



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 29 September 2016

THIRD SECTION

Applications nos. 67685/14 and 35199/15
Valeriy Valeryevich SOZAYEV and Others against Russia
and Pavel Valeryevich SAMBUROV against Russia
(see the Appendix)

STATEMENT OF FACTS

The applicants are five Russian nationals listed in the Appendix. They are represented before the Court by Ms T. Glushkova and Mr K. Koroteyev, lawyers practising in Moscow.

A. The circumstances of the cases

The facts of the cases, as submitted by the applicants, may be summarised as follows.

In recent years a number of Russian regions adopted regional laws banning “homosexual propaganda directed at minors”. In 2012 the Novosibirsk Regional Legislative Assembly introduced a federal bill banning “propaganda for non-traditional sexual relationships directed at minors” to the State Duma (the lower chamber of the Russian Parliament). The bill was supported by Ms Yelena Mizulina from the Fair Russia party; it became known as “the Mizulina bill” after her.

The bill was considered by many to be discriminatory. On several occasions in December 2012 and January 2013 opponents of the bill gathered in front of the State Duma building in Moscow to protest against its adoption by kissing each other. They were arrested and charged with minor disorderly acts under the Code of Administrative Offences of Russia.

In the evening of 6 June 2013 the mass media announced that the second and the third readings of the Mizulina bill were to take place on 11 June 2013 in the State Duma. On 8 June 2013 Ms Yelena Kostyuchenko, a journalist, called on opponents of the bill to come to the State Duma building and take part in a peaceful protest against it on the day of the second and third readings. Information about the protest was published on social media.

On 11 June 2013 at around noon about thirty opponents of the bill came to the entrance of the State Duma building facing Georgiyevskiy Lane in

Moscow. Journalists were present there, as well as a group of about 100 conservative Orthodox Christian activists who were supporting the bill. Riot officers from the Moscow Police Department were also present in Georgiyevskiy Lane; they stood between the opponents of the bill and the Christian activists. The opponents of the bill lined up against the wall of the State Duma building and kissed their partners. Christian activists chanted “Moscow is not Sodom!”; the bill opponents tried to shout them down by chanting “Down with fascism”, “Moscow is not Iran” and “Fascism shall not pass”. At some point Christian activists started throwing eggs and nettles at the opponents of the bill.

At around 12.15 p.m. the police officers surrounded the anti-bill protesters and pushed them into police buses. About thirty of them were apprehended in this way and taken to police stations. None of the Christian activists were apprehended in this way.

Details of each applicant are given in the Appendix.

B. Relevant domestic law and practice

1. The relevant provisions of the Code of Administrative Offences of 30 December 2001, as in force at the material time, read as follows:

Article 20.2 Breaches of the established procedure for the organisation or conduct of public gatherings, meetings, demonstrations, marches or pickets

“5. Breaches by participants in public events of the established procedure for the organisation or conduct of public gatherings, meetings, demonstrations, marches or pickets ... shall be punishable by an administrative fine of between 10,000 Russian roubles (RUB) and RUB 20,000 or by compulsory community service of up to 40 hours ...”

Article 25.1 Individuals against whom administrative proceedings have been instituted

“1. Individuals against whom administrative proceedings have been instituted are entitled to study the case-file material, to make submissions, to adduce evidence, to lodge representations and challenges, and to have legal assistance ...”

Article 27.2 Escorting of individuals

“1. The escort or transfer by force of an individual ... for the purpose of drawing up an administrative offence report, if this cannot be done at the place where the offence was discovered and if the drawing-up of a report is mandatory, shall be carried out:

(1) by the police ...

2. The escort operation shall be carried out as quickly as possible.

3. The escort operation shall be recorded in an escort operation report, an administrative offence report, or an administrative detention report. The escorted person shall be given a copy of the escort operation report if he or she so requests.”

Article 27.3 Administrative detention

“1. Administrative detention or short-term restriction of an individual’s liberty may be applied in exceptional cases if this is necessary for the prompt and proper examination of the alleged administrative offence or to secure the enforcement of any penalty imposed by a judgment concerning an administrative offence ...

...

5. The detained person shall have his rights and obligations under this Code explained to him, and the corresponding entry shall be made in the administrative arrest report.”

Article 27.4 Administrative detention report

- “1. Administrative detention shall be recorded in a report ...
2. ... If he or she so requests, the arrested person shall be given a copy of the administrative detention report.”

Article 27.5 Duration of administrative detention

“1. The duration of the administrative detention shall not exceed three hours, except in the cases set out in paragraphs 2 and 3 of this Article.

2. Persons subject to administrative proceedings concerning offences involving unlawful crossing of the Russian border ... may be subject to administrative detention for up to 48 hours.

