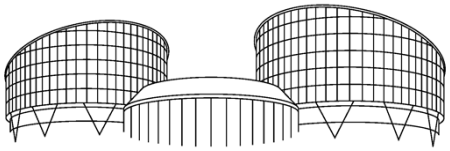

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BUMBEŞ v. ROMANIA

(Application no. 18079/15)

JUDGMENT

Art 10 read in light of Art 11 • Freedom of expression • Activist fined for a short and peaceful gathering, without prior notice, with three other persons, who handcuffed themselves to a government car park barrier, in protest against a mining project • Domestic courts giving the preponderant weight to the event's formal unlawfulness • Lack of assessment of level of disturbance, if any, of applicant's actions • Authorities' disregard of the principle that enforcement of rules on public assemblies not an end in itself • Imposition of sanction on author of political expression, however lenient, with possible chilling effect on public speech

STRASBOURG

3 May 2022

FINAL

03/08/2022

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 Bumbeș v. Romania,

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

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Pere Pastor Vilanova,
Jolien Schukking, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 18079/15) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Mihail-Liviu Bumbeș ("the applicant"), on 25 March 2015;

the decision to give notice to the Romanian Government ("the Government") of the application;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by the Open Society Justice Initiative and by Greenpeace Romania, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 29 March 2022,

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

INTRODUCTION

1. The applicant complained that the judgment of the national courts, upholding a sanction imposed on him for having organised and participated in a protest action, had violated his rights to freedom of expression and peaceful assembly provided for by Articles 10 and 11 of the Convention.

THE FACTS

2. The applicant was born in 1981 and lives in Curtea de Argeș. He was represented by Ms D.O. Hatneanu, a lawyer practising in Bucharest.

3. The Government were represented by their Agents, most recently by Ms. O. Ezer, of the Ministry of Foreign Affairs.

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

I. BACKGROUND TO THE CASE

5. The applicant is a founding member and president of the Spiritual Militia Civic Movement Association (*Asociaţia Mişcarea Civică Miliţia Spirituală*). He is a known activist and was involved in various civic actions, including the Save Roșia Montană (*Salvaţi Roşia Montană*) campaign.

6. That campaign, which attracted significant national and international support and attention, was initiated by the local community in Roșia Montană in the year 2000 as a protest against a mining project of the local gold and silver deposits. The project, which would involve the use of cyanide, was controversial because of its estimated negative impact on the environment and the local heritage. The campaign eventually led to the Roșia Montană mining landscape being registered on the United Nations Educational, Scientific and Cultural Organization's world heritage list in July 2021.

II. THE EVENT IN ISSUE

A. The applicant's decision to participate in the event

7. According to the applicant, on 28 August 2013 he read in the newspapers a press statement by the government informing the public that during their 4 p.m. meeting of 27 August 2013 they had approved a bill (*proiect de lege*) concerning the mining of the gold and silver deposits in Roșia Montană and had sent it to Parliament to be adopted. The bill in question had been approved by the government without any prior public consultation or information being provided and had practically green-lighted the mining of the Roșia Montană deposits.

8. On the same date the applicant and three other persons decided to express their negative opinion about the government's above-mentioned actions and to raise public awareness about the bill by handcuffing themselves to one of the barriers blocking access to the parking area of the government's headquarters and by holding up signs.

B. The video-recording of the event

9. The event was filmed by an acquaintance of the applicant and the resulting film was posted on the YouTube Internet website on 29 August 2013. The film was 5 minutes and 32 seconds long. The first 3 minutes and 55 seconds covered the actual event and the rest covered an interview with the applicant and two of the participants carried out a few hours after the event about the reasons prompting their actions.

10. The film showed that a police officer who was guarding the car park barrier in question immediately tried to stop the applicant and the other persons from handcuffing themselves to the barrier's rails. Other police officers rushed in to help him, but the applicant and the other three persons

succeeded in attaching themselves to the rails and holding up signs reading "Save Roșia Montană" and "United to save Roșia Montană" (*Uniţi pentru a salva Roșia Montană*). The applicant and the other persons were completely silent throughout almost the entire duration of the event. The handcuffs of two of the participants were detached from the barrier's rails very quickly but the applicant's and one other participant's handcuffs could not be removed as quickly because the applicant complained that the process was hurting his arm.

11. A gendarme officer asked the applicant and the remaining handcuffed participant to leave the area because their actions were unlawful, but they refused to do so unless a government representative came out of the building to talk to them. As a result, the officers decided to take the applicant and the remaining person handcuffed to the barrier to a police station on the ground that they had refused to cooperate with the police. The police officers detached the applicant and the other person from the barrier's rails by cutting the rail to which the handcuffs were attached and carried them in their arms to a police car. One of the other two participants was also asked by the officers to get into a police car and to go to the police station, and he complied.

12. The film further showed that apart from the law-enforcement officials and a few passers-by who stopped to watch or film the applicant's removal from the barrier, no other persons were present and the event did not affect in any way the car and pedestrian traffic in the area. Also, no official or unofficial car tried to use the barrier in question to access the government building's car park.

13. The film also showed that in her interview carried out a few hours after the event, one of the participants justified her actions by stating that she had been impressed by the way the locals in Roșia Montană had been fighting against the mining project and by the fact that people had been unaware of their fight. As a result, she had felt that she needed to do something about it and also to convince other young people to do the same by the power of example. She considered that actions had to be more radical since people had been lodging petitions for years only to be ignored.

14. During the same interview, another participant stated that their actions had been to try and break the media silence around the Roșia Montană subject. He was of the opinion that since the type of peaceful protests that had been held before had not had any significant impact and the persons involved in them had not been taken seriously either by the authorities or by the mass media, their type of protest could yield results.

