



Restrictions on protests and other interferences with the applicants' rights led to breaches of the Convention

In today's Chamber judgments¹ in two cases, [Kablis v. Russia](#) (applications nos. 48310/16 and 59663/17) and [Elvira Dmitriyeva v. Russia](#) (nos. 60921/17 and 7202/18), the European Court of Human Rights held, unanimously, that there had been in each case:

a violation of Article 10 (freedom of expression), Article 11 (freedom of assembly) and Article 13 (right to an effective remedy) of the European Convention on Human Rights, and,

in Ms Dmitriyeva's case,

a violation of Article 5 (right to liberty and security) and Article 6 (right to a fair trial) of the European Convention.

Both cases concerned restrictions on protests and other interferences with the applicants' rights.

The Court found in particular that the regional legal provisions used to prohibit a public event planned by Mr Kablis were too broad and did not require any assessment of the particular circumstances, such as a risk of disorder.

It further found that the domestic law in force between September 2015 and June 2018 had not provided an effective remedy against alleged breaches of the right to freedom of assembly.

It found violations of the applicants' right to freedom of expression due to a lack of a proper justification for measures against them – "prior restraints" on Internet posts calling to participate in an unauthorised public event in Mr Kablis's case, and a conviction for calling on people to take part in an unauthorised demonstration in Ms Dmitriyeva's.

Principal facts

The applicants in the two cases were Grigoriy Kablis, born in 1976, Elvira Dmitriyeva, born in 1979. They live in Syktyvkar and Kazan respectively and are both Russian nationals.

In September 2015 Mr Kablis informed Syktyvkar Town Administration of a picket-style protest to discuss the arrest of Komi Republic officials, including the governor, on criminal charges. The Town Administration refused to authorise the picket, citing a regional law prohibiting public events in that part of the town, a central square called Stefanovskaya Square, and suggested another location.

Mr Kablis blogged about these developments and posted information on social networking site VKontakte. Given the refusal for a picket at his chosen site, he urged people to join him in a "people's assembly" and discussion there instead.

His VKontakte account was blocked on the orders of a deputy prosecutor, who found that he had called for people to take part in an unlawful public event as the picket had not been approved. A separate order restricted access to three entries on his blog about the event on the same grounds.

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 courts dismissed Mr Kabilis's challenges to the decisions on the picket and his Internet activity. About 50 people took part in the "people's assembly" in late September 2015.

Ms Dmitriyeva sought in March 2017 to hold a meeting to demand the resignation of Prime Minister Dmitry Medvedev after allegations of large-scale corruption. Kazan Town Administration refused to approve the venues she had suggested as other public events were planned at the same place.

She later posted a message on VKontakte criticising that refusal, which she had challenged before the courts, and announcing that the meeting would take place. The courts allowed her claim in part, finding that the Town Administration's failure to propose an alternative venue was unlawful.

A few days later Ms Dmitriyeva held the meeting, but she was arrested on her way home and taken to a police station for four hours. She was subsequently found guilty of organising and calling for participation in an unauthorised public event and of refusing to obey a lawful order to disperse. She was fined and given community work. The courts held in particular that the success of her court complaint before the meeting had not amounted to "unconditional approval for the ... event".

Complaints, procedure and composition of the Court

Mr Kabilis complained about the restrictions on the location of his picket under Article 10 (freedom of expression) and Article 11 (freedom of assembly and association), and alleged under Article 13 (right to an effective remedy) that he had had no effective protection of his Article 11 rights. He also relied on Article 10 to complain about the restrictions on his VKontakte account and the blog entries.

Ms Dmitriyeva complained under Article 10 and Article 11 about the refusal to approve the venue for her meeting, and about her arrest and convictions for organising and calling for participation in an unauthorised public event. She alleged under Article 13 that she had not had an effective remedy for the alleged violation of her Article 11 rights.

She also complained about her arrest and conviction under Article 5 § 1 (right to liberty and security) and Article 6 § 1 (right to a fair trial).

Mr Kabilis lodged his two applications on 28 July 2016 and 30 July 2017, while Ms Dmitriyeva lodged hers on 16 August 2017 and 22 January 2018. The Court joined the applications in its judgments.

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

Vincent A. De Gaetano (Malta), *President*,
Branko Lubarda (Serbia),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

[Article 11](#)

The Court examined the applicants' complaints about the restrictions on their demonstrations under Article 11 alone, interpreted as appropriate in the light of Article 10. That included Ms Dmitriyeva's complaint about her arrest and conviction for organising the event and for disobeying the police.

Mr Kablis's case

The Court noted that the domestic authorities had relied on two provisions to prohibit Mr Kablis's protest – a legal ban on pickets near the Constitutional Court and a regional law that no public events at all were allowed in the square.

It had already found in *Lashmankin and Others v. Russia* that a general ban on holding public events in the vicinity of court buildings, set down in section 8 of the Public Events Act, was incompatible with Article 11 § 2 of the Convention. It saw no reason to reach a different conclusion in this case.

The Town Administration had relied on a regional law, under powers given to regional legislatures in the Public Events Act, to ban public events if they disturbed aspects of daily life, such as the traffic.

However, such a provision also went against the *Lashmankin* case-law that such reasons could be relevant but did not suffice to justify changing an event's venue or to ban such events completely.

States could adopt general measures, but a general ban on demonstrations could only be justified if there was a real risk of disorder which could not be prevented by less stringent measures.

No arguments related to disorder or security considerations had been made for banning protests at Stefanovskaya Square. In fact, the prohibition arose from a paraphrase of restrictions in the Public Events Act and no reasoning had been given why those restrictions should apply to that square.