3. Persons subject to administrative proceedings concerning offences punishable, among other administrative sanctions, by administrative arrest, may be subject to administrative detention for up to 48 hours.

4. The term of the administrative detention is calculated from the time when [a person] escorted in accordance with Article 27.2 is taken [to the police station] ...”

2. The Constitutional Court’s case-law on equality of arms and adversarial procedure in administrative proceedings reads as follows:

Decision No. 630-O of 23 April 2013 by the Russian Constitutional Court

“... Articles 118 § 2 and 123 § 3 of the Russian Constitution provide that the principles of equality of arms and adversarial procedure should apply in court proceedings, including those under the Code of Administrative Offences of Russia. These constitutional provisions should be interpreted as guaranteeing the application of the principles of equality of arms and adversarial procedure only to cases that are in the courts’ jurisdiction. Meanwhile, administrative-offence cases can be examined not only by the courts, but also by the authorities and officials (Articles 22.1 and 22.2 of the CAO).

Those charged with an administrative offence by an official or an authority may challenge their decisions in the courts (Article 30.1 § 1 of the CAO). Such review proceedings should provide for equality of arms and adversarial proceedings ...”

COMPLAINTS

All the applicants’ complaints are set out in the Appendix.

All the applicants complain under Articles 10 and 11 of the Convention about the allegedly unlawful and disproportionate measures taken against them as peaceful protesters. Furthermore, they claim that the dispersal of the gathering which called for equality for LGBT people constituted discrimination on the grounds of their sexual orientation and political views, in violation of Article 14 of the Convention.

The applicants complain that their apprehension by the police officers during the gathering was arbitrary. One applicant complains under Article 5 § 1 of the Convention that his detention at the police station after being arrested at the gathering was unlawful.

All the applicants complain under Article 6 § 1 of the Convention that the proceedings in which they were convicted of administrative offences fell short of the guarantees of a fair hearing. They point out, in particular, lack of impartiality on the part of the domestic courts owing to the absence of any prosecuting authority; that role was allegedly performed by the judges.

Four applicants complain under Article 6 § 3 (d) of the Convention that the courts refused to call prosecution witnesses, namely the police officers who had arrested them at the gathering.

COMMON QUESTIONS

1. As regards each applicant, has there been an interference with his or her freedom of peaceful assembly, within the meaning of Article 11 § 1 of the Convention?

2. If so, was that interference prescribed by law and necessary in terms of Article 11 § 2 of the Convention, in respect of each applicant? In particular, given the spontaneous character of the assembly and that it was impossible to give notice within the time-limit prescribed by law, was the interference proportionate in the circumstances of the present case (see *Bukta and Others v. Hungary*, no. 25691/04, §§ 35-37, ECHR 2007-III, and *Eva Molnar v. Hungary*, no. 10346/05, §§ 36-38, 7 January 2009)?

3. Have the applicants suffered discrimination in the enjoyment of freedom of assembly contrary to Article 14 of the Convention read in conjunction with Article 11 of the Convention?

4. Was each applicant's arrest on 11 June 2013 compatible with the requirements of Article 5 § 1 of the Convention? In particular:

(a) What were the legal grounds for the applicant's arrest during the gathering on 11 June 2013?

(b) Did it pursue any aim enumerated in Article 5 § 1 of the Convention?

5. As regards the applicants' trials, did they have fair hearings by independent and impartial tribunals in the administrative proceedings against them, in accordance with Article 6 § 1 of the Convention, given the absence of any prosecuting authority, whose role was allegedly performed by the judge?

CASE-SPECIFIC QUESTIONS

Mr Babitskiy, Ms Mishina, Ms Samoshkina (no. 67685/14) and Mr Samburov (no. 35199/15)

1. As regards each applicant, were they able to examine witnesses against them, in particular the police officers who had arrested them at the gathering, as required by Article 6 § 3 (d) of the Convention?

Mr Samburov (no. 35199/15)

2. Was the applicant's deprivation of liberty lasting four hours compatible with the requirements of Article 5 § 1 of the Convention? In particular:

- (a) What were the legal grounds for the applicant's detention?
- (b) Did the detention pursue any aim enumerated in Article 5 § 1 of the Convention?