III. THE POLICE REPORT AND THE FINE IMPOSED ON THE APPLICANT

15. According to a police report drafted on 28 August 2013 at 6.20 p.m. at police station no. 1 in Bucharest, the applicant was fined 500 Romanian lei

(RON) (an estimated 113 euros (EUR)) because he had committed the acts set out in Article 3 § 2 and punished by Article 4 § 1 (c) of Law no. 61/1991 on the punishment of acts breaching certain norms of social coexistence and the public order and peace. The police report stated in particular that "... at 5.15 p.m. ... [the applicant] had been spotted ... at the Romanian government's headquarters in Victoria Square, the Iancu de Hunedoara Boulevard entrance, having formed a group with ... [S.M.B.], [F.B.], and [R.B.] in order to commit antisocial acts, blocking access to the institution [and] attaching himself together with S.M.B. with handcuffs to the access gate's barrier, while the other persons held up the message 'United for Roșia Montană' [*Uniţi pentru Roșia Montană*]".

16. The police report also stated that the applicant had acknowledged the act committed by him, but that he had refused to sign the police report.

IV. THE APPLICANT'S CHALLENGE AGAINST THE FINE

17. On 18 September 2013 the applicant challenged the police report and the fine imposed on him and asked the court to annul them. In the alternative, he asked the court to replace the fine by a warning. He argued that the police report had been unlawful because, to the extent that a sanction had been needed in his case, he should have been punished on the basis of the provisions of Law no. 60/1991 on the organisation and conduct of public gatherings. His behaviour had been wrongly classified as being punished under Law no. 61/1991, because the manifestation of one's rights to freedom of expression and assembly through protest could not be an antisocial act which disturbed the public order and peace.

18. The applicant further argued that the police report had been unfounded. The acts imputed to him had been a form of lawful manifestation of his above-mentioned rights (see paragraph 17). The protest had represented a spontaneous reaction to a decision taken by the government, without any prior notice, with which he had disagreed. In such circumstances, according to the judgment of the European Court of Human Rights in *Bukta and Others v. Hungary* (no. 25691/04, ECHR 2007-III), a person's right to freedom of assembly could be exercised without a prior notification to the authorities. By complying with the three-day time-limit requirement set out in Law no. 60/1991, the spontaneous protest against the government's decision in question would have been void of any substance.

19. Moreover, during the protest he had behaved peacefully and had not disturbed or affected in a significant way the activity of the institution. The protest had taken place in front of a gate which was used only by high dignitaries and therefore was the one least used for access to the building; no one had attempted to use the gate in question during his presence there and the building had remained accessible during the protest through its several other gates. It could not be said, therefore, that he had formed a group of three

or more people in order to commit unlawful acts, violating the public peace and order and the norms of social coexistence.

20. Lastly, the applicant argued that the sanction imposed on him had been unnecessary in a democratic society. In the latter society the existence and expression of critical opinions about the government was essential, even if done in unconventional ways aimed at attracting the public's and the decision-makers' attention.

V. FIRST-INSTANCE JUDGMENT

21. On 7 July 2014 the Bucharest District Court ("the District Court") dismissed the applicant's challenge, holding that the police report had been lawful. Given the content of the act that had been described in the police report and the images filmed at the scene of the event, the legal classification of the act as falling under Article 3 § 2 of Law no. 61/1991 had been justified because the form of protest chosen by the applicant had breached Law no. 60/1991, therefore amounting to an unlawful act, and his having handcuffed himself to the barrier and the expression made could be considered to be acts that had breached the public peace and order and the norms of social coexistence.

22. The court further held that the applicant had not given well-founded reasons grounded in exceptional circumstances that could justify holding this form of protest without following the preliminary procedure provided for by Law no. 60/1991 of declaring public gatherings to the authorities. It could not be said that the rules set out in Law no. 60/1991 did not cover spontaneous forms of protest since the manifestation of one's rights to freedom of expression and assembly could be done only within the limits set by the law and Law no. 60/1991 required that a prior declaration be made about any type of public gathering.

23. Taking into account the text of Article 11 of the European Convention on Human Rights, it could not be said that the sanction imposed on the applicant had not complied with the conditions set out in paragraph 2 of that Article since the measure had been provided for by law, had been imposed in order to protect public order and the rights and freedoms of others and to prevent crime and had been proportionate to the aim pursued given the specific form and means of protest chosen by the applicant.

24. Lastly, the court held that the applicant had not rebutted in any way the version of the facts contained in the police report, even though the burden of proof had been on him to do so, and that there were no lawful grounds to annul the police report. Also, there was no reason to replace the fine by a warning since the applicant had been correctly punished by the lowest fine provided for by law for his actions.

VI. THE APPLICANT'S APPEAL AGAINST THE FIRST-INSTANCE JUDGMENT

25. The applicant appealed against the judgment. He reiterated the arguments that his actions had been a form of manifesting his right to freedom of expression (see paragraph 18 above) and that during the protest he had behaved peacefully and had not disturbed the public peace nor affected in a significant way the activity of the institution (see paragraph 19 above).

26. In the event that his actions were to be viewed as constituting the organisation of and participation in a public gathering which had lacked the requisite prior notification, his punishment would have been lawful only if he had been punished on the basis of Article 26 of Law no. 60/1991, and not on the basis of Law no. 61/1991. The District Court had not taken into account the video-recording of the event which had shown that at the scene of the protest the law-enforcement officials had applied the procedure set out in Law no. 60/1991 and had not referred at all to Law no. 61/1991. Also, it had considered that the sanction imposed on him had been lawful by relying on the provisions of Law no. 60/1991, even though it had found at the same time that his actions had been a form of protest which had breached Law no. 61/1991.

