IN THE EUROPEAN COURT OF HUMAN RIGHTS
Application No. 18079/15 – *Mihail-Liviu BUMBEŞ*
v. Romania

WRITTEN COMMENTS OF

THE OPEN SOCIETY JUSTICE INITIATIVE

AND

GREENPEACE ROMANIA

I. OVERVIEW

1. In these written comments, the Open Society Justice Initiative and Greenpeace Romania provide an analysis of the following questions: (1) Whether the Applicant's protest should be treated under Article 10, read in light of Article 11, as an expression of political opinion, or, instead, as an assembly protected by Article 11? (2) Whether the prosecution of the Applicant and the fine imposed constituted an interference with the Applicant's rights? (3) If the Applicant's protest is treated under Article 11, does the mere fact that he had not applied for authorisation of the protest in a timely manner justify the measures taken against him? (4) Should the Applicant's protest have been subjected to a notification requirement given that the protest was an immediate response to a draft law of major import that the Government had submitted to Parliament without public consultation and was objectively unlikely to cause disruption?

2. These comments draw upon the jurisprudence of this Court, normative statements of other Council of Europe and UN bodies, and other statements on the importance of the rights at issue, noting that this Court takes into account "evolving norms of national and international law in its interpretation of Convention provisions."[1]

3. This case provides the Court with the opportunity to recognise in unambiguous terms that obstructive or symbolic protests, sometimes referred to as non-violent direct action, constitute an important form of communication in a democracy that is protected by Article 10 and should not be subject to notification requirements. In the alternative, if the Court determines that the Applicant's protest action should be analysed as an assembly pursuant to Article 11, then we invite the Court to make clear that special circumstances justifying non-compliance with notification requirements include the intent of assembly organisers to respond immediately to a current event and/or to create surprise as an element of the protest where, given the form and size of the protest, there is scant likelihood of disrupting public order.

4. Roșia Montană Project is a gold and silver mining project in Romania which, if approved, would become Europe's largest open-pit gold mine. The project has faced considerable opposition over nearly a decade.[2]

[1] *Demir and Baykara v. Turkey*, Judgment of 12 November 2008, para. 68.
[2] For more information about the mining project and some of the controversy around it, please see: *Justice for People and Planet*, Greenpeace International, January 2018, pages 73-74 available at: https://storage.googleapis.com/planet4-international-stateless/2018/01/29bf8b6b-justice-for-people-and-planet.pdf (last

5. On 27 August 2013, the Government submitted to Parliament a draft law on mining without any prior public consultation, which, if confirmed, would have advanced the project.[3] The next day, the Applicant and three others chained themselves to a gate of a government building. After a short time, the police forcibly unchained the protesters, took them to a police station, and fined them each 500 lei (about 120 euros). On 10 June 2015, the Bucharest County Court delivered a final judgment which upheld the fine on the ground that the Applicant had not applied for authorisation of the protest at least three days in advance as required by domestic law.[4]

II. ARTICLE 10 - EXPRESSION OF POLITICAL OPINION SHOULD NOT BE SUBJECT TO NOTIFICATION REQUIREMENTS

6. The Applicant's protest should be treated as an expression of political opinion under Article 10, read in light of Article 11, rather than as an assembly under Article 11 for the following reasons: it was a symbolic or obstructive protest; it did not involve an intentional gathering of participants beyond the initial four protesters; facilitation of the event by the authorities could not objectively have been considered necessary given the small size and non-disruptive nature of the protest; and a requirement of prior notice would have interfered with the intended form of the protest given that the protest involved an element of peaceful confrontation and surprise, and was an immediate response to the passage of a controversial measure the preceding day.

7. The Court has ruled on several occasions that symbolic or obstructive protest actions that aim to disrupt the activities they protest, either physically or symbolically, constitute expressions of opinion within the meaning of Article 10 of the Convention rather than assemblies within the meaning of Article 11.

8. In *Steel and Others v. the United Kingdom*, the Court found that the disruption of a grouse and fox hunt by getting in the way of the hunters and making sounds to scare away the animals constituted an expression of opinion.[5] In *Hashman and Harrup v. the United Kingdom*, the Court considered the disruption of a motorway construction by climbing in trees and on equipment constituted such an expression of opinion.[6] In both cases, the Court did not consider it necessary to consider whether Article 11 was engaged.

