



Repeated unjustified Ban on Gay-Rights Marches in Moscow

In today's Chamber judgment in the case **Alekseyev v. Russia** (application nos 4916/07, 25924/08 and 14599/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 11 (freedom of assembly and association);

A violation of Article 13 (right to an effective remedy);

A violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights

The case concerned the complaints by a Russian gay-rights activist about a repeated rejection by the Moscow authorities of his requests to organise gay-pride parades.

Principal facts

The applicant, Nikolay Alekseyev, is a Russian national who was born in 1977 and lives in Moscow (Russia). He was one of the organisers of several marches in 2006, 2007 and 2008 which were aimed at drawing public attention to the discrimination against the gay and lesbian community in Russia and to promoting tolerance and respect for human rights.

The organisers submitted notices to the Moscow mayor's office on several different occasions announcing their intention to hold marches. They also undertook to cooperate with the law-enforcement authorities in ensuring safety and respect for public order by the participants and to comply with the regulations on restriction of noise levels when using loud speakers and sound equipment. Despite that, all they received were refusals to hold the marches. The mayor's decisions explained those refusals with the need to protect public order, health, morals and the rights and freedoms of others, as well as to prevent riots. The decisions specified that, as numerous petitions had been received against the marches, negative reactions - including violence - against the participants in the marches were likely, which in turn could lead to public disorder and mass riots.

In addition to the official decisions issued on those occasions, the Moscow mayor and his staff were quoted in the media more than once saying that "the government of Moscow would not even consider the organisation of gay marches" and that no gay parade would be allowed in Moscow under any circumstances "as long as the city mayor held his post". The mayor further called for an "active mass media campaign ... with the use of petitions brought by individual and religious organisations" against the gay-pride marches.

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

Their marches having been refused, the organisers informed the mayor's office of their intention to hold short pickets instead on the days initially planned for some of the marches. The pickets were also refused. Mr Alekseyev challenged unsuccessfully in court the decisions not to allow the marches or the pickets.

Complaints, procedure and composition of the Court

Relying on Articles 11, 13 and 14, Mr Alekseyev complained about the repeated ban on holding the gay-rights marches and pickets, about not having an effective remedy to challenge those bans, and about them being discriminatory because of his and the other participants' sexual orientation.

The applications were lodged with the European Court of Human Rights on 29 January 2007, 14 February 2008 and on 10 March 2009.

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

Christos **Rozakis** (Greece), *President*,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway), *Judges*,

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Article 11

The Court recalled that Article 11 protected non-violent demonstrations which might annoy or offend people who did not share the ideas promoted by the demonstrators. It also stressed that people had to be able to hold demonstrations without fearing that they would be physically aggressed by their opponents.

At the same time, the mere risk of a demonstration creating a disturbance was not sufficient to justify its ban. If every probability of tension and heated exchanges between opposing groups during a demonstration resulted in the demonstration's prohibition, society would be deprived of hearing differing views on questions which offended the sensitivity of the majority opinion, and that ran contrary to the Convention principles.

The Moscow authorities had repeatedly, over a period of three years, failed to adequately assess the risk to the safety of the participants and public order. Although counter protesters could have indeed taken to the streets to oppose the gay-pride marches, the Moscow authorities should have made arrangements to ensure that both events proceeded peacefully and lawfully, thus allowing both sides to express their views without a violent clash. Instead, by banning the gay pride marches, the authorities had effectively approved of and supported groups who had called for the disruption of the peaceful marches, in breach of law and public order.

The Court further noted that the considerations of safety had been of secondary importance for the decisions of the authorities who had been mainly guided by the prevailing moral values of the majority. The Moscow mayor had on many occasions expressed his determination to prevent gay parades, as he found them inappropriate. The Russian Government had also stated in their submissions to the Court that such

events had to be banned as a matter of principle because gay propaganda was incompatible with religious doctrines and public morals, and could harm children and adults who were exposed to it.

The Court stressed that if the exercise of the right to peaceful assembly and association by a minority group were conditional on its acceptance by the majority, that would be incompatible with the values of the Convention. The purpose of the gay pride demonstrations had been to promote respect for human rights and tolerance towards sexual minorities; they had not intended to include nudity or obscenity, nor to criticise public morals or religious views. In addition, while no European consensus had been reached on questions of adoption by or marriage between homosexual people, ample case law had shown the existence of a long-standing European consensus on questions such as the abolition of criminal liability for homosexual relations between adults, on homosexuals' access to service in the armed forces, to the granting of parental rights, to equality in tax matters and the right to succeed to the deceased partner's tenancy. It was also clear that other Convention member States recognised the right of people to openly identify themselves as gay and to promote their rights and freedoms, in particular by peacefully and publicly gathering together. The Court emphasised that it was only through fair and public debate that society could address such complex issues as gay rights, which in turn would benefit social cohesion, as all views would be heard. An open debate of the kind, which had been exactly the type of event the demonstrators had attempted to organise unsuccessfully many times, could not have been replaced by Moscow's official figures expressing uninformed views considered to be popular.

Consequently, the bans imposed on the holding of gay-rights marches and pickets had not been necessary in a democratic society, and had been in violation of Article 11.

Article 13

The Court noted that there had been no legally binding rule obliging the authorities to decide on the holding of the marches before the dates on which those had been planned. Therefore, there had been no effective remedy available to Mr Alekseyev that could have provided adequate redress in respect of his complaints. There had thus been a violation of Article 13.

Article 14

The Court observed that the main reason for the bans on the gay marches had been the authorities' disapproval of demonstrations which, they considered, promoted homosexuality. In particular, the Court could not disregard the strong personal opinions publicly expressed by the Moscow mayor and the undeniable link between those statements and the bans. Consequently, the Court found that, as the Government had not justified their bans in a way compatible with the Convention requirements, Mr Alekseyev had suffered discrimination because of his sexual orientation. There had therefore been a violation of Article 14.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Russia was to pay to Mr Alekseyev 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 17,510 for costs and expenses.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Emma Hellyer (tel: + 33 3 90 21 42 15)

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

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

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.