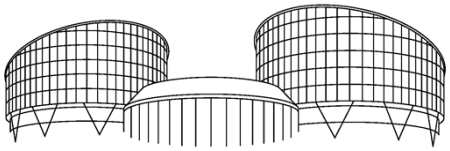

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF LAURIJSEN AND OTHERS v. THE NETHERLANDS

(Applications nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17)

JUDGMENT

Art 11 • Freedom of peaceful assembly • Applicants' arrest and conviction for participating in a protest against the preannounced eviction of a squatted building • Intentional action by the organisers and participants with the foreseeable result of impeding the eviction • Such obstructive or disruptive conduct might still be protected by Art 11 • Lack of evidence of violent intentions or behaviour • Applicants not amongst protesters arrested and prosecuted on suspicion of publicly committing concerted acts of violence against persons or property • Applicants' conduct during gathering not of such a nature and degree as to remove their participation in it from Art 11's protective scope • Art 11 applicable *ratione materiae* • Supreme Court's failure to examine whether applicants' role in the gathering had been "peaceful" within its autonomous meaning in the Court's case-law • Absence of relevant and sufficient reasons • Supreme Court's failure to convincingly establish the necessity for the restrictions, to be interpreted narrowly • Analysis of Art 11 applicability and assessment of the justification of the interference not carried out in a manner consistent with the Convention and the Court's case-law

STRASBOURG

21 November 2023

FINAL

21/02/2024

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

In the case of Laurijsen and Others v. the Netherlands,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Yonko Grozev,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Dutch nationals, Mr Cornelis Jacobus Joseph Laurijsen, Ms Wendy Springer, Ms Nicky van Oostrum, Ms Rosa Annemarie Theadora Koenen and Ms Anat Segal ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Government of the Kingdom of the Netherlands ("the Government") of the complaint concerning Article 11 of the Convention and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 12 September and 17 October 2023,

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

INTRODUCTION

1. The case concerns a protest against a preannounced eviction of a squatted building. The applicants argue that they had no violent intentions and that their arrest, prosecution and conviction amounted to an unjustified interference with their right to freedom of peaceful assembly because the interference lacked a legal basis and was disproportionate.

THE FACTS

2. A list of the applicants and their personal details is set out in the appended table. The applicants were represented by Mr W.H. Jebbink, a lawyer practising in Amsterdam.

3. The Government were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

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

I. EVENTS BEFORE AND DURING THE PROTEST

5. On 10 May 2011 the public prosecutor notified the occupants of a building ("the Schijnheilig squat") at Passeerdersgracht in Amsterdam that they were suspected of squatting and that they would be evicted on or before 5 July 2011.

6. On 1 July 2011 the provisional-measures judge (*voorzieningenrechter*) of the Regional Court (*rechtbank*) of Amsterdam ruled that the intended eviction was lawful. That same day, a message on a website of Independent Media Centre (www.indymedia.nl) called on sympathisers to gather outside the Schijnheilig squat on 5 July 2011 "to make a spectacular statement protesting against an empty city and call for 'free space', for places where creativity and not money rules". It also read: "We expect that the Mobile Unit [*Mobiele Eenheid*; a special operations unit of the police] will arrive at 6 a.m. The protest (*manifestatie*) will continue until the Mobile Unit come to their senses". The next day a call for protest in the form of "poetry, singing, dancing, screaming, jumping [or] sending an angry letter" appeared on another website.

7. On 5 July 2011, at around 6 a.m., some 150 people gathered in front of and around the Schijnheilig squat. Seats and tables had been positioned to block the street. Some participants had air mattresses with them. Loud music was being played from the rooftop of a building opposite the squat, and banners had been placed on various nearby public buildings and bridges with texts such as "Squatting's here to stay" and "Van der Laan is going down" ("*Van der Laan gaat eraan*"; referring to Mr Eberhard van der Laan, then Mayor of Amsterdam). During the gathering the participants danced, played instruments, stood close and talked to each other, and chanted slogans such as "Squatting's here to stay" and "You Government puppets". Most of the participants were recognisable and wore plain clothes. Some of the participants were dressed up in costumes or wedding dresses, and others wore sunglasses, balaclavas or other masks or cloths to cover their faces.

8. At 6.57 a.m. the Police Commissioner ordered those present in front of the Schijnheilig squat to disperse and leave Passeerdersgracht in the direction of an adjacent street. The participants failed to obey this order. After issuing two additional orders to disperse, the Police Commissioner instructed the Mobile Unit to carry out a charge. Using protective shields and wielding truncheons the Mobile Unit advanced and cleared the area in front of the Schijnheilig squat. Items such as beer bottles and a beer crate were thrown at the police. Several smoke bombs were used and there was a small fire.

9. At 8.37 a.m. the Police Commissioner informed the participants that they were all under arrest. A total of 138 persons, including the applicants, were arrested on suspicion of participating in an unlawful gathering or otherwise disturbing public order, prohibited and made punishable by the

Amsterdam general municipal by-law (*Algemene Plaatselijke Verordening*; "the APV"). They were arraigned before the assistant public prosecutor and released the same afternoon. Six other persons were arrested, placed in police custody and prosecuted on suspicion of publicly committing acts of violence in concert against persons or property (Article 141 of the Criminal Code).

10. The events on Passeerdersgracht and Prinsengracht were recorded by the police in two videos. These recordings were viewed during the hearing in the appeal proceedings (see paragraphs 15-17 below) and were submitted by the applicants to this Court.

II. CRIMINAL PROCEEDINGS

11. On an unspecified date, the applicants were summonsed to appear before the limited jurisdiction judge (*kantonrechter)* of the Amsterdam Regional Court on suspicion of participating in an unlawful gathering or otherwise disturbing public order and failing to comply with a police order to disperse (sections 2.2(1) and 2.2(3) of the APV respectively; see paragraph 29 below).