27. The District Court had failed to examine his argument about his right to freedom of expression having been breached (see paragraphs 17-20 above). The findings of the European Court of Human Right in the judgment in *Tatár and Fáber v. Hungary* (nos. 26005/08 and 26160/08, 12 June 2012), which concerned circumstances similar to his, had made the examination of his above-mentioned argument even more necessary since the court had considered that his actions had not been covered by the provisions of Law no. 61/1991.

28. The lower court had also ignored the findings of the European Court of Human Rights in *Bukta and Others* (cited above) to the effect that justified spontaneous gatherings could be held in the absence of a requisite prior notice. As a result, it had misinterpreted Article 11 of the European Convention on Human Rights.

29. Even though the applicant had proved that the government had approved a controversial bill which he had wanted to contest only a day before the protest, suddenly and without any prior notice, the District Court had taken the view that the spontaneous protest had not been justified by the circumstances. At the same time, in contradiction to this finding and despite the fact that spontaneous gatherings by their nature could not be notified in advance, the court had found that the prior-notice procedure provided for by Law no. 60/1991 also covered spontaneous gatherings. However, if that finding of the lower court had been true, its assertion to the effect that the applicant had to provide justified reasons for failing to follow the prior-notice procedure provided for by Law no. 60/1991 would be rendered irrelevant.

VII. LAST-INSTANCE COURT JUDGMENT

30. By a final judgment of 10 June 2015, the Bucharest County Court dismissed the applicant's appeal and upheld the lower court's judgment. It held that the applicant's actions had been correctly classified and punished. According to the content of the police report and of the applicant's application to the court, the applicant and three other persons had decided on 27 August 2013 to form a group in order to protest in front of the government building on the following day against the government and its decision to approve a bill that was green-lighting the mining of the deposits in Roșia Montană. There could be no doubt that the four persons' agreement to meet on the following day in a certain location and at a certain time with the aim of conducting an unauthorised meeting met the conditions of the contravention provided for by Article 3 § 2 of Law no. 61/1991 read in the light of Article 26 § 1 (a) of Law no. 60/1991.

31. The applicant's argument that the authorities should have relied on Law no. 60/1991 rather than Law no. 61/1991 to impose the sanction on him was ill-founded because the two laws were complimentary and not mutually exclusive as provided also by Article 2 of Law no. 60/1991. To accept the applicant's view would mean that those instances of disturbing the public order and peace which had not been covered by Law no. 60/1991 would have gone unpunished.

32. The applicant's argument to the effect that his rights to freedom of expression and assembly had been violated was likewise ill-founded. While it was true that the Constitution and Law no. 60/1991 provided for a person's right to protest in public places by expressing his or her opinions, the latter law also provided that the protests had to be conducted in observance of the lawful procedure, the rights and freedoms of other citizens and the other conditions provided for by law. Given the content of the applicable legal framework which set out the rules and conditions for manifesting one's rights to freedom of expression and assembly and which required a written notification at least three days prior to the date of the protest, the measure taken against the applicant had not violated his right to freedom of expression.

VIII.OTHER INFORMATION

33. The bill adopted by the government on 27 August 2013 concerning the Roșia Montană mining project (see paragraph 7 above) sparked numerous other large protests across Romania starting from 1 September 2013. The protests eventually led to Parliament rejecting the bill.

RELEVANT LEGAL FRAMEWORK

34. The relevant provisions of Law no. 60/1991 on the organisation and conduct of public gatherings, as in force at the relevant time, read as follows:

Article 1

"...

Public gatherings – meetings, demonstrations, manifestations ... and other similar [events] – which are to take place in squares, on public thoroughfares or in other outdoor places, may be organised only after submitting the preliminary declaration provided for by the present law.

..."

Article 2

"Public gatherings must take place in a peaceful and civilised manner, with the protection of the participants and of the environment, without disrupting the normal use of public roads ..., except for those authorised, the functioning of public institutions ... or degenerating into turbulent actions capable of endangering the public peace and order, the safety of persons, ... or their property or those of the public domain, and may not be continued past 11 p.m., in which case they are covered by the provisions of Law no. 61/1991 ..."

Article 7

"The organisers of public gatherings shall submit, at least three days before the date on which they will be held, a written declaration to the mayor's office ... on whose territory they will be held, in which they must mention the name of the organising group, the purpose, location, date, start time and duration of the action, the inflow and outflow routes, the estimated number of participants, the persons authorised to ensure and be responsible for organising measures, the services they require from the local council, the local police and the gendarmerie ..."

Article 13

"The participants in public gatherings must:

...

(d) immediately leave the public gatherings or the location where they are held, when they have been asked [to do so] by the ... police."

Article 26

"The following acts are contraventions, unless they are committed in circumstances that meet the elements of an offence according to criminal law:

(a) organising and holding... unregistered and undeclared public gatherings;

...

(d) participating in undeclared ... public gatherings, followed by a refusal to leave the location where they were held when warned and asked [to do so] according to law by the law-enforcement officials

...

(i) refusing to leave the gathering immediately when asked [to do so] by law-enforcement officials according to law;

..."

35. The relevant provisions of Law no. 61/1991 on the punishment of acts breaching certain norms of social coexistence and the public order and peace, as in force at the relevant time, read as follows:

Article 3

"Committing any of the following acts amounts to a contravention, unless they are committed in circumstances constituting an offence according to criminal law:

...

2. forming a group of three or more people in order to commit unlawful acts contrary to the public order and peace and to the norms of social coexistence, as well as the acts of encouragement and support, in any form, of such groups of persons which incite to social disorder;

..."

Article 4

"1. The contraventions set out in Article 3 shall be punished as follows:

...

(c) with a fine from 500 lei to 1,500 lei, those set out in paragraph 2 ...;

..."

THE LAW

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

36. The applicant complained that the final judgment of 10 June 2015 of the Bucharest County Court, upholding the sanction imposed on him, had violated his rights to freedom of expression and peaceful assembly provided for by Articles 10 and 11 of the Convention, the relevant parts of which read as follows:

Article 10

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

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security,

territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others ..."

