey* (no. 28940/95, §§ 74-79, 24 June 2008) the Government submitted that coercion was a crucial element in the examination of whether someone had been deprived of liberty. In the course of the domestic investigation, the witnesses had stated that the demonstrators had gone to the station voluntarily to clarify the circumstances and that their freedom of movement in the station had not been restricted. The internal police investigation and the criminal investigation had not established that the applicants had been unlawfully detained.

37. The applicants strongly disputed that they had gone to the station voluntarily and pointed out that the Government had failed to provide any evidence to support their version of events. The police had used force to place some of the applicants on the ground, handcuff them, put them in police cars and bring them to the station, where they had been forced to stay for about three hours. Even though they had been free to move about the police station, they had been unable to leave.

2. The Court's assessment

38. The Court reiterates that in proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person. Accordingly, it is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4, with regard to persons lawfully within the territory of that State. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting-point must be his or her specific situation, and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 211-212, 21 November 2019, and *Z.A. and Others v. Russia* [GC], nos. 61411/15 and 3 others, §§ 133-134, 21 November 2019).

39. The characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court's conclusion as to the existence of a deprivation of liberty (see *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012).

40. The Court reiterates that it has previously held, on many occasions, that the taking of individuals to a police station and their presence there amounted to a "deprivation of liberty" (see, for example, *Osypenko v. Ukraine*, no. 4634/04, § 49, 9 November 2010; *Belousov v. Ukraine*,

no. 4494/07, § 83, 7 November 2013; *Khalikova v. Azerbaijan*, no. 42883/11, § 102, 22 October 2015; *Dzabarov and Others v. Bulgaria*, nos. 6095/11, 74091/11 and 75583/11, § 66, 31 March 2016; and *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 107, 10 April 2018, with further references).

41. In a number of cases, presence at the police station for periods such as forty-five minutes (see *Shimovolos v. Russia*, no. 30194/09, §§ 48-50, 21 June 2011), two hours (see *Duğan v. Türkiye*, no. 84543/17, §§ 35-37, 7 February 2023) or three hours and thirty minutes (see *Emin Huseynov v. Azerbaijan*, no. 59135/09, §§ 82-83, 7 May 2015) was found to constitute "deprivation of liberty".

42. There is no reason to find otherwise in the present case. The Government's observations fail to clarify why the applicants supposedly decided voluntarily to come to the police station and remain there (compare *Salayev v. Azerbaijan*, no. 40900/05, § 42, 9 November 2010, where the Government's submissions also gave no explanation on that point). By contrast, the applicants consistently maintained before the domestic authorities and the Court that they had been coerced by the police into coming to the police station, where they had been deprived of their liberty (see paragraph 14 above).

43. The material in the case-file shows that a number of applicants were also handcuffed (see Annex), an element of the situation that is particularly indicative of coercion, although not, in itself, decisive (see *Ursulet v. France* (dec.), no. 56825/13, § 37, 8 March 2016, and *Čamans and Timofejeva v. Latvia*, no. 42906/12, §§ 111-13, 28 April 2016).

44. Video evidence also shows a number of individuals being put to the ground, handcuffed and taken away by the police. Contrary to what the Government appeared to suggest (see paragraph 36 above), there was an element of coercion in the situation.

45. The Court concludes that the applicants were deprived of their liberty within the meaning of Article 5 § 1 of the Convention.

46. This part of the application 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

47. The applicants submitted that no explanation had been given as to why it had been necessary for them to be escorted to the police station or why the administrative offence reports could not have been drawn up on the spot. The deprivation of liberty complied with none of the sub-paragraphs of Article 5 § 1, and even assuming it had pursued the aim provided for in sub-paragraph (c) of Article 5 § 1, it had nevertheless been incompatible with

domestic law: the authorities had failed to explain the reasons for detention or to draw up the relevant reports, contrary to the requirements of the Code of Administrative Offences (see paragraph 28 above). In this connection, the applicants pointed out that a disciplinary sanction had been imposed on the police officer on duty at the police station for failing to ensure compliance with those requirements (see paragraph 21 above).

