



## Local authorities repeatedly undermined public protests against alleged corruption, ineffective governance and the repression of civil liberties

In today's **Chamber judgment**<sup>1</sup> in the case of **Lashmankin and Others v. Russia** (application no. 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, and 37038/13) the European Court of Human Rights held, unanimously, that there had been:

**violations of Articles 11 (freedom of assembly), 13 (right to an effective remedy) in conjunction with 11, 5 (right to liberty) and 6 (right to a fair trial) of the European Convention on Human Rights.**

23 applicants from different parts of Russia alleged that local authorities had imposed severe restrictions on peaceful assemblies planned by them, without any proper justification.

The Court found that the authorities had placed such severe limitations on the applicants' plans for public events, they had violated the applicants' right to freedom of assembly. The restrictions included requirements for the location, time or manner of conduct that undermined the very purpose of the event (for example, by specifying that it had to be held out of the town centre, where nobody would see it). These restrictions – along with a wide range of other measures taken against the applicants - had been disproportionate and unjustified. Furthermore, they had been based on legal provisions which had not protected against an arbitrary and discriminatory use of the authorities' power. There had also been no legal procedure available that would have allowed the applicants to properly challenge the authorities' decisions.

### Principal facts

The applicants are 23 Russian nationals who were born between 1941 and 1990, and live in Russia.

Their proposed assemblies were as follows: a picket on 31 January 2009 near the Memorial to the Victims of Political Repression in Yuri Gagarin Park, Samara, to commemorate the shooting of the human rights lawyer Stanislav Markelov and the journalist Anastasia Baburova; a march on the anniversary of these shootings, on 19 January 2010; two different pickets on 24 August 2009, at the Prefects of the Northern and Central Administrative District of Moscow, to protest about electoral violations and discrimination against certain groups; a march between Tverskoy Boulevard and Pushkin Square on 20 March 2010, to protest about the governance of Moscow; a gay pride march and meeting in the centre of St Petersburg on 26 June 2010; on the same day, a picket in four different administrative districts of St Petersburg; a gay pride march and meeting in St Petersburg on 25 June 2011; a picket in front of the Kaliningrad Regional Interior Department headquarters in May 2010, in support of government policies to fight corruption, reform the police, detect 'werewolves in epaulettes' and eradicate crime; a meeting on 20 March 2011 in Kaliningrad to protest against a police state and demand the resignation of Prime Minister Putin; a picket on 12 June 2009 in the centre of Rostov-on-Don, to protest against ineffective economic policies and other alleged government failings; 6 different "Strategy-31" meetings between October 2009 and August 2012, intended to be held in Rostov-on-Don in support of the right of freedom of assembly; and an

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).

individual picket in front of the State Duma on 19 December 2012, to protest about the law prohibiting the adoption of Russian children by US nationals.

With the exception of the last of these, in each case the applicants submitted a formal notice to the appropriate local authority, notifying it of their intention to hold an event. However, the authorities refused to approve its location, time or manner of conduct. In some cases where the authorities proposed alternative locations, times or manner of conduct, the applicants allege that the authorities' proposals did not answer the purpose of their assembly, for example because the proposed locations were not in the city centre, far from any government officers and with limited passage of people, that is not within sight and sound of the target audiences. In other cases they repeatedly refused to approve any location, time or date suggested by the applicants, without suggesting any that would be suitable. In doing so, the authorities relied on allegedly insufficient or disproportionate grounds. In one case, the authorities made a decision to approve the time and venue of the event, but allegedly ensured that the applicant(s) would not receive the decision in time for the meeting to actually take place. Some applicants complain about the general ban on holding public events in the vicinity of court buildings. Other applicants complain about the automatic and inflexible application of the time-limits for notification of public events without taking into account that it was impossible to comply with the time-limit because of public holidays or spontaneous nature of the event. Lastly, several applicants complain about the exceptionally drastic security measures during their public event, in particular that the square where their event was held was fenced off by police vans to make it invisible to the general public.

In most of the cases, the applicants complain that these refusals meant that they could not hold their event at all, as it would have constituted an offence. In some cases however, the applicant(s) proceeded to hold their event as initially planned. All of these events were obstructed or entirely disrupted by the authorities; following which, the applicant(s) was arrested and charged with an administrative offence.

In numerous cases, the applicant(s) challenged the decision not to approve the location, time or manner of conduct of a public event planned by them, by making an appeal in court. In almost every case, the claims were rejected - both at first instance and on appeal – because the courts found that the refusals to approve the location, time or manner of conduct of the events were lawful and properly reasoned.

## Complaints, procedure and composition of the Court

Relying in on Articles 10 (freedom of expression), 11 (freedom of assembly) and 14 (prohibition of discrimination), the applicants complained that the restrictions imposed on their proposed public events had breached their rights to freedom of expression and peaceful assembly – in numerous cases, by discriminating against them on the grounds of their political opinions or sexual orientation. Relying on Article 13 (right to an effective remedy) in conjunction with Article 11, the applicants complained that they had not had an effective remedy against the violations of their right to freedom of assembly – in particular, because there had been no legal procedure available, which would have allowed them to obtain an enforceable decision prior to the date of their planned events. Three of the applicants also relied on Article 5 § 1 (right to liberty and security) to complain that they had been arrested whilst protesting, and that these arrests had been arbitrary and unlawful. Finally, three applicants relied on Article 6 § 1 (right to a fair trial) to complain about the quashing of a judgment in their favor by way of supervisory review, and one applicant relied on the same Article to complain that he had been convicted by a tribunal which had not been established by law.

