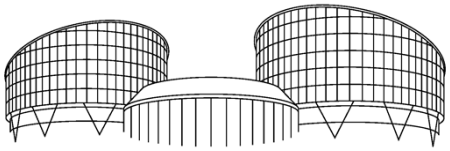

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MANANNIKOV v. RUSSIA

(Application no. 9157/08)

JUDGMENT

Art 10 • Freedom of expression • 14 EUR fine on counter-demonstrator for displaying, amid the crowd of his opponents, provocative banner distorting the event's message and likely to cause unrest • Applicant's location a key factor • Police order to remove the banner triggered by applicant's conduct and the demonstrators' negative reaction to it, and not by the banner's content • Applicant not removed from the event • Sanctioning justified and proportionate • Art 11 case-law principles applicable in Art 10 counter-demonstration context • No absolute right to counter-demonstration which had to be balanced against State's positive obligation to enable lawful demonstrations to proceed peacefully

STRASBOURG

1 February 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Manannikov v. Russia,

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

Georges Ravarani, *President,*
Paul Lemmens,
Dmitry Dedov,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Andreas Zünd, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 9157/08 against) the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksey Petrovich Manannikov ("the applicant"), on 8 January 2008;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning violations of the right to freedom of expression and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 1 June 2021 and on 14 December 2021,

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

INTRODUCTION

1. The case concerns the applicant's conviction of an administrative offence for his failure to follow an order by the police to remove the banner which he displayed during a public event organised by others.

THE FACTS

2. Mr Manannikov was born in 1956 and lives in Moscow. He was represented by Mr N. Zboroshenko, a lawyer practising in Moscow.

3. The Government were initially represented by M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. PUBLIC EVENT OF 27 OCTOBER 2007

5. In the run up to the legislative elections of December 2007 and the presidential election of March 2008, a number of public events in support of the acting President, Mr V. Putin, were held in Russia.

6. The applicant, a human rights activist, decided to attend one such public gathering aimed at supporting the economic and political ideas of Mr Putin on 27 October 2007. He went to the event together with Mr B.

7. The public gathering received official approval and took place in Lenin Square in Novosibirsk from 12 noon to 12.30 p.m. Several thousands of people were present. Many of them waved banners in support of Mr V. Putin. The gathering attracted media attention.

8. The applicant and Mr B. placed themselves among the participants and raised their banner that read "Putin is better than Hitler". According to the footage of the event examined by the domestic court (see paragraph 13 below), two participants of the assembly were displeased by the banner and asked the applicant and Mr B. to remove it, but the applicant and Mr B. continued displaying it.

9. Then police officers, who were present at the venue ordered the applicant and Mr B. to remove the banner, but they refused to do so. They continued to be present at the meeting holding their banner.

10. At the end of the meeting, three people in plain clothes approached the applicant and Mr B., seized their banner and teared it up. The applicant alleged that those people were undercover police officers.

11. On the way home the applicant was approached by police officers, who took him and Mr B. to a police station and kept them there while an administrative-offence report was prepared.

II. THE APPLICANT'S CONVICTION

12. On the same day a justice of the peace of the 1st Circuit of the Tsentralniy District of Novosibirsk examined the administrative case against the applicant.

13. On the basis of the police footage from the site of the public gathering the court established that the applicant had unfurled a provocative banner, which ran contrary to the programme of the event. People present at the meeting reacted negatively and asked the applicant to remove the banner. In that situation the police officers lawfully ordered him to remove the banner (see paragraphs 15 and 16 below), because its display posed a real threat to public order, health and lives of the participants. However, in breach of section 6(3)(2) of the Public Events Act (see paragraph 15 below) the applicant refused to follow that order. In the courts' view his conduct amounted to "a breach of the established rules for the conduct of public events", an offence under Article 20.2 § 2 of the Code of Administrative

Offences (hereafter "the CAO") (see paragraph 17 below). The court fined the applicant for 500 Russian roubles (RUB) (equivalent to 14 euros (EUR)).