Article 11

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

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

A. Admissibility

1. The parties' submissions

(a) The Government

37. The Government argued that in view of the Court's case-law, namely *Kudrevičius and Others v. Lithuania* ([GC], no. 37553/05, § 85, ECHR 2015), the applicant's case should only be examined from the angle of Article 11 of the Convention, which was *lex specialis* in relation to Article 10. They indicated, however, that their submissions concerning Article 11 also applied to Article 10.

38. They argued further that according to the police report and the judgment of the national courts, the applicant had been punished because he had committed acts affecting the public order owing to the manner in which he had chosen to protest, in particular by handcuffing himself to the barrier of the access gate to the government building. He had not been punished because of his participation in the protest, because of the personal opinions expressed or the content of the slogans chanted on that occasion, or because he had failed to give the requisite prior notice for the assembly.

39. Therefore Article 11, which conferred on the applicant a right to peaceful assembly, was not applicable in the present case.

(b) The applicant

40. The applicant disagreed with the Government's assertions to the effect that neither Article 10 nor Article 11 was applicable in his case. The Government had failed to explain why Article 10 was inapplicable and the applicant expressed the view that his case could be considered under both Articles.

41. His case was similar to that in *Tatár and Fáber v. Hungary* (nos. 26005/08 and 26160/08, 12 June 2012) and therefore the Court had to declare admissible his complaint under Article 10 of the Convention. He had been sanctioned for a disturbance that had been the result of the applicant and a few others expressing their opinion in a provocative, but peaceful manner. The event had been very short, had not been aimed at any particular group of

people and, since it had not been advertised beforehand, it had not been designed to attract a large crowd, which would have warranted specific measures by the authorities. The aim had only been to raise public support.

42. As to the Government's arguments that Article 11 of the Convention was inapplicable because the gathering had not been peaceful (see paragraph 40 above), the applicant argued that the event had not been violent and that he had remained passive and silent throughout, even when he was detached from the barrier.

2. The Court's assessment

43. The Court notes that the exact circumstances which led to the applicant being fined, including the exact timeline of his actions on 27 and 28 August 2013, remain to some extent unclear (see paragraphs 7-14, 15-16, 24 and 30). The national authorities and the courts did not address and clarify this point.

44. Nevertheless, the Court notes that in making his complaints under Articles 10 and 11 of the Convention, the applicant has presented his own version of the events as well as written and video evidence to support it which has not been contested as such by the Government (see paragraphs 7-15 and 41-42 above, and 53-58 below). The Court notes further that the applicant's version of the events seems to be largely coherent with the evidence submitted by him, the findings of the national courts and the police report (see paragraphs 15, 21-24 and 30-32 above). Therefore, it finds it reasonable to accept the applicant's version of the events.

45. The Court notes that the applicant has not denied at any stage of the domestic proceedings or before the Court that he had intended to organise and take part in the event on 28 August 2013 together with three other people. Moreover, it is clear that both the event itself and the signs the applicant and the other persons were holding up were designed and aimed to send a message directed both at the government in power and at the public at large (see paragraph 56 below). Furthermore, when giving their reasons for the sanction imposed on the applicant, the law-enforcement authorities referred expressly to the message held up by the participants in the event (see paragraph 15 above).

46. In these circumstances the Court cannot accept that the penalty imposed on the applicant could be dissociated from the views expressed by him through his actions or endorse the Government's argument that the applicant was punished merely for committing acts affecting public order (see paragraph 38 above). In this connection, the Court notes that it has consistently found Article 10 to be applicable to views or opinions expressed through conduct (see *Mătăsaru v. the Republic of Moldova*, nos. 69714/16 and 71685/16, § 29, 15 January 2019, with further references).

47. In so far as the Government's arguments may be understood to suggest that Article 11, or Article 10 for that matter, was inapplicable because the

gathering had not been peaceful (see paragraphs 40 and 42 above), the Court notes that the applicant's conduct, although involving handcuffing himself to a barrier and some damage being done to the rails of that barrier (see paragraph 11 above), did not amount to violence or incite it, and no one was injured during the event in which he was involved (see *Olga Kudrina v. Russia*, no. 34313/06, §§ 53-54, 6 April 2021, with further references). Indeed, neither the police report produced on 28 August 2013 nor the judgments of the national courts expressly mentioned any use or threat of violence by the applicant against individuals or infliction of any bodily harm to anyone. In addition, the damage to the barrier's rails was done by one of the law-enforcement officials when trying to remove the applicant and not by the applicant himself (see paragraph 11 above) and there is no indication that the national authorities or the courts held the applicant liable for the above-mentioned damage. The Government have not submitted any evidence that charges for physical violence or for damaging public property were brought against the applicant or the other participants.

48. The Court is of the opinion therefore that the facts of the applicant's case fall within the scope of Articles 10 and 11 of the Convention. It follows that the Government's objection concerning the applicability of these Articles must be dismissed.

49. The Court further notes that 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

(a) The applicant

50. The applicant argued that he had relied on both Articles 10 and 11 in his applications before the national courts and the Court because of the specific circumstances of the case which had resulted from the national courts' approach when examining it. Both courts had indicated that the unlawful act in which the applicant had conspired with others had been that of participating in a gathering that had been unlawful because it had not complied with the prior-notification requirement set out by law. The District Court had specifically held that even spontaneous protests such as the one the applicant had been involved in had to comply with the prior-notification requirement (see paragraph 22 above). That court had referred only very briefly in its assessment to the form of protest chosen by the applicant and only when considering the proportionality of the sanction imposed on him (see paragraph 23 above).

