



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

THIRD SECTION

CASE OF KÁRI ORRASON AND OTHERS v. ICELAND

*(Applications nos. 29791/21 and 2 others –
see appended list)*

JUDGMENT

Art 11 (read in the light of Art 10) • Freedom of peaceful assembly • Applicants' criminal conviction for refusing to obey a police order to leave the lobby of the Ministry of Justice, where they were engaging in a demonstration, shortly after the building's closure to the public • Domestic authorities' view that the applicants were not entitled to continue their protest within the building after closing-hours not unreasonable • Lenient fines • Impugned interference proportionate

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 May 2025

FINAL

27/08/2025

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

In the case of Kári Orrason and Others v. Iceland,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Darian Pavli,

Diana Kovatcheva,

Úna Ní Raifeartaigh, *judges*,

Ragnhildur Helgadóttir, *ad hoc judge*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos. 29791/21, 40600/21, and 2281/22) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by Mr Kári Orrason (the first applicant) an Icelandic national, Mr Borys Andrzej Ejryszew (the second applicant) a Polish national, and Ms Hildur Harðardóttir (the third applicant) an Icelandic national, (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice to the Icelandic Government (“the Government”) of the complaints under Articles 10 and 11 of the Convention, and to declare inadmissible the remainder of the applications;

the withdrawal of Judge Oddný Mjöll Arnardóttir, the judge elected in respect of Iceland, from the case (Rule 28 of the Rules of Court), and the appointment of Ragnhildur Helgadóttir to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court);

the confirmation of the Polish Government that they did not wish to exercise their right to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

the parties’ observations;

Having deliberated in private on 29 April 2025,

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

INTRODUCTION

1. The case involves complaints pursuant to Articles 10 and 11 of the Convention in circumstances where the applicants were convicted of refusing to obey a police order to leave the lobby of the Ministry of Justice, where they were engaging in a demonstration, shortly after 4 p.m. on a particular date, this being the closing time of the Ministry. They were removed by force, convicted of breach of the Police Act, and fined (approximately 74 euros as regards the first and second applicants, and a suspended fine as regards the third applicant). Their applications for leave to appeal to the Court of Appeal were refused.

THE FACTS

2. The applicants' particulars appear in the appendix to this judgment. They were represented by Ms Helga Balvins Bjargardóttir, a lawyer practising in Reykjavik.

3. The Government were represented by their Agents Ms Fanney Rós Þorsteinsdóttir, Attorney General for Civil Affairs, and Ms Guðrún Sesselja Arnardóttir, Supreme Court Attorney.

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

5. In March 2019 peaceful demonstrations about asylum seekers and refugees in Iceland took place in Reykjavik in front of the Parliament.

6. From 2 to 5 April 2019 there were peaceful demonstrations about the same issue outside the Ministry of Justice, but small groups of people also entered the lobby of the Ministry from time to time.

7. On Friday 5 April 2019, shortly before 4 p.m., nine persons, including the three applicants, entered the lobby of the Ministry of Justice. This is situated on the first floor of the building, where there is also a reception area and two meeting rooms. The Ministry's opening hours were from 8.30 a.m. to 4 p.m. Shortly after 4 p.m. the police arrived and ordered the demonstrators to leave the building. Four persons left voluntarily, but five others, including the applicants, remained. They were therefore removed by force, arrested, and released from police custody some hours later. They were prosecuted for a breach of section 19 read in conjunction with sections 15(2) and 44 of the Police Act (see paragraph 26 below) and fined. Since the applicants refused to pay the fine administratively, they were formally charged and brought separately before the Reykjavik District Court, where they pleaded not guilty.

I. THE FIRST APPLICANT

8. The first applicant explained to the District Court that he and several others had sat on the floor in the lobby, protesting and attempting to get a meeting with the Minister of Justice. They had "called out" and caused commotion, and some people had drumsticks. When the police arrived some of the protestors wanted an explanation, in English as well as Icelandic, as to why they had to leave. He had heard the order to leave more than once, but he had not been given much time to leave voluntarily.

9. Eight police officers were called as witnesses. They explained that for four days in a row, a group of people, mobilised by the same organisers, had gathered in the lobby of the Ministry of Justice each day. On the first three days, the police had removed those persons with no further action. On 5 April 2019, when the police arrived, there were nine persons sitting on the floor in the lobby making a lot of noise and chanting. They were ordered to leave several times. Four persons obeyed. The five who remained were removed by force after having been given ample of time to leave voluntarily.

10. From the police journal, it followed that the police received a call from staff at the Ministry of Justice at 3.51 p.m. asking for assistance.

