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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2757/2016[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*,[[3]](#footnote-4)\*\*\*

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| *Communication submitted by:* | Nikolai Alekseev |
| *Alleged victim:* | The author |
| *State party:* | Russian Federation  |
| *Date of communication:* | 10 February 2016 (initial submission)  |
| *Document references:* | Special Rapporteur’s rule 92 decision, transmitted to the State party on 15 February 2016 (not issued in document form) |
| *Date of adoption of Views:* | … 2020 |
| *Subject matter:* | Right to peaceful assembly; non-discrimination |
| *Procedural issues:* | Abuse of the right of submission, Lack of substantiation  |
| *Substantive issues:* | Unjustified restrictions to the right of peaceful assembly; discrimination against LGBT people |
| *Articles of the Covenant:* | 21 and 26 |
| *Articles of the Optional Protocol:* | 2 and 5 |

1. The author is Nikolai Alekseev[[4]](#footnote-5), a Russian citizen born in 1977. He claims to be a victim of a violation by the Russian Federation of his rights under articles 21 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is unrepresented.

 The facts as presented by the author

2.1 The author submits that he is an LGBT activist, and the President of the Russian LGBT Human Rights Project. Since May 2006, together with others, he has tried to hold peaceful protests (“gay pride parades”) in Moscow, which were all banned by the local authorities.

2.2 On 26 September 2014, together with other activists he submitted a notification to the Mayor of Moscow concerning the organizers’ intention to hold a gay pride parade in support of tolerance, and the rights and freedom of gays in Russia on the occasion of International Coming Out Day. The notification informed the authorities about the time, date, and place of the event.[[5]](#footnote-6) The notification provided guarantees by the applicant to respect public order and norms of public morality. The author also informed the authorities about their readiness to modify the itinerary of the parade. On 1 October 2014, the Department of Regional Security and Anti-Corruption of Moscow informed the organisers that it wouldn’t allow the event because its purposes violate the legislation banning promotion of non-traditional sexual relations among minors, cause moral damage to minors who will eventually see the event, would outrage the religious and moral feelings of others, and “would provoke a negative reaction of the society”. It was also noted that the event would interfere with traffic.

2.3 The authors thus cancelled the planned parade and on 10 October 2014, filed a complaint with the Sverdlov district court of Kostroma, arguing that the laws and regulations do not allow for a ban on parades as long as their purpose and conduct conform to the legislation. In addition, the authorities could take the necessary steps to ensure the peaceful conduct of the event and to protect the participants. An alternative itinerary could be envisaged. On 10 October 2014, the court rejected the complaint and held that there was no violation of the law.

2.4 On 25 October 2014, the author complained to the Kostroma Regional Court. On 8 December 2014, the regional Court confirmed the lower court’s decision. The author’s cassation appeal to the Presidium of Kostroma Region Court was also unsuccessful, and was rejected on 2 February 2015.

2.5 The author further complained to the Supreme Court of the Russian Federation, which rejected the appeal on 17 April 2015.

 The complaint

3.1 The author claims that by denying him and other activists an opportunity to hold a parade, the State party violated his rights under article 21 and 26 of the Covenant. He also submits that he was discriminated against based on his sexual orientation.

3.2 He claims that the State party violated his right to peaceful assembly under article 21 of the Covenant, as it imposed a blanket prohibition on the intended parade. The authorities’ refusal was not imposed “in conformity with the law”. In particular, national law does not prohibit an assembly whose aim and the form it takes are lawful and peaceful. Moreover, the restriction imposed was not “necessary in a democratic society” and did not pursue any of the legitimate aims mentioned in article 21 of the Covenant. The authorities’ refusal to propose an alternative location for the event and their assertion that such a parade conducted in a public place would harm minors’ moral and religious feelings, demonstrate that the authorities’ real aim was to prevent the members of the gay and lesbian community in Russia from becoming visible and from attracting public attention to their concerns.

