

**International Covenant on  
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**ADVANCE UNEDITED VERSION****Human Rights Committee****Views adopted by the Committee under article 5 (4) of the  
Optional Protocol, concerning Communications Nos.  
2943/2017, 2953/2017 and 2954/2017 \*\*\***

<i>Communications submitted by:</i>	Nikolai Alekseev, Kirill Nepomnyashchiy, Sofia Mikhailova and Yaroslav Yevtushenko (not represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Russian Federation
<i>Dates of communications:</i>	21 March 2015 (communication No. 2953/2017), 25 March 2015 (communication No. 2943/2017) and 28 March 2015 (communication No. 2954/2017) (initial submissions)
<i>Document references:</i>	Decisions taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 1 February 2017 (communication No. 2943/2017) and 15 February 2017 (communications No. 2953/2017 and No. 2954/2017) (not issued in document form)
<i>Date of adoption of Views:</i>	14 March 2022
<i>Subject matter:</i>	Right of peaceful assembly; non-discrimination
<i>Procedural issues:</i>	Exhaustion of domestic remedies; abuse of procedure
<i>Substantive issues:</i>	Unjustified restrictions on the right of peaceful assembly; discrimination against lesbian, gay, bisexual and transgender persons
<i>Articles of the Covenant:</i>	21 and 26
<i>Articles of the Optional Protocol:</i>	3 and 5 (2) (b)

1.1 The authors of the communications are Nikolai Alekseev, born in 1977, Kirill Nepomnyashchiy, born in 1981, Sofia Mikhailova, born in 1986 and Yaroslav Yevtushenko,

\* Adopted by the Committee at its 134th session (28 February–25 March 2022).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

born in 1994, all citizens of the Russian Federation. They claim to be victims of a violation by the Russian Federation of their rights under articles 21 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992.

1.2 On 4 July (communication No. 2943/2017), 22 September (communication No. 2954/2017) and 11 December 2017 (communication No. 2953/2017), following requests from the State party dated 5 April (communication No. 2943/2017) and 26 April 2017 (communications No. 2953/2017 and No. 2954/2017), the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to consider the admissibility of the communications separately from the merits.

1.3 On 4 April 2018, pursuant to rule 97, paragraph 3, of the Committee's rules of procedure, the Committee decided to join the three communications for consideration in view of their substantial factual and legal similarity.

### **Factual background**

2.1 The authors are activists in the area of lesbian, gay, bisexual and transgender issues and human rights. In 2013 and 2014, the authors, together with other activists, tried to organize a number of rallies in Moscow, which were all banned by the municipal authorities.

#### *Events relating to communication No. 2953/2017, concerning Nikolai Alekseev, Kirill Nepomnyashchiy and Sofia Mikhailova*

2.2 On 7 October 2013, the authors notified the Mayor of Moscow of their intention to hold a rally dedicated to the third anniversary of the European Court of Human Rights decision in a case concerning the illegality of Moscow gay pride bans. The event, with some 50 participants expected, was to take place on 21 October 2013, from 1 to 2 p.m. in the centre of Moscow. However, on 9 October 2013, the regional security and anti-corruption department had informed the authors that the rally would violate the legislation banning the promotion of non-traditional sexual relations among minors.<sup>1</sup> The authors thus cancelled the planned rally. On 14 October 2013, the authors submitted a complaint to the Tverskoy District Court in Moscow regarding the refusal of the above mentioned department to allow the holding of a public event. The District Court rejected their complaint on 19 December 2013. The Court concluded, among other things, that the authors' intention to hold a rally in a central location popular among families with children was aimed at disseminating gay culture among the general public, including minors, in violation of the relevant legislation banning the promotion of non-traditional sexual relations among minors. The court thus found that the decision of the regional security and anti-corruption department was lawful and justified. The authors appealed to Moscow City Court on 25 January 2014. The City Court rejected their appeal on 24 March 2014 and upheld the decision of the lower court.

2.3 On 9 October 2013, the authors submitted another notification to the Mayor of Moscow concerning a rally in support of the legal ban on discrimination against lesbian, gay, bisexual and transgender persons in the Russian Federation, scheduled for 22 October 2013. On 14 October 2013, the regional security and anti-corruption department informed the authors that the rally would violate the legislation banning promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. A complaint submitted by the authors to the Tverskoy District Court in Moscow, dated 16 October 2013, was rejected on 19 December 2013. Their appeal to Moscow City Court, dated 25 January 2014, was also rejected on 24 March 2014.

