

## Criminal conviction of organiser of peaceful demonstration for non-violent disruptions by demonstrators breached, Convention

In today's Chamber judgment<sup>1</sup> in the case of [Batou v. Switzerland](#) (application no. 30781/22) 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 applicant's conviction, in her capacity as organiser of a demonstration on International Women's Day in 2019, for failure to comply with the conditions laid down for the holding of that demonstration. The domestic courts had found, in particular, that the security team set up by the applicant had been ineffective in the face of disruptions caused by the demonstrators.

In the specific context of the responsibility which an event organiser could reasonably be required to assume, the Court was of the view that the fact of having been "overwhelmed by the burden" of that responsibility could not be seen as a reprehensible act. Having regard to the absence of any reprehensible acts on the applicant's part, and given the fact that the demonstration had not caused any significant disruption or danger, the Court considered that the applicant's conviction – even though the amount of the fine imposed had been minimal – had not been proportionate to the legitimate aim referred to by the Swiss courts. Further, it could have a "chilling effect". The interference complained of had therefore not been "necessary in a democratic society".

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant is a Swiss national who was born in 1994. In 2019 the collective of which she was a member was authorised to organise a night-time demonstration in Geneva on International Women's Day. As the appointed organiser, she was informed of the conditions attached to the authorisation and of the fact that she would be held personally liable in the event of non-compliance.

The demonstration took place on 8 March 2019 and was attended by some 1000 women. The next day, the police drew up a report in which they accused the applicant of a number of failings, including the inability of the security team set up by her to properly supervise the demonstration, graffiti on shop windows, the use of fireworks and an attempt to deviate from the authorised route. The applicant contested these allegations, arguing that only a "gerb" firework had been used, without her knowledge, and that the deviation from the route had taken place in spite of her and her security team's instructions. She further pointed out that the police had not made any arrests.

She was nevertheless ordered to pay a fine – which could be replaced by two days' imprisonment in the event of non-payment – and court fees for her failure to comply with the conditions laid down for the holding of the demonstration (sections 5 to 10 of the Geneva Public Events Act (*loi genevoise sur les manifestations sur le domaine public* – "LMDPu")). The Police Court – which heard testimony from the applicant as the accused and from the author of the police report as a witness – dismissed her

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).

application for evidence to be taken from three witnesses. It found, in particular, that the security team had proven ineffective in preventing and managing the disruptions established in the police reports. The applicant's subsequent appeals to the Geneva Court of Justice and Federal Supreme Court were unsuccessful and her conviction was upheld.

## Complaints, procedure and composition of the Court

The applicant submitted that her conviction as organiser of a demonstration for allegedly failing to comply with the conditions laid down in the authorisation to hold a public event, had infringed her rights to freedom of expression and freedom of peaceful assembly. The Court decided to examine the complaints under Article 11 (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 18 June 2022.

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

Kateřina Šimáčková (the Czech Republic), *President*,  
María Elósegui (Spain),  
Georgios A. Serghides (Cyprus),  
Andreas Zünd (Switzerland),  
Diana Sârcu (the Republic of Moldova),  
Mykola Gnatovskyy (Ukraine),  
Sébastien Biancheri (Monaco),

and also Martina Keller, *Deputy Section Registrar*.

## Decision of the Court

The guarantees of Article 11 of the Convention were applicable to the present case, since the demonstration in question had been peaceful, without violent intentions or conduct on the part of the organisers or participants. It had been known to the authorities, who had therefore been able to make the necessary arrangements in advance to ensure its smooth conduct and the safety of citizens.

The Court noted that the female demonstrators' disorderly conduct had not disrupted daily life or the lawful activities of others and had not amounted to conduct that could be characterised as reprehensible or violent. The applicant had not been accused of having taken part in perpetrating the acts in question, of having incited or orchestrated them, or of having instigated them in any way whatsoever. The domestic courts had found that the applicant and the security team set up by her had failed to react appropriately when faced with the demonstrators' actions, for which, accordingly, she had been held responsible. In the Court's view, that conclusion itself seemed in part problematic in so far as the applicant, in her capacity as organiser, could not be held responsible for the actions of others.

Moreover, the courts had not taken into account the applicant's arguments that the unlawfulness of some of those actions (use of fireworks) was not established in domestic law and that she had overtly distanced herself from others (graffiti, deviation from the route) and called for them to cease. The courts had also refused to hear the witnesses which the applicant had wished to have testify precisely on the issue of the measures she and her security team had taken during the demonstration to bring the demonstrators to order. The Court was therefore not satisfied that the applicant's breaches of her obligations under the authorisation were sufficiently established and, above all, that they had amounted to reprehensible acts within the meaning of its case-law.

In the specific context of the responsibility which an event organiser could reasonably be required to assume, the Court was of the view that the fact of having been "overwhelmed by the burden" of that responsibility could not be regarded as a reprehensible act. In this connection, it noted that the police

had been present throughout the demonstration and that there was nothing to suggest that they had been caught off guard by the inappropriate conduct of certain demonstrators. It appeared to be agreed that, as the latter had heeded calls to order and put an end to these acts, no arrests had been made by the police.

The Police Court had also dismissed the applicant's applications for evidence to be taken on the grounds that they were irrelevant to the charges against her. The higher courts' scope of review had been very limited in this regard, since they had only been called upon to examine whether the applications for evidence to be taken had been arbitrarily dismissed. It was hard to understand how the courts could have considered it irrelevant to hear evidence from the members of the security team set up by the applicant when assessing that team's alleged inaction and ineffectiveness and, more importantly, the applicant's failure to comply with the obligations as to the quality and duties of the security team under the authorisation to hold a public event. The courts had referred solely to the findings of the police, and the applicant's arguments had been dismissed without giving convincing reasons.

Beyond the financial implications of the fine and the threat of imprisonment in the event of non-payment, the conviction had resulted in the refusal – which had been subsequently remedied – to issue the applicant with the certificate of good behaviour necessary for employment as a teacher.

Furthermore, the reasoning adopted by the domestic courts did not provide sufficient explanation as to why it had been for the applicant, in her capacity as organiser, and her security team to thwart “all the unlawful manoeuvres” committed by the demonstrators, having regard, in particular, to the duty to maintain order which fell to the police. Lastly, the domestic courts had failed to weigh the applicant's right to freedom of assembly against the alleged aim of protecting the rights and freedoms of others. Nor had they taken into account the entirely peaceful nature of the demonstration.

Having regard to these considerations and the absence of any reprehensible acts on the applicant's part, and given the fact that the demonstration had not occasioned any significant disruption or danger, the Court considered that the applicant's conviction – even though the amount of the fine imposed had been minimal – had not been proportionate to the legitimate aim alleged. It could also have a “chilling effect” on the applicant and others. The applicant had thus given up organising any further demonstrations. The interference complained of had therefore not been “necessary in a democratic society” and **there had been a violation of Article 11 of the Convention.**

### Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 10,000 euros (EUR) in respect of costs and expenses.

### Separate opinion

Judge Serghides expressed a partly dissenting opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**We are happy to receive journalists' enquiries via either email or telephone.**

**Inci Ertekin (tel: + 33 3 90 21 55 30)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Jane Swift (tel: + 33 3 88 41 29 04)

Claire Windsor (tel: + 33 3 88 41 24 01)

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