48. The Government argued, under admissibility, that the applicants' complaint was ill-founded (see paragraphs 34-36 above) and did not make separate submissions on the merits.

2. The Court's assessment

49. The Government did not argue that the deprivation of the applicants' liberty was justified under any of the sub-paragraphs of Article 5 § 1 (compare, for example, *Duğan*, cited above, §§ 40-46, and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, §§ 51-174, 22 October 2018).

50. The Court notes that the deprivation of liberty did not fall under sub-paragraphs (a), (d), (e) or (f) of Article 5 § 1.

51. While the Government submitted that the applicants had been present at the police station to "clarify the circumstances" (see paragraph 36 above), there is no indication that such presence might be covered by sub-paragraph (b) since there is no indication of any specific obligation or order with which the applicants were required to comply (compare *S., V. and A. v. Denmark*, §§ 79-87, and *Emin Huseynov*, § 87, both cited above).

52. For those applicants charged with administrative offences (see Annex) a deprivation of liberty may have been justified under sub-paragraph (c) of Article 5 § 1 of the Convention. However, neither the detention of those applicants nor that of the others was documented.

53. The domestic authorities established that domestic law had been breached on account of the failure to draw up administrative arrest reports in respect of those demonstrators who had been brought to the police station on suspicion of administrative offences (see paragraph 21 above). It is not clear whether this finding applied to all the applicants or only to those charged with administrative offences. However, the fact that no arrest reports were drawn up in respect of any of the applicants is not in dispute.

54. The Court has repeatedly held, in cases concerning Ukraine, that the failure to document a deprivation of liberty in a timely manner with an arrest report constitutes a violation of Article 5 § 1 of the Convention (see, for example, *Grubnyk v. Ukraine*, no. 58444/15, §§ 70-73, 17 September 2020, with further references). Those findings were reached in the context of detention effected under the Code of Criminal Procedure rather than the Code of Administrative Offences. However, they are no less applicable in the present case.

55. The absence of an arrest record must in itself be considered a most serious failing, as it has been the Court's constant view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Čamans and Timofejeva*, cited above, § 129, with further references).

56. Registration of some applicants in the police station's log could not be considered sufficient to document their detention for several reasons. Firstly, domestic law required that an arrest report to be drawn up (see paragraph 28 above). Secondly, the police station log itself was fragmentary and unreliable, in particular lacking reliable indication of reasons for detention: while all applicants were deprived of their liberty at the station, some of them were recorded in the log as "detained" while others as "invited" and still others not recorded at all or records were illegible (see Annex).

57. As there were no proper records of the applicants' detention, no reasons for it were stated either.

58. These considerations are sufficient to enable the Court to conclude that the applicants' detention was "unlawful".

59. There has accordingly been a violation of Article 5 § 1 of the Convention in respect of all the applicants.

II. ALLEGED VIOLATIONS OF ARTICLES 10 AND 11 OF THE CONVENTION

60. The applicants complained that the measures taken against them by the police had infringed their right to freedom of expression and to freedom of peaceful assembly under Articles 10 and 11 of the Convention, respectively, which read as follows:

Article 10 (freedom of expression)

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11 (freedom of assembly and association)

> “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. The parties’ submissions

1. The Government

61. The Government submitted that the applicants’ complaints under Articles 10 and 11 were manifestly ill-founded. The municipal authorities had been notified of the applicants’ demonstration and had not sought to prohibit it. The demonstrators had brought dangerous items with them such as metal bars and knives, which had given the police legitimate reason to believe that those items could be used to breach public order. The police cordon around the demonstrators had not aimed to prevent the applicants from conveying their ideas and opinions, but had been a necessary measure to ensure their safety in the context of an attack on the demonstration by unknown persons. The actions of the police had not aimed to restrict the demonstration, but to avert a genuine risk of serious injury or damage. The Government pointed out that the State had positive obligations under Articles 2 and 3. Account had to be taken of the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which had to be made in terms of priorities and resources.