9. In *Taranenko v. Russia*, the Court considered a protest in which a group of about forty persons occupied the reception area of the President's Administration building in Moscow and locked themselves in an office. The Court concluded that the action constituted an obstructive protest protected by Article 10:

> The parties submitted arguments under Articles 10 and 11 together. The Court, however, considers that the thrust of the applicant's complaint is

visited on 17 July 2019).

[3] Press release issued by the Romanian Government on 27 August 2013, available in Romanian at: http://gov.ro/ro/stiri/informatie-de-presa-privind-actele-normative-care-au-fost-incluse-pe-agenda-sedintei-guvernului-romaniei-din-27-august-ora-16-00 (last visited on 17 July 2019). The draft law as submitted to Parliament is posted here: https://senat.ro/legis/lista.aspx?nr_cls=L475&an_cls=2013.

[4] *Mihail-Liviu Bumbeș v. Romania,* Subject Matter of the Case, communicated to the Government of Romania on 28 February 2019.

[5] *Steel and Others v. United Kingdom*, Judgment of 23 September 1998.

[6] *Hashman and Harrup v. the United Kingdom* (Grand Chamber), Judgment of 26 June 1996.

> that she was convicted for protesting, together with other participants in the obstructive protest action, against the President's policies. The Court therefore finds it more appropriate to examine the present case under Article 10, which will nevertheless be interpreted in the light of Article 11.[7]

10. In *Tatár and Fáber v. Hungary*, the Court further elaborated the circumstances under which protests should be analysed as expressions of opinion rather than assemblies.[8] The applicants had briefly displayed several items of clothing representing the "dirty laundry of the nation" near the Parliament. In a newspaper interview on the same day, they explained that the "performance" was meant to be provocative and for that reason they had not notified the authorities. The applicants were subsequently fined for the regulatory offence of abusing the right to peaceful assembly by failing to give three days' advance notice to the authorities.

11. The Court held that "the mere fact that an expression occurs in the public space does not necessarily turn such an event into an assembly."[9] The Court referenced several factors that should be considered in deciding whether an event constituted an expression within the meaning of Article 10 or an assembly within the meaning of Article 11. Some of those factors are whether: (i) the event involved an "intentional gathering of further participants,"[10] *i.e.*, an effort by the organisers to recruit additional participants in order to intensify the expression of an idea; (ii) it involved "the exchange of ideas between the speakers and the participants" [11]; and (iii) the event "could have generated the gathering of a significant crowd warranting specific measures" by the authorities and failure to give notice would have prevented them from doing so.[12]

12. The Court indicated that, in the absence of these factors, the event should be considered to have "constituted predominantly an expression."[13]

13. Moreover, the Court has held that expressive acts should only be subject to notification requirements under limited circumstances because such notifications constitute prior restraints that could undermine freedom of expression. In *Tatár and Fáber*, discussed above, the Court criticised the authorities' decision to apply the Hungarian assembly law's notification requirements to the applicants' expression because "the application of that rule to expressions – rather than only to assemblies – would create a prior restraint which is incompatible with the free communication of ideas and might undermine freedom of expression."[14]

14. In particular, the Court has held that such notification requirements constitute prior restraints incompatible with obstructive protest actions given the inherently improvisational nature of such protests. In the recent judgment in *Chernega and*

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[7] *Taranenko v. Russia*, *Judgment of 15 May 2014*, para. 69.
[8] *Tatár and Fáber v. Hungary*, Judgment of 12 June 2012.
[9] *Tatár and Fáber v. Hungary*, para. 38.
[10] *Tatár and Fáber v. Hungary*, para. 39.
[11] *Tatár and Fáber v. Hungary*, para. 38.
[12] *Tatár and Fáber v. Hungary*, para. 29.
[13] *Tatár and Fáber v. Hungary*, para. 29.
[14] *Tatár and Fáber v. Hungary*, paras. 39-40.