12. By separate judgments of 14 June 2013 the limited jurisdiction judge found proven that the applicants had failed to comply with police orders to disperse and found not proven that they participated in an unlawful gathering as referred to in the APV. His reasoning included the following:

> "According to paragraph 4 of section 2.2 of the APV, gatherings that have the character of a demonstration as referred to in the Public Assemblies Act [*Wet openbare manifestaties* – see paragraphs 25-26 below] should be excluded from the scope of section 2.2 of the APV.
>
> A demonstration is about expressing collectively experienced thoughts and wishes in the political or social field.
>
> The limited jurisdiction judge is of the opinion that the gathering of the group of persons on 5 July 2011 was initially characterised more as a demonstration as referred to in the Public Assemblies Act than an unlawful gathering entailing disorder in the sense of section 2.2 of the APV. At the outset there was no threat of disorder.
>
> ... [A] call was made beforehand ... for all sympathisers of 'Schijnheilig [squat]' to make a statement against an empty city and in favour of free space, among other things.
>
> From the formal record of findings of the Police Commissioner it can also be concluded that the atmosphere was somewhat relaxed at the start. The group of persons stayed together almost continuously. As a group they sang along, in varying combinations, with musical instruments, and they chanted slogans. They also performed dances together. The public prosecutor stated at the hearing that four demonstrators wore wedding dresses, and that their photos ... were taken by or with the cooperation of the police.
>
> On this basis, the limited jurisdiction judge concludes that at the outset there was a demonstration within the meaning of the Assemblies Events Act.

> According to the Public Assemblies Act, the decision on the permissibility of a demonstration lies with the Mayor. Pursuant to section 7 of that Act, the Mayor has the power to end or disperse a demonstration in the interest of traffic and to combat and prevent disorder; that is to say, with a view to maintaining certain aspects of public order.
>
> It appears from case-law (Supreme Court judgment of 17 October 2006 [see paragraph 28 below]) that the authority conferred by section 7 of the Public Assemblies Act to end a demonstration cannot be exercised without an order from the Mayor. It does not appear that the Mayor gave the police (commissioner) an order to end the demonstration in question. It is therefore not possible to deduce from the documents and what was discussed at the hearing that the police order on 5 July 2011 was based on section 7 of the Public Assemblies Act.
>
> The behaviour of the group of people in question therefore started out as a demonstration in the sense of that Act. There is no appearance of an order by the Mayor given under section 7 of that Act that changed this designation ...
>
> It is thus not established that the demonstration that had been originally permitted and thus covered by the Public Assemblies Act was, at a later point in time, no longer permitted under that Act. The demonstration must therefore be deemed to have remained permissible based on that Act."

13. Accordingly, the judge found that sections 2.2(1) and (3) of the APV had been inapplicable pursuant to section 2.2(4) (see paragraph 29 below). The applicants were acquitted of the offence of participating in an unlawful gathering or otherwise disturbing public order and were discharged from prosecution for the offence of failing to comply with police orders to disperse.

14. The Public Prosecution Service appealed against those judgments.

15. By separate judgments of 31 August 2015 the Court of Appeal (*gerechtshof*) of Amsterdam quashed the judgments of the Regional Court.

16. The Court of Appeal held that as its aim had been to seek confrontation with the Mobile Unit and to (physically) prevent the eviction, the gathering could not be regarded as a demonstration in the sense of the Public Assemblies Act but had fallen within the scope of section 2.2 of the APV, and that public order had been disturbed within the meaning of section 2.2(1):

> "The gathering on Passeerdersgracht was occasioned by the preannounced eviction of the [Schijnheilig squat]. After the police sent a letter announcing that the eviction would take place, a call was placed on the Internet. On the website indymedia.nl one could read that 'the protest will continue until the Mobile Unit come to their senses'. The organiser of the gathering did not notify the Mayor in writing at least twenty-four hours before the start, as required ... The video camera images of 5 July 2011 show that smoke bombs were used; that in front of the [Schijnheilig squat] barricades were raised by putting tables and chairs on the road, blocking the public road and access to the buildings to be cleared; that several people brought air mattresses to the gathering; and that some persons were masked or clad in balaclavas.
>
> The court considers that bringing air mattresses and wearing masks or balaclavas only serves the purpose of protecting oneself – in the event of a confrontation with the Mobile Unit – against truncheons or recognition. At the hearing the Police

Commissioner explained that the gathering on Passeerdersgracht, the blocked public road and barricaded access to the premises to be vacated made the eviction impossible. Since smoke bombs were also used, the court considers, in view of all the aforementioned circumstances, that the aim of the gathering was to seek a confrontation with the Mobile Unit and to (physically) prevent the eviction. The court is therefore of the opinion that this was not a demonstration within the meaning of the Public Assemblies Act.

The behaviour of those present therefore falls within the scope of section 2.2 of the APV.

On the basis of the evidence, the court finds that the acts as charged took place on 5 July 2011 at Passeerdersgracht in Amsterdam on the side of the [Schijnheilig squat], but also on the opposite side ... After all, the camera images show that smoke bombs were also used on that side of the canal and that people dressed in dark clothing and wearing face coverings were found in the street and on the adjoining waterfront. In his formal record of findings the Police Commissioner stated that on the other side of the premises to be vacated, a person was playing amplified music which made an infernal racket and was apparently intended to strengthen the group of persons in front of the premises that were to be vacated.

The court holds that these facts led to a disturbance of public order on 5 July 2011 on the entire Passeerdersgracht in the sense of section 2.2(1) of the APV.

The camera images ... show that a large group of people lingered at Passeerdersgracht and that within this group the above-mentioned acts were taking place.

The Police Commissioner stated in his formal record of findings ... that the group of people stayed connected with each other almost continuously. The persons walked around one another and talked to each other. The recording police officer [*verbalisant*] also heard the group, in varying combinations, singing along with the musical instruments that were being played, and chanting slogans. He also saw that they performed dances together. ... From this, the recording police officer concluded that the group of people were acting together.

The Police Commissioner described in the aforementioned formal record that he ordered the group three times ... to remove themselves in the direction of Prinsengracht. The group reacted to the orders *en masse* by yelling and screaming. Bottles were also thrown in the direction of the Police Commissioner's vehicle ...

The people in the group did not comply with the orders. The Police Commissioner then ordered the Mobile Unit ... to carry out a charge that drove the group of persons from Passeerdersgracht to Prinsengracht ...