 State party’s submissions on admissibility

4.1 On 16 June 2016, the State party submitted its observations on admissibility and requested that the communication should be declared inadmissible pursuant to article 3 of the Optional Protocol as an abuse of the right of submission.

4.2 According to the State party, the submission of a communication on behalf of the victims on the same violations of the human rights as in previous submissions should be considered an abuse of the right of submission. In this regard, the State party observes that there are two other complaints from the author against the refusals to hold gay pride parades in different cities in the Russian Federation during the period of 2009-2015, which are pending consideration in the European Court of Human Rights. In addition, on 21 October 2010, the European Court of Human Rights has already considered three similar complaints by the author.[[6]](#footnote-7)

 Author’s comments on the State party’s observations on admissibility

5.1 On 12 July 2016, the author provided comments on the State party’s observations. He submits that his complaint cannot be found inadmissible as an abuse of the right of submission since this complaint relates to a particular case of the refusal to authorise a gay pride parade on 11 October 2014 in Moscow. The author appealed this particular refusal to domestic courts. Also, the complaint against the refusal to allow the parade of 11 October 2014 was not examined under another procedure of international investigation or settlement.

5.2 The author submits that the European Court of Human Rights took decisions on several previous similar complaints, however relating to different facts and dates.

5.3 The author states that the position of the State party assumes that he, as an LGBT activist, should not have a right to submit complaints on past or future violations of his rights, if the alleged violations are similar in substance.

 State party’s observations on admissibility and merits

6.1 On 18 October 2016, the State party submitted its observations on admissibility and merits and requested the communication to be declared inadmissible under article 3 of the Optional Protocol.

6.2 The State party notes that the Russian Constitutional Court, having refused to consider the complainant’s motion to clarify its Decision of 23 September 2014 N 24 – П, stated that article 6.21 (1) of the Administrative Code does not allow for an expanded understanding of the prohibition envisaged by this provision. The Court also underlined that in each particular case, the compliance assessment of a planned event includes an examination and evaluation of all circumstances.

6.3 The State party further reiterates the facts of the case and submits that the decision to refuse the gay pride parade was taken by the government of Moscow based on the possible violations of the Law on Protection of Children from Information Harmful to their Health and Development and the Law on the Basic Guarantees of the Rights of the Child in the Russian Federation, whose provisions are aimed at preventing the dissemination of information capable of forming a distorted view of the social equivalence of non-traditional marriage relations among persons deprived of the opportunity to evaluate critically and independently such information. In its decision, the government of Moscow stated that the event had been planned in venues which are popular with families with children and children touristic groups. Thus, they could become involuntary witnesses of the gay pride parade which could result in moral damage. This position was the subject of evaluation and assessment by the relevant domestic courts, and was found to be fully sustained.

6.4 The State party further reiterates its position in relation to the inadmissibility of the complaint, since the aims of the planned gay pride parade were the same as in the complaints by the author to the European Court of Human Rights. Also, the complaints were submitted on similar grounds – the prohibition to hold a mass event in support of rights and freedoms of sexual minorities. The author’s complaint thus constitutes an abuse of the right of submission.

 Author’s comments on the State party’s observations on admissibility and merits

7.1 On 21 December 2016, the author provided comments on the State party’s observations. He submits that the European Court of Human Rights in its decision of 21 October 2010, *Alekeseev v Russia* found that the refusal to allow the planned gay pride parades in 2006, 2007 and 2008 amounted to a violation of articles 11 and 14 of the European Convention on Human Rights. According to the author, there is a systematic violation of the sexual minorities’ rights in the Russian Federation.

7.2 The author states that this complaint is not an abuse of his right of submission since only the facts regarding the planned parade on 11 October 2014 were submitted to the Committee.