Others v. Ukraine, the Court recognised that requiring prior notice is not appropriate in the case of "a purely obstructive protest action which by its very nature would normally be unlawful as infringing on the rights and legitimate interests of third parties" because "[s]uch a requirement would deprive many such actions of much effect."[15]

15. Indeed, obstructive – as well as symbolic – protest actions, by their nature, are intended to create an eye-catching confrontation in order to draw attention to an issue. Requiring prior notice of obstructive protest actions is antithetical to this purpose. The element of surprise is essential for the creation of the symbolic confrontation. In many cases, notification could deprive the protest of its intended dramatic effect or render it entirely impossible.

16. Accordingly, we submit that the key issues for the Court to consider in deciding whether the Applicant's protest was an expression (Article 10) or an assembly (Article 11) are the following: (i) did the protest involve an "intentional gathering of further participants"? (ii) could facilitation of the event by the authorities objectively have been considered necessary? and (iii) would a requirement of prior notice have interfered with the intended form of the protest (for instance, because the protest involved an element of confrontation or surprise, or was an immediate response to a current event)?

17. We submit that, by examining the above questions, drawn from the Court's jurisprudence and applicable international standards, the Court should find that a manifestation should be treated as an exercise of freedom of expression and not assembly, in the following circumstances: when there is no intent to draw others to the manifestation, when there is no need for the State to provide any concrete accommodation for the manifestation, and when the manifestation is a response to a recent event or relies on a certain degree of spontaneity and/or surprise for it to be effective in delivering its message, such that any sort of notification requirements would inhibit its effectiveness.

III. IMPERMISSIBLE INTERFERENCE WITH THE APPLICANT'S RIGHTS UNDER ARTICLE 10.

18. The swift termination of Applicant's protest action, followed by his arrest, prosecution for an administrative offence, and imposition of a fine constituted an interference with his Article 10 rights that was disproportionate and unnecessary given that his action constituted an expression of political opinion.

A. Interference with the Applicant's rights under Article 10

19. The Court has ruled in several cases that the arrest and imposition of an administrative fine on applicants for their political expression constituted an interference with their Article 10 rights.

20. In *Novikova and Others v. Russia*, the applicants, who had each engaged in a non-violent solo protest, had their protests swiftly terminated by police and were arrested, detained at police stations for several hours, and, in some of the cases, convicted of an

[15] *Chernega and Others v. Ukraine*, Judgment of 18 June 2019, para. 239.

administrative offence for non-compliance with a prior notification rule. The Court found "the authorities' actions resulting in the cessation of the demonstrations, their being taken to the police stations and retained there for some time, and their prosecution for an administrative offence resulting in a fine" constituted an interference with their Article 10 rights.[16]

21. Similarly, in *Tatár and Fáber*, discussed above, which involved the imposition of an administrative fine on the applicants for their failure to provide prior notification to authorities of an obstructive protest action, the Court concluded that the applicant's right to freedom of expression had been interfered with after observing that "the applicants were subjected to an administrative fine as a sanction for the expression which they had made."[17] The Court concluded that "it follows that there has been an interference with their right to freedom of expression."[18]

22. In this case, the Applicant was similarly subjected to arrest, prosecution for an administrative offence, and an administrative fine for not providing prior notification of an obstructive protest action. These measures constituted an interference with the Applicant's rights under Article 10.

B. The interference with the Applicant's Article 10 rights was not necessary in a democratic society and therefore constituted a violation of Article 10.

23. The Court reiterated in *Tatár and Fáber* that "[s]uch an interference [namely, arrest, prosecution for an administrative offence, and an administrative fine] will lead to the finding of a violation of Article 10 of the Convention, unless it was prescribed by law, pursued a legitimate aim and was necessary in a democratic society to achieve that aim."[19]

24. In *Tatár and Fáber*, the Court's finding that the protest constituted an expression of political opinion rather than an assembly was sufficient for it to conclude that "the Government's arguments focusing on the necessity to sanction the applicants' non-compliance with the prior notification rule were [not] "relevant and sufficient" for the purposes of Article 10 § 2 of the Convention" and, therefore, that the interference was incompatible with the Convention.[20]

25. The Court noted that "the imposition of an administrative sanction, however mild, on the authors of such expressions which qualify as artistic and political at the same time can have an undesirable chilling effect on public speech," implicitly raising the level of scrutiny afforded to the imposition of such administrative sanctions.