When the police drove the group to Prinsengracht, the people in the group also encircled one another, and danced and held each other in varying combinations. A paint bomb was thrown from the group in the direction of the line formed by the Mobile Unit, and various objects, such as sticks and bottles, were thrown at the police officers. Several people in the group made kicking motions towards the police officers in the line formation.

At the appeal hearing ... the Police Commissioner stated that it had been possible for persons from this group to leave the group but that it had been impossible for them to return to it afterwards. It has furthermore appeared that they had plenty of time to leave the group. In the aforementioned formal record, the Police Commissioner stated

that some persons had moved towards the Mobile Unit vehicles with the apparent intention of leaving, but that the majority of the group had stayed together.

In view of the above, the court considers that before the persons from this group were arrested there had been time and opportunity to leave the group that had been driven together. The court also holds that, contrary to what counsel apparently assumed, the group of persons was not created by the action of the police, but the group stayed together voluntarily. The footage also shows that, at the moment of arrest, the group were sitting on the ground with their arms interlocked."

17. The Court of Appeal accordingly found it proven that the applicants had participated in an unlawful gathering or otherwise disturbed public order and that they had failed to comply with a police order to disperse, in breach of sections 2.2(1) and (3) of the APV (see paragraph 29 below). It sentenced each applicant to two fines of 50 euros (EUR), each fine to be replaced by one day's detention in the event of non-payment.

18. The applicants lodged appeals on points of law with the Supreme Court (*Hoge Raad*), submitting, among other things, that the appellate court had failed to recognise that the protest had been a "peaceful assembly" within the meaning of Article 11 of the Convention and that it had fallen within the scope of the Public Assemblies Act. They referred to case-law of the Court (amongst others to *Cisse v. France*, no. 51346/99, 9 April 2002) and to the OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly (see paragraph 32 below).

19. In his advisory opinion the Advocate General to the Supreme Court recommended that the applicants' appeals on points of law be dismissed. With respect to the Court of Appeal's conclusion that the protest had not fallen within the scope of the Public Assemblies Act, the Advocate General considered the following (footnotes omitted):

"38. The boundary between a gathering for the purpose of expression of opinion and a gathering as a coercive measure (*dwangmaatregel*) cannot always be drawn sharply. A demonstration of a certain size can be accompanied by some coercion (*dwang*), while coercion can be (partly) a goal of a demonstration ...

39. The [applicant] also refers to the international framework in which the right to demonstrate is laid down and mentions, among other things, Article 11 of the Convention, which enshrines freedom of assembly and association. Because freedom of assembly must be regarded as one of the foundations of a democratic society, this right may not, according to the European Court of Human Rights, be interpreted restrictively. The scope of this provision includes all kinds of gatherings, including demonstrations. Blockades may also fall under it. The mere circumstance that there is a risk of disturbances during a demonstration does not mean that the protection of Article 11 of the Convention will lapse. Nor will this be the case if some participants in the demonstration have violent intentions or if 'marginal or sporadic' violent or other criminal behaviour is displayed.

40. However, these principles only apply if there is a peaceful assembly within the meaning of Article 11 of the Convention. According to settled case-law of the European Court of Human Rights, the notion of 'peaceful assembly' does not include 'a demonstration where the organizers and participants have violent intentions which result in public disorder'. In other words, a meeting organised with such 'violent

intentions' will not be protected by Article 11 of the Convention ... This position is also reflected in the legislative history of the Public Assemblies Act and Article 9 of the Constitution. In this connection the Explanatory Memorandum notes that 'actions that are not, or not primarily, intended for the expression of a common opinion, but instead predominantly involve other elements such as the application of *de facto* coercion, are not demonstrations in the sense referred to here' [see paragraph 27 above].

41. In the present case, the Court of Appeal has ruled that there was no demonstration as referred to in the Public Assemblies Act, so that the exception laid down in Article 2.2(4) of the APV did not apply. The [applicant] complained, in the first place, that the Court of Appeal had applied an incorrect criterion when answering the question whether the provisions of Article 2.2(4) of the APV applied in the present case. The Court of Appeal considered that the purpose of the gathering had been to seek a confrontation with the Mobile Unit and to (physically) prevent the eviction of the building on Passeerdersgracht. In doing so, the Court of Appeal did not err in law (*niet uitgegaan van een onjuiste rechtsopvatting*) with regard to the concept of 'demonstration' within the meaning of the Public Assemblies Act, while it also did not fail to acknowledge the treaty-based frame of reference [*verdragsrechtelijk toetsingskader*]. It has already been noted that if elements other than the expression of a common opinion at a gathering are predominant and [if] the organizers do not intend to propagate that common opinion, but to exert *de facto* coercion [*feitelijke dwang*], that meeting cannot be regarded as a demonstration within the meaning of the Public Assemblies Act. The protection of Article 11 of the Convention also does not extend to cases in which the organisers and participants have 'violent intentions which result in public disorder'. The Court of Appeal has determined that the purpose of the meeting was to seek a confrontation with the Mobile Unit and to (physically) prevent the eviction. In this connection the court also took into account that the call to gather had stated that the event would continue until the Mobile Unit came to their senses, while the organisers had also failed to send a timely notification pursuant to section 2.32 of the APV. The video footage shows that smoke bombs were being thrown, a fire was being lit and barricades in the form of tables and chairs on the road had been erected in front of the building to be evicted. All of this took place even before the Mobile Unit proceeded to carrying out charges. Accordingly, there had thus been a gathering that made the intended eviction impossible. Preparations had also been made for a confrontation with the Mobile Unit, such as bringing air mattresses and wearing balaclavas and masks.

42. In the light of the facts and circumstances established by [it], the Court of Appeal's ruling that the primary purpose of the gathering had been to hinder the eviction of the building was not incomprehensible [*niet onbegrijpelijk*]. The mere circumstance that the event also bore characteristics of a demonstration does not detract from this. After all, from the facts and circumstances taken into account by the court, [it] was able to deduce that the intention of the group from the outset had been to prevent the police from carrying out the announced eviction by means of actual coercion – and thus with 'violent intentions'. Under those circumstances, the court could rule that there had not been a peaceful demonstration. The Court of Appeal's judgment which was contested by the [applicant] was therefore not incomprehensible and sufficiently reasoned [*toereikend gemotiveerd*] and, interwoven as it was with assessments of a factual nature [*waarderingen van feitelijke aard*], it cannot be further reviewed in an appeal on points of law.