14. The applicant then appealed to the Tsentralniy District Court of Novosibirsk, which examined his appeal on 28 November 2007. The court endorsed the findings of the lower court. In particular, it noted that the applicant had not disputed the facts of the case. The court agreed with the assessment of the provocative content of the banner and with the assessment of threat to public order posed by the applicant. According to the Tsentralniy District Court of Novosibirsk, the legal classification of the offence was correct, and the fine was not disproportionate.

RELEVANT LEGAL FRAMEWORK

15. The Federal Law on Gatherings, Meetings, Demonstrations, Processions and Pickets, no. FZ-54 of 19 June 2004 ("the Public Events Act") provides that the participants in a public event must comply with lawful instructions of the organisers, orders by the authorities and by the police. The participants also must maintain public order and follow the event's programme (section 6(3)).

16. According to the Public Events Act, police may, *inter alia*, order that the organisers and participants in the public event follow the rules for the conduct of that event. They also may remove, at the organisers' request people who do not comply with the organisers' lawful instructions (section 14(2)). The police must facilitate the conduct of the public event; secure public order and the safety of people during the event (section 14(3)). A public event may be terminated if it creates a genuine risk to people's lives or health or the property of persons or legal entities (section 16 (1)).

17. Article 20.2 § 2 of the CAO (as in force until 8 June 2012) provided that a breach of the established rules for the conduct of public events was punishable by a fine of RUB 1,000 to 2,000 for the organisers of the event, and RUB 500 to 1,000 for the participants.

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

18. The applicant complained of a violation of Article 10 of the Convention on account of his conviction of an administrative offence and the fine imposed on him as a result of that conviction. Article 10 of the Convention in the relevant part reads as follows:

> "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 ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

19. The Government submitted that the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention because the fine imposed on him had been modest and his case had been duly considered by the domestic courts.

20. The applicant submitted that the fine, irrespective of its amount, constituted a disproportionate interference with his freedom of expression.

21. The Court observes that the fine of EUR 14 was indeed modest, and the applicant did not advance any arguments to demonstrate that it had been significant to him in the light of his personal situation.

22. The Court reiterates, however, that a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage regardless of pecuniary interest (see *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010). Considering that the applicant was found guilty of and fined for an act which had in his view amounted to a proper exercise of his right to freedom of expression on a matter of public interest (see paragraph 13 above), the alleged violation of Article 10 of the Convention in the present case concerns "important questions of principle" (compare *Obote v. Russia*, no. 58954/09, § 31, 19 November 2019, and *Handzhiyski v. Bulgaria*, no. 10783/14, § 36, 6 April 2021). The Court thus finds that he has suffered a significant disadvantage. Accordingly, it dismisses the Government's objection pertaining to Article 35 § 3 (b) of the Convention.

23. The Court further notes that the applicant's complaint 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. Submissions by the parties

24. The applicant submitted that the interference with his right to freedom of expression had not been "necessary in a democratic society". Even if his banner could have seemed provocative or shocking to some, it was not offensive for the participants or organisers of the event. None of them expressed any displeasure at the sight of the banner. It was not shown that his conduct posed any threat to public order, peoples' health or lives. The applicant did not participate in any acts of violence. There had been no

"pressing social need" to take him to a police station, since the administrative-offence report could have been drawn up on the spot.

25. The Government submitted that the interference with the applicant's right to freedom of expression had been prescribed by law, had pursued the legitimate aims of protecting public order and public safety, preventing disorder and crime and protecting the rights of others, and had been necessary in a democratic society. Either the applicant had taken part in a public event that had not been notified to the authorities, or he had taken part in a notified and approved public event in support of the president and had used a banner that had not corresponded to the event's programme and aims and was offensive. It might therefore have provoked the participants in the public event and led to public disorder. Indeed, other participants in the event had been displeased and had asked the applicant to remove the banner. The domestic courts had found that displaying the banner had created a real threat to peoples' life and health and that the police order to remove it had therefore been lawful. By failing to comply with that order the applicant breached the rules for the conduct of public events. The penalty imposed on him was proportionate to the legitimate aim pursued.

