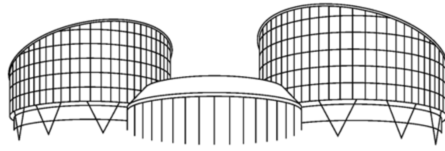

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF KUDREVIČIUS AND OTHERS v. LITHUANIA

(Application no. 37553/05)

JUDGMENT

STRASBOURG

15 October 2015

This judgment is final.

In the case of Kudrevičius and Others v. Lithuania,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President*,
Josep Casadevall,
Elisabeth Steiner,
Angelika Nußberger,
Boštjan M. Zupančič,
George Nicolaou,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Helena Jäderblom,
Aleš Pejchal,
Johannes Silvis,
Krzysztof Wojtyczek,
Egidijus Kūris,
Jon Fridrik Kjølbro, *judges*,
and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 9 April 2015 and 9 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 37553/05) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Lithuanian nationals, Mr Arūnas Kudrevičius, Mr Bronius Markauskas, Mr Artūras Pilota, Mr Kęstutis Miliauskas and Mr Virginijus Mykolaitis (“the applicants”), on 8 October 2005.

2. The applicants were represented by Mr K. Stungys and Mr E. Losis, two lawyers practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms K. Bubnytė.

3. The applicants alleged, in particular, that their conviction for rioting had violated their rights to freedom of assembly and expression and that the law under which they had been convicted did not meet the requirements of Article 7 of the Convention.

4. On 21 May 2008 notice of the application was given to the Government.

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 26 November 2013 a Chamber of the Second Section, composed of Guido Raimondi, Danutė Jočienė, Dragoljub Popović, András Sajó, Işıl Karakaş, Paulo Pinto de Albuquerque and Helen Keller, judges, and Stanley Naismith, Section Registrar, unanimously declared the application admissible in respect of the complaints under Articles 7 and 11 of the Convention and inadmissible for the remainder. By four votes to three, the Chamber held that there had been a violation of Article 11 of the Convention, that there was no need to examine separately the complaint under Article 7 of the Convention and that the respondent State was to pay each applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

6. On 26 February 2014 the Government asked for the case to be referred to the Grand Chamber by virtue of Article 43 of the Convention and Rule 73. On 14 April 2014 a panel of the Grand Chamber granted that request.

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

8. The applicants and the Government each filed observations (Rule 59 § 1).

9. A public hearing was scheduled for 26 November 2014. However, in a fax of 27 October 2014, the applicants' representative, Mr Stungys, indicated that he did not have a sufficient command of either of the Court's official languages to be able to participate fully in a hearing, and was not able to find another lawyer with the relevant skills who could assist him. He therefore requested that the case be heard in his absence and annexed an unsolicited document of nine pages in which, in substance, he replied to the arguments developed in the Government's observations before the Grand Chamber. In a letter of 30 October 2014, the Court informed the Government that, given the applicants' representative's position, it might consider dispensing with a public hearing and giving the parties the opportunity to file a reply to each other's observations. In a fax of 3 November 2014, the Government stated that they did not have any objections to the case being examined without a public hearing and that they would at the same time appreciate the opportunity to file a reply to the applicants' observations.

10. On 4 November 2014 the President decided to cancel the public hearing and first deliberations scheduled for 26 November 2014 and to invite the parties to submit, by 17 December 2014, further written observations in reply to each other's initial observations. The applicants' representative was informed that, should he not submit any new observations within the prescribed time-limit, the document annexed to his fax of 27 October 2014 would be treated as his reply to the Government's submissions before the Grand Chamber.

11. In November 2014 the applicants' representative (Mr Stungys) passed away. The applicants appointed a new representative, Mr Losis, who clarified that the document annexed to Mr Stungys's fax of 27 October (see paragraph 9 above) should be treated as the applicants' reply to the Government's submissions. The Government were informed accordingly. They submitted their observations in reply on 17 December 2014.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

12. The first applicant, Mr Arūnas Kudrevičius ("A.K."), was born in 1970 and lives in Vaitkūnai village, Utena region; the second applicant, Mr Bronius Markauskas ("B.M."), was born in 1960 and lives in Triušeliai village, Klaipėda region; the third applicant, Mr Artūras Pilota ("A.P."), was born in 1973 and lives in Ožkasviliai village, Marijampolė region; the fourth applicant, Mr Kęstutis Miliauskas ("K.M."), was born in 1959 and lives in Jungėnai village, Marijampolė region; and the fifth applicant, Mr Virginijus Mykolaitis ("V.M."), was born in 1961 and lives in Varakiškė village, Vilkaviškis region.

A. The farmers' demonstrations

13. On 15 April 2003 a group of farmers held a demonstration in front of the *Seimas* (the Lithuanian Parliament) building to protest about the situation in the agricultural sector with regard to a fall in wholesale prices for various agricultural products and the lack of subsidies for their production, demanding that the State take action. On 22 April 2003 Parliament passed a resolution on reinforcing the competitiveness of agriculture, providing for an increase in subsidies for the agricultural sector. According to the applicants, this resolution was not implemented by the government.

14. On 16 May 2003 the Chamber of Agriculture (*Žemės ūkio rūmai*), an organisation established to represent the interests of farmers, met to discuss possible solutions to the issues. If no positive changes in legal regulation were forthcoming, the measures foreseen included addressing complaints to the administrative courts. In the meantime, it was decided to organise protests, in three different locations next to major highways (*prie magistralinių kelių*), to draw attention to the problems in the agricultural sector.

15. In May 2003 the Kalvarija municipality issued a permit to hold peaceful assemblies in Kalvarija town "near the marketplace" from 8 a.m. to

11 p.m. between 13 and 16 May 2003, from 8 a.m. to 3 p.m. on 17 May 2003 and from 8 a.m. to 11 p.m. on 19 and 20 May 2003. The organisers had been warned about possible liability under the Code of Administrative Law Offences as well as under the Criminal Code, including under Article 283 of the latter (see paragraph 62 below). According to the Government, similar permits, accompanied by the same warnings, were issued for 21 to 23, 24 and 26 to 30 May 2003.

16. On 8 May 2003 the Pasvalys municipality issued a permit to hold a demonstration "at the car park at the sixty-third kilometre of the Via Baltica highway and next to that highway". The farmers were also authorised to display agricultural machinery for ten days from 15 to 25 May 2003. On 12 May 2003 the organisers of the gathering were informed about possible liability under the Code of Administrative Law Offences as well as under the Criminal Code, including under Article 283 of the latter.

17. On 19 May 2003 the Klaipėda municipality issued a permit to hold an assembly in an "area in Divupiai village next to, but not closer than twenty-five metres from, the Vilnius-Klaipėda highway" from 11 a.m. to 11 p.m. between 19 and 25 May 2003. The permit specified that it granted the right to organise a peaceful assembly in compliance with the provisions set forth, *inter alia*, in the Constitution and in the Law on Assembly. It was also indicated therein that the organisers and the participants were to observe the laws and to adhere to any orders from the authorities and the police; failure to do so could engage their administrative or criminal liability. The second applicant, B.M., who was indicated as one of the organisers of the gathering, signed a receipt for the notification of the permit.

18. The Klaipėda police received information about the demonstrators' possible intention to overstep the limits established by the permits. B.M. was therefore contacted by telephone and a meeting with him was organised in order to avoid unlawful acts being carried out during the demonstrations.

19. The demonstrations started on 19 May 2003. The farmers gathered in the designated areas.

20. On 21 May 2003 the farmers blocked and continued to demonstrate on the roads next to Divupiai village, on the Vilnius-Klaipėda highway, at the sixty-third kilometre of the Panevėžys-Pasvalys-Riga highway, and at the ninety-fourth kilometre of the Kaunas-Marijampolė-Suvalkai highway.

21. The Government pointed out that the police had not received any prior official notification of the demonstrators' intention to block the three major roads of the country. They described as follows the behaviour of the farmers and of the applicants during the demonstrations.

(a) On 21 May 2003 at around 12 noon, a group of approximately 500 people walked onto the Vilnius-Klaipėda highway and remained standing there, thus stopping the traffic.

(b) On 21 May 2003 at 12 noon, a group of approximately 250 people walked onto the Panevėžys-Pasvalys-Riga highway and remained standing there, thus stopping the traffic. The blockade remained in place until 12 noon on 23 May 2003. The first applicant encouraged the demonstrators to move from the car park onto the highway.

(c) On 21 May 2003 at 11.50 a.m. a group of 1,500 people walked onto the Kaunas-Marijampolė-Suvalkai highway and remained standing there, thus stopping the traffic. In addition, on the same day between 3 and 4.30 p.m. the third, fourth and fifth applicants drove tractors onto the highway and left them there. The blockade remained in place until 4 p.m. on 22 May 2003.

22. On 22 May 2003 the farmers continued negotiations with the government. The next day, following a successful outcome to those negotiations, the farmers stopped blocking the roads.

B. Consequences of the demonstrations

23. The parties disagreed as to the extent of the disruption to traffic created by the farmers' demonstrations.

24. According to the applicants (see paragraph 121 below), knowing that blockades were likely to occur, the police had prepared alternative road itineraries in the vicinity of the places where the demonstrations were held, so that the roadblocks would not disrupt the flow of goods. Indeed, on the days in question the latter had been "even better than usual". This could be proven by the "data from posts where the roadblocks took place".

25. In a letter of 24 August 2004 addressed to the applicants' lawyer, the State Border Guard Service indicated that several queues of lorries (ranging from 2 to 10 kilometres long) had formed from 21 until 23 May 2003 in both directions in the proximity of the Kalvarija border crossing between Lithuania and Poland. According to the same letter, "there were no queues of passenger cars". Moreover, no queues had formed at the Lazdijai State border post (another post on the Lithuanian-Polish border).

26. The Government observed, firstly, that the Vilnius-Klaipėda highway was the main trunk road connecting the three biggest cities in the country, while the Panevėžys-Pasvalys-Riga highway (otherwise known as Via Baltica) and the Kaunas-Marijampolė-Suvalkai highway were transitional trunk roads used to enter and leave the country. According to the Government, all three roads were blocked at locations next to the customs post for approximately forty-eight hours.

27. The Government alleged, in particular, that owing to the blocking of the Kaunas-Marijampolė-Suvalkai highway, which prevented vehicles from passing through border control, queues of heavy goods vehicles and cars formed in Lithuania and Poland at the Kalvarija border crossing. The heavy goods vehicles were forced to drive along other routes in order to avoid

traffic jams. As the functioning of the Kalvarija customs post was disrupted, the Kaunas territorial customs authority was obliged to re-allocate human resources as well as to prepare for a possible reorganisation of activities with the State Border Guard Service and the Polish customs. As a consequence, the Kaunas territorial customs authority incurred additional costs; however, the concrete material damage had not been calculated.

28. According to a report of the Kalvarija police, the road was blocked on 22 May 2003. The lorries returning to Lithuania from Poland were directed by the police to a car park at the Kalvarija border crossing. At around 11.40 a.m. the lorry drivers approached the farmers. They demanded an end to the roadblocks, under threat of physical force. The police urged the parties to the conflict to calm down and to wait for the outcome of the negotiations between the farmers and the Prime Minister. According to the Government, the farmers and the lorry drivers had a few arguments, but more serious confrontations were avoided. At around 4.15 p.m. the farmers received a telephone call regarding the positive outcome of the negotiations and moved one tractor off the road. The traffic then resumed in both directions.

29. The Government also noted that, owing to the blocking of the Vilnius-Riga highway on 22 May 2003 from 2 until 4 p.m., heavy goods vehicles could not cross the border and queues of traffic of 1,600 and 700 metres respectively appeared in both directions. Cars took diversions along a gravel road.

30. On 1 September 2003 the Pasvalys police issued a certificate stating that between 19 and 23 May 2003 the farmers had held a demonstration in the car park at the sixty-third kilometre of the Panevėžys-Pasvalys-Riga highway. On 21 May 2003 at around midday the farmers had gone onto the highway and had stopped the traffic. They had only allowed through passenger vehicles and vehicles carrying dangerous substances. Goods vehicles and cars were allowed to go through ten at a time on each side of the road once every hour. In order to improve the situation, the police had attempted to let the traffic bypass the blockade through neighbouring villages. However, owing to the poor condition of those neighbouring roads, not all goods vehicles were able to drive on them and they had to remain on the highway until the farmers had left. Some lorries became stuck in sand and special machinery was necessary to pull them out. The police indicated that the farmers had unblocked the highway at 4 p.m. on 23 May 2003.