APPENDIX

No.	Application no. and date of introduction	Applicant name Date of birth Place of residence Nationality	Represented by	Charge and penalty Russian roubles	Final domestic decision details	Particular facts	Complaints
1.	67685/14 09/10/2014	Valeriy Valeryevich SOZAYEV 25/11/1979 St Petersburg Russian	Tatyana Sergeyevna GLUSHKOVA	Art. 20.2 § 5 of the CAO Administrative fine RUB 10,000	Appeal decision Moscow City Court 08/04/2014	Participated in the gathering.	Art. 6 § 1 – lack of impartiality on the part of the court: in the absence of any prosecuting authority the judges collected evidence on their own initiative. Art. 10 and 11 – the applicant’s arrest and conviction was an unlawful and disproportionate interference with his freedom of peaceful assembly and freedom of expression. Art. 14 in conjunction with Art. 10 and 11 – the dispersal of the gathering calling for equality for LGBT people constituted discrimination on the grounds of sexual orientation and political opinion; only those protesting against the bill were arrested though the gathering of supporters of the bill was also unauthorised. The interference with the applicant’s rights had, therefore, no objective or reasonable justification.
		Ivan Fedorovich BABITSKIY 17/12/1979 Moscow Russian		Art. 20.2 § 5 of the CAO Administrative fine RUB 10,000	Appeal decision Moscow City Court 30/07/2014	In the domestic proceedings claimed that he did not take part in the gathering; he was passing by the State Duma building when he saw it. Stopped to observe the gathering.	Art. 6 § 1 – lack of impartiality on the part of the court: in the absence of any prosecuting authority the judges collected the evidence on their own initiative. Art. 6 § 3 (d) – the courts refused to call prosecution witnesses, namely the police officers who had arrested the applicant. Art. 10 and 11 – the applicant’s arrest and conviction was an unlawful and disproportionate interference with his freedom of peaceful assembly and freedom of expression. Art. 14 in conjunction with Art. 10 and 11 – the dispersal of the gathering calling for equality for LGBT people constituted discrimination on the grounds of sexual orientation and political opinion; only those protesting against the bill were arrested though the gathering of supporters of the bill was also

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							unauthorised. The interference with the applicant's rights had, therefore, no objective or reasonable justification.
		Svetlana Yuryevna MISHINA Moscow Russian		Art. 20.2 § 5 of the CAO Administrative fine RUB 10,000	Appeal decision Moscow City Court 28/05/2014	Participated in the gathering.	Art. 6 § 1 – lack of impartiality on the part of the court: in the absence of any prosecuting authority the judges collected the evidence on their own initiative. Art. 6 § 3 (d) – the courts refused to call prosecution witnesses, namely the police officers who had arrested the applicant. Art. 10 and 11 – the applicant's arrest and conviction was an unlawful and disproportionate interference with her freedom of peaceful assembly and freedom of expression. Art. 14 in conjunction with Art. 10 and 11 – the dispersal of the gathering calling for equality for LGBT people constituted discrimination on the grounds of sexual orientation and political opinion; only those protesting against the bill were arrested, though the gathering of supporters of the bill was also unauthorised. The interference with the applicant's rights had, therefore, no objective or reasonable justification.
		Yevgeniya Dmitriyevna SAMOSHKINA Moscow Russian		Art. 20.2 § 5 of the CAO Administrative fine RUB 10,000	Appeal decision Moscow City Court 28/07/2014	In the domestic proceedings claimed that she did not take part in the gathering; she was passing by the State Duma building when she saw it. Stopped to observe the gathering.	Art. 6 § 1 – lack of impartiality on the part of the court: in the absence of any prosecuting authority the judges collected the evidence on their own initiative. Art. 6 § 3 (d) – the courts refused to call prosecution witnesses, namely the police officers who had arrested the applicant. Art. 10 and 11 – the applicant's arrest and conviction was unlawful and disproportionate interference with her freedom of peaceful assembly and freedom of expression. Art. 14 in conjunction with Art. 10 and 11 – the dispersal of the gathering calling for equality for LGBT people constituted discrimination on the grounds of sexual orientation and political opinion; only those protesting against the bill were arrested though the gathering of supporters of the bill was also unauthorised. The interference with the applicant's rights had,

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2.	35199/15 17/06/2015	Pavel Vyacheslavovich SAMBUROV 10/06/1986 Moscow Russian	Kirill Nikolayevich KOROTEYEV	Art. 20.2 § 5 of the CAO Administrative fine RUB 10,000	Appeal decision Moscow City Court 18/12/2014	Participated in the gathering.	therefore, no objective or reasonable justification. Art. 5 § 1 – the applicant’s arrest, escort to the police station and detention for about four hours was unlawful. Art. 6 § 1 – lack of a fair hearing in the administrative proceedings: absence of any prosecuting authority. Art. 6 § 3 (d) – the courts refused to call prosecution witnesses, namely the police officers who had arrested the applicant. Art. 10 and 11 – the applicant’s arrest and conviction was an unlawful and disproportionate interference with his freedom of peaceful assembly and freedom of expression. Art. 14 in conjunction with Art. 10 and 11 – the dispersal of the gathering calling for equality for LGBT people constituted discrimination on the grounds of sexual orientation and political opinion; only those protesting against the bill were arrested though the gathering of supporters of the bill was also unauthorised. The interference with the applicant’s rights had, therefore, no objective or reasonable justification.