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

SECOND SECTION

DECISION

Application no. 58853/18
Thomas HASCHKE
against Germany

The European Court of Human Rights (Second Section), sitting on 10 December 2024 as a Committee composed of:

Jovan Ilievski*, President*,
Anja Seibert-Fohr,
Stéphane Pisani*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 58853/18) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 December 2018 by a German national, Mr Thomas Haschke ("the applicant"), who was born in 1973, lives in Stuttgart and was represented by Mr J.H. Mader, a lawyer practising in Strausberg;

the decision to give notice of the application to the German Government ("the Government"), represented by one of their Agents, Ms N. Wenzel, of the Federal Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant's conviction for trespassing following his refusal to discontinue his participation in a disruptive group protest against the *Bundeswehr* (the German federal armed forces) at a privately organised job and career fair ("event") in Stuttgart.

2. The domestic courts established the facts of the case as follows. On 17 November 2015 the applicant, together with five or six other persons, protested in front of the information stand of the *Bundeswehr* at a job and career fair organised by a private company with the support of the city of

Stuttgart and other public institutions. The organiser had rented the venue from a private company, the shares of which were wholly owned by the city of Stuttgart.

3. The protest had several elements: the group held up a banner reading "Killing and being killed is no perspective – get the *Bundeswehr* out of education fairs", they distributed leaflets which they also read through a megaphone, and they staged a scene showing bodies covered in blood. Due to the volume of the megaphone, conversations at the stands were interrupted and visitors retreated to other parts of the venue, avoiding the stands in the vicinity, frightened by the scene. Despite repeated requests from the event manager to stop the protest and leave the venue, the group continued their protest in the aforementioned manner until they were escorted out by security. Afterward, the applicant and other participants held a similar spontaneous protest in a public street near the venue (for which they were not convicted).

4. On 16 July 2016 the Stuttgart District Court convicted the applicant of trespassing under Article 123 § 1 of the Criminal Code because he had refused to leave the venue after repeated requests to do so by the event manager and sentenced him to fifteen day-fines of 40 euros (EUR) each.

5. On the applicant's appeal, the Stuttgart Regional Court, after two proposals to discontinue the proceedings subject to conditions and directions under Articles 153 and 153a of the Code of Criminal Procedure, which had not been adopted in the absence of an agreement between the applicant and the prosecution, converted the sentence into a warning with a deferred fine (*Verwarnung mit Strafvorbehalt*) by a judgment of 21 June 2017. It found that the applicant could not directly rely on his rights to freedom of assembly and expression against the organiser, a private company whose shares were not, even not in part, owned by the State. Neither the fact that the organiser had rented the venue from a private company owned by the city of Stuttgart, nor that the *Bundeswehr* had hired a stand, on the same terms as any other exhibitor, nor that the event had received the support of the city of Stuttgart and other public institutions altered that finding.

6. The rights to freedom of assembly and expression nevertheless applied indirectly in the relationship between the applicant and the organiser. However, in view of the serious disruption to the event (see paragraph 3 above) which threatened its purpose, the organiser's interests outweighed those of the applicant. When determining the sentence, the Regional Court considered as a mitigating factor the applicant's motivation deriving from strong beliefs to warn against recruitment attempts by the armed forces and, having regard to the particular circumstances of the case, considered it sufficient to issue only a warning and to defer the fine for a period of two years under Article 59 of the Criminal Code. Under section 32 § 2 of the Federal Central Criminal Register Act *(Bundeszentralregistergesetz*), such a warning does not appear in a criminal record and is deleted from the register

under section 12 § 2 of that Act if no offences are committed within the specified period.

7. The applicant's appeal on points of law was of no avail and on 8 June 2018 the Federal Constitutional Court declined to admit his constitutional complaint for adjudication (1 BvR 366/18), without providing reasons.

8. The applicant, who stated that he intended to continue protesting against recruitment attempts by the armed forces, complained under Articles 10 and 11 of the Convention that his criminal conviction was disproportionate on the grounds that (i) its factual basis was deficient, (ii) the domestic authorities failed to take into account the public involvement in the event, and (iii) the event did not take place on private premises but in a "quasi-public" space. He also complained under Article 14 of the Convention, alleging discrimination on the basis of his political opinion.

THE COURT'S ASSESSMENT

A. Complaint under Articles 10 and 11 of the Convention

9. The Court notes that the applicant was not convicted for the views expressed by the protest, but for his refusal to leave and the disruptive manner in which he continued to conduct that protest together with others after repeated requests by the event manager to stop the protest and to leave the venue (see paragraphs 3-4 above). In these circumstances, the Court considers it appropriate to examine the applicant's complaint under Article 11 of the Convention, considered in the light of Article 10 (see *Ekrem Can and Others v. Turkey*, no. 10613/10, § 68, 8 March 2022).

10. The Court finds that the criminal conviction of the applicant on account of his refusal to leave the venue and thus discontinue his participation in the group protest amounted to an interference with his right to freedom of assembly under Article 11 of the Convention.

11. It is satisfied that the interference, based on Article 123 § 1 of the Criminal Code, was "prescribed by law". It further considers that the interference was intended to protect the rights of the private organiser of the event and therefore pursued the legitimate aim of "protection of the rights of others" within the meaning of Article 11 § 2 of the Convention.