11. Footage from the surveillance camera in the lobby of the Ministry of Justice showed the applicants and six other persons sitting on the floor in the lobby at 3.38 p.m. The police arrived at 4.02 p.m. and spoke to the group. At 4.03 p.m. four persons left the lobby. The police continued to speak to the remaining five persons for a few minutes. The last part of the footage showed that between 4.06 and 4.09 p.m. the police tried to remove the remaining five persons, who were lying on the floor. The footage ended at 4.09 p.m. and therefore did not show exactly when the applicants were removed by force.

12. On 13 October 2020 the District Court convicted the first applicant as charged. He was fined 10,000 Icelandic krónur (ISK) (equal to approximately 74 euros (EUR)). He was also ordered to pay ISK 77,500 in court fees and 516,000 for the costs of own defence (two counsel) (in total approximately EUR 4,250).

13. The applicant requested leave to appeal and submitted that the District Court should have examined the case under Articles 10 and 11 of the Convention.

14. The State Prosecutor submitted a statement to the Court of Appeal, asserting that there was no justification for granting leave to appeal under section 198 (2) of the Code of Criminal Procedure, in that the alleged violation of the Convention was unfounded, and the outcome of the case lacked substantial general value, and had no bearing on important interests.

15. On 30 November 2020 the Court of Appeal refused to grant leave to appeal for the following reasons:

“... In the application, reference is made to section 198 (2) of Act no. 88/2008, and it is argued that the resolution of the case has significant general importance and that it is not ruled out, based on the available documents, that the court’s decision may be changed to some extent. It is argued that the case concerns the applicant’s freedom of expression and the interpretation of Article 19 of the Police Act. It is also stated that the applicant was exercising his freedom of expression according to Article 73 of the Constitution and Article 10 of the European Convention on Human Rights, as well as the right to protest, cf. also Article 73 of the Constitution and Article 11 of the European Convention on Human Rights. The District Court’s methodology was wrong, and no assessment was made of the conditions for restricting expression and the right to protest. Furthermore, the district court should have specifically examined the legality of the police’s orders and actions in light of the applicant’s freedom of expression and right to protest. Finally, the applicant argues that the case concerns his important interests since the request pertains to the applicant’s fundamental human rights.

The Court of Appeal judges ... discussed the application and decided in a meeting ... to reject it. The conclusion is based on the fact that it is not likely that the District Court’s decision will be changed to any significant extent, the outcome of the case does not concern the applicant’s important interests, and it is not seen that the ruling in the case has significant general importance to fulfil the conditions of section 198 (2) of Act no. 88/2008.”

II. THE SECOND APPLICANT

16. When he was brought before the District Court, the second applicant explained that he had been protesting. He had participated in a similar “sit-in” protest in the lobby of the Ministry of Justice some days earlier. When the police arrived on 5 April 2019, they did not speak to him in English. They only yelled in Icelandic. Being Polish, he had not understood their instructions.

17. The evidence presented in the first applicant’s case (see paragraphs 9-11 above) was also presented in the second applicant’s case.

18. On 18 November 2020 the District Court convicted the second applicant as charged. He was fined ISK 10,000 (equal to approximately EUR 74) and ordered to pay ISK 367,040 (approximately EUR 2,650) for the costs of own defence.

19. The applicant requested leave to appeal and submitted that the District Court should have examined the case under Articles 10 and 11 of the Convention.

20. His request was refused on 2 February 2021 by the Court of Appeal for very similar grounds as those set out in respect of the first applicant (see paragraph 15 above).

III. THE THIRD APPLICANT

21. The third applicant explained to the District Court that she had been protesting and that she had refused to obey the orders of the police because she considered them to be “irrational arbitrary instructions without reasons”.

22. The evidence presented in the first applicant’s case (see paragraph 9-11 above) was also presented in the third applicant’s case.

23. On 12 May 2021 the District Court convicted the third applicant as charged. It found that the conviction was not in breach of the Convention or of the Constitution of Iceland. The determination of the sentence was suspended for a year (the length of the proceedings was taken into account). She was also ordered to pay ISK 47,120 (approximately EUR 315) for the costs of own defence. In respect of the provisions of the Convention relied on by the applicant, the District Court stated as follows:

“The evidence of police officers and a video recording where the accused can be seen, and the police can be heard repeatedly giving the accused instructions to leave the lobby of the Ministry of Justice immediately show that the accused did not obey the police instructions. Everyone can access the Ministry of Justice during opening hours, but the Ministry was closed at the time, as indicated on the charge sheet. The witnesses have described [in their evidence] how the police were called to the scene to get the people, including [the third applicant], out, and instructions were given to that effect, as has been set out. By not obeying the instructions of the police, the accused have breached section 19 of Police Act no. 90/1996, as stated in the charge sheet. In the opinion of the Court, the provisions of the Constitution and the European Convention on Human Rights, referred to by the accused’s defence lawyer, do not change this finding.”