2.4 On 15 October 2013, the authors notified the Mayor of Moscow of their intention to hold, on 28 October 2013, another rally, with about 40 participants expected, against the ban on adoption of Russian children by foreign same-sex couples. On 18 October 2013, the regional security and anti-corruption department informed the authors that the rally would

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<sup>1</sup> Based on the information on file, the relevant legislation includes Federal Law No. 436 of 2010 on the protection of children from information harmful to their health and development, Federal Law No. 124 of 1998 on the basic guarantees of the rights of the child, and article 6.21 of the Code of Administrative Offences on the dissemination of propaganda on non-traditional sexual relations among children.

violate the legislation banning the promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. The authors filed a complaint with the Tverskoy District Court in Moscow on 7 November 2013. The District Court rejected their complaint on 19 December 2013. Their appeal to Moscow City Court, dated 25 January 2014, was also rejected on 24 March 2014.

*Events relating to communication No. 2943/2017, concerning Nikolai Alekseev, Kirill Nepomnyashchiy and Sofia Mikhailova*

2.5 On 11 October 2013, the authors notified the Mayor of Moscow of their intention to hold a rally to condemn the federal law of June 2013 banning the dissemination of propaganda of non-traditional sexual relations among minors. The event, with about 30 participants expected, was planned for 25 October 2013, from 1 to 2 p.m., in the centre of Moscow. On 16 October 2013, the regional security and anti-corruption department informed the authors that the rally would violate the legislation banning the promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. On 26 October 2013, the authors filed a complaint with the Tverskoy District Court in Moscow against the decision of the department. The District Court rejected their complaint on 28 January 2014. The authors appealed to Moscow City Court on 18 February 2014. The City Court also rejected their appeal on 4 April 2014.

2.6 On 18 October 2013, the authors notified the Mayor of Moscow of their intention to hold a rally, with about 20 participants expected, on 29 October 2013, to protest against job dismissals on the ground of sexual orientation. On 24 October 2013, the regional security and anti-corruption department informed the authors that the rally would violate the legislation banning the promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. The authors filed a complaint with the Tverskoy District Court in Moscow on 7 November 2013. Their complaint was rejected on 20 December 2013. Their appeal to Moscow City Court, dated 5 February 2014, was also rejected on 12 March 2014.

2.7 On 22 October 2013, the authors notified the Mayor of Moscow of their intention to hold a rally, with about 20 participants expected, on 2 November 2013, to support the Montenegro police officers injured while protecting a gay pride event in Podgorica, Montenegro, on 20 October 2013. On 25 October 2013, the regional security and anti-corruption department informed the authors that the rally would violate the legislation banning the promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. The authors filed a complaint with the Tverskoy District Court in Moscow on 13 November 2013. The District Court rejected the complaint on 20 December 2013. The authors filed an appeal with Moscow City Court on 5 February 2014, which the City Court rejected on 12 March 2014.

2.8 On 22 October 2013, the authors notified again the Mayor of Moscow of their intention to hold a rally, with about 10 participants expected, on 3 November 2013, now to advocate for normal conditions for gay men in the army of the Russian Federation. On 25 October 2013, the regional security and anti-corruption department informed the authors that the rally would violate the legislation banning the promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. The authors filed a complaint with the Tverskoy District Court in Moscow on 13 November 2013. Their complaint was rejected on 29 January 2014. Their appeal to the Moscow City Court, dated 28 February 2014, was also rejected on 4 April 2014.

*Events relating to communication No. 2954/2017, concerning Nikolai Alekseev, Kirill Nepomnyashchiy and Yaroslav Yevtushenko*

2.9 On 21 November 2013, the authors submitted a notice to the Mayor of Moscow about their intention to hold a rally, with 20 participants expected, on 6 December 2013, in support of a ban on the entry of an American homophobe, Scott Lively, to the Russian Federation. On 25 November 2013, the regional security and anti-corruption department informed the authors that the rally would violate the legislation banning the promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. On 29

November 2013, the authors filed a complaint with the Tverskoy District Court in Moscow. The court rejected their complaint on 19 December 2013. The authors appealed to Moscow City Court on 25 January 2014. Their appeal was also rejected on 24 March 2014.