2. The applicants

62. The applicants submitted that they and the other demonstrators had behaved peacefully, as shown, in particular, by the video evidence. The authorities had been under an obligation to facilitate their duly notified demonstration but had dispersed it instead, thereby preventing them from expressing their views. The drawing-up of administrative-offence reports in respect of some of the applicants (see Annex) also constituted interference with their rights, since they had faced potential punishment for lawful actions.

63. The police had not reacted to the actions of the provocateurs who had acted with the aim of disrupting the event and provoking the demonstrators into engaging in illegal activities.

64. The police’s actions had been arbitrary. The measures taken by the police had not been foreseeable for the applicants. No orders had been issued to them before resorting to the use of force. The police had surrounded the

protesters at a moment when there had been no signs of an imminent outbreak of violence or an increase in the level of unrest.

65. The applicants further argued that the unlawfulness of their arrest under Article 5 § 1 also meant that the interference had not been "prescribed by law" within the meaning of Article 10 § 2 and Article 11 § 2.

66. Nor had the interference been necessary in a democratic society. In particular, the use of force and restraint (handcuffing) had been unnecessary and disproportionate to the alleged offences the police had purportedly been attempting to prevent. No evidence had been provided that less intrusive measures, such as surface inspections and orders for certain participants to leave, which it had been within the police's power to take under the National Police Act (see paragraph 29 above), would not have sufficed. The fact that the demonstrators had been in possession of certain items did not mean that they had intended to use them to cause bodily harm. Even if they had been considered a threat, those items could have been removed following a surface inspection, as a preventive measure, and the demonstration could have been allowed to go forward. Since the number of police personnel had exceeded the number of protesters, it could be assumed that the authorities would have retained full control of the situation after the dangerous objects had been removed.

67. Even if the police had suspected some demonstrators of the intent to commit offences, they could have isolated the individuals considered "dangerous" or "suspicious" and given the other participants an opportunity to proceed with the event. There had been no differentiated or individualised assessment of the demonstrators' conduct, contrary to the recommendations of the UN Human Rights Committee's General Comment no. 37 and the OSCE's and Venice Commission's Guidelines on Freedom of Peaceful Assembly (see paragraphs 31-32 above).

68. The applicants' demonstration had attracted public attention at the relevant time but their position against the use of animals in circus acts had initially had few supporters. This situation had been aggravated by the chilling effect of the police's actions, in particular the applicants' arrest and charging with administrative offences punishable by up to fifteen days' detention, even though this sanction had ultimately not been imposed for objective reasons.

B. The Court's assessment

1. Admissibility

69. Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the

foundations of a democratic society (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 92, ECHR 2015).

70. Even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of paragraph 1 of Article 11, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision (ibid., § 94).

71. In order to establish whether an applicant may claim the protection of Article 11, the Court takes into account (i) whether the gathering was intended to be peaceful or whether the organisers had violent intentions; (ii) whether the applicant demonstrated violent intentions when joining the gathering; and (iii) whether the applicant inflicted bodily harm on anyone (see *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 491, 21 January 2021).

72. Nothing in the case-file materials allows the Court to consider that the demonstration against the treatment of animals in circuses was not motivated by peaceful intentions.