 Issues and proceedings before the Committee

 Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee shall ascertain that “the same matter is not being examined under another procedure of international investigation or settlement.” In this regard, the Committee notes the State party’s argument that there were three applications by the author[[7]](#footnote-8), which were considered by the European Court of Human Rights on 21 October 2010. These applications concerned the State party refusal to allow the author to conduct a parade regarding the rights of sexual minorities. Two more complaints from the author were pending before the Court. The State party submits that the complaints before the European Court and the present communication are of a similar nature as they have been submitted by the same person, concern the rights of the same group (those belonging to sexual minorities) and concern the actions of the same authorities. The Committee further notes the author’s explanation that the applications before the European Court of Human Rights concerned different factual circumstances, namely the prohibition to hold pride marches or pickets in the years 2006 to 2015, while the present complaint concerns the prohibition to hold a gay pride parade in Moscow in support of the rights of sexual minorities on 11 October 2014.

8.3 The Committee recalls that the concept of “the same matter” within the meaning of article 5, paragraph 2 (a), of the Optional Protocol shall be understood as including the same authors, the same facts and the same substantive rights.[[8]](#footnote-9) The Committee notes that it appears from the information on file that the author’s applications to the European Court of Human Rights concern the same person and relate to the same substantive rights as those invoked in the present communication. However, the Committee observes that the respective applications before the European Court do not relate to the same facts, that is, the particular event at the particular time referred to in the present communication. Consequently, the Committee considers that it is not precluded by article 5, paragraph 2 (a), of the Optional Protocol from examining the present communication, for purposes of admissibility.[[9]](#footnote-10)

8.4 The Committee notes the author’s claim that all available domestic remedies have been exhausted. It also notes that the State party has not challenged the communication on this ground. Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.5 The Committee notes the author’s claim that his rights under articles 21 and 26 have been violated since he was denied an opportunity to hold a gay pride parade and he was discriminated against based on his sexual orientation. The Committee considers that these claims have been sufficiently substantiated for the purposes of admissibility. It therefore declares them admissible and proceeds with their examination of the merits.

 Consideration of the merits

9.1 The Committee has considered the present 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 author’s claim of a violation of his rights under articles 21 and 26 of the Covenant. The Committee recalls 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.’[[10]](#footnote-11) 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.’[[11]](#footnote-12)

9.3 The Committee recalls that article 21 ‘protects peaceful assemblies wherever they take place: outdoors, indoors, and online; in public and private spaces.’[[12]](#footnote-13) No restriction on the right 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 State parties to justify limitations on the right protected by article 21 of the Covenant and to demonstrate that it does not serve as a disproportionate obstacle to the exercise of the right.[[13]](#footnote-14) 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.[[14]](#footnote-15) Where this onus is not met, article 21 is violated.[[15]](#footnote-16)

9.4 The Committee notes that States parties moreover have certain positive duties to *facilitate* peaceful assemblies, and to make it possible for participants to achieve their objectives.[[16]](#footnote-17) 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* participants against possible abuse by non-State actors, such as interference or violence by other members of the public,[[17]](#footnote-18) counter-demonstrators and private security providers.[[18]](#footnote-19)

9.5 In the present case, the Committee observes that both the State party and the author agree that the failure to authorise a gay pride parade in Moscow on 11 October 2014 was an interference with the author’s right of 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 about the impossibility to hold the parade with the announced purpose – promotion of the rights and freedoms of sexual minorities - was necessary and proportional and the only possible measure in a democratic society for achieving the abovementioned social aim, namely to protect minors from information detrimental to their moral and spiritual development and health. The Committee also notes the State party’s claim that the parade could also outrage religious and moral sensibilities of other people, and that it would provoke a negative reaction of the society and cause some illegal actions from the side of the population who does not share the author’s position as well as that it could disrupt traffic. The Committee also notes the author’s information that he was willing to realize his right to peaceful assembly with the announced purpose, while guaranteeing to respect the public order and norms of public morality and informing the authorities about his readiness to modify the itinerary of the parade.