2.10 On 29 November 2013, the authors notified the Mayor of Moscow of their intention to hold a rally on 10 December 2013, with about 20 participants expected, under the slogan “Healthy spirit in a healthy gay”. On 2 December 2013, the regional security and anti-corruption department informed the authors that the rally would violate the legislation banning the promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. The authors filed a complaint with the Tverskoy District Court in Moscow on 9 December 2013. Their complaint was rejected on 29 January 2014. Their appeal to Moscow City Court, dated 28 February 2014, was also rejected on 4 April 2014.

2.11 On 29 November 2013, the authors again notified the Mayor of Moscow of their intention to hold a rally on 11 December 2013, with about 30 participants expected, under the slogan “Lesbians have their own pride”. On 2 December 2013, the regional security and anti-corruption department informed the authors that the rally would violate the legislation banning the promotion of non-traditional sexual relations among minors. The authors thus cancelled the planned rally. The authors filed a complaint with the Tverskoy District Court in Moscow on 9 December 2013. Their complaint was rejected on 20 December 2013. Their appeal to Moscow City Court, dated 5 February 2014, was also rejected on 12 March 2014.

2.12 The authors indicate that they did not file cassation appeals against the respective decisions of Moscow City Court, for any of the three communications. They maintain that the cassation procedure is ineffective for the reasons specified below.

2.13 First, the authors state that the cassation court cannot change the date of a public event. Even if a cassation court, including the Supreme Court, had quashed the refusals by the municipal authorities to authorize the holding of the rallies, the dates of the scheduled rallies would have passed and the authors would have had to reinitiate the procedure.

2.14 Second, according to the authors, before the introduction of a new cassation procedure in the Civil Procedure Code, the Committee did not recognize as effective the cassation and supervisory review procedures.<sup>2</sup> The authors also claim, by analogy with the decision of the European Court of Human Rights in *Kocherov and Sergeyeva v. Russia*,<sup>3</sup> that since they submitted their complaints to the Committee before the new cassation procedure was recognized as an effective remedy by the European Court of Human Rights in its decision in *Abramyan and others v. Russia*,<sup>4</sup> they did not need to exhaust the cassation procedure for the purpose of admissibility of their communications before the Committee, especially taking into account that the six-month time limit for lodging a cassation appeal has expired.

2.15 Third, the authors argue that they are aware of cases similar to theirs (however, no reference of such cases has been provided), where cassation and supervisory appeal proceedings were exhausted without success. They state that, to date, there has been no case in which the Supreme Court has quashed the administrative decisions to refuse permission for a public event involving lesbian, gay, bisexual and transgender persons.

2.16 Finally, the authors submit that on 22 January 2016, the European Court of Human Rights communicated to the State party two cases submitted by Mr. Alekseev and others involving numerous refusals by Russian authorities to give permission for rallies concerning lesbian, gay, bisexual and transgender issues.<sup>5</sup> The State party did not raise an argument regarding non-exhaustion of domestic remedies in their reply to the Court, despite the fact that in many cases the authors have not lodged cassation appeals.

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<sup>2</sup> Reference is made to *Alekseev v. Russia* (CCPR/C/109/D/1873/2009).

<sup>3</sup> Application No. 16899/13, Judgment, 29 March 2016.

<sup>4</sup> Applications No. 38951/13 and No. 59611/13, Decision, 12 May 2015.

<sup>5</sup> *Alekseyev and others v. Russia*, Application No. 14988/09 and 50 others, and *Alekseyev and others v. Russia*, Application No. 31782/15. These applications combine complaints concerning 252 refusals to allow rallies concerning lesbian, gay, bisexual and transgender issues to be held in different cities of Russian Federation between 2008 and 2014.

## Complaint

3.1 The authors claim that their rights under article 21 of the Covenant were violated by the consistent refusal of the Moscow authorities to allow the rallies for which they had requested permission.

3.2 The authors claim that their rights under article 26 of the Covenant were violated because the Moscow authorities denied permission to hold rallies organized by sexual minorities, under the pretext of protecting minors and avoiding possible protests from the majority of society.

3.3 As a remedy, the authors ask the Committee to find that their rights under the Covenant have been violated.

## State party's observations on admissibility

4.1 In notes verbales dated 5 April 2017 (communication No. 2943/2017) and 26 April 2017 (communications No. 2953/2017 and No. 2954/2017), the State party challenged the admissibility of the communications under articles 3 and 5 (2) (b) of the Optional Protocol. It claims that the authors have failed to exhaust domestic remedies available to them under the domestic procedure, namely, they failed to submit cassation appeals against the Moscow City Court decisions to the Presidium of Moscow City Court and to the Supreme Court. The State party refers to *Abramyan and others v. Russia*, in which the European Court of Human Rights found that the cassation procedure introduced to the Civil Procedure Code through Federal Law No. 353 was effective and had to be exhausted for the purposes of admissibility of a complaint before the Court.