26. The Court's holding in *Tatár and Fáber* conforms to its holding in *Novikova*. In *Novikova*, the Court held that "the swift termination of the events followed by the taking of the applicants to police stations and the prosecution for an administrative offence consisting solely in organising or participating in a non-notified public event, constituted a disproportionate interference with the applicants' freedom of expression" that was therefore unnecessary in a democratic society in violation of Article 10.[21]

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[16] *Novikova and Others v. Russia*, Judgment of 26 April 2016, para. 107.
[17] *Tatár and Fáber v. Hungary*, Judgment of 12 June 2012, para 30.
[18] *Ibid*.
[19] *Tatár and Fáber v. Hungary*.
[20] *Tatár and Fáber v. Hungary*, para. 41.
[21] *Novikova and Others v. Russia*, para. 213.

27. We submit that in this case, as in *Novikova*, the decision to arrest and prosecute the Applicant was not necessary in a democratic society. Rather, the swift termination of the events followed by the taking of the applicants to police stations and their prosecution for an administrative offence consisting solely in organising or participating in a non-notified public event constituted a disproportionate interference with the Applicant's freedom of expression and therefore was unnecessary in a democratic society in violation of Article 10.

IV. ARTICLE 11 - MERE FAILURE TO GIVE NOTICE SHOULD NOT BE CONSIDERED A GROUND FOR SANCTIONS IN THE ABSENCE OF AGGRAVATING ELEMENTS.

28. If this Court finds that the Applicant's conduct should be addressed as an assembly protected by Article 11, we nevertheless submit that the Applicant's rights were violated. Mere failure to give notice should not be considered a ground for sanctions in the absence of aggravating elements.

29. Article 11 of the European Convention on Human Rights sets forth a three-part test for assessing the legitimacy of any interference with the right to freedom of peaceful assembly which is substantively the same as the test set forth in Article 10; namely, restrictions to freedom of peaceful assembly are permissible only when they: (1) are prescribed by law; (2) pursue a legitimate aim; and (3) are necessary in a democratic society, meaning that any restriction must comply with a strict test of necessity and proportionality.[22]

30. Similarly, the Venice Commission has noted that any restriction placed on the right to freedom of peaceful assembly must be proportional, which also implies that states should not impose blanket applications of legal restrictions.[23]

A. The interference with the Applicant's Article 11 rights was not prescribed by law.

31. The Applicant was sanctioned based on an unclear application of the law and for violating an obligation which was not clearly set forth in law at the time the protest was organised.

32. In *Lashmankin and Others v. Russia*, the Court explained that the prescribed by law criterion not only require[s] that the impugned measure should have some basis in domestic law, but also refer[s] to the quality of the law in question;" accordingly, the law must be accessible, precise, clear and offer protection against arbitrariness in interpretation and application by public authorities.[24]

33. In this case, the Applicant was fined for not complying with the notification requirement enshrined in Romania's Law 60/1991 on freedom of assembly.[25] Despite the fact that this law has specific sanctions for organising protests which are not

[22] E.g., *Lashmankin and Others v. Russia*, Judgment of 7 February 2017, paras. 410-412.
[23] European Commission for Democracy Through Law, *Guidelines on Freedom of Peaceful Assembly* (2nd Edition), Adopted by the Venice Commission at its 83rd Plenary Session, Venice, 4 June 2010, para 2.4.
[24] *Lashmankin and Others v. Russia*, Judgment of 7 February 2017, paras. 410- 411.
[25] Romania, Law 60/1991 of 23 September 1991, on organising and holding public gatherings (*Lege nr. 60 din 23 septembrie 1991 privind organizarea și desfășurarea adunărilor publice*).

notified in advance, the Romanian authorities sanctioned the Applicant with a fine based on another law, namely, Law 61/1991 on public order.[26] Justifying a sanction based on one legal norm while applying the sanction based on another norm makes the applicable legal regime arbitrary, imprecise, and unclear, and makes it difficult for a defendant to formulate his or her defence.