24. On 24 June 2021 the Court of Appeal refused the third applicant leave to appeal.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

25. In so far as relevant, the Constitution of the Republic of Iceland reads as follows:

Article 73

“Everyone has the right to freedom of opinion and belief.

Everyone shall be free to express his or her thoughts but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to freedom of expression.

Freedom of expression may only be restricted by law in the interests of public order or the security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others, if such restrictions are found necessary and consistent with democratic traditions.”

Article 74

“... People are free to assemble unarmed. Public gatherings may be attended by the police. Public gatherings in the open may be banned if it is feared that riots may ensue.”

26. In so far as relevant, the Police Act (No. 90/1996) reads as follows:

Section 1

“Role

1. Police activities shall be operated by the state.

2. The role of the police shall be:

a. to maintain public safety and uphold law and order, to seek to ensure the security of citizens under the law and to protect property rights, the public interest and lawful activities of all types;

b. to seek to prevent offences and to prevent events that interfere with public safety and the security of the State;

c. to work on solving crimes, to stop unlawful conduct and to pursue matters in accordance with the provisions of the Code of [Criminal]) Procedure or other statutes;

d. to be of assistance to citizens as appropriate and to assist them when hazards threaten;

e. to give the authorities protection or assistance with the execution of their functions in accordance with the provisions of the law or tradition, as necessary;

f. to collaborate with other authorities and institutions involved in tasks connected with the duties of the police;

g. to carry out other tasks that are entrusted to them by law or fall to them by tradition.”

Section 14

“Use of force

Those who exercise police authority may use force in the course of executing their duties. At no time, however, may they use force to a greater extent than is necessary on each given occasion.”

Section 15

“Measures taken in the interests of public harmony and tranquillity, public order, etc.

1. The police may intervene in the conduct of citizens in order to maintain public harmony and tranquillity and public order or to prevent an imminent disturbance in order to protect the safety of individuals or the public or to avert or stop the commission of criminal offences.

2. For these purposes, the police may, among other things, assume control of traffic, prohibit persons from remaining in particular areas (e.g. by cordoning the areas off or restricting movement through them), take dangerous items into their safekeeping, order people to move away or remove them, order a cessation of or a change to actions or an activity, enter privately owned areas and order the removal of persons from such areas.

3. If it seems likely that disorder will break out at a protest meeting, procession or other such gathering in a public place, the police may prohibit people from changing the appearance of their faces or covering their faces or part of them with masks, hoods, paint or other means intended to prevent them from being recognised.

4. If someone disobeys police instructions [under paragraphs 2 and 3] the police may take the measures necessary at that person’s expense to prevent the person’s disobedience from causing damage or causing a hazard to the public.

5. The police may require any person to give his or her name, ID number and address, and to present an identification document to confirm the information given.

6. The police may concern themselves with matters which by law come under other authorities if they consider it necessary in order to stop, or prevent, a serious disturbance of public harmony and tranquillity and public order and it is not possible to contact the relevant authority or it is impossible for that authority to take measures, or if such measures are ineffective or it is foreseeable that they would be initiated too late. The appropriate authority shall be informed of the police actions as soon as possible.”

Section 16

“Authority to make arrests.

1. A person exercising police authority may arrest a person and take him or her to a police station or other place where the police have facilities:

- a. for the purposes of maintaining law and order, for example, if the person loses control of himself or herself in public or causes an outrage in a public place, or causes the risk of a public disturbance,
- b. if the person does not hold a permit to be in the country,
- c. if the person is to serve a sentence,
- d. if the person has left prison without permission,

e. if there is reason to suspect that the person has substantially violated the conditions of a suspended sentence, probation or pardon.

2. The police shall explain to the person the reason why he or she is being taken to the police facility. No person may be held for longer than is necessary.”

Section 19

“Obligation to obey police orders.

The public shall be obliged to obey orders given by the police, for example in connection with traffic control or in order to maintain law and order in public places.”

Section 44

“Sanctions.

Breaches of sections 19-21 shall be punishable by fines unless more severe punishments are prescribed in other legislation.”

27. In so far as relevant, the Code of Criminal Procedure sets out:

Section 198

“1. An appeal may only be lodged against a conviction if the defendant is sentenced to a term of imprisonment or to pay a fine, or suffer confiscation of property, which amounts to the qualifying sum for bringing an appeal in a civil case. The Director of Public Prosecutions may at all times appeal against a judgment acquitting the defendant.