9.7 The Committee notes 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.[[19]](#footnote-20) The Committee recalls that ‘Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.’[[20]](#footnote-21)

9.8 Restrictions imposed on an assembly on the ground that they are for “the protection of the rights and freedoms of others” may relate to the protection of Covenant or other rights of people not participating in the assembly. In this 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”[[21]](#footnote-22), or public expression of homosexual status, or the call for the respect of the rights of homosexuals, could have a negative effect on minors’ rights and freedoms.

9.9 The Committee also recalls that the participants can freely determine 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 realisation of the right of peaceful assembly is the requirement that any restrictions must in principle be content neutral, and thus not be related to the message conveyed by the assembly.[[22]](#footnote-23) A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation.[[23]](#footnote-24) The Committee accordingly considers that in the present case, the State party’s restrictions on the author’s right to assembly were directly related to the chosen purpose and content of assembly namely an affirmation of homosexuality and the rights of homosexuals.

9.10 The Committee also notes that the State party justifies the denial of permission to hold the parade in question as necessary in the interest of public safety. The Committee notes that freedom of assembly protects demonstrations promoting ideas that may be regarded as annoying or offensive by others and that, in such cases, States parties have a duty to protect the participants in a demonstration in the exercise of their rights against violence by others, including discriminatory attacks. It also notes that an unspecified and general risk of a violent counterdemonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration.[[24]](#footnote-25)

9.11 The Committee also notes that, moreover, the mere fact that there may be some disturbance of the traffic is in itself no a ground to prohibit the assembly, especially where the organizers have indicated their willingness to adjust the location where the demonstrations was going to be held.[[25]](#footnote-26)

9.12 The Committee notes that the State party has not provided the Committee with any information in the present case to support the claim that a “negative reaction” to the author’s proposed gay pride parade by members of the public would present a severe threat to their safety and that the police will not have the capacity to contain such a threat. In such circumstances, the obligation on the State party is to facilitate the exercise of the rights by the author under the Covenant and not to contribute to suppressing those rights. The Committee therefore concludes that the State party has not shown that the restriction imposed on the author’s rights have been necessary in a democratic society in the interest of public safety, and thus that it violated article 21 of the Covenant.[[26]](#footnote-27)

9.13 The Committee further notes the author’s claim that by prohibiting the parade, the authorities subjected him to discrimination on the ground of his sexual orientation in violation of article 26. The Committee also notes the State party’s claim that the motive for prohibition of the parade did not include any manifestation of intolerance towards persons with non-traditional sexual orientation, but was strictly determined by the protection of the rights of minors.

9.14 The Committee recalls that, in paragraph 1 of its general comment No. 18 (1989) on non-discrimination, it stated that article 26 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 earlier jurisprudence,[[27]](#footnote-28) the Committee recalls that the prohibition against discrimination under article 26 also extends to discrimination based on sexual orientation and gender identity.[[28]](#footnote-29)

9.15 The Committee considers that the authorities were opposed to the homosexual content of the parade and expressly drew a distinction based on sexual orientation and gender identity which constituted a differentiation based on grounds prohibited under article 26.

9.16 The Committee further recalls its jurisprudence that not every differentiation 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[[29]](#footnote-30) and it pursues a legitimate aim under the Covenant.[[30]](#footnote-31) While the Committee recognizes the role of the State party’s authorities in protecting the welfare of minors, it observes that the State party failed to demonstrate why the restriction on the peaceful assembly was based on reasonable and objective criteria. Moreover, no evidence which would point to the existence of factors that might justify such assessment has been advanced.

