



Police failed to protect LGBTI demonstrators from homophobic attacks

The case of [Berkman v. Russia](#) (application no. 46712/15) concerned a public LGBTI (lesbian, gay, bisexual, transgender and intersex) meeting in St Petersburg and the authorities' failure to protect participants from aggressive counter-demonstrators.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights because the applicant's arrest during the meeting had been unlawful;

a violation of the State's obligations under Article 11 (freedom of assembly) of the European Convention taken alone because the applicant's arrest had prevented her from continuing to participate in the LGBTI meeting, without sufficient justification;

a violation of the State's obligations under Article 11 in conjunction with Article 14 (prohibition of discrimination) because the police had failed to take steps to facilitate access to the meeting and to protect the applicant from the counter protestors' homophobic attacks; and,

no violation of Article 14 taken in conjunction Article 11 of the Convention as concerned the applicant's allegation that the police officers had only arrested LGBTI participants and disregarded breaches of order by the counter-demonstrators.

The Court found in particular that a State did not just have a duty under the Convention not to interfere with the right to freedom of assembly. For that right to be genuine and effective, the authorities also had an obligation to facilitate access to meetings and ensure participants' safety.

In the applicant's case however the police, aware of the risk of tensions in advance and outnumbering the counter-demonstrators, had been passive in the face of the homophobic attacks.

The Court stressed that the authorities' duty to take steps to facilitate and protect had been all the more important in the case of the applicant, who belonged to a vulnerable minority group towards whom there had been a history of public hostility in Russia.

Principal facts

The applicant, Yelena Vladimirovna Berkman, is a Russian national who was born in 1992 and lives in St Petersburg (Russia).

On 12 October 2013 the applicant and a small group of LGBTI activists went to the Field of Mars, a large square in St Petersburg, to take part in a meeting marking Coming Out Day. The organisers had warned the authorities in advance of the event and enhanced security had been ordered in anticipation of clashes with counter-demonstrators.

However, according to the applicant, when she arrived the square was blocked by more than 100 aggressive counter-demonstrators in national costumes and armed with whips. They surrounded

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.

about 20 to 30 participants, including the applicant, and started to push and bully them. More than 500 police officers deployed to the site did not react, despite the participants asking them for help. They apparently only stepped in when tensions between the two groups reached a critical point. The applicant alleged that the officers had arrested only participants in the LGBTI demonstration and took them to police stations.

The Government submit that about 90 people were arrested on account of their disorderly conduct.

The applicant in particular was arrested at about 1.55 p.m., taken to the central police station and charged in minor offence proceedings with using foul language in a public place. She was released around 6.30 p.m. The domestic courts subsequently dismissed the charges against her owing to lack of evidence.

The applicant's civil claim, challenging the lawfulness of her arrest and detention at the police station, was ultimately unsuccessful in February 2016. The courts found that her arrest had been lawful, while her other allegation regarding the authorities' failure to ensure the personal safety of the LGBTI demonstrators was unsubstantiated.

Complaints, procedure and composition of the Court

Relying on Article 5 (right to liberty and security), Article 11 (freedom of assembly) and Article 14 (prohibition of discrimination), the applicant complained that her arrest and subsequent detention had been arbitrary and unlawful and that the authorities had failed to ensure that the public meeting proceed peacefully. She argued that those breaches of her rights had been a part of the State's discriminatory policy towards LGBTI people.

The application was lodged with the European Court of Human Rights on 9 September 2015.

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

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
María **Elósegui** (Spain),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 5 (right to liberty and security)

The Court found that Ms Berkman's arrest had lacked reasons and legal grounds. In particular, according to her arrest record she had been taken to the police station for the purpose of drawing up an administrative-offence report. Such a measure was permitted under domestic law if it was not possible to write the report on the spot. The Government did not, however, show that in the applicant's case drawing up such a report at the site of the protest had been impossible. Moreover, the domestic authorities had never assessed in a meaningful manner the necessity of her transfer to the police station. There had therefore been a violation of Article 5 § 1 of the Convention.

Article 11 taken alone and in conjunction with Article 14

Like the domestic courts which had examined the applicant's civil claim, the police officers deployed to the LGBTI meeting had only been preoccupied with the protection of public order. They had not considered that it had been necessary to facilitate the meeting.

Firstly, no preliminary measures to prevent the bullying had been taken, such as making official public statements to promote tolerance, monitoring homophobic groups' activities, or arranging a channel of communication with the organisers of the event.

Furthermore, the officers, who had been deployed because of concerns about the risk of tensions and who by far outnumbered those present, had not attempted to secure a safe perimeter for the participants. As a result of such inaction, the applicant and other participants had not been able to join the event at the Field of Mars square which had been occupied by counter-demonstrators.

Nor had the police taken any steps to de-escalate the tensions between the two groups, only stepping in when a real risk of bodily injuries occurring had become apparent.

Such an approach was unsatisfactory. The Court reiterated that a demonstration might annoy or give offence but that participants had to be able to attend without fear of being subjected to physical violence by their opponents. Genuine, effective freedom of peaceful assembly could not be reduced to a mere duty on the part of the State not to interfere.

Indeed, the obligation under the Convention to take steps to protect freedom of assembly was of paramount importance in the case of the applicant, who belonged to a minority with views that were unpopular. She was therefore vulnerable, especially given the history of public hostility towards LGBTI people in Russia.

Moreover, although the homophobic connotation of the counter-demonstrators' speech and their conduct had to have been evident to the authorities, it had not been duly addressed.

The Court therefore considered that the domestic authorities had failed to comply with their obligations under Article 11 of the Convention, taken alone and in conjunction with Article 14.

Article 11 taken alone

The Court reiterated that the applicant's arrest, which had prevented her from participating in the LGBTI meeting, had been unlawful. The interference with her freedom of assembly had therefore also been unlawful. Indeed, the authorities' justification for such interference was insufficient, especially in view of the fact that the applicant's conduct had clearly not been violent.

The Court therefore held that there had been a violation of the State's obligations under Article 11 of the Convention taken alone.

However, the Court could not conclude from the case file and the parties' submissions (including video material and the allegations about the number of participants and those arrested) that the police officers had only arrested LGBTI participants and disregarded the breaches of public order by their opponents. There had therefore been no violation of Article 14 taken in conjunction with the State's obligations under Article 11 of the Convention in that regard.

Other articles

The Court held that there was no need to examine separately the applicant's complaints under Article 5 § 1 or under Article 14 taken in conjunction with Article 5 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage.

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.