2. The Court's assessment

(a) General principles

26. For a summary of the relevant general principles, see *Fáber v. Hungary* (no. 40721/08, §§ 32-41, 24 July 2012).

(b) Application of the general principles to the present case

(i) Existence of an interference

27. The applicant's claim that the circumstances of the case disclose an interference with his right to freedom of expression was not questioned by the Government. The Court finds that the police order to remove the banner and the applicant's conviction amounted to such interference.

(ii) "Prescribed by law"

28. The Court is satisfied with the lawfulness of the police order. Under section 14(2) of the Public Events Act the police had the power to require that the applicant refrain from any actions that could have led to a breach of public order or the rules for the conduct of a public event (see paragraph 16 above).

29. The applicant's conviction of "a breach of the established rules for the conduct of public events" under Article 20.2 of the CAO was based on the domestic courts' finding that he had violated section 6(3)(2) of the Public Events Act. That Act stipulated that the participants in a public event must comply with lawful police orders and maintain public order. Given that the failure to comply with the police order had not been contested by the

applicant, the Court finds that his conviction had a sufficient basis in domestic law.

(iii) Legitimate aim

30. The applicant was ordered to remove the banner and then convicted of an administrative offence because the authorities considered that his banner was provocative and could lead to disorder. The Court accepts that the interference pursued the legitimate aims of "prevention of disorder" and "the protection of the rights and freedoms of others" (see *Fáber*, cited above, § 31).

(iv) "Necessity in a democratic society"

31. The impugned police order was based on the considerations that the banner did not correspond to the programme of the event, was provocative and could result in unrest. The applicant contested that assessment. According to him, the banner corresponded to the declared aims of the event and was not offensive; its demonstration did not result in a breach of public order.

32. Given that the domestic courts are better placed than the international judge to assess what is likely to be considered provocative and offensive by the society, and that the text on the applicant's banner was ambiguous, the Court gives credence to the finding by the domestic courts that the banner could in fact be perceived as offensive by some of the participants. Indeed, comparing Mr Putin with Adolf Hitler could be seen as something other than support for the President's policies. The Court therefore accepts the Government's argument based on the assessment of the situation by the domestic authorities that the display of the banner could have resulted in a conflict between the applicant and the participants in the public event.

33. That fact by itself could not however justify an interference with the fundamental right provided for by Article 10 of the Convention. The Court has already held that a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote (*Plattform "Ärzte für das Leben" v. Austria,* 21 June 1988, § 32, Series A no. 139). Moreover, it consistently underlined the importance of the right to counter-demonstration, which could be held at the same time and venue with a demonstration (see, for example, *Öllinger v. Austria*, no. 76900/01, § 44, ECHR 2006-IX, and *Fáber*, cited above, §§ 42-44, 24 July 2012).

34. The right to counter demonstration, however, is not absolute, as in a democracy it cannot extend to inhibiting the exercise of the right to demonstrate (see *Plattform "Ärzte für das Leben"*, cited above, § 32; *Fáber,* cited above, § 38; and *Berkman v. Russia*, no. 46712/15, § 47, 1 December 2020). Moreover, the Contracting States have a duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully

(*The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, § 115, 20 October 2005).

35. The aforementioned principles, formulated in cases concerning freedom of assembly are fully pertinent to the present case, given that the applicant expressed his opinion during a public event. Bearing them in mind, the Court notes that it has not been shown that the police order to remove the banner was triggered by its content as such. Rather, as the domestic courts found, the police order was triggered by the applicant's conduct considered provocative by some of the participants to the event and by their negative reaction.

36. Indeed, the applicant chose to raise the banner in the middle of a crowd of his opponents, although nothing prevented him from taking a place in an adjacent area (see, by contrast, *Fáber,* cited above, § 6, where the applicant held a counter-demonstration outside of the crowd of protestors). The applicant's location among the demonstrators was a key factor. The applicant's banner distorted and undermined the message that other participants and the overall demonstration wanted to convey, which was in support of Mr Putin. It also made it difficult for the police to ensure the peaceful conduct of the event.