51. The applicant explained that on 28 August 2013 he had intended to respond quickly and express his disagreement with the government's

initiative. He had opted for a more provocative manner of showing his dissatisfaction and for drawing the public's attention to this matter because the various other forms of protest that had been used before 28 August 2013 had not yielded results. The fact that the protest had been filmed and that the film had been disseminated online (see paragraph 9 above) proved that he had intended only to show his dissatisfaction with the initiative in question and to draw the public's attention to it. His protest had been followed by large demonstrations later that year against the Roșia Montană mining project which had eventually led to the project being cancelled (see paragraph 33 above).

52. The applicant argued that the sanction imposed on him had been an interference with his rights to freedom of expression or to freedom of assembly which, given the circumstances of his protest, had been unnecessary in a democratic society. It was therefore unnecessary for him to elaborate on the foreseeability of the law providing for his punishment.

53. The applicant acknowledged that the measure had pursued the legitimate aim of protecting public order. However, he could not agree that the measure had been aimed at preventing the disturbance of a public institution's activity. The film of the events and the judgment of the courts had clearly shown that the activity of the institution had not been disturbed at all. The gate used for the protest had been far away from the building and no one had attempted to use it during the protest. The protest had been silent and none of the participants had engaged in any other action that could have disturbed the activity of the building's occupants.

54. The event had been of a very short duration and had not led to the destruction of public property. The pedestrian traffic in the area had not been affected, the members of the public passing by had not gathered to watch what had been happening and there had been no public outrage about the protest or any serious intentional disruption of public activities. Also, imposing a requisite three days' prior notice even for spontaneous protests and the authorities' failure to demonstrate a high degree of tolerance to his protest, given that he had been removed from the barrier and taken to a police station almost immediately, ran counter to the European Court of Human Rights' case-law on Article 11 of the Convention. Therefore, there had been no pressing social need for the authorities to punish the applicant.

55. The national courts had not provided relevant and sufficient reasons explaining the interference with his rights protected under Article 10 or Article 11. They had ignored the arguments he had raised in this connection and had simply considered that the interference had been justified because he had chosen to protest without complying with the relevant legal framework requiring a prior notification of the protest.

(b) The Government

56. Reiterating their above-mentioned arguments (see paragraph 38 above), the Government argued that the measure imposed on the applicant had not constituted an interference with his right to freedom of peaceful assembly.

57. Even assuming that there had been an interference with the applicant's right, the interference in question had been prescribed by law. Moreover, by seeking to prevent the disruption of the activities within the government building, it had pursued the legitimate aims of preventing disorder and of protecting the rights and freedoms of others. Furthermore, it had been necessary in a democratic society.

58. The domestic authorities had not prevented the applicant from taking part in the event in question and had punished him by imposing only the minimum fine provided for by law. In their assessment of the case the courts had struck a fair balance between the competing interests at stake. They had duly examined the applicant's challenge against the police report and his arguments and had found that his actions had violated the legal framework protecting public order by relying on relevant and sufficient reasons.

(c) The third-party interveners

59. In their joint intervention, The Open Society Justice Initiative and Greenpeace Romania submitted that the applicant's case provided the Court with an opportunity to acknowledge that obstructive or symbolic protests, sometimes referred to as non-violent direct action, constituted an important form of communication in a democratic society protected by Article 10 and should not be subject to notification requirements. In the alternative, in the event that the Court should take the view that the applicant's conduct had to be examined as a peaceful assembly protected by Article 11, it could acknowledge that any notification requirements for assemblies should provide exceptions for special circumstances that justified an immediate response, and that one such circumstance was the recent adoption without prior consultation of legislation affecting a community.

60. As could be seen from the Court's case-law and the views expressed by the Council of Europe's Venice Commission, the key issues for the Court to consider when deciding whether the applicant's conduct was an expression within the meaning of Article 10 or a peaceful assembly within the meaning of Article 11 were whether: (i) the conduct involved an intentional gathering of further participants; (ii) facilitation of the event by the authorities could objectively have been considered necessary, and failure to give prior notice had prevented them from doing so; and (iii) a requirement for prior notice would have interfered with the intended form of the protest, given that the protest involved an element of confrontation or surprise or was an immediate response to a current event.

61. The third-party interveners took the view that since in the applicant's case the first two questions could be answered in the negative and the third one in the positive, his protest had to be examined under Article 10 read in the light of Article 11, rather than Article 11 alone.

2. The Court's assessment

(a) General principles

62. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24, and *Jersild v. Denmark*, 23 September 1994, § 37, Series A no. 298).

63. Moreover, Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204; *Thoma v. Luxembourg*, no. 38432/97, § 45, ECHR 2001-III; and *Women On Waves and Others v. Portugal*, no. 31276/05, § 30, 3 February 2009).

64. Similarly, 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 *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Barraco v. France*, no. 31684/05, § 41, 5 March 2009). A balance must always be struck between the legitimate aims listed in Article 11 § 2 and the right to free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places (see *Ezelin v. France*, 26 April 1991, § 52, Series A no. 202).

65. However, Article 11 of the Convention only protects the right to "peaceful assembly". That notion does not cover a demonstration where the organisers and participants have violent intentions (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 77, ECHR 2001-IX, and *Galstyan v. Armenia*, no. 26986/03, § 101, 15 November 2007). Nonetheless, even if there is a real risk of a public demonstration resulting in disorder as a result of developments outside the control of those organising it, such a demonstration does not fall outside the scope of Article 11 § 1, but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that Article (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 103, ECHR 2011 (extracts)).

66. Lastly, the Court reiterates that any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles do a disservice to democracy and often even endanger it (see *Fáber v. Hungary*, no. 40721/08, § 37, 24 July 2012).