31. As can be seen from the documents submitted to the Court, in May and September 2003 four logistics companies informed the police and Linava, the Lithuanian National Road Carriers' Association, that they had sustained pecuniary damage in the sum of 25,245 Lithuanian litai ((LTL) – approximately 7,300 euros (EUR)) as a result of the roadblocks during the farmers' demonstrations. The companies stated that they would institute court proceedings in respect of those claims.

32. The Government alleged that, notwithstanding the fact that only one claim for pecuniary damage was ultimately lodged (see paragraph 40 below), more than one carrier company incurred material loss owing to the disruption of traffic. As submitted by Linava, Vilniaus Dobilas incurred damage amounting to LTL 6,100 (approximately EUR 1,760); Rokauta incurred damage amounting to LTL 4,880 (approximately EUR 1,400); and Immensum incurred damage amounting to LTL 3,600 (approximately EUR 1,050). Moreover, in a letter of 26 May 2003, the company Ridma indicated that the loss incurred by them owing to the roadblocks amounted to LTL 10,655 (approximately EUR 3,000).

C. Criminal proceedings against the applicants

1. *Pre-trial investigations and first-instance trial before the Kaunas City District Court*

33. Pre-trial investigations against the applicants and a number of other persons, on suspicion of having caused a riot, were initiated. In July 2003 B.M., V.M., A.P. and K.M. were ordered not to leave their places of residence. That measure was lifted in October 2003.

34. On 1 October 2003 the police imposed a fine of LTL 40 (approximately EUR 12) on a farmer, A.D. According to the applicants, it was established in the police record relating to the fine that on 21 May 2003 A.D. had taken the farmers to block the Kaunas-Marijampolė-Suvalkai highway in the Kalvarija municipality; he had walked in the middle of the road, pushing a cart in front of him, thus obstructing the traffic. By such actions A.D. had breached paragraph 81 of the Road Traffic Regulations (see paragraph 67 below) and thus committed an administrative-law violation, as provided for in Article 131 of the Code of Administrative Law Offences (see paragraph 66 below).

35. The Government noted that the criminal proceedings against A.D. were discontinued on 1 August 2003 as he had not organised or provoked a gathering to seriously breach public order; his act (walking in the middle of the road pushing a cart in front of him) was not considered to fall under Article 283 § 1 of the Criminal Code (see paragraph 62 below). The Government further noted that the criminal proceedings had been discontinued on similar grounds in respect of three other persons. In respect of a fourth person the criminal prosecution was discontinued owing to his immunity as a member of parliament.

36. On 4 December 2003 an indictment was laid before the courts. B.M. and A.K. were accused of incitement to rioting under Article 283 § 1 of the Criminal Code.

37. The prosecutor noted that B.M. had taken part in the farmers' meeting of 16 May 2003, at which the farmers had decided to hold

demonstrations near major highways on 19 May and, should the government not satisfy their requests by 11 a.m. on 21 May, to blockade those highways. On 19 May B.M. had told the farmers to blockade the roads on 21 May. As a result, at 12.09 p.m. on that date around 500 farmers had gone onto the Vilnius-Klaipėda highway. The farmers had refused to obey police requests not to stand on the road. Consequently, traffic had been blocked until 1 p.m. on 23 May. Traffic jams had occurred on neighbouring roads and road transport in the region had become impossible.

38. With regard to A.K., the prosecutor claimed that he had also incited the farmers to blockade the highway. As a result, at midday on 21 May 2003 approximately 250 people had gone onto the Panevėžys-Pasvalys-Riga highway, refusing to obey police orders not to block the highway. The road had remained blocked until 10.58 a.m. on 23 May. The roads in the vicinity had become clogged. The normal functioning of the Saločiai-Grenctale border-control post had been disrupted.

39. V.M., K.M. and A.P. were accused of a serious breach of public order during the riot, under Article 283 § 1 of the Criminal Code. The prosecutor maintained that on 21 May 2003, at around 11.50 a.m., approximately 1,500 people had gone onto the Kaunas-Marijampolė-Suvalkai highway at the ninety-fourth kilometre. At about 3 or 4 p.m. the above-mentioned applicants had driven three tractors onto the highway and had left them on the carriageway. The three applicants had refused to follow police instructions not to breach public order and not to leave the tractors on the road. The tractors had remained on the road until 4.15 p.m. on 22 May 2003. As a result, the highway had been blocked from the eighty-fourth to the ninety-fourth kilometre. Due to the resulting increase in traffic on neighbouring roads, congestion had built up and road transport in the region had come to a halt. The normal functioning of the Kalvarija and Marijampolė State border-control posts had been disrupted.

40. Within the criminal proceedings, a logistics company brought a civil claim against A.K., as the person who had incited the farmers to block the Panevėžys-Pasvalys-Riga highway, seeking damages of LTL 1,100 (approximately EUR 290) for the loss allegedly incurred by it owing to the blockading of that road.

41. Several hearings, during which a number of witnesses testified, took place before the Kaunas City District Court.

42. On 29 September 2004 the Kaunas City District Court found the applicants guilty of incitement to rioting or participating in them, under Article 283 § 1 of the Criminal Code.

43. In convicting B.M., the District Court relied on video-recordings of the events, documentary evidence and the testimony of one witness. The court concluded that B.M. had organised a gathering with the aim of seriously breaching public order, namely by rioting. B.M. had been one of the leaders of the farmers' meeting on 16 May 2003, at which the farmers

had decided to attempt to achieve their goals by organising protests next to major highways. The District Court noted that B.M. had coordinated the actions of the farmers and as a consequence, on 21 May 2003, approximately 500 people had gone on to the Vilnius-Klaipėda highway and had blocked it. As a result, traffic had been blocked until 23 May 2003. The ensuing serious breach of public order had been deliberate and had to be characterised as a riot. The District Court dismissed B.M.'s claim that he and other farmers had acted out of necessity because the roadblock had been their last opportunity to draw the government's attention to their problems. The farmers had had an alternative, namely, they could have brought complaints before the administrative courts. The farmers had themselves mentioned that alternative during the meeting of 16 May 2003 (see paragraph 14 above). The District Court further noted that a person who created a dangerous situation by his or her actions could only rely on the defence of necessity when a dangerous situation arose through negligence (Article 31 § 2 of the Criminal Code – see paragraph 65 below). However, the actions of B.M. had been deliberate and it was therefore appropriate to find him guilty of organising the riot.

44. The District Court found it established, mainly on the basis of video-recordings and documentary evidence, that A.K. had also organised a gathering with the aim of seriously breaching public order. He had taken part in the farmers' meeting of 16 May 2003 and had known about the decision to hold protests next to the roads. When a crowd of farmers had blocked the Panevėžys-Pasvalys-Riga highway on 21 May 2003, public order had been seriously breached. Traffic had been stopped on that part of the road, causing inconvenience to drivers and goods carriers. The District Court held that

> "during the blockade of 21 and 22 May, A.K. coordinated the actions of the crowd, that is to say he gave orders that some of the vehicles should be let through, incited [the farmers] to hold on and not to move away from the highway, was in contact with the participants in the protests in the Kalvarija municipality and the Klaipėda region, [and] was negotiating with the authorities by mobile phone in the name of the farmers".

The District Court emphasised that the farmers who had gathered (approximately 250 people) "obeyed the actions of A.K. and followed his orders". For the District Court, the actions of A.K. were to be characterised as organising a riot under Article 283 § 1 of the Criminal Code.

45. On the basis of written evidence submitted by Linava, the District Court also found that by organising the blockade of the Panevėžys-Pasvalys-Riga highway, A.K. had caused pecuniary damage to three carrier companies. As one of the carriers had submitted a civil claim for the sum of LTL 1,100 (approximately EUR 290 – see paragraph 40 above), the District Court deemed it proper to grant that claim.

46. In finding V.M., K.M. and A.P. guilty of causing a serious breach of public order during a riot, the District Court, on the basis of documentary evidence, audio-visual material and the testimony of two witnesses, established that on 21 May 2003 between 11.50 a.m. and 4.15 p.m. the three of them had driven tractors onto the Kaunas-Marijampolė-Suvalkai highway at the ninety-fourth kilometre. They had refused to obey lawful orders by the police not to breach public order and not to park the tractors on the road (*ant važiuojamosios kelio dalies*) and had kept the tractors there until 4.15 p.m. on 22 May 2003. As a consequence, and because about 1,500 people had gathered on the road, the traffic had been blocked from the eighty-fourth to the ninety-fourth kilometre of the Kaunas-Marijampolė-Suvalkai highway, traffic jams had occurred and the normal functioning of the Kalvarija and Lazdijai border-control posts had been disrupted.

47. The five applicants were each given a sixty-day custodial sentence (*baudžiamasis areštas*). The District Court also noted that all the applicants had positive characteristics and that there were no circumstances aggravating their guilt. Accordingly, there was reason to believe that the aim of the punishment could be achieved without actually depriving them of their liberty. Consequently, the District Court suspended the execution of their sentences for one year. The applicants were ordered not to leave their places of residence for more than seven days without the authorities' prior agreement. This measure was to last for one year, while execution of the sentence was suspended.

48. The District Court also acquitted, for lack of evidence, two other individuals charged with organising the riots.

2. *Appeal before the Kaunas Regional Court*

49. On 18 October 2004 the applicants lodged an appeal with the Kaunas Regional Court. They noted, *inter alia*, that another farmer, A.D., had been punished only under administrative law for an identical violation (see paragraphs 34-35 above).

50. The applicants further argued that in European Union member States, roadblocks were accepted as a form of demonstration, and that the right to demonstrate was guaranteed by Articles 10 and 11 of the Convention. They referred, *inter alia*, to Article 2 of Council Regulation (EC) No 2679/98 of 7 December 1998 (see paragraph 77 below) and to a report of 22 March 2001 by the Commission of the European Communities (COM(2001) 160) on the application of that Regulation, as well as to the judgment of the Court of Justice of the European Communities (ECJ) in *Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria* (see paragraphs 73-76 below).

51. On 14 January 2005 the Kaunas Regional Court found that the District Court had thoroughly and impartially assessed all the circumstances of the case. The Regional Court observed that the offence of rioting

endangered public order, public safety and public health, human dignity and the inviolability of property. The objective aspect of the offence was the organising of a gathering of people for a common goal – namely, to breach public order – and the implementation of their decision which, in the instant case, had been to organise the roadblocks. To constitute an offence, the actions also had to be committed deliberately, that is to say, the persons charged had to understand the unlawfulness of their behaviour. In relation to B.M. and A.K., the Regional Court observed that during the demonstrations the two applicants had told others that it had been decided to block the roads. It had been established that B.M. and A.K. had understood that the roadblocks would be illegal and that they had been warned about their liability as organisers. Even so, they had continued to coordinate the farmers' actions and had insisted that the farmers maintain the roadblocks. As a direct result of the actions of B.M. and A.K., on 21 May 2003 a crowd had gone onto the highways and had blocked them, thereby stopping the traffic and breaching the constitutional rights and liberties of others to move freely and without restriction, causing damage to goods carriers and thus seriously breaching public order.

52. The Regional Court also shared the District Court's conclusion as to the reasonableness of convicting V.M., K.M. and A.P. It noted that by driving tractors onto the highway, thus causing traffic congestion and disturbing the work of the State border-control service, and by refusing to obey lawful requests by the police not to park their tractors on the road, the three applicants had seriously breached public order. The fact that after the highway had been blocked the police and the drivers had negotiated with the farmers, with the result that some of the drivers had been let through, did not diminish the danger caused by the offence or its unlawfulness. The Regional Court also emphasised that the blockading of a major highway had had dangerous consequences and could not be considered to have been a mere administrative-law offence such as a traffic violation. As to the applicants' argument that their offences were identical to that for which another farmer, A.D., had been given a mere administrative sanction for a traffic violation (see paragraph 49 above), the Regional Court indicated that it was not an administrative tribunal and thus could not comment on the administrative offence.

53. While noting that the applicants had the right to freedom of expression under Article 10 of the Convention, the Regional Court nevertheless observed that such right was not without restrictions, should the interests of public order and prevention of crime be at stake. Analogous limitations to freedom of expression were listed in Article 25 of the Lithuanian Constitution (see paragraph 61 below). On this issue, the Regional Court emphasised that the behaviour of B.M. and A.K., in guiding the actions of the other individuals involved in the protest, could not be

regarded as a non-punishable expression of their opinion, because they had breached public order, thus engaging criminal liability.

54. The Regional Court further noted that the criminal offence had not lost its element of danger to the public merely because the government had refused to raise wholesale prices or had allegedly failed to take the necessary action.