4.2 The State party addresses each of the arguments the authors raise about the lack of effectiveness of the cassation procedure in their cases. The State party submits that under the new cassation procedure, the cassation court has the power to quash or alter the decision of the first instance, appeal or cassation court and to adopt a new decision without remitting the case to the lower courts for reconsideration.<sup>6</sup> The cassation courts can thus effectively restore violated rights and freedoms. This was acknowledged by the European Court of Human Rights in its finding about the effectiveness of the cassation procedure, including in cases concerning the refusal of permission to hold an assembly.<sup>7</sup>

4.3 According to the State party, the six-month time limit for lodging a cassation appeal can be extended by the courts under the provisions of the amended Civil Procedure Code. The State party provides in this respect several Supreme Court decisions concerning the extension of missed time limits in administrative cassation procedures.

4.4 The State party further submits that the fact that to date there have been no judicial decisions quashing administrative decisions denying authorization of assemblies concerning lesbian, gay, bisexual and transgender issues does not mean that the new cassation procedure is ineffective. The cassation courts could in principle find that the administrative decisions in the authors' cases were unlawful or unjustified.

4.5 Regarding the authors' argument that in *Alekseev v. Russia*<sup>8</sup> the Committee found the State party's cassation appeal and supervisory review procedures ineffective, the State party submits that the Committee's finding concerned only the supervisory review, not the cassation procedure.

4.6 The State party further submits that formulation of its position before the international human rights mechanisms is the State party's sovereign right. The fact that the State party did not raise the issue of non-exhaustion of domestic remedies in its submission regarding the complaints lodged by Mr. Alekseev and others to the European Court of Human Rights does not mean that the cassation procedure is ineffective.

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<sup>6</sup> Civil Procedure Code, art. 390 (5).

<sup>7</sup> No reference was provided.

<sup>8</sup> CCPR/C/109/D/1873/2009.

4.7 With regard to communications No. 2953/2017 and No. 2954/2017, the State party submits that the authors' submissions constitute an abuse of the complaints procedure under article 3 of the Optional Protocol. The authors have complained to the European Court of Human Rights on similar grounds – refusal of the authorities to approve the holding of assemblies concerning lesbian, gay, bisexual and transgender issues. Two cases, concerning 139 such refusals, are pending, and recently the Court issued decisions in three cases involving Mr. Alekseev.<sup>9</sup> The Committee has also registered a number of communications involving the authors. The materials submitted for those communications suggest that the authors were submitting two requests daily for assemblies concerning lesbian, gay, bisexual and transgender issues. Some requests concerned events scheduled only one day apart. The State party alleges that the goal of the organizers was not to carry out an assembly, but to receive a refusal from the authorities and then complain to international mechanisms.

4.8 The State party concludes that the communication should be found inadmissible under articles 3 and 5 (2) (b) of the Optional Protocol.

#### **Authors' comments on the State party's observations on admissibility**

5. On 21 April and 22 June 2017, the authors submitted comments on the State party's observations. On the issue of non-exhaustion of domestic remedies, they reiterate arguments reflected in their earlier submissions. The authors respond that the State party's claim that they abused the right to submit individual complaints to international human rights mechanisms is groundless. In the 10 years preceding the submission of the authors' complaints, the State party authorities had not allowed a single assembly concerning lesbian, gay, bisexual and transgender issues. The domestic courts always took the side of the municipal authorities by recognizing as lawful the bans on public events held in support of sexual and gender minorities. As at the date of submission of their comments, the authors did not have the opportunity to enjoy their right to assembly under article 21 of the Covenant. They were, therefore forced to revert to international mechanisms for protection of their rights in every case.

#### **Committee's decision on admissibility**

##### *Consideration of admissibility*

6.1 At its 122d session, on 4 April 2018, the Committee examined the admissibility of these communications and decided the following.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement, although several complaints regarding other events were brought before the European Court of Human Rights by the authors.