2. Without prejudice to the provisions of the first paragraph, appeals may be made against district court judgments under leave from [the Court of Appeals], which may be granted if the outcome of the case is of substantial general value or has a bearing on important interests, or if it cannot be ruled out, in the light of the available materials, that the judgment may be amended in a significant respect.”

28. On 11 November 2022, the Court of Appeal found against one of the other demonstrators, who had also been fined for disobeying the police order to leave the lobby in the Ministry of Justice on 5 April 2019, after it had closed at 4 p.m.

29. That demonstrator had specifically relied on the Convention, both before the District Court and the Court of Appeal. The latter found the conviction and sentence to be compliant with Articles 10 and 11 of the Convention (and the equivalent Articles 73 and 74 of the Constitution of Iceland) for the following reasons:

“...

10) It remains to be assessed whether the conviction of the accused in this case violates the provisions of the constitution and the European Convention on Human Rights, which was given domestic effect by Act no. 62/1994. Although little is known in the case about the motives and reasons for the aforementioned persons entering the Ministry of Justice premises, the defendant told the court that a group of people had tried for many months to get a meeting with the Minister of Justice on the issue of refugees, without success. It had therefore been decided to stage a sit-in at the Ministry so that their presence could not be ignored, and the only demand had been that the

Minister would meet with certain refugees. This narrative makes it clear that the situation was a protest in which the defendant participated.

11) Under paragraph 1 of Article 73 of the Constitution, as amended by Article 11 of Constitutional Act no. 97/1995, everyone has freedom of opinion and belief. Paragraph 2 of the Article confirms that every person has the right to express their thoughts, but they must account for them in court. This is a broad protection of freedom of expression, and the provision has been clarified so that it includes the right of people to communicate information through all forms of expression. This freedom therefore extends to both printed and spoken language, as well as expression through other forms of activity. Paragraph 3 of Article 74 of the Constitution, like Article 12 of Act no. 97/1995, says that people have the right to gather unarmed, but also that the police are allowed to be at public gatherings. These provisions of the Constitution establish a general right for individuals to express their thoughts and opinions in a peaceful manner. The provisions will not be interpreted in any way other than so as to recognise the right of a group of individuals to exercise their freedom of expression together through meetings or joint protests. This right will not be restricted except by law in the interests of public order or the security of the state, for the protection of human health or morals or the rights or reputation of others, and those restrictions must be necessary and compatible with democratic traditions: see paragraph 3 of Article 73 of the Constitution, see also Articles 10 and 11 of the European Convention on Human Rights, and for example the judgments of the Supreme Court of 28 May 2015 in case no. 812/2014 and of 30 September 1999 in case no. 65/1999, and the judgment of the Court of Appeal of 27 November 2020 in case no. 336/2019.

12) The defendant's protest as manifested in the aforementioned conduct must be considered an expression within the meaning of Article 73 of the Constitution and Article 10 of the European Convention on Human Rights. The defendant and those who were with her in the Ministry also gathered peacefully, as referred to in paragraph 3 of Article 74 of the Constitution and Article 11 of the European Convention on Human Rights. Their right to hold such a protest could therefore only be limited under the conditions specified in those provisions. This court must therefore assess whether in this the restrictions on the defendant's freedom under the articles, on which a conviction for disobeying the instructions of the police would be based, fulfilled the condition of being prescribed by law, in the interest of legitimate aims and necessary in a democratic society.

13) It is not disputed that the requirement that any restriction on freedom of expression must be prescribed by law is met by sections 15 and 19, as per section 44 of the Police Act, and the objectives of sections 15 and 19 on maintaining public order and public peace constitute a legitimate aim under paragraph 3 of Article 73 of the Constitution, paragraph 2 of Article 10 and paragraph 2 of Article 11 of the Convention. There is also the question of whether the restriction was necessary in a democratic society. It is not sufficient for a proper conviction that someone has disobeyed police instructions. The restriction constituted by the instructions must be assessed to check whether it was necessary and whether proportionality was observed, or whether it went beyond what was necessary in pursuit of the legitimate aim.