3. *Appeal on points of law before the Supreme Court*

55. On 2 March 2005 the applicants appealed on points of law.

56. On 4 October 2005 the Supreme Court, composed of an enlarged chamber of seven judges (see paragraph 70 below), dismissed the appeal. In providing an explanation as to the substance of the offence of rioting, as defined in Article 283 § 1 of the Criminal Code (see paragraph 62 below), the Supreme Court referred to its classification as an offence against public order, which was the objective aspect of the crime (*nusikaltimo objektas*). In describing the scope of the offence, the aforementioned provision stipulated the following features: the organisation of a gathering with the aim of causing public violence, damaging property or otherwise breaching public order, or the commission of those actions during a gathering. For the Supreme Court, a riot was to be characterised as a situation where a gathering of people deliberately and seriously breached public order, caused public violence, or damaged property. The subjective aspect of the crime was that of direct intent (*kaltė pasireiškia tiesiogine tyčia*). The guilty person had to (i) be aware that he or she was performing an action that was listed as an offence in Article 283 § 1 of the Criminal Code; and (ii) wish to act accordingly.

57. Turning to the circumstances of the present case, the Supreme Court found that the courts below had been correct in characterising the applicants' actions as falling under Article 283 § 1 of the Criminal Code. In particular, the trial court had properly established all the prerequisites for the application of Article 283 § 1, namely that there had been a crowd and that public order had been breached by blocking the highways, stopping traffic and disturbing the work of the State border-control service. The applicants had been sentenced for their offences under a law in force at the time they were committed and their sentences had been imposed in accordance with the provisions of the Criminal Code. It followed that the applicants' convictions had been in accordance with the law and not in breach of Article 7 § 1 of the Convention.

58. The Supreme Court also stated that the applicants had not been sentenced for expressing their opinion or imparting ideas, actions which were protected by the guarantees of Article 10 § 1 of the Convention, but for actions by which they had seriously breached public order.

59. Lastly, the Supreme Court shared the Regional Court's view that the applicants could not be regarded as having acted out of necessity (see

paragraph 54 above). The fall in milk purchase prices and other problems with subsidies for agriculture had not constituted a clear or present danger to property, because the property in question had not yet materialised. The State had not deprived the applicants of their property, and their dissatisfaction with the government's agricultural policy had not justified the acts for which the applicants had been convicted.

60. By court rulings of 17, 18, 20, 21 October and 7 November 2005, the Supreme Court discharged the applicants from their suspended sentences.

II. RELEVANT DOMESTIC LAW

A. The Constitution

61. Articles 25 and 36 of the Constitution read as follows.

Article 25

"A natural person shall have the right to have his own convictions and to freely express them.

A natural person must not be hindered from seeking, receiving and imparting information and ideas.

Freedom to express convictions [and] to receive and impart information may not be limited other than by law, if this is necessary to protect the health, honour and dignity, private life and morals of a natural person, or to defend the constitutional order.

Freedom to express convictions and to impart information shall be incompatible with criminal actions, such as incitement to national, racial, religious, or social hatred, violence and discrimination, [or] slander and disinformation. ..."

Article 36

"Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings. This right may not be limited other than by law and only when it is necessary to protect the security of the State or society, public order, people's health or morals, or the rights and freedoms of others."

B. The Criminal Code

62. On 25 October 2000 the Criminal Code was published in the Official Gazette (*Valstybės žinios*) and it came into force on 1 May 2003. Article 283 § 1 establishes criminal liability for rioting, which is categorised as a public-order offence, and provides as follows.

Article 283 – Rioting

"A person who organises or provokes a gathering of people to commit public acts of violence, damage property or otherwise seriously breach public order, or a person who, during a riot, commits acts of violence, damages property or otherwise seriously

breaches public order, is liable to be sentenced to a short-term custodial sentence [*baudžiamasis areštas*] or to imprisonment for up to five years.”

63. Article 75 §§ 1 and 2 stipulates that if a person is sentenced to imprisonment for a term not exceeding three years for the commission of one or several minor or less serious premeditated offences, a court may suspend the sentence for a period ranging from one to three years. The sentence may be suspended when the court rules that there is a sufficient basis for believing that the aim of the punishment will be achieved without the sentence actually being served. When suspending execution of the sentence, the court may order the convicted person not to leave his or her place of residence for a period exceeding seven days without the prior agreement of the authority supervising the execution of the judgment.

64. Pursuant to Article 97, individuals convicted of a crime and whose conviction has become final are regarded as offenders having a previous conviction. Any person given a suspended sentence is considered as having a previous conviction during the period of suspension of the sentence.

65. Article 31 defines the concept of necessity (*būtinasis reikalingumas*). It states that a person is not to be held criminally liable for an act committed in an attempt to avert an immediate danger which threatens him or her, other persons or their rights, or public or State interests, where this danger could not have been averted by other means and where the damage caused is less than the damage which it is intended to avert. Nonetheless, a person who creates a dangerous situation by his or her actions may only rely upon the defence of necessity when the dangerous situation arose through negligence (*dėl neatsargumo*).

C. Code of Administrative Law Offences and Road Traffic Regulations

66. Article 124[1] of the Code of Administrative Law Offences at the relevant time provided for administrative liability for a breach of traffic regulations by drivers. The provision stipulated that a breach of the regulations on how and when a driver could stop and park on highways carried a fine ranging from LTL 100 to LTL 150 (approximately EUR 30-45). Article 131 of the Code provided for administrative liability for the non-observance by pedestrians of traffic signs, or for crossing or walking on a carriageway. The offence was punishable by a fine of LTL 30-50 (approximately EUR 8-15).

67. The Road Traffic Regulations provide that pedestrians must walk on the pavement and, if there is none, on the right side of the road in single file (paragraph 81 of the Regulations).

D. The Law on assembly

68. In so far as relevant, the Law on assembly provides as follows.

Article 8 – Prohibited gatherings

"The following gatherings shall be prohibited, where their participants:

...

(2) drive vehicles in a way which causes a threat to road safety, endangers the safety and health of the participants in a gathering and other persons, or breaches public order and peace;

..."

Article 17 – Termination of a gathering on the initiative of the police

"A gathering shall be terminated by the police officers whose duty it is to ensure observance of the law during the course thereof, if, when publicly warned, the organisers of or participants in the gathering:

(1) commit a deliberate and gross breach of the procedure for organising gatherings as laid down by the present Law ...

(2) by making use of the opportunities afforded by a gathering, attempt to commit or commit crimes against the independence, territorial integrity and constitutional order of the State of Lithuania or other deliberate criminal acts against a person's life, health, freedom, honour and dignity, or against public safety, governance and public order;

(3) individually or by group actions disturb, or cause an actual threat to disturb, traffic or the activities of State establishments, organisations and local authorities ..."

69. Article 188^7 of the Code of Administrative Law Offences provides:

"Violation of the Law on Assembly shall carry a fine ranging from LTL 500 to LTL 2,000 or result in administrative arrest of up to thirty days.

Breaches of public order at other large-scale events shall carry a fine ranging from LTL 100 to LTL 500."

E. The Law on courts

70. The Law on courts at the material time provided that the Supreme Court established uniform judicial practice in interpreting and applying laws and other regulations. The Supreme Court also analysed the practice of courts and gave recommendations to be followed. Depending on the complexity of the case, the Supreme Court could decide cases in chambers of three or seven judges or in plenary session (Articles 23, 27 and 36).

III. RELEVANT EUROPEAN UNION LAW AND PRACTICE

A. Case-law of the ECJ

1. The case of Commission of the European Communities v. France

71. The ECJ examined the issue of obstruction to the free movement of goods in *Commission of the European Communities v. France* (C-265/95, judgment of 9 December 1997 – "the *Commission* case"), concerning serious incidents which occurred in the south of France. Agricultural products from Spain and Italy had been destroyed by French farmers and acts of violence and vandalism had been committed in the relevant wholesale and retail sectors. The ECJ emphasised that, in accordance with the EC Treaty, the European internal market was characterised by the abolition, between member States, of obstacles to the free movement of goods. Article 30 of the Treaty prohibited, between member States, quantitative restrictions on imports and all measures having equivalent effect. Therefore, all barriers, whether direct or indirect, actual or potential, to flows of imports in intra-Community trade had to be eliminated. Article 30, read in conjunction with Article 5 of the Treaty, also applied where a member State abstained from adopting the measures required in order to deal with obstacles to the free movement of goods which were not caused by the State.

72. The ECJ accepted that States enjoyed a margin of discretion in determining what measures were more appropriate in this field. It was, however, clear that the acts of violence committed in France against agricultural products originating in other member States created obstacles to intra-Community trade in those products. The incidents in issue had taken place regularly for more than ten years; in certain cases the French authorities had been warned of the imminence of demonstrations by farmers, the disruption had continued for several hours and the acts of vandalism, committed by persons whose faces were often not covered, had been filmed by television cameras. In spite of this, only a very small number of perpetrators had been identified and prosecuted. This was sufficient for the ECJ to come to the conclusion that the measures adopted by the French government were manifestly inadequate to ensure freedom of intra-Community trade in agricultural products on its territory and that France had failed to fulfil its obligations under Article 30, taken in conjunction with Article 5 of the EC Treaty. This had created a climate of insecurity which had had a deterrent effect on trade flow as a whole and the difficult situation of French farmers could not justify a failure to apply Community Law correctly, as it had not been shown that implementation of that law would have posed a danger to public order with which the State could not cope. It was true that the threat of serious disruption to public order might, in

appropriate cases, justify non-intervention by the police; however, this argument could have been put forward only with respect to a specific incident, and not in a general way covering all the incidents in issue.

2. *The case of* Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria

73. In *Eugen Schmidberger, Internationale Transporte und Planzüge v. Austria*, (C-112/00, judgment of 12 June 2003 – "the *Schmidberger* case"), the ECJ gave a preliminary ruling on the interpretation of Articles 30, 34 and 36 (now Articles 34, 35 and 36 of the Treaty on the Functioning of the European Union – TFEU), read together with Article 5 of the EC Treaty (repealed and replaced in substance by Article 4 § 3 of the Treaty on European Union – TEU) and on the conditions for liability of a member State for damage caused to individuals by a breach of Community Law. The case originated in the permission implicitly granted by the Austrian authorities to an environmental group to organise a demonstration on the Brenner motorway, the effect of which was to completely close that motorway to traffic for almost thirty hours. In conjunction with a pre-existing, national, generally applicable ban on holiday driving, this caused the Brenner motorway (an essential intra-Community transit route) to be closed to the majority of heavy goods traffic for four consecutive days, with a short interruption of a few hours.

74. After referring to the principles laid down in the *Commission* case (see paragraphs 71-72 above) regarding the positive obligations of the member States in this area, the ECJ held that the fact of not banning the demonstration complained of amounted to a restriction of the free movement of goods. It went on to consider whether the failure to impose a ban could be objectively justified. It observed that the specific aims of the demonstration were in themselves immaterial to establish the liability of the member State under the EC Treaty, only the objective pursued by the national authorities, namely respect for the fundamental rights of freedom of expression and assembly, being relevant. Both the free movement of goods, one of the fundamental principles of the EC Treaty, and the rights guaranteed by Articles 10 and 11 of the Convention could be subject to certain restrictions for overriding requirements relating to the public interest. It remained to be ascertained whether the restrictions to the free movement of goods tolerated by Austria were proportionate to the legitimate objective pursued.

75. In this connection the ECJ noted that the case in *Schmidberger* could be distinguished from that in the *Commission* case in that: (a) the demonstrators had requested an authorisation; (b) the obstacle to the free movement of goods was limited geographically; (c) the aim of the demonstrators was not to restrict trade in goods of a particular type or from a particular source; (d) various administrative and supporting measures

(publicity campaign, designation of various alternative routes, security arrangements on the site of the demonstration) had been taken by the competent authorities in order to limit as far as possible the disruption to road traffic; and (e) the demonstration did not give rise to a general climate of insecurity such as to have a dissuasive effect on intra-Community trade flow as a whole. Under these circumstances, Austria was entitled to consider that an outright ban on the demonstration would have constituted unacceptable interference with freedom of peaceful assembly, and stricter conditions concerning the site and/or the duration of the demonstration could have been perceived as excessive restrictions. In this respect, the ECJ stated as follows.

