

Ban on trade-union demonstration at the height of Covid pandemic was justified

In today's **Chamber judgment**¹ in the case of [Central Unitaria de Trabajadores/as v. Spain](#) (application no. 49363/20) the European Court of Human Rights held, by 6 votes to 1, that there had been:

no violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned a refusal by the local authorities in Galicia to allow a trade union to organise a convoy-demonstration in Vigo for May Day owing to the Covid restrictions in force at that time.

The Court noted the difficult circumstances in which the Spanish authorities had had to make their decisions – early in a pandemic, without full knowledge of the origin and incidence of the disease, and with grave pressure on the healthcare system. It found in particular that the Spanish authorities had balanced the need to protect public health with the rights of the trade union, and that the ban had been justified in that light.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Central Unitaria de Trabajadores/as, is a Spanish trade union which was set up in 1998 and is based in Vigo (Galicia, Spain). Its aim is to defend the rights and interests of workers in Galicia.

Background

On 31 January 2020 Covid-19 was detected on Spanish territory for the first time, growing quickly into a difficult situation for the Spanish Government, who declared a "state of alarm" (*estado de alarma*) in March of that year and instituted a strict lockdown, the terms of which evolved over time. On 2 April 2020 950 people died of the disease in Spain. By 25 April 2020, 22,900 people had died after contracting the disease, of whom 388 were in Galicia.

By May 2020 some restrictions were eased, and the state of alarm was lifted on 21 June 2020.

Events in this case

The trade union notified the authorities (the Government Sub-Delegation in Pontevedra) on 20 April 2020 of its intention to hold a convoy-demonstration in Vigo on May Day of that year. Participants would come in their own vehicles and would begin at 11 a.m. in Plaza de España and go to the Xunta, a Government building on Concepción Arenal Street. The authorities replied that they were "unable to provide a criterion for holding [the demonstration]" (*no puede trasladarle un criterio sobre su celebración*). Citing the state of alarm and the public-health emergency, they noted that gatherings such as that suggested by the trade union were not among activities exempted from the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

general limitation on movement and held that “the regulations in force on the date the event [was] scheduled to take place were to be observed”. The trade union appealed to the courts.

On 28 April 2020 the High Court of Justice of Galicia (*Tribunal Superior de Xustiza de Galicia*) dismissed the appeal. It stated that the demonstration could give rise to a disproportionate disturbance to other rights and values protected by the Constitution – specifically public health. It concluded that, while a more explicit reply along with a deeper reflection on and a more careful weighing up of the legal interests at stake would have been desirable, the original decision did not lack reasoning. It held that the relevant legislation on assembly had been respected.

The trade union lodged an *amparo* appeal, which the Constitutional Court declared inadmissible on 30 April 2020 by a reasoned decision (*auto*). The courts at two instances concluded that the ban was based on Article 21 § 2 of the Spanish Constitution and section 10 of the Right to Assembly Act and constituted a proportionate interference with the trade union’s right to assembly. The courts considered that the convoy-demonstration could still have had an adverse impact on the safety of the participants and other persons owing, in particular, to a massive influx of persons to the departure point of the demonstration and outflow of the participants after its termination, as well as possible interaction both between the participants themselves and between the demonstrators and members of the security forces and medical services who would have to be present to ensure the peaceful running of the event.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), the applicant trade union complained of the prohibition of its demonstration.

The application was lodged with the European Court of Human Rights on 30 October 2020.

Judgment was given by a Chamber of seven judges, composed as follows:

Mattias **Guyomar** (France), *President*,
Lado **Chanturia** (Georgia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),
Artūrs **Kučs** (Latvia),

and also Victor **Soloveytchik**, *Section Registrar*.

Decision of the Court

The Government conceded, and the Court agreed, that the ban on the demonstration had interfered with the exercise of the applicant trade union’s right to freedom of assembly. The Court held that the interference in question was not a blanket ban, but an interdiction for the May Day demonstration in question. It was satisfied that the ban had not been based on the content of the protest.

The Court was satisfied that the restriction was “prescribed by law” – specifically Article 21 § 2 of the Constitution and section 10 of the Right of Assembly Act – which was accessible and foreseeable. The parties did not disagree that the aim had been the protection of health and the protection of the rights and freedoms of others.

Freedom of peaceful assembly was subject to a number of exceptions which had to be interpreted narrowly. The necessity for any restrictions had to be convincingly established. Looking at the

circumstances of a particular case, the Court examined whether the interference corresponded to a “pressing social need” and whether it was “proportionate to the legitimate aim pursued”.

The Court took into account the discretion (“margin of appreciation”) left to the Spanish authorities, but reiterated that the decision on compliance with the Convention remained with the Court. Healthcare policy generally fell within the discretion of the national authorities. The Court held that the restriction in this case was not based on the content of the protest. Such a restriction would be subject to more serious scrutiny, but the Contracting States had to be allowed wider discretion in relation to restrictions on the location, time or manner of conduct of an assembly when they were not based on the assembly’s content. The discretion in this case afforded to the Spanish authorities was therefore wide.

Given the public-health emergency present in Spain at the time, which had to be seen as an exceptional and unforeseeable situation with wide-ranging consequences, and noting that many European countries had declared public-health emergencies, the Court held that the restriction on the demonstration had been imposed in the context of a pressing social need.

The Spanish courts had assessed the applicant trade union’s complaints in detailed decisions, which had been given prior to the planned date of the demonstration. The Spanish authorities had had an obligation to take measures to protect public health, and the Spanish courts, when balancing the right to assembly against the right to life and physical integrity and the State’s constitutional obligation to protect public health, had highlighted “the enormous magnitude” of the effects the Covid-19 pandemic had had on the Spanish population and healthcare system at the time, and had taken into account relevant local conditions and health indicators specific for the early stage of the pandemic. They had judged that the obligation to protect public health had outweighed the right of assembly.

The Spanish courts found that the type of demonstration suggested by the applicant trade union – a convoy of individual cars – had in any event not been sufficient to avert the risk of infection. The domestic courts stressed the “state of scientific ignorance as to the origin and incidence of Covid-19” at that time and the pressure on the healthcare system as a whole, and referred to the minimisation of contacts as the only proven means of reducing the spread of infection. The Court ruled that in those circumstances even an overly cautious approach in matters such as those at issue in the present case could not be seen as disproportionate. The Spanish courts had given relevant and sufficient reasons, under the circumstances, for prohibiting the event.

The Court concluded that the Spanish authorities had struck a fair balance between the need to protect health and the rights and freedoms of others in this case. The banning of the demonstration had been “necessary in a democratic society”, and there had been no violation of the trade union’s right to freedom of assembly.

Separate opinions

Judge Mourou-Vikström expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.