43. ... The explanatory note [to section 2.2 of the APV; see paragraph 30 below] clarifies that the prohibitions in section 2.2 of the APV do not apply to demonstrations

'within the meaning of the Public Assemblies Act'. If the Public Assemblies Act is inapplicable, the prohibitions in section 2.2 of the APV do apply.

...

45. Given that the Court of Appeal's judgment that there had been no demonstration within the meaning of the Public Assemblies Act did not err in law and was not incomprehensible, the same can be said of the consideration contained therein that the exception as laid down in section 2.2(4) did not apply. The Court of Appeal was not obliged to provide further reasoning."

20. By separate judgments of 11 April 2017 the Supreme Court dismissed the applicants' appeals on points of law, thereby upholding the judgments of the Amsterdam Court of Appeal. The Supreme Court's reasoning included the following:

"4.4. The Court of Appeal ruled – not incomprehensibly – that 'the aim of the gathering was to seek a confrontation with the Mobile Unit and to (physically) prevent the eviction'. In that court's opinion, this implied that the gathering did not (primarily) have the character of common expression of opinion, but was aimed at preventing the police from proceeding with the announced eviction by means of *de facto* coercion. Taking into account, among other things, a passage from the Explanatory Memorandum to the Bill which became the Public Assemblies Act [see paragraph 27 below] ... the Court of Appeal did not err in law and was not incomprehensible in ruling that 'there was no question of a demonstration within the meaning of the Public Assemblies Act' and that 'the conduct of those present [...] therefore [fell] within the scope of section 2.2 of the APV'.

The explanation to the [applicant's] ground of appeal on points of law concerning a broad interpretation of the right to freedom of assembly as protected by Article 11 of the Convention does not necessitate a different conclusion in a case such as the present one. After all, according to settled case-law of the European Court of Human Rights, Article 11 of the Convention does not protect 'a demonstration where the organizers and participants have violent intentions' (cf. [*Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, ECHR 2011 (extracts)])."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION OF THE KINGDOM OF THE NETHERLANDS

21. The relevant provision of the Constitution (*Grondwet*) reads as follows:

Article 9

"1. The right of assembly [*vergadering*] and demonstration [*betoging*] shall be recognised, without prejudice to the responsibility of everyone under the law.

2. Rules to protect health, in the interest of traffic, and to combat or prevent disorder may be laid down by Act of Parliament."

22. Article 9 of the Constitution does not define the scope of the right to assembly and demonstration. However, at the time of the preparation of the 1983 constitutional amendment, the question was raised to what extent it

would be acceptable that forms of expression in the context of (in particular) a demonstration amount to coercion. The Memorandum in Reply (*Memorie van Antwoord*) to the Bill which amended, *inter alia*, this provision of the Constitution notes that the notion of a "demonstration" within the meaning of Article 9 of the Constitution does not include "actions of which the quality of common expression of opinion has faded into the background and which are in the nature of coercive measures (*dwangmaatregelen*) against the Government or against third parties, as may be the case with blockades of roads and waterways" (Parliamentary Documents, Lower House of Parliament 1976/77, 13 872, no. 7, p. 33).

23. Article 93 of the Constitution provides that the Convention forms part of domestic law. Pursuant to Article 94 of the Constitution, the provisions of the Convention take precedence over domestic statutory rules in the event of a conflict.

24. Dutch courts are expected, as far as is possible, to interpret and apply domestic law in such a way that the State meets its treaty obligations (*"verdragsconforme uitleg"*; see, for example, Supreme Court judgment of 16 November 1990, ECLI:NL:HR:1990:ZC0044).

II. PUBLIC ASSEMBLIES ACT

25. The Public Assemblies Act (*Wet openbare manifestaties*), an act laid down by Parliament, regulates the exercise of and restrictions on the freedom of religion (Article 6 of the Constitution) and the right of assembly and demonstration (Article 9 of the Constitution). The power to restrict these rights as conferred on public authorities by or pursuant to the provisions of this Act, may be used only to protect health, in the interest of traffic and to combat or prevent disorder (section 2).

26. The Mayor may issue instructions which organisers of or participants in an assembly or demonstration must observe (section 6). The Mayor may order the organisers or participants to end the assembly or demonstration forthwith and disperse if, *inter alia*, one of the interests referred to in section 2 so requires (section 7). The violation of these provisions is punishable by a term of detention not exceeding two months or a second-category fine (section 11).

27. The Explanatory Memorandum to the Bill which became the Public Assemblies Act (see Parliamentary Documents, Lower House of Parliament 1985/86, 19 427, no. 3, p. 8) includes the following:

> "[E]vents within the meaning of the proposed Act ... include ... assemblies and demonstrations. A common feature of such events is that they are intended for more or less collectively expressed thoughts, feelings or beliefs.
>
> Any differences between them mainly concern their objectives and subject matter. ... Whereas the main aim of an assembly is internal opinion- and decision-making, a

demonstration is about expressing thoughts or wishes on matters of a political or social nature which are shared by those taking part.

[A]ctions that are not, or not primarily, intended for the expression of a common opinion, but instead predominantly involve other elements such as the application of *de facto* coercion [*feitelijke dwang*], are not demonstrations in the sense referred to here. This may be the case, for example, with blockades of roads and waterways, unlawful gatherings, riots and so forth [a footnote refers to Parliamentary Documents, Lower House of Parliament 1976/77, 13 872, no. 7, p. 33; see paragraph 22 above]."

28. The Supreme Court held in a judgment of 17 October 2006 (ECLI:NL:HR:2006:AU6741) that the power under section 7 of the Public Assemblies Act to end a demonstration could not be exercised by a police officer without a specific instruction to that effect given by the Mayor.