> "90. ... Whilst the competent national authorities must endeavour to limit as far as possible the inevitable effects upon free movement of a demonstration on the public highway, they must balance that interest with that of the demonstrators, who seek to draw the aims of their action to the attention of the public.
>
> 91. An action of that type usually entails inconvenience for non-participants, in particular as regards free movement, but the inconvenience may in principle be tolerated provided that the objective pursued is essentially the public and lawful demonstration of an opinion.
>
> 92. In that regard, the Republic of Austria submits, without being contradicted on that point, that in any event, all the alternative solutions which could be countenanced would have risked reactions which would have been difficult to control and would have been liable to cause much more serious disruption to intra-Community trade and public order, such as unauthorised demonstrations, confrontation between supporters and opponents of the group organising the demonstration or acts of violence on the part of the demonstrators who considered that the exercise of their fundamental rights had been infringed."

76. The ECJ concluded that

> "the fact that the authorities of a Member State did not ban a demonstration in circumstances such as those of the main case [was] not incompatible with Articles 30 and 34 of the [EC] Treaty, read together with Article 5 thereof".

B. Council Regulation (EC) No 2679/98

77. Article 2 of Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the member States reads as follows:

> "This Regulation may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right or freedom to take other actions covered by the specific industrial relations systems in Member States."

IV. COMPARATIVE LAW

78. The Court has examined the regulations concerning the use of vehicles to obstruct traffic in the context of public demonstrations in thirty-five Council of Europe member States, namely Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, the Republic of Moldova, Montenegro, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and the United Kingdom.

79. This comparative-law survey shows that, while the use of vehicles in public demonstrations is generally not specifically regulated in the laws of the member States, obstruction of traffic on the public highway by vehicles or by other means is criminally punishable in the following ten countries: Azerbaijan, Belgium, France, Greece, Ireland, Italy, Portugal, Romania, Turkey and the United Kingdom. In the event of conviction, the guilty person may be sentenced to imprisonment for different terms (minimum of three months in Greece, up to one year in Italy, two years in France and Romania, three years in Azerbaijan and Turkey, five years in Portugal, ten years in Belgium) or to a fine (Ireland and the United Kingdom).

80. A number of countries provide for criminal sanctions including imprisonment in qualified situations where the obstruction of traffic entails grave consequences, such as damage to property or to the life and physical integrity of persons (for example, the Czech Republic, Georgia, Hungary, the Republic of Moldova, Russia, Switzerland, the former Yugoslav Republic of Macedonia and Ukraine) or if it involves certain examples of reprehensible conduct, such as the use of threats or violence (Estonia and Slovakia), a breach of the legal requirements for assembly (Cyprus), or the disobeying or resisting of police orders (Austria). In Germany, in particular, there is established case-law of the courts applying the offence of duress to the blocking of streets by vehicles in the context of public demonstrations.

81. Non-criminal sanctions for obstructing traffic in breach of road-safety provisions or rules governing public assembly are provided for in the laws of Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Finland, Latvia, Luxembourg, the Republic of Moldova, Poland, Russia, Serbia, Slovakia and Switzerland, where such breaches constitute a misdemeanour or an administrative offence, punishable by a fine.

THE LAW

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

82. The applicants complained that their criminal conviction had violated their rights to freedom of expression and freedom of peaceful assembly, guaranteed by Articles 10 and 11 of the Convention respectively.

The relevant parts of these provisions read as follows.

Article 10

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

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

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. ..."

83. The Government disputed this claim.

84. The Court observes, firstly, that in their observations before the Grand Chamber the applicants alleged, *inter alia*, that the Government's Agent who signed the referral request could not be deemed to be impartial, as she was the Parliamentary Controller who, in 2004, had dealt with a complaint from the farmers concerning some critical issues of agricultural policy. However, they did not rely on any provision of the Convention or of the Rules of Court, nor did they point to any specific fact or circumstance which could be viewed as a shortcoming for the purposes of Rules 44A (Duty to cooperate with the Court), 44B (Failure to comply with an order of the Court), 44C (Failure to participate effectively) or 44D (Inappropriate submissions by a party) of the said Rules or which otherwise calls into question the conduct of the proceedings before the panel of five judges which examined the Government's request. In any event, pursuant to Article 43 § 3 if, as here, the panel has "accept[ed] the request, the Grand Chamber *shall decide the case* by means of a judgment" (emphasis added),

it being foreseen that the panel's decision is final and may not form the subject of an appeal. The Court therefore sees no reason to deal with the matter.

85. The Court further notes that in relation to the same facts the applicants relied on two separate Convention provisions: Article 10 and Article 11 of the Convention. In the Court's opinion, in the circumstances of the present case, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202). The thrust of the applicants' complaint is that they were convicted for holding peaceful assemblies. The Court therefore finds that the applicants' complaint should be examined under Article 11 alone (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 101, ECHR 2011; see also, *mutatis mutandis*, *Galstyan v. Armenia*, no. 26986/03, §§ 95-96, 15 November 2007, and *Primov and Others v. Russia*, no. 17391/06, § 91, 12 June 2014).

86. At the same time, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10, where the aim of the exercise of freedom of assembly is the expression of personal opinions (see *Ezelin*, cited above, § 37; *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 37, ECHR 1999-VIII; *Fáber v. Hungary*, no. 40721/08, § 41, 24 July 2012; and *Nemtsov v. Russia*, no. 1774/11, § 62, 31 July 2014), as well as the need to secure a forum for public debate and the open expression of protest (see *Éva Molnár v. Hungary*, no. 10346/05, § 42, 7 October 2008).

A. Whether there has been an interference with the exercise of the right to freedom of peaceful assembly

1. *The parties' submissions*

(a) The applicants

87. The applicants argued that their conviction amounted to an interference with their right to organise and take part in a peaceful demonstration.

(b) The Government

88. Before the Chamber the Government submitted that there had not been any interference with the applicants' right to freedom of peaceful assembly. They observed that the applicants and other participants had been given permission to organise peaceful meetings. They had availed themselves of that freedom and no one had been punished for that. The applicants had not been convicted for exercising their right to freedom of assembly, but rather for a serious breach of public order by organising riots.

89. However, in their observations before the Grand Chamber, the Government stated that they did not contest that there had been an interference with the applicants' right to freedom of peaceful assembly.

2. The Chamber judgment

90. The Chamber found that, even though they had been permitted to exercise their right to peaceful assembly, the applicants had been convicted of an offence in connection with their actions during a gathering which did not involve any violence, a fact which had interfered with their Article 11 rights (see paragraph 67 of the Chamber judgment).

3. The Grand Chamber's assessment

(a) Applicability of Article 11 of the Convention

91. The Court must first determine whether the facts of the present case fall within the ambit of Article 11 of the Convention. It reiterates that 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 *Taranenko v. Russia*, no. 19554/05, § 65, 15 May 2014). As such this right covers both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it can be exercised by individual participants and by the persons organising the gathering (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III; *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004; and *Barraco v. France*, no. 31684/05, § 41, 5 March 2009).

92. 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 (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 77, ECHR 2001-IX). 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 *Sergey Kuznetsov v. Russia*, no. 10877/04, § 45, 23 October 2008; *Alekseyev v. Russia*, nos. 4916/07 and 2 others, § 80, 21 October 2010; *Fáber*, cited above, § 37; *Gün and Others v. Turkey*, no. 8029/07, § 49, 18 June 2013; and *Taranenko*, cited above, § 66).

93. In the present case, the Lithuanian courts established that some of the farmers had used vehicles, especially tractors, to block the highways. This is not contested by the applicants. However, the vehicles in issue had not been used to cause bodily harm to the police officers or any members of the public. Even though the farmers and lorry drivers had a few arguments, more serious confrontations had been avoided (see paragraph 28 above). Moreover, neither the applicants nor the other farmers were accused by the

domestic authorities of having engaged in any specific act of violence or of having any violent intentions.

94. In this connection, 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 (see *Ziliberberg*, cited above). The possibility of persons with violent intentions, not members of the organising association, joining the demonstration cannot as such take away that right (see *Primov and Others*, cited above, § 155). 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 *Schwabe and M.G.*, cited above, § 103, and *Taranenko*, cited above, § 66).

95. The Court further notes that the farmers had been authorised to hold peaceful assemblies and to display agricultural machinery. These gatherings pursued a political aim and were meant to express political ideas, in particular to contest the government's policy and to obtain the granting of subsidies in the agricultural sector.

96. The demonstrations were held in the designated areas from 19 to 21 May 2003 (see paragraphs 19-20 above). On the latter date, the farmers moved onto the highways and parked tractors there, thus blocking the three major roads of the country and exceeding the scope of the permits issued by the Lithuanian authorities.

97. However, the applicants' conviction was not based on any involvement in or incitement to violence, but on the breach of public order resulting from the roadblocks. The Court further observes that, in the present case, the disruption of traffic cannot be described as a side-effect of a meeting held in a public place, but rather as the result of intentional action by the farmers, who wished to attract attention to the problems in the agricultural sector and to push the government to accept their demands (see also the arguments developed by the Court in paragraphs 169-75 below). 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 (see, for instance, *Barraco*, cited above, § 39, where the applicant's conviction for his participation in a traffic-slowing operation, consisting in a rolling barricade of vehicles across several lanes of the motorway to slow down the traffic behind, was held to be an interference with his Article 11 rights; see also *Lucas v. the United Kingdom* (dec.), no. 39013/02, 18 March 2003,

concerning a demonstration during which a public road was blocked in order to protest against the retention of a nuclear submarine, which was considered to fall within the terms of Article 11; *Steel and Others v. the United Kingdom*, 23 September 1998, § 92, *Reports of Judgments and Decisions* 1998-VII, where the Court considered that the physical impediment of activities – a hunt and the construction of a motorway – of which the first and second applicants, respectively, disapproved, constituted expressions of opinion within the meaning of Article 10; and *Drieman and Others v. Norway* (dec.), no. 33678/96, 4 May 2000, where the Court proceeded on the assumption that Articles 10 and 11 could be relied on by Greenpeace activists who had manoeuvred dinghies in such a manner as to obstruct whaling). This state of affairs might have implications for any assessment of "necessity" to be carried out under the second paragraph of Article 11.

98. Nevertheless, the Court does not consider that the impugned conduct of the demonstrations for which the applicants were held responsible was of such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention. The Court also notes that the Kaunas Regional Court accepted that the applicants enjoyed the right to freedom of expression under Article 10 of the Convention (see paragraph 53 above) and considers that there is no indication that the applicants have undermined the foundations of a democratic society.

99. This is sufficient for the Court to arrive at the conclusion that the applicants are entitled to invoke the guarantees of Article 11, which is therefore applicable in the present case.

(b) Existence of an interference

100. Secondly, the Court will establish whether the applicants' right to freedom of assembly has been interfered with. It reiterates that the interference does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. 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 *Ezelin*, cited above, § 39; *Kasparov and Others v. Russia*, no. 21613/07, § 84, 3 October 2013; *Primov and Others*, cited above, § 93; and *Nemtsov*, cited above, § 73). For instance, a prior ban can have a chilling effect on the persons who intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities. A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference as well. So too do measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants, and penalties

imposed for having taken part in a rally (see *Kasparov and Others*, cited above, § 84, with further references).

101. The Court observes that in the present case the applicants were permitted to exercise unhindered their freedom of peaceful assembly, not only at the authorised locations, but also when the demonstrations moved onto the public highways in breach of the terms of the authorisation granted. Indeed, the gatherings, even when the demonstrators resorted to roadblocks, were not dispersed by the police. However, the applicants were subsequently convicted because of their role in the organisation and implementation of the roadblocks during the latter part of the demonstrations. As already indicated above, their conduct in this respect, albeit reprehensible, was not deemed to have been violent in character. The Court is therefore prepared to accept that the applicants' conviction for their participation in the demonstrations in issue amounted to an interference with their right to freedom of peaceful assembly. In this connection, it is noteworthy that before the Grand Chamber the Government did not dispute the existence of an interference (see paragraph 89 above).

102. Such interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of the aim or aims in question (see, among many other authorities, *Vyerentsov v. Ukraine*, no. 20372/11, § 51, 11 April 2013, and *Nemtsov*, cited above, § 72).

B. Whether the interference was "prescribed by law"

1. The parties' submissions

(a) The applicants

103. The applicants argued that their conviction under Article 283 § 1 of the Criminal Code (see paragraph 62 above) had not been "prescribed by law". In particular, the notion of "serious breach of public order", as specified in the aforementioned provision, was not clearly defined and thus could not legitimately be regarded as a feature characterising the criminal offence in question. B.M. and A.K. insisted that they had not been convicted and sentenced in accordance with the law, but rather for having expressed their opinions at the farmers' meeting and for defending those opinions during a peaceful demonstration. The other three applicants – V.M., K.M. and A.P. – claimed that they had been convicted merely for driving their tractors onto the highway and parking them there, even though the highway had already been blocked by the police and the farmers. Accordingly, the criminal conviction had been an excessive measure and their actions should have been treated as an administrative offence, in accordance with Articles 124^1 or 131 of the Code of Administrative Law Offences (see

paragraph 66 above), as was the case for the farmer, A.D. (see paragraph 49 above).