There had also been no explanation why a general ban was the best way to achieve the goals of the law, rather than a provision allowing for a case-by-case examination. There was also no time-limit on the ban and it applied to all public events, no matter what their size or potential to cause disruption.

The refusal to allow Mr Kablis's protest, whether based on the provisions on protests close to court buildings or on the regional law, without any consideration of the specific circumstances, had not been necessary in a democratic society. There had therefore been a violation of Article 11 § 2.

Ms Dmitriyeva's case

The Court held that the circumstances of the restrictions on her demonstration were similar to those in *Lashmankin*. Applying that case-law, it also found a found a violation of Article 11 in her case.

Article 13 in conjunction with Article 11

Mr Kablis's case

In *Lashmankin* the Court had found two deficiencies in Chapter 25 of the Code of Civil Procedure (CCP) and the Judicial Review Act when it came to providing a remedy for a failure to protect someone's right of assembly under Article 11.

A new Code of Administrative Procedure (CAP) had come into force in September 2015, which had rectified one of the deficiencies by allowing for an enforceable judicial decision on a refusal by the authorities to approve a public event's location, time, or conduct before its planned date.

However, the second problem identified in *Lashmankin* remained unresolved as the lawfulness of an official decision or act remained the sole relevant issue for a court, with no account to be taken of necessity or proportionality. Such was Mr Kablis's case, where the courts had not struck a fair balance between private and public interests, in breach of the Court's standards under Article 11.

In June 2018 the Supreme Court had instructed the domestic courts to make such assessments, but the instruction had been issued after the events in Mr Kablis's case. The Court said it would examine the effectiveness of the Supreme Court's decision when the opportunity arose.

For Mr Kablis, the domestic law in force between September 2015 and June 2018 had not provided an effective remedy for his grievance and there had been a violation of Article 13.

Ms Dmitriyeva's case

The applicant had used the new CAP to challenge the authorities' decision on her protest and had obtained a favourable court decision, however, there had been no proper enforcement of the judgment. The remedy had therefore been ineffective in her case, in violation of the Convention.

Article 10

Mr Kabilis's case

The orders to block Mr Kabilis's VKontakte account and to restrict access to three Internet entries on the planned demonstration had amounted to a "prior restraint" as prosecutors had acted before any court decision on the content being illegal. Such prior restraints were only justified in exceptional circumstances and required a clear legal framework so the courts could review them effectively.

Prosecutors had wide powers to block access to Internet content on taking part in unauthorised demonstrations. That wide discretion also hampered the courts in providing an effective review of such decisions and meant successful legal challenges were likely to be difficult. The one-month deadline for such reviews meant they might not finish before the event itself, depriving the proceedings of their meaning. The blocking procedure thus lacked the necessary guarantees against abuse which were required in the Court's case-law on prior restraint measures.

The Internet posts themselves had concerned a picket on matters of general public interest, only about 50 people had been expected to attend, and the applicant had not called for violence or disorder. The breach of the procedure for the conduct of public events had therefore been of a purely formal nature and minor in nature.

There had been no pressing social need for prior restraint measures and the courts had not given "relevant and sufficient reasons" for interfering with the applicant's rights. There had therefore been a violation of Article 10.

Ms Dmitriyeva's case

The applicant complained that her conviction for calling people to take part in an unauthorised public event had violated her rights under Article 10 and Article 11. The Court decided to examine the complaint under Article 10, interpreted where appropriate in the light of Article 11.

Under domestic law, people were forbidden to "campaign" for participation in an unauthorised demonstration, although they could inform people about it. However, the domestic courts had not explained how her VKontakte message had amounted to campaigning.

Furthermore, her message had concerned a matter of public interest – allegations of high-level corruption – and expression on such matters attracted strong protection from the Court. Public authorities also had to show tolerance for unlawful but peaceful gatherings like Ms Dmitriyeva's.

The demonstration had been banned on purely formal grounds – the kind of refusal the Court had found disproportionate in *Lashmankin* – rather than because of a risk of disorder, crime, or possible harm to public safety and the rights of others. Indeed, she had made clear in her post that the demonstration had not been authorised and so had not misled people.

There had been no proper justification for interfering with her freedom of expression by convicting her for calling on people to take part in an event on an issue of public interest, particularly because her breach of the law had only been minor and there had never been a threat of disorder. There had been no "pressing social need" for the interference, which had thus violated Article 10.

Article 5

Ms Dmitriyeva's case was similar to others where the Court had found a violation of Article 5, such as *Navalnyy and Yashin v. Russia* and *Frumkin v. Russia*, and the Government had not put forward any arguments that persuaded the Court to reach a different conclusion on her application.

It found that her being escorted to the police station and being put under administrative arrest had not complied with Russian law and had not been "lawful" within the meaning of Article 5 § 1. There had therefore been a violation of that provision.

Article 6

Ms Dmitriyeva argued that there had been no prosecuting party in the criminal proceedings against her and that the courts themselves had assumed that role, breaching the principle of judicial impartiality. The Government rejected that argument.

The Court found that this case was similar to others, such as *Karelin v. Russia*, where it had found that the absence of a prosecuting party had violated the right to a fair trial. None of the Government's submissions persuaded it to reach a different conclusion in this case and it found a violation of the impartiality requirement of Article 6.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Kablis 12,500 euros in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

It held that Russia was to pay Ms Dmitriyeva EUR 149 for pecuniary damage, EUR 12,500 in respect of non-pecuniary damage and a total of EUR 2,650 to her lawyers in respect of costs and expenses.

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.