14) In the jurisprudence of the Supreme Court and the European Court of Human Rights, various points of view have been formed regarding the assessment of whether limitations on protests are necessary in a democratic society: see the judgments of the Supreme Court referred to above and the judgment of the Grand Chamber of the European Court of Human Rights of 15 October 2015 in *Kudrevicius and others v. Lithuania* [GC], no. 37553/05, ECHR 2015. Where a defendant is accused in connection with participation in a demonstration, which is an important part of the

exchange of opinions in a democratic society, any restrictions on freedom of assembly must be interpreted narrowly, since political expression enjoys the greatest protection. As far as peaceful protests are concerned, they are protected even if they annoy or offend those who hold a different opinion from that of the protesters. It is also clear that even if protests cause some disruption, for example to traffic, that alone does not justify a restriction on them, since the government must tolerate people's right to protest. If, on the other hand, protests are intentionally organised with the intention of disrupting daily life or legitimate activities more than is an inevitable result of a democratic protest, the leeway for the authorities to intervene increases. In this connection, it must also be taken into account that it matters whether the protestors have other ways to express their views and what their options are. The nature and severity of the penalties is also relevant, since the heavier the penalties, the more is required [to fulfil the proportionality test].

15) The accused's protest was undoubtedly an expression of political opinion and therefore enjoyed extensive protection. On the other hand, it is clear that the defendant had been given some leeway for the protest before she was forced to leave the Ministry. The protesters had settled in the lobby of the Ministry at 3:38 p.m., but the Ministry closed at 4:00 p.m. It is also clear from a video recording of the protest action that the protesters intended to stay in the lobby after the usual opening hours. Almost half of them obeyed the police's instructions to leave at 4:03 p.m., but the defendant disobeyed them and was arrested a few minutes later, and therefore had had time to comply. In these circumstances, [the Court of Appeal] found that the protesters had not had a right to continue protesting in the Ministry after it closed, and that the police had acted moderately, in the interests of public order, in instructing them to leave the Ministry so that it could be closed. In that regard, the Court of Appeal also observed that the defendant had not been prohibited from protesting against the decisions of the Minister and the government by other, legal means, including outside the Ministry. A breach of section 19 of the Police Act is punishable only by a fine, unless a more severe punishment is provided for by other legislation, and the court must take into account that the defendant was asked to pay regulatory fine of 10,000 ISK to the State Treasury. Finally, it must be taken into account when determining the punishment, see below, that the defendant was exercising her constitutionally protected right to protest.

16) In accordance with the above, the defendant is convicted of the criminal charges set out in this section of the indictment of 2 June 2020, which are correctly brought under provisions of the criminal law."

THE LAW

I. JOINDER OF THE APPLICATIONS

30. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

31. The applicants complained that their convictions for participation in a peaceful demonstration had violated their rights to freedom of expression and freedom of peaceful assembly, guaranteed by Articles 10 and 11 of the Convention respectively.

32. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case and that it is not bound by the characterisation given by an applicant or a Government (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018, and *S.M. v. Croatia* [GC], no. 60561/14, §§ 241-43, 25 June 2020). Having regard to the circumstances of the case and the manner in which the applicants' complaints were formulated, it considers it more appropriate to examine the complaint under Article 11 of the Convention, interpreted in the light of Article 10 (see also, *inter alia*, *Kudrevičius and Others v. Lithuania*, [GC], no. 37553/05, §§ 85-86, ECHR 2015, and *Tuskia and Others v. Georgia*, no. 14237/07, § 73, 11 October 2018). In its relevant parts Article 11 of the Convention reads as follows:

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

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

A. Admissibility

33. The Government submitted that the applications lodged by the first and second applicants should be declared inadmissible for non-exhaustion of domestic remedies, since these applicants had failed to rely on Articles 10 and 11 the Convention, or the equivalent provisions of the Constitution (Articles 73 and 74(3)), in the District Court. It was only when they applied unsuccessfully for leave to appeal to the Court of Appeal that they referred to those provisions.

34. The first and second applicants disagreed. They said that while they had not submitted any written pleadings before the District Court, their defence lawyers had referred to the relevant provisions of the Convention and the relevant case-law in their oral pleadings before the District Court.

35. The Court reiterates that the obligation to exhaust the available domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of these remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be made subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see, for example, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

36. The Court observes that the first and second applicants did not file any written pleadings in the District Court. They claimed that their defence lawyers referred to the relevant provisions of the Convention and case-law orally, but neither the court records nor the judgments from the District Court indicate that they did so in their oral argument. In their request for leave to appeal to the Court of Appeal (see paragraphs 13 and 19 above), the first and second applicants submitted that the District Court should have examined the case under Articles 10 and 11 of the Convention, but it is not possible for the Court to determine whether the applicants meant by this that the District Court should have addressed the Convention issue *ex officio* or by way of reply to specific complaints in this regard made orally. Thus, it is not possible for the Court to be certain of the factual situation in the District Court in terms of whether the first and second applicants relied orally upon Convention arguments.