104. The applicants further noted that the Government had cited as a precedent a "riot" which had taken place near the Parliament building (see paragraph 191 below). However, in that case, as opposed to the present one, the demonstrators had used violence, destroyed property and resisted the police, causing them physical and moral harm. By contrast, the applicants' intention had not been to use violence or to cause damage, but to demonstrate for the social and financial needs of Lithuanian farmers.

(b) The Government

105. The Government submitted that any possible interference with the applicants' right to freedom of peaceful assembly had been prescribed by law. The applicants had been convicted under Article 283 § 1 of the Criminal Code, prescribing punishment for serious breaches of public order. Referring to the Court's judgment in *Galstyan* (cited above, § 107) and taking into account the diversity inherent in public-order offences, the Government considered that the domestic legal norm had been formulated with sufficient precision (see also the arguments developed by the Government under Article 7 of the Convention – paragraphs 188-91 below).

106. The Government further disputed as unreasoned the applicants' argument that their acts ought to have been classified as breaches of administrative law. Administrative liability for parking agricultural vehicles on the public highway and leaving them in a prohibited place could hypothetically have been imposed on the applicants, pursuant to Article 124^1 or Article 131 of the Code of Administrative Law Offences (see paragraph 66 above). However, the scope of the breach of administrative law provided for in those provisions did not encompass the applicants' acts in the instant case. Firstly, the applicants had acted as part of a crowd of people. Secondly, tractors had not only been parked and left unattended, but had also been used to block a highway, thus threatening the rights of others and the normal functioning of State institutions. Lastly, a concrete result had been pursued – the roadblocks. Therefore, the applicants' intent had been to commit a serious breach of public order and not merely to contravene a parking regulation.

2. The Chamber judgment

107. The Chamber proceeded on the assumption that the interference was "prescribed by law" within the meaning of Article 11 § 2 of the Convention (see paragraph 79 of the Chamber judgment).

3. *The Grand Chamber's assessment*

(a) General principles

108. The Court reiterates its case-law to the effect that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V; *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, § 52, ECHR 2001-VI; *Gawęda v. Poland*, no. 26229/95, § 39, ECHR 2002-II; *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I; *Vyerentsov*, cited above, § 52; *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 64-65, ECHR 2004-I; and *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 153, ECHR 2013).

109. In particular, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, *Djavit An*, cited above, § 65). Experience shows, however, that it is impossible to attain absolute precision in the framing of laws, particularly in fields in which the situation changes according to the prevailing views of society (see, among other authorities, *Ezelin*, cited above, § 45). In particular, the consequences of a given action need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, while certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, among other authorities, The Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30; *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III; *Ziliberberg*, cited above; *Galstyan*, cited above, § 106; and *Primov and Others*, cited above, § 125).

110. The role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain; the Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A; *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports* 1998-II; *VgT Verein gegen Tierfabriken*, cited above, § 52; *Mkrtchyan v. Armenia*, no. 6562/03, § 43, 11 January 2007; and *Vyerentsov*, cited above, § 54). Moreover, the level of precision required of domestic legislation – which cannot in any case

provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Vogt v. Germany*, 26 September 1995, § 48, Series A no. 323, and *Rekvényi*, cited above, § 34).

(b) Application of those principles to the present case

111. In the present case, the applicants' conviction had a legal basis in Lithuanian law, namely Article 283 § 1 of the Criminal Code, which prescribes punishment for the offence of rioting (see paragraph 62 above). While the Criminal Code was accessible, it remains to be ascertained whether the application of this provision was foreseeable.

112. Article 283 § 1 of the Criminal Code provides that imprisonment for up to five years will be the sanction imposed on "a person who organises or provokes a gathering of people to commit public acts of violence, damage property or otherwise seriously breach public order, or a person who, during a riot, commits acts of violence, damages property or otherwise seriously breaches public order". The domestic authorities did not accuse the applicants of committing acts of violence or of damaging property. They maintained, however, that the applicants had "otherwise seriously breach[ed] public order". In particular, on the basis of video-recordings, documentary evidence and witness statements, the District Court found that A.K. and B.M. had deliberately organised protests and coordinated the actions of the farmers in order to block the roads (see paragraphs 43-44 above) and that the other applicants, V.M., K.M. and A.P., had driven tractors onto the highway and parked them there and refused to obey lawful orders by the police to stop doing so (see paragraph 46 above). These findings were confirmed by the Kaunas Regional Court, which specified that A.K. and B.M. had been warned about their liability as organisers and had understood the unlawfulness of their actions (see paragraph 51 above). Finally, the Supreme Court provided an explanation of the substance of the offence punished under Article 283 § 1 of the Criminal Code, indicating, *inter alia*, that a riot was a situation where a gathering of people deliberately and seriously breached public order and that blocking the roads, stopping the traffic and disturbing the work of the State border-control authority was a means of causing such a breach (see paragraphs 56-57 above).

113. The Court acknowledges that, by its very nature, the concept of "breach of public order" used in Article 283 § 1 of the Criminal Code is to a certain extent vague. However, as ordinary life can be disrupted in a potentially endless number of ways, it would be unrealistic to expect the national legislator to enumerate an exhaustive list of illegitimate means for achieving a particular aim. The Court therefore considers that the terms in which Article 283 § 1 is formulated satisfy the qualitative requirements emanating from its case-law.

114. Moreover, the Court is of the opinion that the interpretation of this provision given by the domestic courts in the present case was neither arbitrary nor unpredictable, and that the applicants could have foreseen, to a degree reasonable in the circumstances, that their actions as described above, entailing long-lasting roadblocks with ensuing disruptions of ordinary life, traffic and economic activities, could have been deemed to amount to a "serious breach of public order" attracting the application of Article 283 § 1 of the Criminal Code.

115. This is not altered by the fact that Article 283 of the Criminal Code, which was published on 25 October 2000, was applied for the first time in the applicants' case. It is true that the Criminal Code came into force on 1 May 2003 (see paragraph 62 above) and the conduct the applicants were convicted of occurred between 21 and 23 May 2003, however, there must come a day when a given legal norm is applied for the first time (see, *mutatis mutandis*, and in relation to Article 7 of the Convention, *Huhtamäki v. Finland*, no. 54468/09, § 51, 6 March 2012, with further references).

116. In these circumstances, it should have been clear to the applicants that disobeying the lawful orders of the police could engage their responsibility.

117. In passing, the Court also notes that the permits to hold peaceful assemblies contained a warning regarding the possible liability of the organisers under the Code of Administrative Law Offences and under the Criminal Code, including Article 283 of the latter (see paragraphs 15-17 above). It is also to be noted that the police explicitly asked the demonstrators to remove the roadblocks.

118. In the light of the above, the Court concludes that the interference complained of was "prescribed by law" within the meaning of Article 11 § 2 of the Convention.

C. Whether the interference pursued a legitimate aim and was "necessary in a democratic society"

1. *The parties' submissions*

(a) The applicants

119. The applicants argued that the government's ongoing and deliberate delay in regulating milk, grain and meat prices and its refusal to implement Parliament's resolution of 22 April 2003 allocating funds to the agricultural sector (see paragraph 13 above) had put the farmers – and especially small farmers – in a critical situation, as they were unable to cover their production costs, were suffering losses and were sometimes compelled to sell their livestock. The government's inaction and its unilateral decision to stop the negotiations with the farmers had significantly impoverished rural areas. In the applicants' opinion, the conduct for which they had been

convicted was deprived, given that background, of the objective and subjective elements of criminal liability.

120. The applicants considered that their decision to stage the roadblocks had been as a last resort in order to defend their interests as farmers. This was a form of demonstration accepted in Europe, in situations where no other means of protecting the demonstrators' rights existed. In such circumstances, the right to freedom of peaceful assembly should have prevailed over any resulting minimal disturbances to the free movement of goods. In this connection, the applicants alleged that Council Regulation (EC) No 2679/98 (see paragraph 77 above) recognised roadblocks as a form of strike action.

121. In accordance with that Regulation, before the roadblocks started on 21 May 2003, the Lithuanian authorities had already known about the farmers' intention to demonstrate. Knowing that roadblocks were likely to occur, the police had prepared action plans and alternative itineraries in the vicinity of the demonstrations, thus reducing any possible disruption to the flow of goods. The farmers themselves had foreseen measures, which were fully implemented, to ensure that traffic was redirected onto secondary roads. According to the applicants, on the critical days the flow of traffic had been "even better than usual". This was proven by the "data from posts where the roadblocks took place". The Government's contention that further damage could have been caused to public safety (see paragraph 189 below) was pure speculation.

122. The applicants also submitted that the demonstrations were peaceful and that no incidents had taken place: public order had not been breached, nor had there been any destruction of property belonging to others or damage caused to health. On the contrary, the roadblocks had been symbolic and aimed at attracting the government's attention. B.M. and A.K., who were respected by the farmers, had maintained order among the demonstrators. Moreover, during the roadblocks, selected representatives of the farmers were still negotiating with the government in order to reach a compromise on milk prices. The farmers had acted calmly and had taken no action that would require police special units or the army to intervene to restrain them. Their intention was not to breach public order, but to peacefully demonstrate for social justice. Only one lawsuit for civil damage, in the amount of LTL 1,100 (approximately EUR 290), had been upheld by a court (see paragraph 45 above). This amount was negligible when compared to what was at stake for the farmers.

123. By blocking the roads the farmers had in part obtained satisfaction of their requests – the milk purchasing price and the compensatory payments had been increased. The demonstration had ended as soon as the government had agreed to grant subsidies.

124. The applicants contended that the criminal proceedings against them had been a clearly disproportionate and unnecessary measure.

Restrictions of movement had been imposed upon them in 2003, when, as suspects, four of them had been ordered not to leave their places of residence (see paragraph 33 above). Later on, those measures had been lifted. Subsequently, the Kaunas City District Court had imposed on the applicants a custodial sentence. Even though the execution of the sentences had been suspended, the applicants had not been able to leave their places of residence without the authorities' permission during the year in which the suspended sentences had been in force (see paragraph 47 above).

125. The applicants further challenged the relevance of the case-law cited by the Government. They noted, in particular, that *Éva Molnár*, cited above, concerned a demonstration which had not been authorised, about which the police had not been informed and which had ended with acts of violence and disruption to traffic and public order. Similarly, the demonstration had not been authorised in *Barraco*, cited above, where the putting in place of the roadblocks had been sudden and unexpected and where before being charged the applicant had been requested to leave the motorway several times. Concerning the case-law of the ECJ, the applicants explained that in *Schmidberger* (cited above) the demonstration had lasted for two days on the main trunk route along which no goods carriers could pass, while the police had allegedly not taken any measures to ensure the free movement of goods; in the *Commission* case (cited above) the demonstrators had acted violently towards lorry drivers transporting agricultural products from foreign countries. Conversely, in the present case the roadblocks had been the result of a critical economic situation in the country and of the government's inaction.

126. The applicants lastly considered that the Government had exaggerated the consequences of the demonstrators' actions, relying on hypothetical speculations, and had failed to provide sufficient evidence to support their conclusions. In reality, the domestic courts had ignored the fact that permits to hold assemblies had been issued and that, when the farmers had spontaneously gone onto the highways, the applicants had coordinated their actions with the police in order to maintain, and not to breach, public order.

(b) The Government

127. The Government maintained that the interference pursued the legitimate aims of the "prevention of disorder" and the "protection of the rights and freedoms of others". Moreover, the sanctions imposed had pursued not only the aim of discouraging reoffending, but also that of ensuring respect for the law in general.

128. With regard to the proportionality principle, the Government submitted that in 2003 the situation of the Lithuanian dairy sector had worsened, milk purchase prices had been reduced and farmers had become increasingly worried. They had demanded an increase in milk purchase

prices and had organised various actions. Following negotiations between farmers, dairy processors and the government, between March and June 2003 the government had adopted a number of decisions providing subsidies to milk producers in the sum of LTL 52,000,000 (approximately EUR 15,067,000). The government had organised and participated in meetings with the farmers' representatives and had actively sought possible solutions involving regulation of the dairy sector and of the milk market. In spite of these efforts, the applicants had staged roadblocks, thus violating the rights of other members of society.