6.3 The Committee noted the State party's claim that the repetitive submissions by the authors to international mechanisms constitute an abuse of the right to submission under article 3 of the Optional Protocol (see para. 4.7 above). The Committee noted, as well, the authors' argument that they were forced to look to international mechanisms to seek protection of their rights owing to the lack of such protection domestically. The Committee however observed that nothing in its rules of procedure prevents it from considering communications submitted in a timely manner in accordance with the criteria established in the Covenant and the Optional Protocol, as repetitive as they may seem.

6.4 The Committee noted the State party's argument that the authors have failed to exhaust domestic remedies, namely the new cassation procedure under the Presidium of Moscow City Court and under the Supreme Court. The Committee took due note of the State party's reference to the jurisprudence of the European Court of Human Rights regarding changes introduced through the Civil Procedure Code, as amended by Federal Law No. 353, and of the conclusion of that court about the effectiveness of the new cassation procedure.

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<sup>9</sup> Applications No. 4916/07, No. 25924/08 and No. 14599/09, Judgment, 21 October 2010.

The Committee also noted the submission by the authors that they did not exhaust the new cassation procedure for several reasons (see paras. 2.13–2.16 above). The Committee referred in this respect to its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the authors.<sup>10</sup> The Committee also recalled that mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting available domestic remedies.<sup>11</sup>

6.5 In the present case, the authors did not argue that they did not have access to the new cassation procedure, which was de facto available to them. They however contest the effectiveness of such a procedure in their particular cases, namely, the holding of public events organized by the lesbian, gay, bisexual and transgender community in the context of overall opposition by the State authorities to such events. In this respect, the Committee noted the authors' claim that in the 10 years prior to their submission of the communications they were not able to organize a single public event related to lesbian, gay, bisexual and transgender issues (para 5) and that the State party itself acknowledges that, to date, there has been no court judgment quashing negative decisions of municipal authorities regarding assemblies concerning lesbian, gay, bisexual and transgender issues (see para 4.4 above).

6.6 In assessing the effectiveness of the new cassation procedure in relation to the communications, the Committee noted that the cassation procedure, introduced by Federal Law No. 353 of 2010, and which entered into force on 1 January 2012, allows for the revision, on points of law only, of court decisions that have entered into force. The decision on whether to refer a case for hearing by the cassation court is discretionary in nature and is made by a single judge. These characteristics led the Committee to believe that such cassation reviews contain elements of an extraordinary remedy. The State party must therefore show that there is a reasonable prospect that such procedure would provide an effective remedy in the circumstances of the cases in question.<sup>12</sup> The Committee noted that the municipal authorities and domestic courts have consistently denied the authors the possibility of organizing rallies, basing the decisions on legislation banning the promotion of non-traditional sexual relations among minors. In this regard, the Committee referred to paragraph 10 (d) of its concluding observations on the seventh periodic report of the Russian Federation,<sup>13</sup> in which it expressed concern that such legislation exacerbated negative stereotypes against lesbian, gay, bisexual and transgender persons and represented a disproportionate restriction on their rights under the Covenant. The Committee referred, in particular, to two Constitutional Court rulings, No. 151-O-O of 19 January 2010 and No. 24-P of 23 September 2014, which had upheld the legality of such legislation. The Committee considered that the systematic application of this legislation to assemblies concerning lesbian, gay, bisexual and transgender issues by the authorities, and the support of such practice by the courts, in particular by the Constitutional Court of the State party, render improbable a successful outcome for the authors in the new cassation appeal procedure.<sup>14</sup> In the absence of information from the State party on changes to the legislation or administrative practice on this matter since 2015, when the complaints were submitted, and on the potential effectiveness of the new cassation recourse to challenge the application of this legislative scheme, since, as the State party itself recognizes, there are no judicial decisions quashing administrative decisions denying authorization of assemblies on lesbian, gay, bisexual and transgender issues (see paragraph 4.4 above), the Committee found that the cassation procedure under the Civil Procedure Code was not to be considered as a remedy that the authors were required to exhaust for the purpose of the admissibility of the communications. The Committee therefore found that it was not precluded by article 5

<sup>10</sup> See, inter alia, *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5.

<sup>11</sup> *Leghaei et al. v. Australia* (CCPR/C/113/D/1937/2010), para. 9.3.

<sup>12</sup> See, for example, *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011).

<sup>13</sup> CCPR/C/RUS/CO/7.

<sup>14</sup> See, inter alia, *S.L. v. Czech Republic* (CCPR/C/103/D/1850/2008), para. 6.4; and *Min-Kyu Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), para. 6.3.