37. When the risk of unrest started materialising in a form of a conflict between the applicant and his opponents, the police invited the applicant and Mr B. to remove the banner. The police officers were best positioned to evaluate the security risks and those of disturbance as well as the appropriate measures dictated by the risk assumption. Their order to remove the banner therefore does not appear to have been unreasonable or excessive (see, by contrast, *Berkman,* cited above, §§ 51-52, where the Court criticised the police inaction) and can thus considered proportionate to the legitimate aims pursued.

38. The Court lastly notes that the applicant was not removed from the meeting. Taking that into account, his conviction of an administrative offence and the fine of EUR 14 (which is the minimal sanction for a breach of Article 20.2 § 2 of the CAO), do not appear to be excessive (see, by contrast, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 133, 15 November 2018, where the Court held that the amount of fine imposed on the applicant was immaterial, if the public assembly was dispersed by the police; compare to *Rai and Evans v. the United Kingdom* (dec.), nos. 26258/07 and 26255/07, 17 November 2009, and *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2014, where the imposition of fines was not found to be a disproportionate interference with freedom of peaceful assembly).

39. In the light of the above the Court concludes that the measures complained of by the applicant did not, in the specific circumstances of the case, go beyond what was "necessary in a democratic society". There has therefore been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares,* unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 1 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Georges Ravarani
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Ravarani;
(b) Joint concurring opinion of Judges Elósegui and Zünd;
(c) Dissenting opinion of Judge Seibert-Fohr joined by Judge Pavli.

G.R.
O.C.

CONCURRING OPINION OF JUDGE RAVARANI

1. I am in agreement with the conclusion reached by the majority of judges that, in the circumstances of the case, there has been no violation of Article 10. I should like, however, to make clear that I reached that conclusion only because of the specificity of the known facts and, moreover, lacunae in the presentation of other facts which might have been relevant for the assessment of the alleged violation. Based on the available information, it appears to me that the case was not about (i) the applicant's allegedly impaired right to express his opinions, but rather (ii) his non-compliance with a legal and proportionate police order, based on the risk of degeneration of the peaceful conduct of the gathering into which he had introduced himself.

2. As a matter of fact, the applicant and Mr B. were not actually prevented from expressing their opinion at any point during the demonstration. It is true, as stated in paragraph 9 of the judgment, that the police invited them to remove the provocative banner, but they refused to do so; moreover, they were able to remain in the middle of the pro-Putin gathering and to display their banner during the entire meeting, until its very end. So, there actually was no *concrete* impediment to expressing their opinion.

3. It is true that at some point the police invited them to remove their banner. I am in agreement with the majority that there was a genuine risk to the peaceful conduct of the event and it appears quite astonishing that only two participants in the demonstration showed discontent with the provocative banner being displayed in their midst. The police did not, to my mind, take an unreasonable or excessive step in inviting the applicant and Mr B. to remove their banner; on the contrary, such action showed sound risk-assessment. It is futile to speculate on how the police would have reacted had they stepped out of the demonstration and displayed their banner outside the pro-Putin crowd in a quite visible way, using their right to counter-demonstrate. Had there had been an intervention by the police in such a situation, there would certainly have been an issue under that right. In this context, I feel obliged to distance myself from the statement contained in paragraph 36 of the judgment according to which "the applicant's banner distorted and undermined the message that other participants and the overall demonstration wanted to convey, which was in support of Mr Putin", as it is highly ambiguous and could be understood as restricting the right to counter-demonstrate, which is protected by Article 10 of the Convention (see the references to the Court's case-law in that field in paragraph 33 of the judgment).

4. It is also true that once the gathering was over, the police stepped in and took the applicant to the police station in order to record the administrative offence of non-compliance with a legal order. It appears to me

that, as a matter of fact, the applicant had indeed failed to abide by such an order. This did not in itself impair his freedom of expression, as it does not appear from the facts that the given order was aimed at preventing him from expressing his opinions, but rather at avoiding uproar and violence, as the applicant actually continued to display his banner and did not step out of the gathering; had he done so and the police had nevertheless recorded an administrative offence, an issue under Article 10 would certainly have arisen.