129. In the Government's opinion, the applicants' conviction for organising or participating in a riot had been based on relevant and sufficient reasons. The applicants' incitement to block the roads and disobey the lawful orders of the police had been duly taken into account. The applicants had had a full and unhindered opportunity for several days to exercise their freedom of peaceful assembly and to draw the attention of the authorities and of society in general to the farmers' problems. Nonetheless, they had subsequently broken the law through their actions, which had constituted a serious breach of public order, inflicting harm on other persons, impairing the functioning of State institutions and creating a real danger of greater harm. The applicants had been convicted for their actual illegal behaviour, which had provoked general chaos in the country and not mere disruption of traffic. In this respect, the present case could be distinguished from that in *Ezelin* (cited above).

130. In this connection, the Government noted that the blockading of the three main trunk routes linking EU countries with their trading partners to the east had gone beyond the "inevitable disruption of traffic" (see, by contrast and *a fortiori*, *Primov and Others*, cited above, concerning the blockading of the main road linking several mountain villages) and had elicited a strong response in civil society and the mass media.

131. The Government asserted that the applicants had not been convicted for participating in the protests, but for specific criminal behaviour during the demonstrations, which had restricted public life to a greater extent than the exercise of freedom of peaceful assembly should normally do. The roadblocks were not an immediate and spontaneous response to a sudden event, overriding the obligation of prior notification. Consequently, the mode of exercising their Article 11 rights chosen by the applicants had shown a severe lack of respect for other members of society.

132. The Government pointed out that the applicants had received only the mildest of possible sanctions – a short custodial sentence – provided for in Article 283 § 1 of the Criminal Code. Moreover, their punishment had mainly had a moral force, given that the execution of their sentences had been suspended for one year (see paragraph 47 above). It had therefore not entailed any ban, even temporary, on the applicants' continuing their professional and political activities. One year after their conviction, the

applicants had been discharged by the Supreme Court upon the expiry of the term of their suspended sentences (see paragraph 60 above). Once discharged the applicants were no longer regarded as convicted persons. The obligation not to leave, without authorisation, their place of residence for a period exceeding seven days (see paragraph 47 above) had been a mere formality which had not created significant inconveniences for the applicants' daily life.

133. The Government argued that the Court should not depart from its precedent in *Barraco* (cited above), where no violation had been found and where the traffic-slowing operation had lasted for only five hours on a single road. They also pointed out that the authorities had not been in a position to take preventive measures in order to limit as far as possible the effects of the disruption to traffic. The fact that, several days before the demonstration, the Klaipėda regional police had accidentally learned about the demonstrators' intentions to block the roads could not be regarded as a "decent notification" allowing the authorities to take appropriate measures. Moreover, the Marijampolė and Pasvalys regional police had remained unaware of such intentions.

134. The Government further referred to the case-law of the ECJ, which, in the *Schmidberger* case (cited above), had affirmed the State's duty to keep major trunk routes open in order to ensure the free movement of goods within the EU. It is true that in *Schmidberger* the ECJ found that, by allowing the demonstration, Austria did not violate its obligations under the Treaty; however, *Schmidberger* could be distinguished from the present case for the timing of the demonstration (a bank holiday and the weekend, and not normal working days), its location (only one highway was blocked), the presence of a prior public warning (thirty days in advance) informing the authorities of the roadblocks. Moreover, in the *Commission* case (cited above) the ECJ had found that, by not preventing private individuals from putting in place measures aimed at blocking free trade, the respondent State had failed to meet its obligations.

135. The Government also noted that at the time of the demonstrations Lithuania was a candidate for EU membership, having signed an Association Agreement with the EU, and had thus undertaken to demonstrate its ability to comply on a political, legal and technical level with EU standards and norms. The blockading of the country's three main trunk routes of international importance might well have amounted to a restriction on the free movement of goods, and thus to a breach of EU law, for which Lithuania could have been held liable.

136. The Government finally relied on Guideline 3.5 of the Guidelines on Freedom of Peaceful Assembly (second edition) prepared by the Panel of Experts on the Freedom of Assembly of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe in consultation with the European Commission for

Democracy though Law (the Venice Commission) of the Council of Europe, which read:

> “Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within ‘sight and sound’ of their target audience.”

In the present case, the demonstrators had already gained the attention of the relevant State authorities, there was an ongoing dialogue between the latter and the farmers, decisions in their favour had been issued and the Ministry of Agriculture was constantly analysing the situation in the dairy sector. Under these circumstances, the recourse by the demonstrators to drastic measures such as unlawful roadblocks had been excessive and could hardly be justified.

137. In the light of the above, the Government considered that the interference with the applicants’ Article 11 rights was proportionate to the legitimate aims pursued and that the domestic authorities had not overstepped their margin of appreciation.

2. The Chamber judgment

138. The Chamber found (see paragraphs 79-84 of the Chamber judgment) that, even assuming that it pursued the legitimate aims of the “prevention of disorder” and of the “protection of the rights and freedoms of others”, the interference in issue was not proportionate for the following reasons:

(a) The farmers were granted permits to hold peaceful assemblies in selected areas and, even though major disruptions of traffic were caused on three main roads, any demonstration in a public place inevitably provoked a certain level of disruption to ordinary life; the authorities were expected to show tolerance in this regard.

(b) Only one carrier company had sued the farmers for damages, and on one road the demonstrators had let some vehicles pass through, including goods vehicles as well as cars.

(c) During the demonstrations there were ongoing negotiations between the farmers and the government, the applicants showed flexibility and readiness to cooperate with the other road users, and the element of violence was “clearly absent”.

(d) The Lithuanian courts had viewed the case in the context of a “riot” and were thus not able to carry out a proper consideration of the proportionality issue.

(e) Another farmer (A.D.) who disrupted traffic during the same demonstration was only charged with an administrative traffic offence and was punished with a fine of approximately EUR 12; by way of contrast, “the five applicants had to go through the ordeal of criminal proceedings, and, as a result of criminal conviction, were given a custodial sentence”.

Even though the execution of this penalty was suspended, for one whole year the applicants could not leave their places of residence for more than seven days without the authorities' prior approval.

139. In the light of the above, the Chamber found that there had been a violation of Article 11 of the Convention.

3. *The Grand Chamber's assessment*

(a) Whether the interference pursued a legitimate aim

140. The Court takes the view that the applicants' conviction pursued the legitimate aims of the "prevention of disorder" (see, *mutatis mutandis*, *Ziliberberg*, cited above, *Galstyan*, cited above, § 110; *Skiba v. Poland* (dec.), no. 10659/03, 7 July 2009; *Rai and Evans v. the United Kingdom* (dec.), nos. 26258/07 and 26255/07, 17 November 2009; and *Gün and Others*, cited above, § 59) and the "protection of the rights and freedoms of others" (specifically, the right to move freely on public roads without restriction, see, *mutatis mutandis*, *Oya Ataman v. Turkey*, no. 74552/01, § 32, ECHR 2006-XIV; and *Barraco*, cited above, § 40).

141. It remains to be ascertained whether the interference complained of was "necessary in a democratic society" for the achievement of those aims.

(b) Whether the interference was "necessary in a democratic society"

(i) *Principles in the Court's case-law*

(α) General

142. 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 (see *Barraco*, cited above, § 42). 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 *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X, and *Galstyan*, cited above, § 114).

143. 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, 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" (see *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001; *Ashughyan v. Armenia*, no. 33268/03, § 89, 17 July 2008; *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008; *Barraco*, cited above, § 42; and *Kasparov and Others*, cited above, § 86). 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 *Rai and Evans*, cited above, and *Gün and Others*, cited above, § 75; see also *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports* 1998-I, and *Gerger v. Turkey* [GC], no. 24919/94, § 46, 8 July 1999).

144. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in paragraph 2 on the one hand, and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places, on the other (see *Osmani and Others*, cited above; *Skiba*, cited above; *Fáber*, cited above, § 41; and *Taranenko*, cited above, § 65).

145. Freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 86). Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it (see *Güneri and Others v. Turkey*, nos. 42853/98 and 2 others, § 76, 12 July 2005; *Sergey Kuznetsov*, cited above, § 45; *Alekseyev*, cited above, § 80; *Fáber*, cited above, § 37; *Gün and Others*, cited above, § 70; and *Taranenko*, cited above, § 67).

146. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued (see *Öztürk v. Turkey* [GC], no. 22479/93, § 70, ECHR 1999-VI; *Osmani and Others*, cited above; and *Gün and Others*, cited above, § 82). Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification (see *Rai and Evans*, cited above). A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction (see *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011), and notably to deprivation of liberty (see *Gün and Others*, cited above, § 83). Thus, the Court must examine with particular scrutiny the cases where

sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Taranenko*, cited above, § 87).

(β) The requirement of prior authorisation

147. It is not, in principle, contrary to the spirit of Article 11 if, for reasons of public order and national security, a High Contracting Party requires that the holding of meetings be subject to authorisation (see *Oya Ataman*, cited above, § 37; *Bukta and Others v. Hungary*, no. 25691/04, § 35, ECHR 2007-III; *Balçık and Others v. Turkey*, no. 25/02, § 48, 29 November 2007; *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02 and 6 others, § 42, 18 December 2007; *Éva Molnár*, cited above, § 35; *Karatepe and Others v. Turkey*, nos. 33112/04 and 4 others, § 46, 7 April 2009; *Skiba*, cited above; *Çelik v. Turkey (no. 3)*, no. 36487/07, § 90, 15 November 2012; and *Gün and Others*, cited above, §§ 73 and 80). Indeed, the Court has previously considered that notification, and even authorisation procedures, for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering (see *Sergey Kuznetsov*, cited above, § 42, and *Rai and Evans*, cited above). Organisers of public gatherings should abide by the rules governing that process by complying with the regulations in force (see *Primov and Others*, cited above, § 117).

148. Prior notification serves not only the aim of reconciling the right of assembly with the rights and lawful interests (including the freedom of movement) of others, but also the aim of preventing disorder or crime. In order to balance these conflicting interests, the institution of preliminary administrative procedures appears to be common practice in member States when a public demonstration is to be organised (see *Éva Molnár*, cited above, § 37, and *Berladir and Others v. Russia*, no. 34202/06, § 42, 10 July 2012). However, regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Samüt Karabulut v. Turk*ey, no. 16999/04, § 35, 27 January 2009, and *Berladir and Others*, cited above, § 39).

149. Since States have the right to require authorisation, they must be able to impose sanctions on those who participate in demonstrations that do not comply with such a requirement (see *Ziliberberg*; *Rai and Evans*; *Berladir and Others*, § 41; and *Primov and Others*, § 118, all cited above). At the same time, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion (see *Ezelin*, § 53; *Galstyan*, § 115; and *Barraco*, § 44, all cited above). This is true also

when the demonstration results in damage or other disorder (see *Taranenko*, cited above, § 88).

150. An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person's right to freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III; and *Oya Ataman*, § 39; *Barraco*, § 45; and *Skiba*, all cited above). While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public demonstrations, since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself (see *Primov and Others*, cited above, § 118). In particular, where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Oya Ataman*, § 42; *Bukta and Others*, § 37; *Nurettin Aldemir and Others*, § 46; *Ashughyan*, § 90; *Éva Molnár*, § 36; *Barraco*, § 43; *Berladir and Others*, § 38; *Fáber*, § 47, all cited above; and *İzci v. Turkey*, no. 42606/05, § 89, 23 July 2013; and *Kasparov and Others*, cited above, § 91).

151. The absence of prior authorisation and the ensuing "unlawfulness" of the action do not give carte blanche to the authorities; they are still restricted by the proportionality requirement of Article 11. Thus, it should be established why the demonstration was not authorised in the first place, what the public interest at stake was, and what risks were represented by the demonstration. The method used by the police for discouraging the protesters, containing them in a particular place or dispersing the demonstration is also an important factor in assessing the proportionality of the interference (see *Primov and Others*, cited above, § 119). Thus, the use by the police of pepper spray to disperse an authorised demonstration was found to be disproportionate, even though the Court acknowledged that the event could have disrupted the flow of traffic (see *Oya Ataman*, cited above, §§ 38-44).

152. In *Bukta and Others* (cited above, §§ 35-36), the Court held that in special circumstances where a spontaneous demonstration might be justified, for example in response to a political event, to disperse that demonstration solely because of the absence of the requisite prior notice, without any illegal conduct on the part of the participants, might amount to a disproportionate restriction on their freedom of peaceful assembly.

153. The Court has also clarified that the principle established in *Bukta and Others* cannot be extended to the point where the absence of prior notification of a spontaneous demonstration can never be a legitimate basis for crowd dispersal. The right to hold spontaneous demonstrations may override the obligation to give prior notification of public assemblies only in special circumstances, namely if an immediate response to a current event is

warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete (see *Éva Molnár*, cited above, §§ 37-38, and *Skiba*, cited above).