III. AMSTERDAM GENERAL MUNICIPAL BY-LAW OF 2008

29. The relevant provision of the Amsterdam general municipal by-law (*Algemene plaatselijke verordening*; "the APV") of 2008, laid down by the local council (*gemeenteraad*), reads as follows:

Section 2.2 – Unlawful gathering, disturbances, disturbance of public order and gatherings

"1. It is prohibited, on or near the public road or in a building or vessel accessible to the public, to participate in an unlawful gathering [*samenscholing*] [defined in section 2.1(4) as 'a gathering of people who assume a threatening attitude, have malicious intentions or appear threatening'] or, either as a member of a group or individually, to impose oneself unnecessarily, to harass others, to fight or otherwise to disturb public order [*de orde verstoren*].

2. ...

3. A person who is present on or near the public road at an event that attracts members of the public or at any occurrence that causes or is likely to cause disturbances [*ongeregeldheden*] or who is moving towards that event or occurrence must immediately obey an order given by a police officer to move away in a given direction.

4. The prohibitions do not apply to demonstrations [and] assemblies ... within the meaning of the Public Assemblies Act."

30. An explanatory note to section 2.2 of the APV provides:

"... Regulation of demonstrations does not fall within the competence of the municipal legislature. Therefore, gatherings to which the Public Assemblies Act applies are excluded by the fourth paragraph. The Mayor must base any measures on that [Act]. Among other things, the [Act] grants the Mayor powers to take measures in the event of disturbances and contains penal provisions in this regard."

31. A breach of section 2.2(1) or section 2.2(3) of the APV is a minor offence (section 154 of the Municipality Act) and punishable by a term of imprisonment not exceeding three months or a second-category fine (section 6.1 of the APV).

IV. RELEVANT INTERNATIONAL MATERIAL

32. The Guidelines on Freedom of Peaceful Assembly (CDL-AD(2019)017rev, 15 July 2020, 3rd edition) prepared by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in consultation with the European Commission for Democracy through Law ("Venice Commission") read as follows, in so far as relevant (emphasis in original, references omitted):

Section B. Guiding Principles: Interpretive Notes

"86. **Duty to presume the peacefulness of an assembly**: All assemblies shall be presumed to be peaceful in the absence of convincing evidence that the organisers and/or a significant number of participants intend to use, advocate or incite imminent violence.

87. **Duty to distinguish between peaceful and non-peaceful participants**: Law enforcement officials must differentiate between peaceful and non-peaceful participants since only those who themselves take part in violence forfeit the legal guarantee of their right to assemble. State intervention should target individual wrongdoers, rather than all participants more generally, unless that is impossible due to the massive nature of the violence committed."

33. General Comment No. 37 on the right of peaceful assembly (Article 21) of the Human Rights Committee (adopted at its 129th session, 29 June-24 July 2020, UN Doc. CCPR/C/GC/37) provides that the use of disguises should not in itself be deemed to signify violent intent (at point 60).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

35. The applicants complained that because they had no violent intentions, the dispersal of the gathering on 5 July 2011 and their subsequent arrest, deprivation of liberty and criminal conviction had unjustly interfered with their right to freedom of peaceful assembly, guaranteed by Article 11 of the Convention, the relevant part of which reads as follows:

Article 11

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

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

A. Admissibility

36. The Government considered that the applicants' complaints were incompatible *ratione materiae* with the Convention because it followed from the organisers' intentions and the participants' collective and coordinated actions that the demonstration in which they had participated had not been peaceful.

37. The applicants submitted that the demonstration of 5 July 2011 had constituted a "peaceful assembly" within the meaning of Article 11 of the Convention.

38. The Court finds that the question whether Article 11 of the Convention was applicable in the instant case is closely linked to the merits of the applicants' complaints. It therefore considers that the Government's objection should be joined to the merits of the case.

39. The Court further observes that the applicants' complaints under Article 11 of the Convention are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. The complaints must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

40. The applicants submitted that the gathering was a "peaceful assembly" within the meaning of Article 11 of the Convention. The calls in advance for sympathisers to attend and the behaviour of the participants during the gathering showed that the intentions and actions of the organisers and participants had been aimed at the collective expression of political and social views on squatting and the use of public space. Further, the applicants pointed out that the atmosphere had initially been relaxed and resigned, the vast majority of the participants had worn plain clothes and the metaphorically phrased banners and slogans had not incited violence. In so far as violence had been used, it had been sporadic and had come not from the group as a whole but from some individual participants, who might very well have been the people arrested that day on suspicion of publicly committing concerted acts of violence against persons or property (see paragraph 9 above). The applicants maintained that they could not be held responsible for this. The applicants also contended that the violent

behaviour occurred (mainly) after the police had provoked and dispersed them, and that they had not been given a realistic opportunity to protest elsewhere once those orders had been given.

41. The applicants further submitted that their arrest, prosecution and criminal conviction had interfered with their rights protected by Article 11 and that this interference had not been prescribed by law. Reiterating that the gathering had been a "peaceful assembly" within the meaning of this provision of the Convention and had fallen, as the Regional Court had held (see paragraphs 12-13 above), within the scope of the Public Assemblies Act, they claimed that in the absence of an order by the Mayor of Amsterdam pursuant to provisions of that Act to end the demonstration, the police intervention and subsequent arrest and conviction had lacked a legal basis.

42. Moreover, even assuming that there had been a legal basis, the applicants argued that the interference had been disproportionate.

(b) The Government

43. The Government submitted that the organisers' intentions and the participants' collective and coordinated actions had not been peaceful and had therefore not fallen within the scope of Article 11 of the Convention. Referring to the facts as established by the Court of Appeal (see paragraph 16 above), the Government noted that the (primary) intention of the organisers and participants had been to physically prevent the eviction of the Schijnheilig squat. In this connection, the Government drew the Court's attention to the calls posted online, the lack of prior notification, and the fact that participants had worn balaclavas, carried air mattresses, initiated violence, set off smoke bombs, thrown objects and kicked out in the direction of the police, and chanted inciting slogans such as "Van der Laan is going down". The Government added that if the primary purpose had been to exercise the right to demonstrate, the logical course of action for the participants would have been to obey the police orders and make use of the opportunity they were offered to continue elsewhere.