37. However, it is clear that the first and second applicants did raise the Convention in their (unsuccessful) application for leave to appeal. Moreover, the terms in which the Court of Appeal refused the application for leave (see paragraphs 15 and 20 above) do not appear to suggest that a failure to raise Convention arguments at first instance was relevant to the refusal decision. Nor has the Government claimed that the applicants would have been precluded from raising Convention arguments on appeal (if leave to appeal had been granted) in the event of their failure to raise them at first instance.

38. The Court has previously rejected non-exhaustion objections in cases where Convention arguments were not raised at first instance but were considered for the first time on appeal (or in a constitutional court), not only in cases where a decision was ultimately given by the latter court on the merits but also in some cases where the appellate court's consideration resulted in a decision of non-admissibility (see, among others, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 116-118, ECHR 2007-IV; *Gäfgen v. Germany* [GC], no. 22978/05, §§ 143-146, ECHR 2010; *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, §§ 29 and 53, 20 January 2020; *Šidlauskas v. Lithuania*, no. 51755/10, §§ 32-33, 11 July 2017; *Elmazova and Others v. North Macedonia*, nos. 11811/20 and 13550/20, §§ 58-60, 13 December 2022; and *Voggenreiter v. Germany* (dec.), no. 47169/99, 28 November 2002).

39. The Court in such cases has taken the view that if the domestic appellate courts are prepared to consider Convention arguments on appeal for the first time, this Court should not accede to a non-exhaustion objection, bearing in mind the principle that it would be unduly formalistic to require the applicants to exercise a remedy which even the highest court of the country concerned had not obliged them to use (see, for example, *D.H. and Others*, cited above, § 118 and *Elmazova and Others*, cited above, § 59). Moreover, the underlying purpose of the requirement to exhaust domestic remedies is to ensure that the domestic courts have been afforded an

opportunity to consider and rule upon the Convention argument. Given that the first and second applicants referred to the Convention in their application for leave to appeal, it cannot be said that the Court of Appeal had no opportunity to rule upon the Convention aspect of the case; it could have done so if it had chosen to do so. To accept the non-exhaustion objection in the present case would therefore undermine the rationale of the principle.

40. The Court therefore takes the view that the non-exhaustion objection should be rejected in the case of the first and second applicants.

41. The Court also notes that it is not in dispute that the third applicant, orally or in writing, relied on the Convention before the District Court, like the demonstrator in the similar case which led to the subsequent finding of the Court of Appeal in its judgment of 11 November 2022 (see paragraphs 28-29 above). No issue as to non-exhaustion therefore arises in her case.

42. The Government also submitted that there had been no interference with the applicants' rights guaranteed by Article 11 of the Convention. In the Court's view, this issue is, given the circumstances of the present case, closely connected to the merits of the applicants' complaint. The objection should therefore be joined to the merits of the complaint (see, for example, *Makarashvili and Others v. Georgia*, nos. 23158/20 and 2 others, § 71, 1 September 2022).

43. The applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The arguments by the parties

44. The applicants maintained that their criminal conviction for participating in a peaceful "sit-in" demonstration in the lobby of the Ministry of Justice had been disproportionate.

45. They alleged that the police had shown no tolerance for civil protest, and that the criminal prosecution had been aimed at silencing their political views and preventing further protests. They had remained in the lobby only for a short while before being removed, and they were not given sufficient time to leave voluntarily. They were not aware of the exact time, or that the Ministry of Justice was about to close. The police had failed to explain this to them, including a failure to explain in English.

46. In addition, although the fine imposed on them had been lenient, they were convicted in criminal proceedings, and consequently had to pay significant legal costs.

47. In the Government's view the case should be examined only under Article 11 of the Convention, in the light of Article 10.

48. In their opinion there had been no interference with the applicants' rights, neither under Article 11, since that provision did not secure a right to remain in public buildings after they closed, nor under Article 11 in the light of Article 10. The applicants had already expressed their opinion by sitting in the lobby for some time on Friday 5 April 2019, and they could have continued to demonstrate outside the building after 4 p.m.

49. Moreover, even if the convictions and fines imposed on the applicants under section 19 of the Police Act were to be considered an interference with their Convention rights, that interference was justified under the second paragraph of Article 11 of the Convention. The Government reminded the Court that there were no restrictions in domestic law on peaceful protests or expressing one's views, and demonstrators were not required to apply for authorisation for a peaceful assembly. Section 19 of the Police Act, read with section 44, was therefore obviously not aimed at preventing or punishing participation in a demonstration. It aimed at preventing the public from refusing to obey orders given by the police in order to maintain law and order in public places.

50. In the present case the applicants had refused to obey a repeated police order to leave the lobby of the Ministry of Justice after it had closed on a Friday afternoon. They had had ample time to leave the building voluntarily, as had been shown by the four persons who had complied with the order at around 4.03 p.m. (see paragraph 11 above). Consequently, the interference, including the lenient fines imposed, were proportionate.