(b) Application of these principles to the instant case

(i) Scope of the Court's assessment

67. The Court notes that the issues of freedom of expression and freedom of peaceful assembly are closely linked in the present case. Indeed, the protection of personal opinions, secured by Article 10 of the Convention, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention (see *Taranenko v. Russia*, no. 19554/05, § 68, 15 May 2014, with further references).

68. The parties and the third-party interveners have submitted arguments under both Article 10 and Article 11 and have laid out various options the Court could choose in respect of its assessment of the case in terms of the Article most relevant in this connection (see paragraphs 37, 40, 50, 59 and 61 above).

69. Given the detailed explanations provided by the applicant as to the intended purpose and scope of the event he had staged and participated in (see paragraphs 51 and 54 above), the Court considers that the thrust of his complaint is that he was punished for protesting, together with other participants in the non-violent direct action, against the government's policies. The Court is therefore persuaded that the event constituted predominantly an expression, all the more so since it involved only four persons and lasted a very short time (see paragraph 10 above and, *mutatis mutandis*, *Tatár and Fáber*, cited above, § 29). Moreover, since it was the result of a rather spontaneous decision (see paragraphs 7 and 30 above) and lacked any prior advertisement, it is difficult to conceive that such an event could have generated the presence of further participants or the gathering of a significant crowd warranting specific measures on the part of the authorities (ibid.).

70. The Court therefore finds it appropriate to examine the present case under Article 10, which will nevertheless be interpreted in the light of Article 11 (see *Women On Waves and Others*, cited above, § 28, and *Taranenko*, cited above, § 69).

(ii) Existence of an interference

71. The Court notes that the parties disagree as to whether the measure taken against the applicant constituted an interference with his right to freedom of expression (see paragraphs 52 and 56 above).

72. The Court has established that the measure in question could not be construed to have concerned only the applicant's conduct as such and not also

the views and message expressed by him through his actions (see paragraph 51 above). It follows that there has been an interference with his right to freedom of expression (see *Tatár and Fáber*, cited above, § 30).

73. Such an interference will lead to the finding of a violation of Article 10 of the Convention, unless it was prescribed by law, pursued a legitimate aim and was necessary in a democratic society to achieve that aim (ibid.).

(iii) Prescribed by law

74. The Court notes that while the Government argued that the interference with the applicant's right had been lawful, the applicant considered that the interference was not necessary in a democratic society which made it unnecessary for him to elaborate on the foreseeability of the law providing for his punishment, suggesting that he viewed the interference with his right to be unlawful (see paragraphs 52 and 57 above).

75. The relevant principles for the assessment of the lawfulness of an interference, including the requirements of accessibility and foreseeability of the law are set out in *Kudrevičius and Others* (cited above, §§ 108-110).

76. The Court notes that the legal basis for the fine imposed on the applicant was Article 3 § 2 of Law no. 61/1991 read in the light of Article 26 § 1 (a) of Law no. 60/1991 (see paragraphs 15 and 30 above).

77. However, the reference to this provision for the sanction, namely Article 3 § 2 of Law no. 61/1991, was contested by the applicant before the national courts on the grounds that the legal basis for his punishment should have been Law no. 60/1991. For the reasons emphasised by him in paragraphs 17-19 above, the applicant contested that he had formed a group of three or more people in order to commit unlawful acts, violating the public peace and order and the norms of social coexistence as required by Law no. 61/1991. He also argued before the courts that at the scene of the protest the law-enforcement officials had relied on the procedure under Law no. 60/1991 and had not referred to Law no. 61/1991 at all. Given that his actions could be viewed as constituting organisation and participation in a public gathering which had lacked the requisite prior notification, his punishment would have been lawful only if he had been punished on the basis of Article 26 of Law no. 60/1991 (see paragraph 26 above).

78. The national courts dismissed the applicant's above-mentioned arguments on the grounds that the legal classification of his actions under Article 3 § 2 of Law no. 61/1991 had been justified because the form of protest chosen by the applicant had breached Law no. 60/1991, therefore amounting to an unlawful act, and his having handcuffed himself to the barrier and the expression made could be considered to be acts that had breached the public peace and order and the norms of social coexistence. The applicant had not given reasons that could have justified holding this form of protest without following the preliminary procedure provided for by Law

no. 60/1991 of declaring public gatherings to the authorities, and it could not be said that the rules set out in Law no. 60/1991 had not covered spontaneous forms of protest since it required that a prior declaration be made about any type of public gathering. There could be no doubt that the agreement to meet with three other persons in a certain location and at a certain time with the aim of conducting an unauthorised meeting met the conditions of the contravention provided for by Article 3 § 2 of Law no. 61/1991 read in the light of Article 26 § 1 (a) of Law no. 60/1991. Also, the argument that the authorities should have relied on Law no. 60/1991 rather than Law no. 61/1991 to impose the sanction was ill-founded because the two laws were complimentary and not mutually exclusive. To accept the applicant's view would have meant that the instances of disturbing the public order and peace which had not been covered by Law no. 60/1991 would have gone unpunished. Given the content of the applicable legal framework which required a written notification at least three days prior to the date of the protest, the measure taken against the applicant had not violated his right to freedom of expression (see paragraphs 21-24 and 30-32 above).

79. The Court reiterates that its power to review compliance with domestic law is limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among other authorities, *Kudrevičius and Others*, cited above, § 110, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 144, 27 June 2017). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 108, 26 March 2020, with further references).

80. The Court notes that nothing in the language of Laws nos. 60/1991 and 61/1991 (see paragraphs 34-35 above) would lead it to believe that the national courts' assessment to the effect that the provisions of those two laws are complementary and not mutually exclusive was arbitrary or manifestly unreasonable (see paragraph 78 above). Moreover, the parties have not put forward any evidence to suggest that the above-mentioned conclusion by the courts goes against established legal practice. Therefore, the Court is prepared to accept that the two laws in question were complementary and could be read in conjunction.