44. The Government further reiterated that the notion of "demonstration" within the meaning of Article 9 of the Constitution and the Public Assemblies Act did not cover non-peaceful actions which were (primarily) intended to obstruct the activities of others, as had been the situation in the case at hand. They added that even if the Public Assemblies Act was deemed to be applicable at the start of the gathering (a position which the Government disputed), it was clear that from the moment that disturbances and violence took place, there was no longer a peaceful – and thus lawful – assembly within the meaning of that Act. Consequently, the Government submitted that section 2.2 of the APV offered a statutory basis for the interference with the applicants' right to freedom of assembly.

45. The Government also noted that even if the gathering had been designated as a demonstration and thus had fallen within the scope of the Public Assemblies Act, there would still have been a legal basis in domestic law for the interference with the applicants' right to freedom of assembly. Sections 7 and 11 of that Act would have provided a legal basis for the actions undertaken by the authorities in the case at hand, such as ending the assembly and prosecuting those participants who had failed to comply with the order to disperse and to leave the area.

46. As for the requirements of the interference serving a legitimate aim and being necessary in a democratic society, the Government contended that its aim had been the prevention of disorder or crime, the interests of public safety, and the protection of the rights of others and that the applicants had had an opportunity to express their opinions, that the violence had not been sporadic, and that the two fines imposed had been proportionate in the circumstances of the case.

2. The Court's assessment

(a) Applicability of Article 11 and the existence of an interference

(i) General principles

47. The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, 15 October 2015, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018).

48. Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *Kudrevičius and Others*, cited above, § 92).

49. In order to establish whether an applicant may claim the protection of Article 11, the Court takes into account (i) whether the assembly was intended to be peaceful or whether the organisers had violent intentions; (ii) whether the applicant demonstrated violent intentions when joining the assembly; and (iii) whether the applicant inflicted bodily harm on anyone (see *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 491, 21 January 2021). It notes that where both sides – demonstrators and police – were involved in violent acts, it is sometimes necessary to examine who started the violence (see *Primov and Others v. Russia*, no. 17391/06, § 157, 12 June 2014).

50. It should be noted that an individual does not cease to enjoy the right

to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour. The possibility that persons with violent intentions who are not members of the organising association might join the demonstration cannot as such take away that right. Even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of paragraph 1 of Article 11, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision (see *Kudrevičius and Others*, cited above, § 94).

51. The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities (see *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, § 23, 2 February 2010).

52. In the Court's view, although not an uncommon occurrence in the context of the exercise of freedom of assembly in modern societies, physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by Article 11 of the Convention. This state of affairs might have implications for any assessment of "necessity" to be carried out under the second paragraph of Article 11 (see *Kudrevičius and Others*, cited above, § 97).

53. The Court reiterates that the term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards (see *Navalnyy*, cited above, § 103, with further references). Thus, an interference may consist in, *inter alia*, dispersal of a gathering or the arrest of participants, and penalties imposed for having taken part in a gathering (ibid.).

(ii) Application of these principles to the present case

54. The Court is prepared to agree with the Government that impeding the scheduled eviction of the Schijnheilig squat was the foreseeable result of intentional action by the organisers and participants, including the applicants. However, and while recognising that protests which foreseeably or intentionally impede the activities of other private actors or public bodies are not at the core of the right to peaceful assembly in Article 11 of the Convention (see paragraph 52 above), such obstructive or disruptive conduct might still be protected by that provision (see, for example, *Kudrevičius and Others*, cited above, §§ 98-99 and 155-57; *Tuskia and Others v. Georgia*, no. 14237/07, §§ 74-75, 11 October 2018; *Ekrem Can and Others v. Turkey*, no. 10613/10, §§ 82-85, 8 March 2022; and *Bumbeş v. Romania*, no. 18079/15, §§ 47-48, 3 May 2022).

55. The Court does not discern any reason in the present case to depart from these precedents. Even if the purpose of the gathering went beyond conveying disapproval of the eviction of the Schijnheilig squat and the participants also sought to prevent the lawful eviction of the squat (potentially amounting to "a form of coercion"; compare *Drieman and Others v. Norway* (dec.), no. 33678/96, 4 May 2000), this did not, of itself, remove the applicants' participation in it from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention. As noted above (see paragraph 52), such state of affairs might have implications for any assessment of "necessity" to be carried out under the second paragraph of this provision (*Kudrevičius and Others*, cited above, § 97). The Court also reiterates that the question of whether a gathering falls within the autonomous concept of "peaceful assembly" in paragraph 1 of Article 11 and the scope of protection afforded by that provision is independent of whether that gathering was conducted in accordance with a procedure provided for by the domestic law (see *Navalnyy*, cited above, § 99), such as a duty of prior notification.

56. The Court further considers that no violent intentions or behaviour can be inferred from the calls posted online or the slogans chanted. On the face of it and given the context, they should be understood as expressions of dissatisfaction and protest rather than deliberate and unambiguous calls for violence (compare *Gül and Others v. Turkey*, no. 4870/02, §§ 41-42, 8 June 2010; *Christian Democratic People's Party*, cited above, § 27; and *Primov and Others*, cited above, § 135). Nor can any such intentions or behaviour be inferred in itself from the fact that several participants brought air mattresses or wore balaclavas or other disguises (with respect to the wearing of balaclavas, compare *Ibragimova v. Russia*, no. 68537/13, § 39, 30 August 2022; see also point 60 of General Comment No. 37 of the Human Rights Committee, cited in paragraph 33 above).

57. Turning to the question of whether any violent intentions or actions on the part of the participants, including the applicants, could be inferred from the remaining factors adduced by the Government (see paragraph 43 above), the Court reiterates that in several cases it has recognised that Article 11 offers protection to ostensibly peaceful protesters who have taken part in assemblies which were tarnished by violence on the part of other protesters (see, for example, *Karpyuk and Others v. Ukraine*, nos. 30582/04 and 32152/04, §§ 207-08 and 211, 6 October 2015; *Mushegh Saghatelyan v. Armenia*, no. 23086/08, §§ 233-35, 20 September 2018; and *Laguna Guzman v. Spain*, no. 41462/17, § 35, 6 October 2020; all with further references).