(2) (b) of the Optional Protocol from examining the communications. The Committee considered that the facts of the cases also raised issues under article 19 of the Covenant.

6.7 The Committee considered that the authors' claims under articles 19, 21 and 26 of the Covenant have been sufficiently substantiated for the purpose of admissibility.

#### **State party's observations on the merits**

7.1 On 5 April 2021, the State party submitted its observations on the merits noting that freedom of assembly can be subjected to restrictions, as per interpretation by the Committee and the European Court of Human Rights. Such restrictions should be based on the law, should have a socially meaningful aim and should be proportionate.

7.2 As for the lawfulness of the restrictions, the domestic courts acknowledged that right of peaceful assembly is guaranteed in the Constitution and can only be limited by a federal law inasmuch as necessary for the protection of constitutional order, morality, health, rights and legitimate interests of others, state defense and national security (art. 55 (3) of the Constitution). The courts referred to article 11 of the European Convention of Human Rights and noted that the mechanism of realization of the right to assembly is regulated by the Federal Law of 19 June 2004 No. 54 FZ on Assemblies, Meetings, Demonstrations, Marches and Picketing. The restrictions applied to the authors were based on this law.

7.3 The State party then presents its observations on socially meaningful aim of restrictions applied to the authors. According to the domestic court decisions, the protection of the rights of children made it necessary to apply such restrictions. The aims of the events planned by the authors are among prohibited activities listed in the Federal Laws on Protection of Children from Information Harmful to their Health and Development (art. 5 (2) (4)) and on the Basic Guarantees of the Rights of the Child in the Russian Federation (art. 14 (1)) (propaganda for non-traditional sexual relations among minors).

7.4 While considering the necessity of restrictions, the courts, having in mind the need to protect children from information that could harm their moral and spiritual development and health, lawfully concluded that it was not possible to allow the events to be held in the proposed locations. These locations are open to the public and are traditionally used for child and family recreation. Holding the proposed events in these locations would have a harmful effect, inter alia, on children's psychological wellbeing. According to the courts, it was impossible to apply less restrictive measures, which would put lesser restriction on the rights of the authors. The courts held that carrying out the events by the authors would lead to more negative than positive consequences and concluded that the restrictions imposed were proportionate.

7.5 The State party concludes that the restrictions on the rights of the authors are in line with the requirements of article 21 of the Covenant and that the authors' claims are unsubstantiated.

#### **Author's comments on the State party's observations on the merits**

8.1 On 20 July 2021, the authors provided comments on the State party's observations. They claim that the Committee and the European Court of Human Rights found on numerous occasions that the federal legislation on protection of minors from harmful information referred to by the State party, contradicts the international obligations of the Russian Federation under the Covenant and the European Convention on Human Rights.<sup>15</sup> Both, the European Court and the Committee found, in similar cases, violation of the right of peaceful assembly and discrimination based on sexual orientation.<sup>16</sup>

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<sup>15</sup> Reference is made to communications *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010) and *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), as well as to the judgment of the European Court of Human Rights *Bayev and others v. Russia*, adopted on 20 June 2017.

<sup>16</sup> Reference is made to the European Court judgments *Alekseev v. Russia* of 21 October 2010, *Lashmakin and others v. Russia* of 7 February 2017, *Alekseev and others v. Russia* of 27 November 2018, and



8.2 At the time of submission of the present communications to the Committee, the State party refused to authorize the holding of more than 1500 public events to support rights and freedoms of sexual and gender minorities in more than 400 cities of the Russian Federation. The majority of refusals were based on the federal legislation on prohibition of propaganda of non-traditional sexual relations among minors. Some of these events concerned implementation of the Committee's Views concerning violations of LGBT rights in the State party.

### Committee's decision on the merits

#### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee has taken note of the authors' claims of a violation of their rights under articles 21 and 26 of the Covenant. The Committee recalls its general comment No. 37, in which it noted that the right of peaceful assembly protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.<sup>17</sup> Moreover, States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of sexual orientation or gender identity.<sup>18</sup>

9.3 The Committee further recalled in that same general comment that article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online and in public and private spaces.<sup>19</sup> No restriction on the right of peaceful assembly is permissible unless it is: (a) imposed in conformity with the law; and (b) necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The onus is on States parties to justify restrictions on the right protected by article 21 of the Covenant and to demonstrate that they do not serve as a disproportionate obstacle to the exercise of that right.<sup>20</sup> The authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or cause a chilling effect. Where this onus is not met, article 21 is violated.<sup>21</sup>

9.4 The Committee notes, moreover, that States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives.<sup>22</sup> States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States must also protect

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*Alekseev and others v. Russia* of 16 January 2020. The authors refer to communications *Alekseev v. Russian Federation* (CCPR/C/109/D/1973/2009), *Alekseev v. Russian Federation* (CCPR/C/130/D/2757/2016), and *Alekseev v. Russian Federation* (CCPR/C/130/D/2727/2016).