34. Moreover, the law is contradictory. Article 3 of Law 60/1991 provides an exception to the need for prior notification, namely, that there is no need for prior notification in case of protests organised outside of public buildings,[27] as was the case for the protest organised by the Applicant. – Yet, Article 1 (2) of the law states that notifications are required for protests organised in public spaces.[28] While this contradiction has recently been explained by the Supreme Court,[29] it had not yet been clarified in 2013 and therefore affected the Applicant's right to assembly.

B. The interference with the Applicant's Article 11 rights was not necessary in a democratic society.

35. Although this Court permits the imposition of notice and even authorisation requirements for assemblies, the Court has stated that public authorities must show restraint in the enforcement of such requirements, particularly when a protest relates to a political issue or other serious matter of public interest.[30]

36. Moreover, the Court has held that "[a]n 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."[31] Indeed, "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."[32] In the Court's view, "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."[33]

37. In this case, the Applicant caused no actual disturbance and posed no threat of causing one. Despite this, he and the other protesters were forcibly unchained by the police, taken to a police station, and fined 500 lei (about 120 euros). Even if the Court holds that the imposed sanction was only an administrative one, we submit that the sanction was disproportionate. Moreover, the Court's case-law suggests that the sanction should be treated as criminal in nature. In a 2012 judgment, the Court found that that fines issued based on Law 61/1991 are "criminal" in nature for the purpose of the

[26] Romania, Law 61/1991 of 27 September 1991, on sanctioning acts that go against social norms and public order (*Lege nr. 61 din 27 septembrie 1991pentru sancționarea faptelor de încălcare a unor norme de conviețuire socială, a ordinii și liniștii publice*).
[27] Romania, Law 60/1991 of 23 September 1991, on organising and holding public gatherings (*Lege nr. 60 din 23 septembrie 1991 privind organizarea și desfășurarea adunărilor publice*), Article 3.
[28] *Ibid*, Article 1.
[29] Romanian Supreme Court, Decision number 19/2018, on a referral in the interest of the law, of 15 October 2018 (*Înalta Curte de Casaţie şi Justiţie, Completul Competent să Judece Recursul în Interesul Legii, Decizie nr. 19/2018 din 15/10/2018*).
[30] *Kudrevičius and Others v. Lithuania*, Grand Chamber Judgment of 15 October 2015, para 149-150.
[31] *Kudrevičius and Others v. Lithuania*, para 149.
[32] *Kudrevičius and Others v. Lithuania*, para 149.
[33] *Kudrevičius and Others v. Lithuania*, para 150.

Convention.[34] Thus, we submit that the imposed sanction was even more severe – and, therefore, even more disproportionate – than an administrative one.

38. In addition, the authorities' response pursued no legitimate aim, as there was no actual or threatened disturbance to public order and there were no aggravating elements. The Court's reasoning in *Novikova*, discussed above, is relevant:

> Therefore, the Court cannot see what legitimate aim, in terms of Article 10 of the Convention, the authorities genuinely sought to achieve. It fails to discern sufficient reasons constituting a "pressing social need" for convicting for non-observance of the notification requirement, where they were merely standing in a peaceful and non-disruptive manner at a distance of some fifty metres from each other. Indeed, no compelling consideration relating to public safety, prevention of disorder or protection of the rights of others was at stake. The only relevant consideration was the need to punish unlawful conduct. This is not a sufficient consideration in this context, in terms of Article 10 of the Convention, in the absence of any aggravating elements.[35]

39. While the Court analysed the *Novikova* protest in terms of Article 10, we submit that, given the similarity between the facts of this case and those of *Novikova*, this case offers the Court the opportunity to extend the *Novikova* reasoning — that the need to punish unlawful conduct is not a sufficient reason to justify sanctions for non-notification where a protest was peaceful and non-disruptive — to situations where the Court finds that Article 11 provides the appropriate frame for analysis.

V. THE LAW SHOULD AKNOWLEDGE THAT SPONTANEOUS PROTESTS SHOULD BE EXCEPTED FROM NOTIFICATION REQUIREMENTS.

40. Given the nature of spontaneous protests, imposing notification requirements on them and sanctions for non-compliance amount to disproportionate restrictions on freedom of peaceful assembly.