58. The Court notes that the applicants were not amongst the group of protesters who were arrested and prosecuted on suspicion of publicly committing concerted acts of violence against persons or property (see paragraph 9 above). In this connection the Court reiterates that individuals

are not to be held responsible for the acts of violence by other participants (see *Ezelin v. France*, 26 April 1991, § 53, Series A no. 202, and *Gün and Others v. Turkey*, no. 8029/07, § 83, 18 June 2013 and compare points 86 and 87 of the OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly, cited in paragraph 32 above). Since it does not appear from the materials in the case file that the applicants – who must be presumed to have had peaceful intentions in the absence of sufficient and convincing evidence to the contrary (compare *Karpyuk and Others*, §§ 198-207, and *Mushegh Saghatelyan*, §§ 230-33, both cited above) – personally set off smoke bombs, threw objects or kicked out in the direction of the police, or otherwise resorted or incited to violence, the Court finds that the conduct during the gathering for which they were held responsible was not of such a nature and degree as to remove their participation in it from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention (see, by contrast, *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 284, 19 November 2019).

59. In view of the above, the Court finds that the applicants are entitled to invoke the guarantees of Article 11, which is therefore applicable *ratione materiae* in the present case, and that their arrest, prosecution and conviction amounted to an interference with their right to freedom of peaceful assembly. The Court therefore dismisses the Government's objection.

(b) Whether the interference was prescribed by law and pursued a legitimate aim

60. The relevant general principles were summarised in *Kudrevičius and Others* (cited above, §§ 108-10 and 140) and confirmed and further developed in *Navalnyy* (cited above, §§ 114-15 and 120-22).

61. The Court notes that the parties disagreed as to whether the interference was prescribed by law (see paragraphs 41 and 44 above). However, the Court decides to dispense with ruling on the issue of lawfulness because, in any event, the interference cannot be said to have been "necessary in a democratic society", for the reasons set out below.

62. The Court further accepts that the interference may be regarded as having pursued the "prevention of disorder or crime" and the "protection of the rights and freedoms of others" within the meaning of paragraph 2 of Article 11 (see also *Kudrevičius and Others*, cited above, § 140; *Oya Ataman v. Turkey*, no. 74552/01, § 32, ECHR 2006 XIV; and *Éva Molnár v. Hungary*, no. 10346/05, § 34, 7 October 2008).

(c) Whether the interference was necessary in a democratic society

63. The right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be

narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Kudrevičius and Others*, § 142, and *Mushegh Saghatelyan*, § 238, both cited above).

64. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This does not mean that it has to confine itself to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, after having established that it pursued a "legitimate aim", whether it answered a "pressing social need" and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Kudrevičius and Others*, cited above, § 143, and *Körtvélyessy v. Hungary*, no. 7871/10, § 26, 5 April 2016).

65. Turning to the present case, the Court notes that the Supreme Court found that the appellate court did not err in law and was not incomprehensible in its ruling that there had been no demonstration within the meaning of the Public Assemblies Act as the aim of the gathering had been to seek confrontation and to (physically) prevent the eviction (see paragraph 20 above), adopting the position that Article 11 of the Convention was inapplicable as well. The Supreme Court essentially stopped its assessment at that point; it did not examine whether the applicants' role in the gathering was in fact "peaceful" within the autonomous meaning given to that concept in the Court's case-law (see *Navalnyy*, cited above, § 99).

66. By reaching such a conclusion and not exercising the balancing test required under Article 11 § 2 of the Convention, the Supreme Court failed to give relevant and sufficient reasons for the interference with the applicants' right to freedom of assembly, and thus failed to convincingly establish the necessity for such restrictions, which must be interpreted narrowly (see the relevant principles in paragraph 63 above). Given the above considerations, the Court finds that the requirements under Article 11 of the Convention were not met because the analysis of applicability of that provision – and, consequently, the assessment of the justification of the

interference – were not carried out at the domestic level in a manner consistent with the Convention and the Court's case-law (compare *Obote v. Russia*, no. 58954/09, § 43, 19 November 2019, and *Malofeyeva v. Russia*, no. 36673/04, § 141, 30 May 2013; see also, *mutatis mutandis*, *L. v. the Netherlands*, no. 45582/99, §§ 40-42, ECHR 2004-IV).

67. It follows that the interference with the applicants' rights cannot be said to have been "necessary in a democratic society" and was thus in breach of Article 11 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicants each claimed 100 euros (EUR) in respect of non-pecuniary damage for their detention following arrest. The applicants each also claimed two fines (at a total of EUR 100 per applicant) under the head of costs and expenses.

70. The Government did not comment on these claims.

71. The Court finds that the amounts claimed in respect of the fines are to be considered under the head of pecuniary damage and awards each applicant the sums claimed, plus any tax that may be chargeable.

72. Having regard to the applicant's claims in respect of non-pecuniary damages, the Court awards each applicant EUR 100, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicants also claimed EUR 562 (application nos. 56896/17, 56910/17 and 56917/17, each), EUR 363 (application no. 56914/17) and EUR 419 (application no. 57307/17) for the costs incurred for the proceedings before the domestic courts and before the Court. Although legal aid had been granted by the domestic authorities for those proceedings, the applicants had had to pay the claimed amounts as their own contribution to the cost of legal assistance. They submitted documentary evidence to support their claims.

74. The Government observed that the applicants' claims for costs were specified and reasonable.

75. The Court awards the applicants the sums claimed for their own contribution to the costs of legal assistance, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join to the merits the Government's objection as to the applicability of Article 11 of the Convention and, having examined it, *dismisses* it;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 11 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 100 (one hundred euros), plus any tax that may be chargeable, to each of the applicants, in respect of pecuniary damage;
      (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable, to each of the applicants, in respect of non-pecuniary damage;
      (iii) EUR 562 (five hundred and sixty-two euros) to Mr Laurijsen (application no. 56896/17), Ms Springer (application no. 56910/17) and Ms Koenen (application no. 56917/17), each, in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
      (iv) EUR 363 (three hundred and sixty-three euros) to Ms Van Oostrum (application no. 56914/17), in respect of costs and expenses, plus any tax that may be chargeable to her;
      (v) EUR 419 (four hundred and nineteen euros) to Ms Segal (application no. 57307/17), in respect of costs and expenses, plus any tax that may be chargeable to her;
   (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 21 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Pere Pastor Vilanova
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Schukking is annexed to this judgment.