<sup>17</sup> General comment No. 37 (2020) on the right of peaceful assembly (article 21)\*, (CCPR/C/GC/37), para 1.

<sup>18</sup> *Ibid*, para 25.

<sup>19</sup> *Ibid*, para 6.

<sup>20</sup> *Ibid*, para 36, *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

<sup>21</sup> *Ibid*, para 36, *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

<sup>22</sup> General comment No. 37 (2020) on the right of peaceful assembly (article 21)\*, (CCPR/C/GC/37), para 24. Since its decision in *Turchenyak v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), the Committee has often repeated that steps taken by States in response to an assembly "should be guided by the objective to facilitate the right" (para. 7.4). See also CCPR/C/BEN/CO/2, para. 33; A/HRC/20/27, para. 33; and Human Rights Council resolution 38/11, The promotion and protection of human rights in the context of peaceful protests, operative para. 4.

participants against possible abuse by non-State actors, such as interference or violence by other members of the public,<sup>23</sup> counterdemonstrators and private security providers.<sup>24</sup>

9.5 In the present cases, the Committee observes that both the State party and the authors agree that the refusal to permit the holding of public events on a number of occasions was an interference with the authors' right to assembly, but the parties disagree as to whether the restriction in question was permissible.

9.6 The Committee notes the State party's contention that its decision not to authorize the events with the announced purpose – promotion of the rights and freedoms of sexual minorities – was necessary and proportionate and the only measure possible in a democratic society in view of the social aim of protecting minors from information detrimental to their moral and spiritual development and health (see para 7.4 above).

9.7 In its general comment No. 37, the Committee noted that restrictions on peaceful assemblies should only exceptionally be imposed for the protection of "morals". If used at all, this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition, and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination. Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.<sup>25</sup>

9.8 Restrictions imposed for the protection of "the rights and freedoms of others" may relate to the protection of the Covenant or other human rights of people not participating in the assembly.<sup>26</sup> In the present case, the Committee has a common approach with the European Court of Human Rights and considers that there is no basis on which to assume that the "mere mention of homosexuality",<sup>27</sup> public expression of homosexual identity or a call for respect for the rights of homosexuals could have a negative effect on minors' rights and freedoms.

9.9 In its general comment No. 37<sup>28</sup>, the Committee also recalled that States must leave it to the participants to determine freely the purpose of a peaceful assembly to advance ideas and aspirational goals in the public domain and to establish the extent of support for or opposition to those ideas and goals. Central to the realization of the right of peaceful assembly is the requirement that any restriction must in principle be content neutral, and thus not be related to the message conveyed by the assembly.<sup>29</sup> A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation that allows people to advance ideas and establish the extent of the support that they enjoy.<sup>30</sup> The Committee accordingly considers that, in the present cases, the State party's restrictions on the authors' right to assembly were directly related to the chosen purpose and content of the assembly, namely an affirmation of homosexuality and the rights of homosexual persons.

9.10 The Committee notes the authors' claim that, by refusing to authorize the planned events, the authorities subjected them to discrimination on the ground of sexual orientation. The Committee also notes the State party's claim that the motive for the refusal to authorize the events was determined only by the need to protect minors' rights (see paras 7.3 and 7.4 above). At the same time, the Committee notes the statement of the State party that the aims

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<sup>23</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

<sup>24</sup> General comment No. 37 (2020), para. 24.

<sup>25</sup> General comment No. 37 (2020) on the right of peaceful assembly (article 21)\*, (CCPR/C/GC/37), para 46.

<sup>26</sup> *Ibid*, para 47.

<sup>27</sup> European Court of Human Rights, *Alekseyev v. Russia*, para. 86; *Zhdanov and others v. Russia*, Applications Nos. 12200/08, 35949/11 and 58282/12, decision of 16 October 2019; *Alekseyev and others v. Russia*, Applications Nos. 14988/09 and 50 others, decision of 6 May 2019.