154. Furthermore, it should be pointed out that even a lawfully authorised demonstration may be dispersed, for example when it turns into a riot (see *Primov and Others*, cited above, § 137).

(γ) Demonstrations and disruption to ordinary life

155. Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic (see *Barraco*, cited above, § 43; *Disk and Kesk v. Turkey*, no. 38676/08, § 29, 27 November 2012; and *İzci*, cited above, § 89). This fact in itself does not justify an interference with the right to freedom of assembly (see *Berladir and Others*, cited above, § 38, and *Gün and Others*, cited above, § 74), as it is important for the public authorities to show a certain degree of tolerance (see *Ashughyan*, cited above, § 90). The appropriate "degree of tolerance" cannot be defined *in abstracto*: the Court must look at the particular circumstances of the case and particularly at the extent of the "disruption to ordinary life" (see *Primov and Others*, cited above, § 145). This being so, 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 (see *Oya Ataman*, cited above, § 38; *Balçık and Others*, cited above, § 49; *Éva Molnár*, cited above, § 41; *Barraco*, cited above, § 44; and *Skiba*, cited above).

156. The 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 considers that the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity in taking measures to restrict such conduct (see paragraph 97 above; see also, *mutatis mutandis*, *Drieman and Others*, cited above).

157. 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 (see *Éva Molnár*, cited above, § 34). 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 (see *Primov and Others*, cited above, § 130).

(δ) The State's positive obligations under Article 11 of the Convention

158. States must not only refrain from applying unreasonable indirect restrictions upon the right to assemble peacefully but also safeguard that right. Although 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 *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 37, 27 February 2007, and *Nemtsov*, cited above, § 72), there may in addition be positive obligations to secure the effective enjoyment of these rights (see *Djavit An*, cited above, § 57; *Oya Ataman*, cited above, § 36; and *Gün and Others*, cited above, § 72).

159. The authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see *Oya Ataman*, cited above, § 35; *Makhmudov v. Russia*, no. 35082/04, §§ 63-65, 26 July 2007; *Skiba*, cited above; and *Gün and Others*, cited above, § 69). However, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (see *Protopapa v. Turkey*, no. 16084/90, § 108, 24 February 2009). In this area the obligation they enter into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved (see *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 34, Series A no. 139, and *Fáber*, cited above, § 39).

160. In particular, the Court has stressed the importance of taking preventive security measures such as, for example, ensuring the presence of first-aid services at the site of demonstrations, in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature (see *Oya Ataman*, cited above, § 39)

(ii) Application of these principles to the present case

(α) The prior authorisation of peaceful assembly

161. The Court observes that in the present case the farmers had been authorised to demonstrate in designated locations. In particular, in May 2003 the Kalvarija municipality issued a permit to hold peaceful assemblies in Kalvarija town "near the marketplace" from 8 a.m. to 11 p.m. between 13 and 16 May 2003, from 8 a.m. to 3 p.m. on 17 May 2003 and from 8 a.m. to 11 p.m. on 19-20 May 2003. Similar permits were issued for 21 to 23, 24 and 26 to 30 May (see paragraph 15 above). On 8 May 2003 the Pasvalys municipality issued a permit to hold a demonstration for ten days from 15 to 25 May 2003 "in the car park at the sixty-third kilometre of the Via Baltica highway and next to that highway" (see paragraph 16 above). Finally, on 19 May 2003, the Klaipėda municipality issued a permit to hold an assembly in an "area in Divupiai village next to, but not closer than

twenty-five metres from, the Vilnius-Klaipėda highway" from 11 a.m. to 11 p.m. between 19 and 25 May 2003 (see paragraph 17 above).

162. The Lithuanian authorities had thus given an explicit prior authorisation for the gatherings (see, by contrast, *Ziliberberg*; *Oya Ataman*, §§ 38-39; *Bukta and Others*, § 34; *Éva Molnár*, §§ 40-41; *Skiba*; *Rai and Evans*; *Gün and Others*, § 77; and *Primov and Others*, §§ 121-28, all cited above). The farmers' demonstrations cannot thus be considered unlawful for failure to comply with the relevant domestic procedure preceding the holding of the meetings.

163. It is also to be noted that from 19 May until midday on 21 May 2003, the farmers gathered in the designated areas and were able to demonstrate peacefully without any interference by the authorities (see paragraph 19 above).

(β) The conduct of the applicants and of the other demonstrators from 21 to 23 May 2003 and its consequences

164. However, at around midday on 21 May 2003, following a stagnation of the negotiations with the government, the farmers decided to move the gatherings from the designated areas onto the neighbouring roads, notably the Vilnius-Klaipėda highway, the Panevėžys-Pasvalys-Riga highway, and the Kaunas-Marijampolė-Suvalkai highway (see paragraph 20 above). As indicated by the Government and not contested by the applicants, these were the country's three major highways. Moreover, between 3 and 4.30 p.m. on 21 May 2003, the third, fourth and fifth applicants drove tractors onto the Kaunas-Marijampolė-Suvalkai highway and left them there, thus obstructing the flow of traffic (see paragraph 21 (c) above).

165. In the Court's opinion, the moving of the demonstrations from the authorised areas onto the highways was a clear violation of the conditions stipulated in the permits. This action was taken without any prior notice to the authorities and without asking them to amend the terms of the permits. The applicants could not have been unaware of those requirements.

166. Nor does it even appear – albeit that this is not a decisive consideration in the kind of situation at hand – that the farmers' actions overstepping the limits of the permits to demonstrate were justified by a need for an immediate response to a current event (see, in particular and *mutatis mutandis*, the case-law cited in paragraphs 152-53 above). The Court notes that the problems in the agricultural sector and the fall in the wholesale prices of agricultural products were an ongoing situation and the farmers' dissatisfaction continued as the government failed in their view to implement Parliament's resolution of 22 April 2003 (see paragraph 13 above). The situation at the heart of the conflict was well known to the applicants and to the authorities even before the issuance of the permits to

hold assemblies. There is nothing to suggest that a sudden political event, calling for an immediate reaction, occurred on or around 21 May 2003.

167. In view of the above, the Court considers that the unauthorised roadblocks were not justified by a current event warranting an immediate response (see *Éva Molnár*, cited above, § 38, and *Skiba*, cited above; see also, conversely and *mutatis mutandis*, *Bukta and Others*, cited above, § 36, where a demonstration was held as a spontaneous protest against the Hungarian Prime Minister's participation in a reception organised by the Romanian Prime Minister).

168. As to the applicants' contention that the roadblocks were a last-resort measure taken in a situation of serious financial difficulties to protect their legitimate interests (see paragraphs 119-20 above), the Court has no reason to question the assessment of the domestic courts that the farmers had had at their disposal alternative and lawful means to protect their interests, such as the possibility of bringing complaints before the administrative courts (see paragraph 43 above).

169. The Court further sees no reason to doubt the domestic courts' findings to the effect that the applicants were aware that the moving of the demonstration from the authorised locations onto the highways and the parking of the tractors on the Kaunas-Marijampolė-Suvalkai highway would provoke a major disruption to traffic. Having examined the material at their disposal, the domestic courts and the Kalvarija and Pasvalys police (see paragraphs 28 and 30 above) came to the conclusion that the roadblocks had created a significant inconvenience for the flow of goods vehicles and private cars, with ensuing traffic jams and long queues of vehicles. These lasted for more than forty-eight hours, as the roadblocks were lifted only on 23 May 2003. It is not normally within the province of the European Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them (see, *inter alia*, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B; *Vidal v. Belgium*, 22 April 1992, §§ 33-34, Series A no. 235-B; and *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). No material has been adduced before this Court which could call into question the findings of the national courts and add weight to the applicants' allegations before the Court, disputed by the Government, that on the critical days the flow of goods had been "even better than usual" (see paragraphs 24 and 121 above).

170. As already pointed out in paragraph 97 above, the disruption to ordinary life and traffic was not a side-effect of a demonstration held in a public place. As long as the demonstrations took place in the designated locations, the flow of traffic was not affected. The decision of the farmers to move onto the highways and to use the tractors could not but be an attempt to block or reduce the passage of vehicles and create chaos in order to draw attention to the farmers' needs. The intentional roadblocks could not but

have been aimed at pressuring the government to accept the farmers' demands, as shown by the fact that they were lifted as soon as the demonstrators had been informed of the successful outcome of the negotiations (see paragraphs 22 and 28 above). This feature distinguishes the present case from those in which the Court has observed that demonstrations may cause a certain level of disruption to ordinary life, including disruption to traffic (see the case-law cited in paragraph 155 above).

171. The Court has already been called upon to examine situations where demonstrators had tried to prevent or alter the exercise of an activity carried out by others. In *Steel and Others* (cited above) the first and second applicants had obstructed a hunt and had impeded engineering work for the construction of a motorway, respectively. In *Drieman and Others* (cited above), Greenpeace activists had manoeuvred dinghies in such a way as to physically obstruct whaling, forcing the whalers to abandon their lawful exploitation of the living resources in Norway's exclusive economic zone. In these two cases, the Court considered that the inflicting of sanctions (in *Steel and Others*, forty-four hours' detention pending trial and sentencing to twenty-eight days' imprisonment for the obstruction of the hunt and seventeen hours' detention pending trial and sentencing to seven days' imprisonment for the protest against the construction of the motorway; in *Drieman and Others*, two days' detention on remand, fines convertible into imprisonment in case of default on payment and confiscation of a dinghy) was a reaction proportionate to, *inter alia*, the legitimate aim of protecting the rights and freedoms of others. The Court considers that the same conclusion should *a fortiori* be reached in the present case, where the actions of the demonstrators had not been directly aimed at an activity of which they disapproved, but at the physical blocking of another activity (the use of highways by goods vehicles and private cars) which had no direct connection with the object of their protest, namely the government's alleged lack of action *vis-à-vis* the decrease in the prices of some agricultural products.

172. In this respect, the present case has more similarities with the cases of *Lucas* (cited above), where the applicant blocked a public road in order to protest against the retention of a nuclear submarine, and *Barraco* (cited above), concerning the applicant's participation in a form of protest resulting in a severe slowing-down of the flow of traffic. As in *Steel and Others* and *Drieman and Others* (both cited above), the Court found that the sanctions imposed on the applicants (four hours' detention in a police van and a fine of 150 pounds sterling in *Lucas*, and a three-month suspended prison sentence and a fine of 1,500 euros in *Barraco*) were "necessary in a democratic society" within the meaning of Article 11 § 2 of the Convention. The Court further notes that in *Barraco* the disruption to traffic lasted only

five hours (as opposed to more than forty-eight hours in the present case) and that only one highway (as opposed to three) had been affected.

173. As can be seen from the above case-law, the intentional serious disruption, by demonstrators, to ordinary life and to the activities lawfully carried out by others, which disruption was more significant than that caused by the normal exercise of the right of peaceful assembly in a public place, might be considered a “reprehensible act” within the meaning of the Court’s case-law (see paragraph 149 above). Such behaviour might therefore justify the imposition of penalties, even of a criminal nature.

174. The Court considers that, even though the applicants had neither carried out acts of violence nor incited others to engage in such acts (contrast *Osmani and Others*; *Protopapa*; and *Primov and Others*, all cited above), the almost complete obstruction of three major highways in blatant disregard of police orders and of the needs and rights of the road users constituted conduct which, even though less serious than recourse to physical violence, can be described as “reprehensible”.

175. Against this background, the Court finds no reason to doubt that the impugned restriction entailed by the national authorities’ decision to sanction the applicants’ conduct was supported by relevant and sufficient reasons. Bearing in mind the margin of appreciation to be accorded to the respondent State in such circumstances (see paragraph 156 above; see also, by way of comparison, the wide discretion enjoyed by the Contracting States in respect of trade-union action, *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, §§ 86-87, ECHR 2014), the latter was clearly entitled to consider that the interests of protecting public order outweighed those of the applicants in resorting to roadblocks as a means for the farmers to achieve a breakthrough in their negotiations with the government (see, *mutatis mutandis*, *Primov and Others*, cited above, § 160).

(γ) The authorities’ conduct during the demonstrations

176. As to the conduct of the authorities, the Court notes that, as requested by the farmers, they had issued permits to hold peaceful assemblies at specific locations and that they did not interfere with the meetings until the demonstrators moved onto different locations, namely the highways. From that moment on, the police confined themselves to ordering the applicants to remove the roadblocks and to warning them of their possible liability (see paragraphs 46 and 52 above). Even when the applicants refused to obey these lawful orders, the police chose not to disperse the gatherings. The farmers only decided to stop demonstrating when their demands had been met by the government (see paragraph 22 above). Moreover, when tensions arose between the farmers and the lorry drivers, the police urged the parties to the conflict to calm down in order to avoid serious confrontations (see paragraph 28 above). Finally, the

authorities tried to redirect the traffic onto secondary, neighbouring roads with a view to reducing the traffic jams.