81. As indicated also by the national courts' assessment, the Court notes further that a joint reading of Laws nos. 60/1991 and 61/1991 suggests that any public gathering – no matter how small or short, irrespective of its nature, namely assembly or expression, and regardless of its potential to cause disruption to ordinary life – could be declared unlawful unless a declaration had been submitted to the authorities no later than three days before the event. Regardless of whether it was coupled with other acts that could also be viewed as amounting to breaches of the public peace and order and the norms

of social coexistence, this transgression on its own gave rise to a possibility for the authorities to impose a sanction for such an event.

82. Thus, the regulatory framework in dispute provided for a broad interpretation of what constituted an event subject to prior notification and gave the authorities a rather wide discretion in imposing restrictions on such events, in the absence of the above-mentioned notification.

83. The Court notes also that, as suggested by the Government (see paragraphs 38 and 56 above) and the conclusions of the police report (see paragraph 15 above), aside from the matter of the existence or absence of a prior notification, the conduct chosen by the applicant and the other participants to disseminate their message, namely handcuffing themselves to a car park barrier, taken on its own, could have been viewed as amounting to an unlawful act contrary to the public order and peace and to the norms of social coexistence, therefore giving rise to the possibility of the sanction being imposed on him.

84. In the light of the above, the Court is prepared to accept that the relevant domestic legal framework as applied in the applicant's case to impose the sanction on him was formulated sufficiently clearly in order to fulfil the requirement of foreseeability under Article 10 § 2 of the Convention.

85. Therefore, the Court considers that the interference with the applicant's right was "prescribed by law".

(iv) Legitimate aim

86. The Court notes that the parties agreed either explicitly or implicitly that the sanction in question was aimed at protecting public order and the rights and freedoms of others (see paragraphs 53 and 57 above), even though the applicant seemed to indicate that his agreement depended on whether the aims in question could be read to imply that the authorities were seeking to prevent the disturbance of the activity of the public institution in question (see paragraph 53 above).

87. The Court can accept that the sanction imposed on the applicant for organising or participating in the protest in question, for which no prior declaration had been made, could be aimed at the prevention of disorder and at the protection of the rights and freedoms of others (see, *mutatis mutandis*, *Tatár and Fáber*, cited above, § 32, and *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 147, 26 April 2016).

88. Therefore, it will proceed on the assumption that the measure against the applicant pursued the legitimate aims cited by the Government.

(v) Necessary in a democratic society

89. The Court reiterates that the test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a

certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among other authorities, *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII, and *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V).

90. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their margin of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; the Court looks at the interference complained of in the light of the case as a whole, including the content of the statement held against the applicant and its context (see *News Verlags GmbH & CoKG v. Austria*, no. 31457/96, § 52, ECHR 2000-I).

91. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see *Zana v. Turkey*, 25 November 1997, § 51, Reports of Judgments and Decisions 1997-VII).

92. In the applicant's case, the Court has established that he and the other participants in the event wished to draw the attention of their fellow citizens and public officials to their disapproval of the government's policies concerning the Roșia Montană mining project (see paragraphs 45 and 69 above). This was a topic of public interest and contributed to the ongoing debate in society about the impact of this project and the exercise of governmental and political powers green-lighting it. The Court reiterates in this connection that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or debates on questions of public interest. It has been the Court's consistent approach to require very strong reasons for justifying restrictions on political debate, for broad restrictions imposed in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV, and *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII).

93. The Court notes in this regard that the protest action took place in a square freely open to the public (see paragraph 15 above). The event was

terminated swiftly by the law-enforcement officials and the applicant and the other participants were taken to a police station and fined after having been given hardly any time to express their views (see paragraphs 9-15 and 44 above). The domestic courts seem to have dealt with the situation arising from the applicant's protest as a matter falling primarily within the ambit of the regulations concerning public events requiring prior notification and the exercise of one's right to freedom of peaceful assembly (see paragraphs 21-24 and 30-32 above). Therefore, the Court finds it particularly pertinent at this junction to refer to the principles that it has established in the context of Article 11 of the Convention.

94. It reiterates that while rules governing public assemblies, such as the system of prior notification, may be essential for the smooth conduct of public demonstrations, in so far as they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself (see *Novikova and Others*, cited above, § 163, with further references). The Court reiterates its constant position that a situation of unlawfulness, such as one arising under Romanian law from the staging of a demonstration without prior notification, does not necessarily (that is, by itself) justify an interference with a person's right to freedom of assembly (see *Kudrevičius and Others*, cited above, § 150). In other words, the absence of prior notification and the ensuing "unlawfulness" of the event, which the authorities consider to be an assembly, do not give *carte blanche* to the authorities; the domestic authorities' reaction to a public event remains restricted by the proportionality and necessity requirements of Article 11 of the Convention (see *Primov and Others v. Russia*, no. 17391/06, § 119, 12 June 2014, and *Novikova and Others*, cited above, § 163).

95. Where demonstrators do not engage in acts of violence it is important for the public authorities to show a degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Oya Ataman v. Turkey*, no. 74552/01, § 42, ECHR 2006-XIV). The appropriate "degree of tolerance" cannot be defined *in abstracto*: the Court must look at the particular circumstances of the case and particularly the extent of the "disruption of ordinary life" since it is understood that any large-scale gathering in a public place inevitably creates inconvenience for the population or some disruption to ordinary life (see *Primov and Others*, cited above, § 145, and *Novikova and Others*, cited above, § 165). The actual degree of such tolerance and its specific manifestations vary on account of the particular circumstances of each case, for instance where dispersal of the event is envisaged with recourse to physical force (see *Primov and Others*, cited above, §§ 156-63, and *Novikova and Others*, cited above, § 166) or where it concerns an event which was not notified in advance to the authorities but (i) was an urgent reaction to an ongoing political event (see *Bukta and Others*, cited above, §§ 36-38, and *Novikova and Others*, cited above, § 166) or (ii) was a purely obstructive

protest action which because of its very nature it is doubtful, in principle and as a practical matter, that it could be subjected to prior-notification requirements (see *Chernega and Others v. Ukraine*, no. 74768/10, § 239, 18 June 2019).