<sup>28</sup> General comment No. 37 (2020) on the right of peaceful assembly (article 21)\*, (CCPR/C/GC/37), para 22 and 48.

<sup>29</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

<sup>30</sup> General comment No. 37 (2020) on the right of peaceful assembly (article 21)\*, (CCPR/C/GC/37), para 48.

of the events in question are included in the list of prohibited activities listed in the Federal Laws on Protection of Children from Information Harmful to their Health and Development (art. 5 (2) (4)) and on the Basic Guarantees of the Rights of the Child in the Russian Federation (art. 14 (1)) (propaganda for non-traditional sexual relations among minors) (see para 7.3 above).

9.11 The Committee notes that, in its general comment No. 37<sup>31</sup>, it recalled that States must not deal with assemblies in a discriminatory manner, for example, on the basis of sexual orientation or gender identity. Particular efforts must be made to ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination. Moreover, States have a duty to protect participants from all forms of discriminatory abuse and attacks.<sup>32</sup>

9.12 The Committee recalls that, in paragraph 1 of its general comment No. 18 on non-discrimination, it observed that article 26 of the Covenant entitles all persons to equality before the law and equal protection of the law, prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With reference to its jurisprudence,<sup>33</sup> the Committee recalls that the prohibition against discrimination under article 26 also covers discrimination based on sexual orientation and gender identity.<sup>34</sup>

9.13 The Committee notes that the decisions of domestic authorities did not include direct wording of intolerance towards persons with non-traditional sexual orientation; and that the decisions were directed at protecting minors from factors that may negatively influence their spiritual and moral development. The Committee considers, however, that the authorities disagreed with the homosexual content of the proposed events, drawing a distinction based on sexual orientation and gender identity, and that the decision thus constituted a distinction on grounds prohibited under article 26.

9.14 The Committee further recalls its jurisprudence that not every distinction based on the grounds listed in article 26 of the Covenant amounts to discrimination, as long as it is based on reasonable and objective criteria and pursues a legitimate aim under the Covenant. While the Committee recognizes the role of the State party's authorities in protecting the welfare of minors, it observes that the State party not only did not point to the existence of factors that might justify such an assessment but also failed to demonstrate that the restrictions imposed on the requested peaceful assemblies were based on reasonable and objective criteria..

9.15 In such circumstances, the obligation of the State party was to protect the authors in the exercise of their rights under the Covenant and not to contribute to suppressing those rights.<sup>35</sup> The Committee further notes that it has previously concluded that the laws banning the "promotion of non-traditional sexual relations to minors" in the State party exacerbate negative stereotypes of individuals on the grounds of sexual orientation and gender identity and represent a disproportionate restriction of their rights under the Covenant, and has called for the repeal of such laws.<sup>36</sup> Accordingly, the Committee considers that the State party has failed to establish that the restrictions imposed on the authors' right of peaceful assembly were based on reasonable and objective criteria, in pursuit of an aim that was legitimate under the Covenant, and that the prohibition therefore amounted to a violation of their rights under articles 21 and 26 of the Covenant.

<sup>31</sup> General comment No. 37 (2020) on the right of peaceful assembly (article 21)\*, (CCPR/C/GC/37), para 25.

<sup>32</sup> CCPR/C/CHL/CO/6, para. 19. See also *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), para. 10.4.

<sup>33</sup> *Toonen v. Australia* (CCPR/C/50/D/488/1992), para. 8.7; *Young v. Australia* (CCPR/C/78/D/941/2000), para. 10.4; and *X v. Colombia* (CCPR/C/89/D/1361/2005), para. 7.2.

<sup>34</sup> *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.3.

<sup>35</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6..

<sup>36</sup> CCPR/C/RUS/CO/7, para. 10. See also CRC/C/RUS/CO/4-5, paras. 24–25, *Alekseev v. Russian Federation* (CCPR/C/130/D/2727/2016), para. 7.15.

9.16 In light of this finding, the Committee decides not to consider separately possible violation of article 19 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 21 and 26 of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, however, the authors request the Committee only to find that their rights under the Covenant have been violated (para. 3.3). Therefore, the Committee considers that the finding of violation in the present Views constitute sufficient remedy for them. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that connection, the Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications, and thus the State party should revise its normative framework on public events, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under articles 21 and 26 of the Covenant may be fully enjoyed in the State party.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official language of the State party.

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