5. The fact of taking the applicant to the police station could have given rise to a violation of Convention guarantees if it had been shown that it was triggered by the content of his banner rather than by the refusal to abide by an invitation that quite legitimately tried to minimise a risk of physical violence, not least directed against the applicant and Mr. B. themselves. There could also have been a Convention issue if the applicant had been taken by force to the police station and been obliged to remain in the premises longer than necessary to draw up the offence record. However, the facts surrounding this episode are unknown or at the least unexplained (see paragraph 11 of the judgment) and the applicant has not lodged a complaint under Article 5 of the Convention.

JOINT CONCURRING OPINION OF JUDGES ELÓSEGUI AND ZÜND

1. In the present case of *Manannikov v. Russia* we have voted with the majority because we agree with the finding that there has been no violation of Article 10 of the Convention. The reason for our concurring opinion is to emphasise one of the elements which ought to be taken into consideration as a limitation on the right to freedom of expression, namely the rights of expression of other citizens.

2. We agree with the reasoning in the judgment to the effect that there is a double reason for finding no violation, namely the legitimate aims of protecting the rights of others and preventing a disturbance of public order. Our caveat is that in the current circumstances, different parts of the population demonstrate on an increasingly frequent basis in public spaces because they hold different opinions about social matters, such as, for instance, the policies imposed by States with regard to pandemic-related public-health measures. We are living in tense societies all around Europe, for very different causes and reasons.

3. In our view, what it is important under Article 10 is that those citizens who have requested official permission to demonstrate in one or another direction should be able to do so, without being hampered by other citizens who think differently. In the present case, the fact that the applicant (Mr Manannikov) introduced himself into the middle of an authorised demonstration distorted the message that the other participants wished to express. In fact, by displaying a banner stating that "Putin is better than Hitler" he changed the overall image of the demonstration, which was intended to express support for Mr Putin.

4. In our view, this behaviour of course increased the risk of conflict, but, moreover, it also failed to respect the rights of others to freedom of expression. The applicant is free to think in another way, but he is not entitled to impede others from expressing their views in the way that he did. The case-law of the Court has insisted on the idea that the exercise of one individual's freedom may be limited if it impedes the rights of others. For instance, in the case of *Steel and Others v. the United Kingdom* (23 September 1998, *Reports of Judgments and Decisions* 1998-VII), the first applicant, together with approximately sixty others, took part in a protest against a grouse shoot on Wheeldale Moor, Yorkshire (ibid., § 7). She was arrested for a "breach of the peace". Moreover, "according to the police she was intentionally impeding the progress of a member of the shoot by walking in front of him as he lifted his shotgun to take aim, thus preventing him from firing" (ibid., § 8). She was further charged with using "threatening, abusive or insulting words or behaviour within the hearing or sight of a person likely

to be caused harassment, alarm or distress" (ibid., § 10). The Court found that the measures taken against her had not given rise to a violation of Article 10.

5. We would like to emphasise that the Court has consistently underlined "the importance of the right to counter-demonstration, which could be held at the same time and venue [as] a demonstration (see, for example, *Öllinger v. Austria*, no. 76900/01, § 44, ECHR 2006-IX; and *Fáber v. Hungary*, no. 40721/08, §§ 42-44, 24 July 2012)"; see paragraph 33 of the present judgment. However this right to counter-demonstration is not absolute and it has to respect the rights of others (see *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32, Series A no. 139; *Fáber*, cited above, § 38; and *Berkman v. Russia*, no. 46712/15, § 47, 1 December 2020; see also paragraph 34 of the present judgment). This was not so in the present case, as outlined in paragraph 3 above.

DISSENTING OPINION OF JUDGE SEIBERT-FOHR JOINED BY JUDGE PAVLI

1. While we agree with the majority that there has been an interference with the applicant's right to freedom of expression, we come to a different conclusion with respect to its necessity. Whereas the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent an interference is necessary, this margin goes hand in hand with European supervision. When carrying out that supervision the Court must ascertain whether the impugned measures are "proportionate to the legitimate aim pursued", due regard being had to the importance of freedom of expression in a democratic society (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 198, 17 December 2013). In our view, it has not been shown in the present case that it was necessary to take and hold the applicant at a police station for several hours after the demonstration had ended, let alone to impose a fine on him. The Government have failed to demonstrate that there were no less restrictive means at their disposal to protect public order (see *Glor v. Switzerland*, no. 13444/04, § 94, ECHR 2009).