73. There is no indication that the applicants inflicted bodily harm on anyone. There were no clashes between the demonstrators and the police or other violent acts on the part of the demonstrators (contrast, for example, *Çiçek and Others v. Türkiye*, nos. 48694/10 and 4 others, §§ 130-142, 22 November 2022, and cases cited therein, where Article 11 was found to be applicable despite clashes between demonstrators and the police and other violent acts which occurred during demonstrations). The parties also did not point to any history of violence on the part of demonstrators or the groups to which they belonged (compare *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 105, 1 December 2011, where the Court found Article 11 applicable, referring in particular to the fact that neither of the applicants was shown to have previous convictions for violent conduct during demonstrations or in comparable situations, despite allegations that one of the applicants resisted the police's identity check by force). The Court observes that several of the applicants were found to be in possession of potentially dangerous objects (see Annex) and more were apparently discarded before being found by the police (see paragraphs 12 and 20 above). The applicants alleged that those items had been brought for innocent purposes, such as hoisting banners or use in construction work (see paragraph 23 above). It fell first to the domestic authorities to assess the credibility of those explanations. However, there were apparently no domestic findings on that point.

74. Whatever their purpose, there is no evidence in the file that shows that the applicants, or other demonstrators, attempted to use those objects to cause harm to individuals or property in the course of the demonstration and no information (such as police intelligence) to the effect that any of the demonstrators had such plans. In this respect, the present case can be contrasted with such cases as, for example, *Mushegh Saghatelyan v. Armenia,*

no. 23086/08, §§ 230 and 232, 20 September 2018, where, contrary to the present case, the Government of Armenia did refer to certain intelligence information supposedly suggesting that demonstrators had been arming themselves to instigate mass disorder but the Court did not consider that information credible and found that there was no evidence linking weapons allegedly found at the demonstration location to any of the demonstrators and since it was not suggested that the applicant had used the clasp knife he had on him, and *Schwabe and M.G.* (cited above, §§ 97, 105 and 106), where the Government of Germany argued that the applicants had been heading to a city where violence had taken place the day before and intended to use their banners to incite protesters to liberate by force prisoners arrested by the police the day before but the Court relied, in part, on the fact that no weapons were found on either of the two applicants to find that the applicants' detention interfered with their rights under Article 11.

75. The Court reiterates that the burden of proving the presence of violent intentions of the organisers of a demonstration lies with the authorities (see *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, § 23, 2 February 2010). The Government did not seek to show that Article 11 was not applicable, that the organisers of the demonstration had had violent intentions and did not make any specific, substantiated submissions showing that the applicants had had violent intentions when joining the demonstration.

76. The question of how the presence of dangerous objects on some of the applicants could be addressed is to be examined on the merits (see paragraphs 82 to 89 below).

77. In view of these considerations, the Court accepts that the applicants can claim the protection of Article 11.

78. The Court considers that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. *Merits*

(a) Legal classification of the complaints

79. The Court notes that, in the circumstances of the case, Article 10 is to be regarded as a *lex generalis* in relation to Article 11. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (see, for example, *Chkhartishvili v. Georgia*, no. 31349/20, § 46, 11 May 2023, *Auray and Others v. France*, no. 1162/22, § 97, 8 February 2024, with further references).

(b) Relevant general principles

80. The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Kudrevičius and Others v. Lithuania*, cited above, § 91, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018).

81. An interference with the right to freedom of assembly does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards. For instance, a prior ban can have a chilling effect on those who may intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities. A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference. So too do measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants, and penalties imposed for having taken part in a rally (see *Kudrevičius and Others*, cited above, § 100).

(c) Application of the above principles to the present case

(i) Inspection of the applicants' belongings by the police

82. The Court observes that the applicants appeared to concede that the police inspection in search of potentially dangerous objects had been justified (see paragraph 66 above). Even assuming that the inspection constituted an interference with the applicants' rights under Article 11 of the Convention – an issue that was not debated between the parties in the present case – the Court considers that it had a basis in domestic law (see paragraphs 29-30 above), which does not appear problematic in terms of quality, and pursued the legitimate aims of public safety, prevention of disorder or crime, and protection of the rights and freedoms of others.

