



Police failure to prevent far-right invasion of gay film screening and homophobic abuse

In today's **Chamber judgment**¹ in the case of [Association ACCEPT and Others v. Romania](#) (application no. 19237/16) the European Court of Human Rights held that there had been:

by a majority of 5 votes to 2, a **violation of Article 14 (prohibition of discrimination), taken in conjunction with Article 8 (right to respect for private and family life)** of the European Convention on Human Rights in respect of the individual applicants, and

unanimously, a **violation of Article 14 of the Convention, taken in conjunction with Article 11 (freedom of assembly and association).**

The case concerned a demonstration that had occurred at a screening of a film involving a same-sex family during the applicant association's LGBT History Month in February 2013. The other five applicants had attended the screening. Although the police had provided some protection, the cinema had been invaded by protestors, allegedly carrying far-right paraphernalia. Cinemagoers had been verbally abused.

Complaints by the applicant association and the other applicants to prosecutors had not led to indictments. Following a court complaint, it had been adjudged that there had been no evidence to sustain beyond reasonable doubt that fascist symbols had been displayed in public.

The Court found in particular that the police had failed to prevent the homophobic slurs and to ensure that the event could take place, despite adequate presence at the scene. It also found that the investigation had not taken reasonable steps to investigate the homophobic abuse directed at the applicants.

Principal facts

The applicants are Association ACCEPT, a non-profit association, and five Romanian nationals. The applicant association was founded in 2000 and is based in Bucharest. The other applicants were born between 1980 and 1988 and live in Bucharest. ACCEPT promotes the interests of lesbian, gay, bisexual and transgender (LGBT) people in Romania.

During the applicant association's LGBT History Month in February 2013 a screening of a film involving a same-sex family was held. The other five applicants attended the screening. A protest against the film took place at the same time.

Fifty or so of the protestors entered the auditorium and disrupted the screening. They shouted insults such as "death to homosexuals", "faggots", and "you filth". Some were allegedly carrying far-right flags. The intruders seemed to be associated with a far-right political movement, *Noua Dreaptă* ("the New Right"), which is openly opposed to, among other things, same-sex marriage and same-sex adoptions.

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.

The organisers alerted the police, who were present at the scene. They entered the room, confiscated some flags, and left, despite being asked to remain. The relevant police reports do not mention homophobia.

As the protestors had blocked the projector, the organisers were ultimately forced to cancel the screening.

On 5 March 2013 the applicant association complained to the police about the incident, alleging incitement to discrimination, abuse of office by the restriction of rights, and the displaying of fascist, racist or xenophobic symbols in public. An investigation was opened and then closed on 14 October 2014 (the incident was described as an “exchange of views”), a decision that was upheld by the authorities.

An investigation into the use of fascist symbols was also discontinued on 11 August 2017.

Several complaints by the applicants to the courts were in vain. Overall, there were no indictments.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman and degrading treatment), 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention and Article 1 of Protocol No. 12 to the Convention (general prohibition of discrimination), the applicants complained, in particular, of the lack of protection from the authorities against the treatment they had suffered on 20 February 2013, and of bias against them owing to their sexual orientation. Under Article 11 (freedom of assembly and association) read alone or together with Article 14 they complained, in particular, of the interruption of their public event caused by the failure of the authorities to protect their right to peaceful assembly. Under Article 13 (right to an effective remedy), the applicants complained they had no effective remedy for their complaints.

The application was lodged with the European Court of Human Rights on 2 April 2016.

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

Yonko **Grozev** (Bulgaria), *President*,
 Faris **Vehabović** (Bosnia and Herzegovina),
 Iulia Antoanella **Motoc** (Romania),
 Gabriele **Kucsko-Stadlmayer** (Austria),
 Pere **Pastor Vilanova** (Andorra),
 Ana Maria **Guerra Martins** (Portugal),
 Armen **Harutyunyan** (Armenia),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

[Articles 3, 8 and 14 of the Convention and Article 1 Of Protocol No. 12 to the Convention](#)

Obligation to protect

The incident had concerned a group of 20 or so individuals who had been verbally abused by a group of 45 individuals, effectively breaking up their event. There had been minimal help from the police, who had not even remained in the auditorium, despite being there in numbers and not having been overwhelmed. For the Court, this had not been effective intervention, and they had not prevented the abuse suffered.

The Court furthermore noted that the reports drafted by the police and gendarmes contained no reference to the homophobic insults suffered by the applicants and described the incident without reference to homophobia.

The Court adjudged that the authorities had failed to correctly assess the risk incurred by the individual applicants at the hands of the intruders and to respond adequately in order to protect the individual applicants' dignity against homophobic attacks by a third party.

Obligation to investigate

The Court noted that the police had clear prima facie evidence of the protestors' verbal abuse regarding sexual orientation, owing to the fact that they had been present. There had been an obligation on the authorities to investigate the matter – a potential hate crime. However, no significant investigative steps had been taken for a year after the complaint had been made, and the investigation had ended up lasting four years and eight months. The Court does not consider that the investigation should have been so difficult in the initial stages. Ultimately, the authorities failed to conclude a criminal investigation into the actions of the intruders.

The Court noted in particular the authorities' consistent referral to the verbal abuse as mere "discussions" or an "exchange of views"; the perpetrators had been described as "sympathisers" of far-right organisations and the victims as "followers" of same-sex relations. For the Court, this language lacked neutrality and risked jeopardising the effectiveness of the domestic proceedings.

The Court concluded that the authorities had not taken reasonable steps to investigate whether the verbal abuse had been motivated by homophobia.

Conclusion

Overall, the Court concluded that the authorities had failed to offer adequate protection in respect of the individual applicants' dignity (and more broadly, their private life), and to effectively investigate the real nature of the homophobic abuse directed against them. The authorities thus discriminated against the applicants on the grounds of their sexual orientation, leading to a violation of Article 14 taken in conjunction with Article 8.

Article 14 taken in conjunction with Article 11

The Court reiterated that the right to freedom of peaceful assembly covered both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it could be exercised by individual participants and by the persons organising the gathering. It asserted that the disruption of the screening in this case had amounted to an interference to the applicants' right to peaceful assembly.

The Court considered that the relevant facts were the same as for the complaint under Article 14 taken in conjunction with Article 8, with the Court finding that the authorities had failed to de-escalate the situation despite clear evidence of homophobic slurs being proffered.

In sum, the Court concluded that the authorities had failed to ensure that the event in question in this case could take place, falling short of their obligations under Article 14 taken in conjunction with Article 11.

Other articles

The Court decided that there was no need to examine the issues raised under Article 13 and Article 1 of Protocol No. 12.

Just satisfaction (Article 41)

The Court held that Romania was to pay 7,500 euros (EUR) to the applicant association and EUR 9,750 to each individual applicant in respect of non-pecuniary damage, and EUR 3,264 jointly to all the applicants in respect of costs and expenses.

Separate opinions

Judges Grozev and Harutyunyan expressed a joint partly dissenting opinion, which is annexed to the judgment.

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.