2. We agree with the majority that public authorities may legitimately intervene in cases where public order is at stake and take action in order to avoid conflicts between demonstrators and counter-demonstrators. As the Court has explained in *Ärzte für das Leben v. Austria* (no. 10126/82, § 32, 21 June 1988): "In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere. Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be." Therefore, States may be required to take positive measures in order to protect a lawful demonstration against counter-demonstrations (see also *Öllinger v. Austria*, no. 76900/01, § 37, 26 June 2006). For this reason, it may be necessary to take steps to de-escalate tensions before a real risk of inflicting bodily harm materialises (see *Berkman v. Russia*, no. 46712/15, § 52, 1 December 2020). What kind of measures are permissible will depend on the particular situation at hand. In *Fáber v. Hungary* (no. 40721/08, § 43, 24 July 2012), the Court considered that the State had had a positive obligation to protect the right of assembly of both demonstrating groups by identifying the least restrictive means that would, in principle, enable both demonstrations to take place.

3. In the present case, the authorities have failed to demonstrate that the order to remove the banner, followed by the imposition of a fine on the applicant, was indeed necessary to protect public order. The applicant's conduct was neither threatening nor abusive. He did not hinder other participants from participating or expressing their views. The reason for the applicant's conviction was the fact that he displayed a banner which was

considered provocative (compare *Fáber v. Hungary*, cited above, § 46). Two participants in the event were displeased by the banner and asked for its removal (see paragraph 8 of the judgment). However, the applicant's refusal to take the banner down did not lead to any further reactions by other participants. The banner continued to be displayed until the end of the event without any further incident. Nonetheless, the police took the applicant to a police station after the meeting had ended.

4. In their submissions (see paragraph 25), the Government argue that the divergence from the event's programme "might" have provoked the participants in the public event and led to public disorder. However, repressive measures cannot be based on such hypothetical effects. Inviting the police to decide on their own which views are consistent with an event's programme would significantly undermine the right to freedom of expression. An expression which is considered to be provocative is therefore in itself insufficient to justify intervention. If provocative expressions do in fact lead to a disruption of the main event or to tensions with other demonstrators who consider the message of the event to be distorted, preventative de-escalating measures need to be considered, such as separating the demonstrators on site while allowing both groups an opportunity to express their views (see *Öllinger v. Austria*, cited above, § 48).

5. In the present case, however, the police did not consider such preventative measures to be necessary. The applicant was not directed to an adjacent area in order to avoid tensions with the other participants or to prevent the alleged distortion of the event and disruption to its participants. Instead, the police waited until the applicant was already on his way home before sanctioning him. The course of events thus contradicts the assumption that the applicant's presence rendered it difficult for the police to ensure the peaceful conduct of the event.

6. We acknowledge that during a public event the police are required to determine the appropriate measures on the basis of an *ex ante* evaluation of the security risks and the likelihood of disturbance. However, this does not absolve the authorities from pointing to concrete facts, such as actual disruption, prior disturbances or violent acts in past events, in order to establish a pressing social need to prohibit the expression of an opinion. Moreover, based on the relevant risk assessment the police need to resort to the least restrictive measures (see *Fáber v. Hungary*, cited above, § 43). We are doubtful that the discomfort experienced by two other demonstrators with regard to the banner was sufficient to justify the order to remove it entirely, rather than asking the applicant to move to an adjacent area at a sufficient distance from the demonstrators. In any event, once subsequent events showed that the alleged risk of disorder, the assumption of which had been hasty, did not materialise, there were no grounds for taking the applicant to the police station after the event, holding him there and sentencing him to a fine. For these reasons and in the absence of any demonstration of a pressing

social need for the applicant's conviction, we would have found a violation of Article 10 in the present case.