



## Insufficient reasons for criminal conviction for wearing a plastic visor during a demonstration

In today's **Chamber** judgment<sup>1</sup> in the case of [Russ v. Germany](#) (application no. 44241/20) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of assembly and association)** of the European Convention on Human Rights.

The case concerned the criminal conviction of Mr Russ for wearing a plastic visor at a demonstration against the opening of the new European Central Bank headquarters in Frankfurt am Main, in breach of a general prohibition on carrying protective weapons (*Schutzwaffen*) at public outdoor assemblies in Germany.

The Court found that, while the national courts had taken into account the applicant's freedom of expression, they had not weighed up his right to freedom of assembly against the intended aim of preventing disorder and violence; nor had they assessed the characteristics of the demonstration.

As the national courts had failed to explain why wearing a makeshift visor had constituted a threat to public safety, the Court concluded that the reasons justifying Mr Russ's criminal conviction had not been sufficient.

### Principal facts

The applicant, Benjamin Russ, is a German national who was born in 1985 and lives in Munich (Germany).

On the morning of the opening of the newly built European Central Bank headquarters on 18 March 2015 in Frankfurt am Main, Mr Russ took part in an anti-capitalist demonstration. Various protests took place that day in different parts of the city, with some leading to episodes of violence.

The demonstration that Mr Russ took part in that morning was entitled "colourful, loud – but peaceful" (*bunt, laut – aber friedlich*). He wore a makeshift plastic visor that covered his forehead and eyes, held together with a rubber band and with the slogan "smash capitalism" written across it.

In June 2016 Mr Russ was issued with a penalty order for having worn the plastic visor during the demonstration. Following his objection, he was subsequently convicted in May 2017 and fined for contravening the Public Assemblies and Processions Act (*Versammlungsgesetz*), which prohibited the carrying of protective weapons at public outdoor assemblies. In German law, the term protective weapon (*Schutzwaffe*) includes objects, equipment or self-made constructions that are objectively capable of warding off attacks or law enforcement measures; they are not weapons in the technical sense. The Frankfurt am Main District Court held that the homemade visor, despite its simplicity, was designed to be a protective weapon as it could protect eyes from pepper spray. Had Mr Russ worn it on the back of his head, it would not have been considered a protective weapon, but simply as the expression of an opinion, bearing, as it did, an anti-capitalist slogan.

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

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

Mr Russ appealed, unsuccessfully, to the Frankfurt am Main Regional Court. He then lodged an appeal on points of law, which was rejected by the Court of Appeal in August 2019. The following March, the Federal Constitutional Court refused to examine a constitutional complaint he lodged, but without providing any reasons for the refusal.

## Complaints, procedure and composition of the Court

Relying on Articles 7 (no punishment without law), 10 (freedom of expression) and 11 (freedom of assembly and association) of the European Convention, Mr Russ alleged that his criminal conviction for wearing a plastic visor at a peaceful assembly and the reasoning of the criminal courts violated his Convention rights. He complained that the national courts' interpretation of the term "protective weapon" was exaggerated and that the plastic visor he had worn was not prohibited under the Public Assemblies and Processions Act (*Gesetz über Versammlungen und Aufzüge*).

The application was lodged with the European Court of Human Rights on 1 October 2020.

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

Arnfinn Bårdsen (Norway), *President*,  
Saadet Yüksel (Türkiye),  
Jovan Ilievski (North Macedonia),  
Péter Paczolay (Hungary),  
Anja Seibert-Fohr (Germany),  
Davor Derenčinović (Croatia),  
Juha Lavapuro (Finland),

and also Dorothee von Arnim, *Deputy Section Registrar*.

## Decision of the Court

The Court examined the application under Article 11 of the Convention in the light of Article 10 of the Convention as the reason given for the punishment had concerned the wearing of the visor as a "protective weapon" and not what was written on it. The Court concluded that there had been no separate interference with the applicant's right to freedom of expression.

### Article 11 considered in the light of Article 10

The Court considered that, while there had been some violence and criminal offences committed that day in Frankfurt, it had not been established that any of them had taken place at the "colourful, loud – but peaceful" demonstration, in which Mr Russ had participated. Nor had it been shown that the organisers had intended the demonstration to be violent or that Mr Russ had displayed violent intentions or behaviour. His criminal conviction had therefore interfered with his right to freedom of peaceful assembly under Article 11 of the Convention.

In determining whether the interference had been "prescribed by law", the Court noted that the legal basis for the applicant's conviction was section 27(1) of the Act on Public Assemblies and Processions, which prohibited carrying protective weapons during public assemblies. While the Act itself did not contain a definition of "protective weapon", the documentation from the legislative process, which was also publicly accessible, did include such a definition and also listed some examples. While acknowledging the simple construction of the applicant's plastic visor, the national courts, had concluded that it constituted a prohibited "protective weapon". The Court considered that this interpretation by the domestic courts had not been arbitrary or unpredictable, and concluded that the interference complained of had been "prescribed by law". It was satisfied that the aims behind the ban on protective weapons and Mr Russ's conviction had been to prevent disorder and crime and to protect the rights and freedom of others. Nevertheless, the plastic visor used by Mr Russ had been

made simply out of a sheet of hard clear plastic and a rubber band, and Mr Russ had not been warned about the visor during the demonstration itself. While the fine had been relatively small, it had come in the form of a criminal sanction and not an administrative fine.

The Court reiterated that criminal sanctions required special justification and that, in principle, a peaceful demonstration should not result in such sanctions. When considering the criminal liability of a demonstrator, courts must take into account the right to freedom of assembly and decide whether a criminal conviction was proportionate and “necessary in a democratic society” within the meaning of Article 11 of the Convention.

The Court found that, while the national courts had taken into account the applicant’s freedom of expression, they had not weighed up his right to freedom of assembly against the intended aim of preventing disorder and violence; nor had they assessed the characteristics of the demonstration. Moreover, the national courts had failed to explain why wearing a makeshift visor had constituted a threat to public safety. The Court concluded that the reasons they had put forward to justify Mr Russ’s criminal conviction had not been sufficient. It therefore concluded that the interference had not been “necessary in a democratic society” and had violated Article 11 of the Convention.

### Article 7

In view of its findings under Article 11 of the Convention concerning the legal basis of the interference, the Court declared the complaint under Article 7 inadmissible.

### Just satisfaction (Article 41)

The Court held that the finding of a violation was in itself just satisfaction. It also considered that a reopening of the criminal proceedings would in principle be the most appropriate form of address. It held that Germany was to pay the applicant 7,305 euros in respect of costs and expenses.

*The judgment is available only in English.*

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