41. As the Venice Commission has noted:

> It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation. Prior notification should only therefore be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require an assembly organiser to submit a notice of intent rather than a request for permission.[36]

[34] *Nicoleta Gheorghe v. Romania*, Judgment of 3 April 2012, para. 26.
[35] *Novikova and Others v. Russia*, para. 199.
[36] European Commission for Democracy Through Law, *Guidelines on Freedom of Peaceful Assembly* (2nd Edition), Adopted by the Venice Commission at its 83rd Plenary Session, Venice, 4 June 2010, para 4.1.

42. The Court's case-law reflects these principles. In *Navalnyy v. Russia*, the Court observed that notification requirements can constitute a disproportionate limitation on the right to freedom of assembly and can, when coupled with punitive measures, have a chilling effect on those who may want to exercise their right to freedom of assembly.[37]

43. In *Bukta and Others v. Hungary*, the Court explained that:

> in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.[38]

44. The Court applied this reasoning in *Lashmankin and Others v. Russia*[39], where one of the applicants protested the parliamentary examination of a draft law that was announced two days beforehand, making it impossible for the protesters to comply with the three-day notification time-limit for "pickets" applicable under Russian law. The Court noted that the Russian courts "had not examined whether there were special circumstances calling for an immediate response to a current event in the form of a spontaneous assembly and justifying a derogation from the strict application of the notification time-limits," and this failure was in itself sufficient to constitute a violation of Article 11.[40]

45. Similarly, in this case, it does not appear that the Romanian courts examined whether any special circumstances existed that justified non-compliance with the notification requirement, such as the passage of a law project without any prior public consultation the day prior to the protest or the inherently improvisational nature of the protest.

46. We submit that Romanian legislation does not uphold the above-described principles. The notification requirement enshrined in Law 60/1991 on peaceful assembly is more than just a notification requirement.[41] Even the Romanian Constitutional Court acknowledges that it constitutes an authorisation procedure.[42]

47. Moreover, Romanian legislation does not provide for special provisions for "spontaneous protests" which come as an immediate response to an important social development. As highlighted by Romanian human rights NGOs,[43] this legislative lacuna needs to be filled.

48. Consequently, the existing provisions do not offer sufficient scope for the exercise of the right to freedom of peaceful assembly in the many forms this freedom may legitimately be exercised.

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[37] *Navalnyy v. Russia*, Grand Chamber Judgment of 15 November 2018, paras. 100, 103.
[38] *Bukta and Others v. Hungary*, Judgment of 17 July 2007 para. 36.
[39] *Lashmankin and Others v. Russia*, Judgment of 7 February 2017, para. 453.
[40] *Ibid*, paras. 454-456.
[41] Romania, Law 60/1991 of 23 September 1991, on organizing and holding public gatherings (*Lege nr. 60 din 23 septembrie 1991 privind organizarea și desfășurarea adunărilor publice*), article 1(2).
[42] Romanian Constitutional Court, Decision no. 687 of 24 November 2016, para. 19.
[43] Romanian Helsinki Committee (APADOR-CH), press-release of 17 August 2018, available in Romanian at: http://www.apador.org/cum-ramane-cu-mitingurile-spontane/ (last visited on 13 July 2019).

VI. CONCLUSIONS

49. For the above reasons, Amici respectfully submit that the key issues for the Court to consider in deciding whether the Applicant's conduct should be analysed as expression pursuant to Article 10 or as a peaceful assembly pursuant to Article 11 are whether: (i) the conduct involved an "intentional gathering of further participants"; (ii) facilitation of the event by the authorities could objectively have been considered necessary, and failure to give notice prevented them from doing so; and (iii) a requirement of prior notice would have interfered with the intended form of the protest, for instance, because the protest involved an element of confrontation or surprise, or was an immediate response to a current event.

50. Given that the first two questions may be answered in the negative concerning the Applicant's protest, and the third, in the positive, we submit that his protest should be analysed pursuant to Article 10 in light of Article 11, rather than Article 11 alone.

51. If, however, the Court should decide to assess the Applicant's conduct as a peaceful assembly, then we submit that the Court should take the opportunity provided by this case to clarify that any notification requirements for assemblies should provide an exception for special circumstances that justify an immediate response, and that one such special circumstance is the recent adoption, without prior consultation, of legislation that affects a community.

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