The applications were lodged with the European Court of Human Rights on 5 October 2009, 24 August 2010, 8 December 2010, 25 February 2011, 11 May 2011, 13 June 2011, 14 June 2011, 27 August 2011, 7 December 2011, 28 February 2012, 28 February 2012, 20 March 2012, 19 May 2010, 21 September 2012, and 20 May 2013.

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

Luis **López Guerra** (Spain), *President*,  
Helena **Jäderblom** (Sweden),  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Branko **Lubarda** (Serbia),  
Pere **Pastor Vilanova** (Andorra),  
Georgios A. **Serghides** (Cyprus),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### Article 11 (freedom of assembly)

The Court noted that interference with the right to freedom of assembly need not necessarily involve an outright ban of an event, but can occur through other restrictions. In particular, the right to freely assemble includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in Article 11. In this case, the authorities had refused to approve the arrangements for the public events put forward by the applicants, and had proposed alternatives. The applicants, considering that the authorities' proposals did not answer the purpose of their assembly, either cancelled the event altogether or decided to hold it as initially planned despite the risk of dispersal, arrest and prosecution. The authorities' actions had therefore interfered with the applicants' right to freedom of assembly.

Furthermore, the Court held that this interference had been based on legal provisions which did not meet the Convention's "quality of law" requirements, and that that the interference had not been "necessary in a democratic society".

The Court found, in particular, that in each application the authorities did not give relevant and sufficient reasons for their proposals to change the location, time or manner of conduct of the applicants' public events. These proposals were based on legal provisions which did not provide for adequate and effective legal safeguards against arbitrary and discriminatory exercise of the wide discretion left to the executive and which did not therefore meet the Convention "quality of law" requirements.

The Court found, in addition, that the refusal to approve the public event in one application by reference to the general ban on holding public events in the vicinity of court buildings could not be regarded as being compatible with Article 11 § 2 because the general ban lacked convincing justification and was too broadly drawn.

Also, in some applications, the automatic and inflexible application of the time-limits for notification of public events – without taking into account that it was impossible to comply with the time-limit because of public holidays or the spontaneous nature of the event respectively – was not justified under Article 11 § 2.

Furthermore, in one application the authorities failed in their obligation to ensure that the official decision taken in response to a notification reached the applicants reasonably in advance of the planned event, in such a way as to guarantee the right to freedom of assembly which was practical and effective, not theoretical or illusory.

By dispersing some of the applicants' public events and by arresting three of them the authorities failed to show the requisite degree of tolerance towards peaceful, albeit unlawful, assemblies, in breach of the requirements of Article 11 § 2.

Lastly, in adopting the exceptionally drastic security measures during the public event held by some applicants, the domestic authorities acted in an arbitrary and discriminatory manner.

The Court therefore held that there had been a violation of Article 11 of the Convention (interpreted in the light of Article 10) in each application and that it was not necessary to examine separately the applicants' complaint under Article 14 of the Convention taken in conjunction with Articles 10 and 11.

#### Article 13 (right to an effective remedy) in conjunction with Article 11

The Court held that the applicants did not have at their disposal an effective remedy which would allow an enforceable judicial decision to be obtained on the authorities' refusal to approve the location, time or manner of conduct of a public event before its planned date. Moreover, the scope of judicial review was limited to examining the lawfulness of the proposal to change the location, time or manner of conduct of a public event, and did not include any assessment of its "necessity in a democratic society" and "proportionality". This meant that the applicants could not properly challenge the authorities' violations of their right to freedom of assembly, in violation of their right to an effective remedy provided by Article 13.

#### Article 5 § 1 (right to liberty and security)

Police had interrupted Mr Tarasov's picket and escorted him to the police station, for the alleged purpose of producing an administrative offence report. However, under Article 27.2 of the Code of Administrative Offences, a person can only be taken to a police station for this reason if the report cannot be drawn up on the spot. The Court found no reason why this would have been impossible in Mr Tarasov's case, and therefore held that the taking him to the police station had been unlawful, and in violation of Article 5 § 1.

Mr Tarasov, Mr Yelizarov and Mr Batyy had all been subjected to administrative arrest. Under Article 27.3 of the Code of Administrative Offences, such arrests can only be justified in an exceptional case, where arrest is necessary for the examination of the case and enforcement of a penalty. However, neither the Government nor any other domestic authorities had provided any such justification, in relation to any of the three applicants. The court therefore found that their arrests had also been unlawful, and in violation of Article 5 § 1.

#### Article 6 § 1 (right to a fair trial)

The Court found violations of the "right to court" guaranteed by Article 6 § 1 of the Convention in relation to three applicants. This arose from a breach of the principle of legal certainty, as a decision in the applicants' favour had been quashed by a supervisory review procedure, but without that procedure identifying any fundamental defect in the original judgment.

#### Just satisfaction (Article 41)

In respect of pecuniary damage, the Court held that Russia was to pay Mr Tarasov 450 euros (EUR). In respect of non-pecuniary damage, the Court held that Russia was to pay three applicants EUR 10,000, 14 applicants EUR 7,500, and five applicants EUR 5,000. In respect of costs and expenses, the Court held that Russia was to pay nine of the applicants a total of EUR 11,600.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.