177. In the light of the above, the Court considers that, despite the serious disruptions caused by the applicants' conduct, the authorities demonstrated a high degree of tolerance (see, *mutatis mutandis*, *Éva Molnár*, cited above, § 43; *Barraco*, cited above, § 47; and *Skiba*, cited above; see also, by contrast, *Primov and Others*, cited above). Moreover, they attempted to balance the interests of the demonstrators with those of the users of the highways, in order to ensure the peaceful conduct of the gathering and the safety of all citizens, thus satisfying any positive obligation that they might be considered to have had (see the case-law cited in paragraphs 158-60 above).

(δ) The sanctions imposed on the applicants

178. As to the sanctions imposed on the applicants, the Court notes that the penalty applied was a lenient sixty-day custodial sentence whose execution was suspended for one year. The applicants were not sentenced to pay fines and the only actual consequence of their conviction was the obligation, lasting one year, to obtain authorisation if they wanted to leave their places of residence for more than seven days (see paragraph 47 above). A similar measure was applied to four of the applicants before their trial from July until October 2003 (see paragraph 33 above). Such inconvenience does not seem disproportionate when compared to the serious disruption of public order provoked by the applicants (see also, by way of comparison, the sanctions applied in *Steel and Others* and *Lucas*, both cited above, which were considered proportionate by the Court). Moreover, the applicants did not allege that they had unsuccessfully requested to leave their places of residence or that such requests would have been systematically disregarded by the domestic tribunals.

179. The Grand Chamber is not convinced that the criminal prosecution of the applicants prevented a balancing of the conflicting interests at stake (compare paragraph 82 of the Chamber judgment). In this connection, it observes that the District Court took into account the characteristics of the applicants and the degree of their guilt in reaching the conclusion that the aim of the punishment could be achieved without actually depriving them of their liberty (see paragraph 47 above). Moreover, the Regional Court and Supreme Court examined the case in the light, *inter alia*, of the constitutional and Convention right to freedom of expression (see paragraphs 53 and 58 above).

180. In addition, the Court considers that due account should be taken of the width of the margin of appreciation enjoyed by the State in relation to the subject matter in the particular circumstances of the present case. In this regard, it is noteworthy that according to the comparative-law material

available to the Court (see paragraphs 78-81 above), there is no uniform approach amongst the member States as to the legal characterisation of the obstruction of traffic on a public highway, which is treated as a criminal offence in some States and as an administrative matter in others. Therefore, a wide discretion should be given to the domestic authorities as to the characterisation of the conduct attributed to the applicants. Thus, the domestic authorities did not overstep the limits of their wide margin of appreciation (see paragraph 156 above) by holding the applicants criminally liable for their conduct.

181. The Grand Chamber sees no reason to depart from the domestic courts' assessment that A.D., another farmer who obstructed the traffic, was liable only for the administrative offence of breaching traffic regulations (compare paragraph 83 of the Chamber judgment). In any event, the fact that other individuals might have obtained more lenient treatment does not necessarily imply that the sanctions imposed on the applicants were disproportionate.

(ε) Conclusion

182. The foregoing considerations as a whole lead the Court to the conclusion that in sentencing the applicants for rioting, in relation to their behaviour from 21 to 23 May 2003 during the farmers' demonstrations, the Lithuanian authorities struck a fair balance between the legitimate aims of the "prevention of disorder" and of the "protection of the rights and freedoms of others" on the one hand, and the requirements of freedom of assembly on the other. They based their decisions on an acceptable assessment of the facts and on reasons which were relevant and sufficient. Thus, they did not overstep their margin of appreciation in relation to the subject matter.

183. As the interference complained of was "necessary in a democratic society" within the meaning of Article 11 of the Convention, there has been no violation of this provision in the present case.

184. This conclusion dispenses the Court from addressing the arguments put forward by the parties in order to determine whether the measures adopted by the Lithuanian authorities could be justified in the light of the case-law of the ECJ (see paragraph 125 above for the applicants, and paragraphs 134-35 above for the Government). In this connection, the Court confines itself to observing that the role of the ECJ was to establish whether the EU member States had complied with their obligation to ensure the free movement of goods, while the Court's task in the present case is to determine whether there has been an infringement of the applicants' right to freedom of assembly.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

185. The applicants further alleged that they had been convicted in breach of Article 7 of the Convention, which reads as follows:

> “1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

186. The Government contested that argument.

A. The parties’ submissions

1. The applicants

187. Before the Chamber, the applicants complained that Article 283 § 1 of the Criminal Code, under which they had been sentenced, had not been clearly formulated and had not been properly interpreted by the domestic courts (see also the applicants’ arguments under Article 11 of the Convention – paragraph 103 above).

2. The Government

188. The Government observed that Article 283 § 1 of the Criminal Code was a law accessible to all citizens which had come into force on 1 May 2003. The notion of “serious breach of public order” contained in this provision could not be seen as lacking clarity or precision, as it was legitimate for laws to use general categories rather than exhaustive lists. Moreover, in its decision of 4 October 2005 (see paragraphs 56-59 above) the Supreme Court had described the substance of the offence of rioting.

189. The Government were of the opinion that in convicting the applicants, the domestic courts had not exceeded a reasonable interpretation of the definition of the offence. According to the Government, the applicants’ conduct could have caused severe damage and impaired a person’s property, health or even life; these more serious forms of harm had been avoided because the police had adopted preventive measures and organised alternative routes for traffic.

190. In the Government’s opinion, the applicants’ liability for rioting was also foreseeable. This same offence had also been punishable under the “old” Criminal Code of 1961, in force until 30 April 2003. The organisers of the demonstration (A.K. and B.M.) had been officially informed, in writing, of the wording of Article 283 of the Criminal Code (see paragraphs 15 and 17 above), and could therefore have foreseen the

possibility of being liable to prosecution if they blocked the roads. As persons carrying special responsibility for the demonstrations, they could also have sought advice from legal experts.

191. It is true that the applicants' case was apparently the first in which the provision on rioting was applied. However, the absence of national case-law for objective reasons (rarity of the offence) could not automatically entail a violation of Article 7 of the Convention. Other people had subsequently been convicted of rioting in respect of facts which occurred in 2009 (see the decision of the Supreme Court of 4 December 2012 in criminal case no. 2K-552/2012).

B. The Chamber judgment

192. Having regard to its findings under Article 11 of the Convention, the Chamber considered that it had already examined the main legal issue of the case and that therefore it was not necessary to examine the complaint under Article 7 separately (see paragraph 87 of the Chamber judgment).

C. The Grand Chamber's assessment

193. The Court observes that it has held that the interference with the applicants' freedom of peaceful assembly was "prescribed by law" within the meaning of Article 11 § 2 of the Convention, including that it was foreseeable for the applicants (see paragraphs 111-18 above). It also reiterates that when speaking of "law" Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law together with case-law and implies qualitative requirements, notably those of accessibility and foreseeability (see the restatement of the relevant principles in *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 50, ECHR 2015). The Court further notes that in their observations before the Grand Chamber, the applicants did not specifically address the complaint that they had raised before the Chamber under Article 7 of the Convention. That being so, the Court considers that it is not necessary to carry out a separate examination of whether there has been a violation of Article 7 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that there has been no violation of Article 11 of the Convention;

2. *Holds* that there is no need to examine separately the complaint under Article 7 of the Convention.

Done in English and in French, and notified in writing on 15 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen Deputy Registrar	Dean Spielmann President

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

D.S.
S.C.P.

CONCURRING OPINION OF JUDGE WOJTYCZEK

(Translation)

1. I fully share my colleagues' opinion that freedom of assembly is of primary importance for a democratic society and must be protected with particular stringency. I am also of the opinion that the Convention has not been breached in the present case. I would nevertheless like to introduce certain nuances in relation to the reasoning of the judgment.

2. In its reasoning, the Court states in general terms that "[i]t is not, in principle, contrary to the spirit of Article 11 if, for reasons of public order and national security, a High Contracting Party requires that the holding of meetings be subject to authorisation ..." (paragraph 147 of the present judgment), without examining the proportionality of the measure in question. I am not convinced by that approach, which seems to acknowledge as a general rule that the system of prior authorisation of meetings is in conformity with the Convention. The position thus adopted does not take sufficiently into account the letter of Article 11. The requirement that a demonstration be authorised beforehand is an interference with the sphere protected by Article 11 § 1, which must be seen in the light of paragraph 2 of that Article. In particular, the measure in question must comply with the proportionality principle. In order to answer the question whether the measure examined is necessary in a democratic society, it is indispensable to take into consideration, *inter alia*, the nature of the gathering that the citizens wish to organise and the nature of the places to which the measure applies. In addition, the factual circumstances of each case must be examined, taking into account the specificities of the various States. While in certain cases the obligation to obtain an authorisation will be perfectly justified, this is not necessarily true in others. It is also necessary to draw a clear distinction between the prior-authorisation system and the notification system, the latter being much less restrictive. In many cases, the obligation to notify the holding of a demonstration will be sufficient to ensure the effective protection of public interests and the rights of third parties, while the obligation to obtain prior authorisation will be an excessive measure.

The Court's approach, requiring a certain flexibility on the part of the authorities *vis-à-vis* unauthorised demonstrations, and in particular spontaneous demonstrations, does not make good all the negative consequences for freedom of assembly that flow from a general acceptance that the system of prior authorisation of demonstrations complies with the Convention.

3. Article 11 of the Convention protects freedom of peaceful assembly. It applies to different types of collective action organised for the purpose of expressing opinions. It is necessary to adopt a broad interpretation of the

notion of peaceful assembly and to bear in mind the principle *in dubio pro libertate*. However, the scope of the provision in question must be circumscribed by certain limits. While freedom of assembly presupposes that the national authorities have an obligation to take the measures necessary to protect the safety of demonstrators, it is also necessary to take into consideration, when circumscribing the scope of Article 11, the authorities' obligation to protect effectively the rights of third parties who could be directly affected by collective actions whose effects go far beyond the usual consequences of demonstrations. I find it, moreover, regrettable that this latter obligation of the national authorities has not been more prominently highlighted in the reasoning of the judgment.

I have strong reservations as to whether the blockading of highways, as organised by the applicants, falls within the scope of Article 11. The judgment's reasoning rightly emphasises the fact that the roadblocks were organised with the intention of disrupting the movement of persons and goods nationwide (paragraphs 164-75 of the present judgment). The effects of such roadblocks go far beyond the usual disruption caused by demonstrations in public places. They also go well beyond the idea of a sit-in protest organised around certain specific places for the purpose of blocking access to them. The applicants took these actions to promote their opinions, not by strength of argument, but by directly undermining the legitimate individual economic interests of a significant number of third parties, and by disrupting the economic life of their country – and thus, more by argument of strength. The demonstrators' message was meant not only to be heard but also to directly affect their fellow citizens. In that context, the reasoning of the judgment rightly describes the applicants' acts as reprehensible (see paragraph 174 of the present judgment). Do such acts really enjoy the prima facie protection of Article 11?

4. The reasoning of the judgment seems to attach great importance to the fact that – as the Lithuanian courts observed – the farmers could have used alternative lawful means to protect their interests, such as the possibility of bringing complaints before the administrative courts (see paragraph 168 of the present judgment). In that perspective, the protection of peaceful freedom of assembly could be modulated depending on the existence of other means of protecting the interests in question, thus nuancing the protection afforded by the Convention.

I would note in this connection that in a democratic State – member of the Council of Europe – citizens necessarily have various means by which they can express their opinions collectively and defend their interests without directly and intentionally undermining the freedom of movement and legitimate economic interests of others. At the same time, the fact that the applicants had the possibility of defending their interests through complaints to administrative courts does not seem to me to be pertinent for the legal characterisation of their actions. Even if, for various reasons, the

economic interests defended by demonstrators cannot be protected effectively by the courts and their claims are not justiciable, that does not justify causing prejudice to the legitimate interests and rights of others. Conversely, the justiciability of claims expressed during a peaceful gathering cannot reduce the extent of the protection afforded to demonstrators under Article 11.

5. Whatever the answer to the question of the applicability of Article 11 in the present case, the finding that the Lithuanian authorities had complied with the Convention seemed to be self-evident. Given the particular circumstances of the case, as presented in detail in the judgment's reasoning, the application could even have been declared manifestly ill-founded.