83. Having regard to the circumstances of the present case, the Court is satisfied that there were sufficient reasons to carry out the inspection of the second applicant, given that the long metal rod was observed by the police in his sleeve, a place where it could be easily used as a weapon (see paragraphs 11 and 20 above). As regards the other applicants, examination of their belongings was justified in view of the fact that, after the weapon-like objects were discovered on the second applicant, the other demonstrators had started disposing of dangerous objects on the ground *en masse* (see paragraphs 12 and 20 above). Moreover, a number of similar dangerous items were found on some of them, including the first, tenth and twelfth applicants.

84. In this context, the Court refers to the OSCE's and Venice Commission's Guidelines on Freedom of Peaceful Assembly which provide

that participants in an assembly may be banned from carrying weapons and weapon-like objects, as well as checked for the presence of the above objects (see paragraph 32 above). In the Court's assessment, in the circumstances, such an inspection was an adequate tool of preserving the peaceful nature of the demonstration, of protecting the security of persons present and preventing the risk of violent provocations.

85. In view of the discovery of dangerous items in the demonstrators' possession and the atmosphere of tension between them and the opposing group, there is no doubt that that measure was necessary in a democratic society.

86. There has therefore been no violation of Article 11 of the Convention, read in the light of Article 10, in respect of inspection of the applicants' belongings by the police.

(ii) Applicants' arrest and detention

87. The applicants' arrest and detention constituted an interference with their freedom of peaceful assembly (see *Kudrevičius and Others*, cited above, § 100). While the scope of the present case does not encompass the arrest of the other participants in the demonstration, it is relevant to note that the interference complained of, because of it having been accompanied by the arrest of most demonstrators, consisted in effectively putting an end to the demonstration shortly after it started.

88. In view of the Court's findings above under Article 5 § 1 of the Convention and, in particular, its finding to the effect that no reasons were given for the applicants' arrest and detention, it is difficult to accept that the resulting interference with their Article 11 rights was "prescribed by law" within the meaning of Article 11 § 2 of the Convention (see *Hakim Aydın v. Turkey*, no. 4048/09, § 51, 26 May 2020, and, *mutatis mutandis*, *Auray and Others*, cited above, §§ 108-09).

89. In any event, but closely connected to the above, it has never been duly explained why the police decided to stop the demonstration and detain all of the applicants, instead of having recourse to less restrictive measures.

90. On the facts of the case, given in particular the considerable number of police officers present, which was roughly equal to that of the demonstrators and the members of the opposing group taken together (see paragraphs 5 to 7 above), it appears that the police were in full control of the situation. In these circumstances, in the absence of an explanation by the respondent Government, the Court cannot but consider that less restrictive alternatives must have been available but were even not considered by the police.

91. Therefore, even assuming that the police's actions had a legal basis and pursued legitimate aims, such as the ones mentioned in paragraph 82 above, it has not been shown that they were proportionate and, therefore, "necessary in a democratic society".

92. There has accordingly been a violation of Article 11 of the Convention, read in the light of Article 10, in respect of the applicants' arrest and detention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

93. The applicants further complained that no effective remedy had been available to them in respect of their complaint under Article 11 of the Convention, in breach of Article 13 of the Convention.

94. The Government submitted that Article 13 applied only where an individual had an "arguable claim" to be the victim of a violation of a Convention right. The Government considered the complaints under Articles 10 and 11 inadmissible. Therefore, Article 13 was inapplicable.

95. Having regard to the facts of the case, the submissions of the parties, and its findings under Articles 5 and 11 of the Convention, the Court considers that it has examined the main legal questions raised in the present application, and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned complaint (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. Article 41 of the Convention provides:

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

97. The applicants claimed the amounts set out in the Annex in respect of non-pecuniary damage and costs and expenses incurred before the Court.

98. The Government contested those claims. They considered that the difference in the amounts claimed for non-pecuniary damage by different applicants was indicative of the unsubstantiated nature of those claims. The claims were exorbitant and unfounded, as were the applicants' complaints. As to costs and expenses, the Government pointed out that, according to the documentation provided, the same number of hours (twenty-five), had been spent on preparing the application and observations in each applicant's case, even though the case concerned the same events. The claim was exorbitant and unsubstantiated.