2. *The Court's assessment*

(a) **General principles**

51. 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*, cited above, § 91, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018).

52. The Court has emphasised that the freedom of assembly provided for in Article 11 is closely linked with the freedom of expression guaranteed by Article 10, as the protection of personal opinions, secured by the latter, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11. Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis*. One of the distinctive criteria noted by the Court is that in the exercise of the right to freedom of assembly the participants would be seeking not only to express their opinion, but to do so together with others (see *Navalnyy*, cited above, § 101).

53. At the same time, the Court has recognised that in the sphere of political debate the guarantees of Articles 10 and 11 are often complementary. Notwithstanding its autonomous role and particular sphere of application,

Article 11 must also be considered in the light of Article 10, where the aim of the exercise of freedom of assembly is the expression of personal opinions, as well as the need to secure a forum for public debate and the open expression of protest (*ibid.*, § 102).

54. The link between Article 10 and Article 11 is particularly relevant where the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration or members of an association (*ibid.*, § 102, and *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 364, 7 February 2017).

55. An interference with the right to freedom of peaceful assembly 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*, cited above, § 102 and *Laguna Guzman v. Spain*, no. 41462/17, § 44, 6 October 2020).

(b) Application of those principles to the present case

56. As to whether there has been an interference with the exercise of the right to freedom of peaceful assembly, the Court notes at the outset that the applicants were not convicted of having participated in a demonstration *simpliciter*, whether outside the Ministry of Justice or in the lobby of the building (see, *a contrario*, *Yılmaz Yıldız and Others v. Turkey*, no. 4524/06, § 46, 14 October 2014 and *Chernega and Others v. Ukraine*, no. 74768/10, § 259, 18 June 2019), but of having refused to obey a police order to leave the lobby of the Ministry of Justice just after it closed on a Friday afternoon.

57. It is undisputed that the physical activity engaged in by the applicants fell within concept of a “peaceful assembly”, although the applicants interfered with the activities carried out by others, including the employees who continued working after the building closed to the public and the security staff, and they demanded to meet with the Minister of Justice. Thus, it cannot be said that they committed “any reprehensible act”, or demonstrated “physical conduct which deliberately obstructed the ordinary course of life and seriously disrupted activities carried out by others”, so that their behaviour was not protected by Article 11 (see, among others, *Kudrevičius and Others*, cited above, § 149, and *Tuskia and Others*, cited above, § 74). The Court therefore considers that the demonstration, viewed as a whole, was not of such a nature and degree as to exclude the applicants from the scope of protection under Article 11 of the Convention. Accordingly, their convictions constituted an interference with their right to freedom of assembly. The Court therefore dismisses the Government’s objection in this respect (see paragraph 42 above).

58. The Court is satisfied that the interference was prescribed by law and pursued a legitimate aim. Section 19, read in conjunction with sections 15(2) and 44 of the Police Act, specifically refers to the obligation to obey orders

given by the police, for example in order to maintain law and order in public places, and therefore pursued the legitimate aim of the “prevention of disorder” and “the protection of the rights and freedoms of others”.

59. As to the necessity in a democratic society of the interference at issue, the crux of the matter is thus whether the limitations imposed by the authorities on the applicants, in terms of the time and place of the assembly, were justified under paragraph 2 of Article 11 of the Convention (see, for example, *Eckert v. France*, no. 56270/21, § 72, 24 October 2024; *mutatis mutandis*, *Central Unitaria de Traballadores/as v. Spain*, no. 49363/20, §§ 85-94, 17 October 2024, and *Kudrevičius and Others*, cited above, §§ 142-5).

60. The Court finds it regrettable that the reasoning by the District Court on this issue is virtually non-existent, even in the proceedings concerning the third applicant, who undisputedly relied on Article 11 of the Convention (see paragraph 23 above). It emphasises that under the principle of subsidiarity and the doctrine of the margin of appreciation, the domestic courts must put forward specific reasons in the light of the circumstances of the case, not least to enable the Court to carry out the European supervision entrusted to it. Where the reasoning of domestic decisions is insufficient, and the interests in issue have not been weighed in the balance, it may lead the Court to find a breach of the requirement of the provision relied on (see, for instance, *mutatis mutandis*, *Loukili v. the Netherlands*, no. 57766/19, § 50, 11 April 2023 and *I.M. v. Switzerland*, no. 23887/16, § 72, 9 April 2019), or, as the Court has found appropriate to do in the present case, to carry out its own assessment of the merits. However, the Court emphasises that the domestic courts should as a matter of general practice engage in the balancing of interests and articulate its reasons for its decision following this balancing exercise.