P.P.V.
M.B.

CONCURRING OPINION OF JUDGE SCHUKKING

1. The main question in the present case was whether the applicants' actions qualified as "peaceful assembly" within the autonomous meaning of Article 11 of the Convention; in other words, whether the applicants' actions fell within the scope of protection of that provision.

2. I endorse the conclusion that, for the reasons set out in paragraphs 54-59 of the judgment, the applicants were entitled to invoke the guarantees of Article 11 of the Convention, which was thus applicable *ratione materiae*. I also agree with the conclusion that the interference with that right – their arrest and the penalties imposed – was not justified under the second paragraph of that provision.

That being so, I would like to add the following two considerations.

1. "Prescribed by law"

3. The legal basis used to convict the applicants was section 2.2(1) and (3) of the Amsterdam general municipal by-law ("the APV") in conjunction with section 6.1 of the APV (see paragraphs 16-17 and 20 of the judgment).

4. The applicants contested the applicability of those provisions of the APV. They argued that in the absence of an order by the Mayor of Amsterdam pursuant to provisions of the Public Assemblies Act to end the demonstration, the police intervention and their subsequent arrest and conviction had lacked a legal basis (see paragraph 41 of the judgment), whereas the Government submitted that even if the gathering had been designated as a demonstration and thus had fallen within the scope of the Public Assemblies Act, there would still have been a legal basis in domestic law for the interference with the applicants' right to freedom of assembly. They noted that sections 7 and 11 of that Act would have provided a legal basis for the actions undertaken by the authorities in the case at hand, such as ending the assembly and prosecuting those participants who had failed to comply with the order to disperse and to leave the area (see paragraph 45 of the judgment).

5. I note that it follows from the domestic courts' interpretation of national law (see the rulings summarised in paragraphs 12-13, 16 and 20 of the judgment) that, in the absence of violent intentions or behaviour on the part of the organisers and participants, a demonstration falls within the scope of the Public Assemblies Act.

6. In view of the Court's findings concerning the applicability of Article 11 of the Convention in the present case (see paragraphs 54-59 of the judgment) and taking into account that section 2.2(4) of the APV specifically excludes from the scope of the APV "demonstrations [and] assemblies ... within the meaning of the Public Assemblies Act" (see paragraph 29 of the judgment), I consider the applicants' argument as to the absence of a legal basis for the interference to be valid (for a comparable

example from domestic case-law, see ECLI:NL:RBROT:2011:BP6099). As regards the Government's argument that even if the gathering were to be regarded as a demonstration within the meaning of the Public Assemblies Act, sections 7 and 11 of that Act would have provided a legal basis in domestic law for interference with the applicants' right to freedom of assembly (see above), I merely wish to observe that those provisions of the Public Assemblies Act did not in fact constitute the legal basis for the interference with the applicants' right, and that the legal basis cannot be "replaced" *ex post facto*.

2. "Necessary in a democratic society"

7. The right to freedom of assembly is a fundamental right and is regarded as one of the foundations of a democratic society (see paragraph 63 of the judgment). It is not, however, an absolute right. Restrictions of that right for the purposes listed in the second paragraph of Article 11 of the Convention (national security or public safety, the prevention of disorder and crime, the protection of health or morals or the protection of the rights and freedoms of others) may be necessary in particular situations. Contracting States enjoy a certain but not unlimited margin of appreciation in deciding on the necessity of such restrictions. The essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 156-58, 15 October 2015).

8. The proportionality principle demands that a fair balance be struck between the requirements of the aims listed in paragraph 2 of Article 11 (see above) 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 (ibid., § 144). Incitements to violence or calls for the rejection of democratic principles are not protected by the Convention. In its extensive body of case-law, the Court has identified factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued (ibid., §§ 146-60, for an overview of the relevant factors).

9. As regards the disruption to ordinary life, including the disruption of traffic, the Court has noted that any demonstration in a public place may cause a certain level of disruption and that this, in itself, does not justify an interference with the right to freedom of assembly; it is important for the public authorities to show a certain "degree of tolerance". What constitutes an appropriate "degree of tolerance" cannot be defined *in abstracto*: the Court has observed that the particular circumstances of the case and particularly the extent of the "disruption to ordinary life" are relevant in this context. This being so, the Court has also held that it is important for associations and others organising demonstrations, as actors in the democratic process, to abide by the rules governing that process by

complying with the regulations in force. An intentional failure by the organisers to abide by these rules and the structuring of a demonstration, or of part of it – in such a way as to cause disruption to ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances – constitutes conduct which cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest, or the peaceful manifestation of opinions on such matters. On the contrary, the Court has considered that the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity in taking measures to restrict such conduct. Restrictions on freedom of peaceful assembly in public places may serve to protect the rights of others with a view to preventing disorder and maintaining an orderly flow of traffic. Since overcrowding during a public event is fraught with danger, it is not uncommon for State authorities in various countries to impose restrictions on the location, date, time, form or manner of conduct of a planned public gathering (ibid., §§ 155-57, with further case-law references).

10. In the present case, the national authorities, including the judicial authorities, adopted the position that Article 11 of the Convention was inapplicable and stopped their assessment at that point (see paragraph 65 of the judgment). As no "fair balance" test, as required under the second paragraph of that provision, had been carried out at the domestic level, the Court concluded that it could not be said that the interference with the applicants' rights had been "necessary in a democratic society" (see paragraphs 66-67 of the judgment).

APPENDIX

List of cases:

No.	Application no. Date of introduction	Applicant Year of birth Place of residence
1	56896/17 31 July 2017	**Cornelis Jacobus Joseph LAURIJSEN** 1955 Amsterdam
2	56910/17 31 July 2017	**Wendy SPRINGER** 1987 Amsterdam
3	56914/17 31 July 2017	**Nicky VAN OOSTRUM** 1984 Amsterdam
4	56917/17 24 July 2017	**Rosa Annemarie Theadora KOENEN** 1988 Den Dolder
5	57307/17 31 July 2017	**Anat SEGAL** 1985 Amsterdam