99. The Court, ruling on an equitable basis, awards the applicants 1,200 euros (EUR) each in respect of non-pecuniary damage.

100. The Court awards the first, second, third, fourth, sixth, seventh, ninth and tenth applicants EUR 6,350 jointly for legal costs incurred in the proceedings before the Court, plus any tax that may be chargeable to the

applicants concerned, to be transferred directly into the account of the applicants' lawyer Mr Tarakhkalo.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 5 § 1, 10 and 11 of the Convention admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of all the applicants;

3. *Holds* that there has been no violation of Article 11 of the Convention, read in the light of Article 10, in respect of the inspection of the applicants' belongings by the police;

4. *Holds* that there has been a violation of Article 11 of the Convention, read in the light of Article 10, regarding all the applicants in respect of their arrest and detention;

5. *Holds* that it is not necessary to examine the admissibility and merits of the complaint under Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (i) EUR 1,200 (one thousand two hundred euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 6,350 (six thousand three hundred and fifty euros), plus any tax that may be chargeable to them, to the first, second, third, fourth, sixth, seventh, ninth and tenth applicants jointly, in respect of costs and expenses, to be transferred directly into the account of the applicants' lawyer Mr Tarakhkalo;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

Victor Soloveytchik Registrar	Mattias Guyomar President

APPENDIX

List of applicants:

No.	Applicant’s Name	Year of birth	Place of residence	Items found of the applicant	Handcuffing	Offence report drawn up	Police station logbook	Claims for non-pecuniary damage and costs, in euros
1	BOGAY Taras Petrovych	1989	Lviv	Pepper spray canister, tourist knife	Yes	Yes	“Detained”	6,000 for damage, 3,750 for costs
2	BAGAYEV Rodion Oleksiyovych	1994	Chervonograd	Two knives (trousers pocket), metal rod (bar of about 50 cm in the right sleeve)	Yes	No	“Invited”	6,000 for damage, 3,750 for costs
3	BREZINA Anastasiya Yuriyivna	1996	Lviv	None	No	No	No record	6,000 for damage, 3,750 for costs
4	KHOMYAK Oksana Andriyivna	1995	Stryy	None	No	No	No record	6,000 for damage, 3,750 for costs
5	KORDYYAKA Oleg Vasylyovych	1996	Lviv	None	No	No	“Detained”	6,000 for damage, no claim for costs
6	KOTSYUBYNSKYY Viktor Volodymyrovych	2000	Lviv	None	Yes	Yes	“Detained”	6,000 for damage; 3,750 for costs
7	KUTSIL Ivanna Mykolayivna	1999	Lviv	None	No	No	Record not legible	10,000 for damage; 3,750 for costs
8	LYTVYN Vladyslav Sergiyovych	1998	Stryy	None	Yes	Yes	“Detained”	3,000 for damage; no claim for costs
9	OSTROVSKA Marta Andriyivna	1993	Stryy	None	No	No	No record	6,000 for damage; 3,750 for costs
10	RAZUMOVSKYY Gerkhard Olegovych	2001	Lviv	Metal rod (piece of bar of about 50 cm)	No	No	“Detained”	5,000 for damage; 3,750 for costs
11	VERESHCHAGINA Yelyzaveta Olegivna	1997	Lviv	None	No	No	No record	6,000 for damage; no claim for costs

No.	Applicant's Name	Year of birth	Place of residence	Items found of the applicant	Handcuffing	Offence report drawn up	Police station logbook	Claims for non-pecuniary damage and costs, in euros
12	YABLONSKA Veronika Oleksandrivna	1996	Pidvolochysk	Piece of metal bar of 30 to 40 cm	No	No	No, the applicant refused	6,000 for damage; no claim for costs