61. The Court notes that peaceful demonstrations on the same topic had been taking place outside the Parliament and the Ministry of Justice since March 2019. Further, on 2, 3 and 4 April 2019, a small group of people had also entered the lobby of the Ministry of Justice, albeit only for a short period of time, before they were removed without further action, all of which indicate that the authorities demonstrated a reasonable degree of tolerance.

62. The particular facts which gave rise to the prosecution of the applicants were that on Friday 5 April 2019, shortly before 4 p.m., nine persons, including the three applicants, entered the lobby of the Ministry of Justice. According to the first applicant, they sat down, called out and made a commotion, and some of them had drumsticks. They demanded a meeting with the Minister of Justice (see paragraph 8 above). Shortly after 4 p.m. the police arrived and ordered the demonstrators to leave the building. Four persons left voluntarily at 4.03 p.m. whereas the applicants (and two other persons) remained. Subsequently, apparently a few minutes later, they were removed by force by the police and taken into custody. Before the District Court the applicants submitted that they either did “not have time to obey the

order to leave the building voluntarily” (see paragraph 8 above), or “did not understand the orders” (see paragraph 16 above) or found them to be “irrational arbitrary instructions without reasons” (see paragraph 21 above).

63. The District Court found that the applicants had refused to obey the police order to leave the building and therefore found them guilty as charged. The Court sees no reason to question the District Court’s factual findings.

64. The Court observes that the location of the protest, namely the lobby of the Ministry of Justice, was open to the public between certain hours (8.30 a.m. to 4 p.m.) and that the applicants had entered the premises during those hours. The authorities’ objection does not appear to have been based on the location of the protest as such, but rather that the applicants sought to remain there after its closing hours. The issue of their entry to State-owned property or quasi-public spaces (an issue referred to in *Appleby and Others v. the United Kingdom*, no. 44306/98, § 47, ECHR 2003-VI and *Tuskia and Others*, cited above, § 72), therefore does not arise, strictly speaking. Nor does the case concern whether the manner of protesting (such as the noise level or physical actions of the protestors) impacted unduly upon the exercise of activities carried out by others (see, for example, *Kudrevičius and Others*, cited above, §§ 171-175 and *Tuskia and Others*, cited above, § 83). The question in the present case is rather whether the Contracting State exceeded the margin of appreciation when it took the view that the applicants were not entitled to remain and exercise their Article 11 rights within the building after its closing hours. The Court in *Kudrevičius and Others* (§§ 155-160) has set out the principles governing the balancing of interests between protestors and other members of the public when a demonstration takes place in a public place. Having regard to those principles, the Court considers that the view taken by the Contracting State’s authorities concerning protests within the building after closing time was not unreasonable.

65. The Court further notes that the applicants could have continued to demonstrate outside the Ministry of Justice, had they followed the example of the four persons who voluntarily obeyed the order to leave the lobby at 4.03 p.m.

66. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued. Where the sanctions imposed on demonstrators are criminal in nature, they require particular justification (see, for example, *Kudrevičius and Others*, § 146). It has not been disputed by the applicants that the fines imposed on them, equally to approximately EUR 74 as regards the first and second applicants and a suspended fine in respect of the third applicant, were lenient.

67. The applicants have pointed out that in addition to the fines, they also had to pay legal costs (see paragraph 46 above). It thus appears that they complain about the chilling effect of these costs (respectively EUR 4,250; 2,650 and 315). However, most of these costs related to the costs of their

defence lawyers. Accordingly, and since the applicants have failed to further develop this complaint, the Court is satisfied that the legal costs, the payment of which by them was a normal consequence of their convictions, were proportionate.

68. The foregoing considerations are sufficient to enable the Court to conclude that there was no disproportionate interference with the applicants' freedom of assembly in the present case.

69. There has accordingly been no violation of Article 11 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Decides* to join to the merits the Government's objection concerning the applicability of Article 11 of the Convention and dismisses it;
3. *Declares* the applications admissible;
4. *Holds* that there has been no violation of Article 11 of the Convention.

Done in English, and notified in writing on 27 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President

APPENDIX

List of cases:

No.	Application no.	Case name	Applicant Year of Birth Nationality	Lodged on
1.	29791/21	Kári Orrason v. Iceland	Kári ORRASON 1997 Icelandic	28/05/2021
2.	40600/21	Borys Andrzej Ejryszew v. Iceland	Borys Andrzej EJRYSZEW 1991 Polish	30/07/2021
3.	2281/22	Hildur Harðardóttir v. Iceland	Hildur HARÐARDÓTTIR 1996 Icelandic	22/12/2021