12. Turning to whether the interference complained of was "necessary in a democratic society", the general principles concerning the necessity of an interference with the right to freedom of assembly have been summarised, *inter alia*, in *Kudrevičius and Others v. Lithuania* ([GC], no. 37553/05, §§ 142-146, ECHR 2015). The Court reiterates, in particular, that where a protest is structured in such a way as to disrupt the activities lawfully carried out by others to a degree exceeding that which is inevitable in the circumstances, States enjoy a wide margin of appreciation in their assessment

of the necessity in taking measures to restrict such conduct (see *Kudrevičius and Others*, cited above, §§ 156 and 173).

13. In examining, at the outset, whether the domestic courts based their decisions on an acceptable assessment of the relevant facts, the Court notes that the applicant disputed the Stuttgart Regional Court's assessment of facts as regards the disruptive effect of the protest, arguing that visitors should have been heard as witnesses and the actual volume of the megaphone assessed by an expert. The Stuttgart Regional Court based its findings on the testimony of two witnesses, the event manager and the organiser's managing director, both of whom had been present at the event in different parts of the venue. Its assessment of the evidence, which is set out in detail in the judgment, is both conclusive and exhaustive and does not reveal any inconsistencies or unreasonable approach. What is more, the applicant did not submit a request for hearing further witnesses or expert evidence in the domestic proceedings. The Court hence sees no reason to call into question the Stuttgart Regional Court's assessment of the facts (compare for the relevant principles in that regard also *Tuskia and Others v. Georgia*, no. 14237/07, § 71, 11 October 2018).

14. As to whether the reasons adduced by the domestic courts to justify the interference were "relevant and sufficient" and whether they struck a fair balance between the interests at stake, the Court notes that the Stuttgart Regional Court attached particular weight to the disruptive effect of the protest and recognised that the effects of the protest prevented visitors from continuing their ongoing interactions and visiting the information stands in the area, threatening the purpose of the event (see paragraphs 3 and 6 above). It found that, in these circumstances, the organiser's interest in the continuation of the event outweighed the applicant's rights to freedom of assembly and expression. What lay at the core of this outcome of the balancing exercise is hence that the protest had been conducted in a way which disrupted the job fair to a greater extent than was unavoidable (see paragraph 12 above). Indeed, the applicant was not convicted for the protest as such, nor for the views expressed by it, but for having refused to leave the venue after repeated requests to do so by the event manager in view of the protest's disruptive effect on the event (see paragraphs 3-4 above).

15. The Court further observes that the Regional Court had attempted to avoid a conviction and had twice proposed, during the hearing, that the proceedings be discontinued. After this had failed to materialise in the absence of an agreement between the applicant and the prosecution, the Regional Court converted the applicant's sentence of fifteen day-fines into a warning with a deferred fine, applying an exception particularly created for special circumstances that do not require the imposition of a penalty, which was the most lenient sentence possible under domestic criminal law (compare also *Erdtmann v. Germany* (dec.), no. 56328/10, § 25, 5 January 2016). Under the rules governing the central criminal register, the warning does

furthermore not appear in a criminal record and is deleted from the register, provided that the applicant commits no further offences (see paragraph 6 above).

16. The applicant also argued that the assessment of the domestic courts was disproportionate in that it attached too much weight to the organiser's interests over those of the applicant, on the grounds that insufficient account had been taken of the public involvement in the event and of the fact that the protest took place in a "quasi-public" space. The Court reiterates that the intentional serious disruption, by demonstrators, to the activities lawfully carried out by others in a public place, which is more significant than that caused by the normal exercise of the right of peaceful assembly, might justify the imposition of penalties of a criminal nature (see *Kudrevičius and Others*, cited above, § 173). Therefore, irrespective of the support given to the event by the city of Stuttgart and other public institutions and the fact that the organiser had rented the venue from a private company wholly owned by the city of Stuttgart (see paragraphs 2 and 5 above), and of whether the event, which was open to the public albeit for a specific purpose, could be qualified as a "quasi-public" space (see also *Appleby and Others v. the United Kingdom*, no. 44306/98, §§ 44-47, ECHR 2003-VI), the Court is satisfied that, by finding that the applicant's rights of freedom of assembly and expression applied indirectly in the relationship between the applicant and the organiser and by weighing them against the interest in the undisrupted continuation of the event (see paragraph 6 above), resulting in the most lenient sentence possible, the national authorities adduced relevant and sufficient reasons to justify the measure, struck a fair balance between the interests at stake and did not overstep their wide margin of appreciation (see paragraphs 12 and 14-15 above). The Court therefore finds that the measure was proportionate and thus "necessary in a democratic society".

17. It follows that the complaint is manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 14 of the Convention

18. In so far as the applicant complained under Article 14 of the Convention about discrimination on the basis of his political opinion, the Court, having regard to the material before it, considers that the applicant failed to substantiate his complaint, in particular as regards a difference in treatment (see, among many other authorities, *Molla Sali v. Greece* [GC], no. 20452/14, § 133, 19 December 2018).

19. It follows that this part of the application is equally manifestly ill-founded and must be rejected as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 January 2025.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President