96. The Court stresses that it remains in the first place within the purview of the national authorities' discretion, having direct contact with those involved, to determine how to react to a public event (see *Novikova and Others*, cited above, § 169). Nevertheless, given the relevance of the principles summarised above (see paragraphs 94-95) for the present case, the Court considers that its task when dealing with the applicant's complaint under Article 10 of the Convention as described in paragraph 91 above is to assess whether the decisions taken by the authorities in relation to his protest duly considered the extent of the "disruption of ordinary life" caused by it (see, *mutatis mutandis*, *Novikova and Others*, cited above, § 168).

97. In this connection, the Court notes that when dismissing the applicant's challenge against the police report and the fine imposed on him, the national courts did not assess the level of disturbance his actions had caused, if any. They merely observed that the applicant had failed to comply with the prior-declaration requirement in respect of a situation that, in their view, had doubtless required one and that his having handcuffed himself to the barrier and the expression made could be considered to be acts that had breached the public peace and order and the norms of social coexistence (see paragraphs 21-24 and 30-32 above).

98. The Court reiterates that, as acknowledged also by the national courts, the proportionality principle demands that a balance be struck between the requirements of the purposes listed in Article 11 § 2 on the one hand, and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places, on the other (see *Kudrevičius and Others*, cited above, § 144). Nevertheless, the Court notes that the national courts did not seek to strike this balance giving the preponderant weight to the formal unlawfulness of the event in question (see *Obote v. Russia*, no. 58954/09, § 43, 19 November 2019).

99. The Court notes that as far as the national courts' assertion of a prior notification of the event staged by the applicant being required is concerned, it was not accompanied by any apparent consideration of the fact whether, given the number of participants, such a notification would have served the purpose of enabling the authorities to take necessary measures such as those described in paragraph 94 above in order to guarantee the smooth conduct of the event (see, *mutatis mutandis*, *Novikova and Others*, cited above, § 171). It further notes that the application of that rule to expressions (see paragraph 69 above) – rather than only to assemblies – would create a prior restraint which is incompatible with the free communication of ideas and might undermine freedom of expression (see *Tatár and Fáber*, cited above, § 40).

100. The authorities' impugned actions disregarded the emphasis repeatedly placed by the Court on the fact that the enforcement of rules governing public assemblies should not become an end in itself (see the case-law cited in paragraphs 94 above; and also *Kudrevičius and Others*, cited above, § 155; and *Obote*, cited above, § 42).

101. The Court notes, finally, as pointed out also by the national courts, that the fine imposed on the applicant for taking part in the event in question was the minimum statutory amount envisaged for the impugned contravention and the applicant did not argue or submit evidence that paying the fine was beyond his financial means. Nevertheless, it reiterates that the imposition of a sanction, administrative or otherwise, however lenient, on the author of an expression which qualifies as political (see paragraph 92 above) can have an undesirable chilling effect on public speech (see, *mutatis mutandis*, *Tatár and Fáber*, cited above, § 41).

102. In the light of the above, the Court considers that the decision to restrict the applicant's freedom of expression was not supported by reasons which were relevant and sufficient for the purposes of the test of "necessity" under Article 10 § 2 of the Convention. The interference was thus not necessary in a democratic society within the meaning of Article 10 of the Convention. There has accordingly been a violation of that Article interpreted in the light of Article 11.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

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

A. Damage

104. The applicant claimed 113 euros (EUR) in respect of pecuniary damage corresponding to the amount of the fine imposed on him by the authorities. He submitted copies of a receipt attesting to the payment of the amount claimed.

105. The applicant also claimed EUR 5,000 in respect of non-pecuniary damage for the violation of his rights by the national authorities.

106. The Government argued that the applicant was not entitled to an award in respect of pecuniary damage given the reasons provided by the national authorities for their actions.

107. As to the applicant's claim in respect of non-pecuniary damage, the Government argued that it was excessive and that the possible finding of a violation would constitute sufficient just satisfaction in his case.

108. The Court notes that there is a clear link between the fine imposed on him by the national authorities and the amount paid by him. The Court therefore grants the applicant EUR 113, plus any tax that may be chargeable, in respect of pecuniary damage.

109. As regards the applicant's claim in respect of non-pecuniary damage, the Court considers that a mere finding of a violation by the Court is insufficient to compensate the applicant for the sense of injustice and frustration which he must have felt on account of the sanction imposed on him. Making its assessment on an equitable basis, the Court therefore awards the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

110. The applicant also claimed EUR 1,872 in respect of the costs and expenses incurred for his legal representation before the Court, to be paid directly to his representative. He submitted an agreement signed by him with his lawyer as regards the hourly rate charged by the lawyer, and a breakdown of the number of hours worked by the lawyer on the case, totalling EUR 1,872.

111. The Government argued that the Court should grant the applicant only an amount which corresponded to his actual expenses which had been proven and necessarily incurred.

112. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the amount claimed by the applicant for costs and expenses, the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 1,872 in respect of his lawyer's fees, plus any tax that may be chargeable to the applicant. This sum is to be paid directly into the bank account of the applicant's representative (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, 15 December 2016).

C. Default interest

113. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention interpreted in the light of Article 11;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 113 (one hundred and thirteen euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 1,872 (one thousand eight hundred and seventy-two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representative;

(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.

Done in English, and notified in writing on 3 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Yonko Grozev President