9.17 In such circumstances, the obligation of the State party was to protect the author in the exercise of his rights under the Covenant and not to contribute to suppressing those rights.[[31]](#footnote-32) The Committee further notes that it has previously concluded that the laws banning “promotion of non-traditional sexual relations to minors” in the State party exacerbate negative stereotypes against 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.[[32]](#footnote-33) The Committee accordingly considers that the State party has failed to establish that the restriction imposed on the author’s right to peaceful assembly was based on reasonable and objective criteria and in pursuit of a legitimate aim under the Covenant. The prohibition therefore amounted to a violation of his rights under article 26 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 the author’s rights under article 21 and article 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, including adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the rights under article 21 of the Covenant, including organizing and conducting peaceful assemblies and article 26 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.

Annex

 Joint Opinion by Committe members Vasilka Sancin and Yuval Shany (dissenting).

1. While we agree with almost all of the analysis on admissibility and merits offered by the majority on the Committee, we disagree with the approach of the Committee to the question of abuse of the right to submit a communication, and therefore dissent from the Committee’s decision on admissibility.

2. Article 3 of the Optional Protocol requires the Committee to find inadmissible communications which it considers an abuse of the right of submission. Although to date, the Committee has applied this concept mostly in connection with unjustified delays in submissions,[[33]](#footnote-34) the language of the Protocol allows the Committee to consider other forms of abuse, including exercise of the right to submit in a manner that illegitimately or unjustifiably impedes the ability of States parties to exercise their own rights under the Optional Protocol.[[34]](#footnote-35)

3. In the present case, the State party has raised an objection alleging that a series of cases relating to similar refusals to allow the holding of gay pride parades in different cities in the Russian Federation filed by the author during the period of 2009-2015, (a period which overlaps with the dates relevant to the present communication), are already pending before the European Court of Human Rights. The State party maintains that these cases allege the same violations and that, as a result, the present communication represents an abuse of the right of submission. The author did not contest the fact that he submitted similar complaints to the European Court of Human Rights, but claimed that the case before the Committee is different since it relates to a request to hold a parade on 11 October 2014 in Moscow – a particular request which was not addressed in the previously submitted complaints to the Court.

4. In paragraph 8.4 of the Views, the majority on the Committee held that: “it appears from the information on file that the author’s applications to the European Court of Human Rights concern the same person and relate to the same substantive rights as those invoked in the present communication. However, the Committee observes that the respective applications before the European Court do not relate to the same facts, that is, the particular event at the particular time referred to in the present communication”.

5. We agree with the majority that the conditions of article 5(2)(a) of the Optional Protocol were not met stricto sensu in the present case, since the communication involves events which occurred on different dates from the dates mentioned in the parallel cases pending before the European Court of Human Rights. Still, the communication does appear to raise essentially the same matter involving almost identical facts, and identical legal issues between the same parties. Although it cannot a priori be excluded that the events surrounding the refusal of the request to hold a gay pride parade on 11 October 2014 had unique features that potentially distinguished it in a legally meaningful way from the other refusals under review by the European Court of Human Rights, the author did not point to any such features, but merely referred in his replies to the State party’s objection to the “particular case” of refusal to hold the parade on 11 October 2014.

6. In practical terms, the choice by the author to simultaneously submit essentially the same matter to the European Court and the Committee resulted in a legal outcome that runs contrary to the object and purpose of the article 5(2)(a), which is to avoid litigation of the same human rights complaint before more than one international complaints mechanism. Such double litigation has negative implications for the system of international protection of human rights, as it might generate inconsistent decisions and entail ineffective use of scarce international judicial or quasi-judicial resources for dealing with the same human rights matter. Furthermore, it effectively undercuts the legally-protected interest of State parties to the Optional Protocol to minimize their exposure to multiple proceedings in different fora over the same matter.

7. The author did not provide a meaningful explanation for what appears to be a strategic choice on his part to institute parallel proceedings by submitting a communication to the Committee raising essentially the same matter which is contained in the complaints pending before the European Court of Human Rights. Rather, it seems as if the author has deliberately generated multiple litigation over essentially the same factual and legal matters, and has thereby impeded without good reason or justification the right of the State party not to be compelled to simultaneously litigate the same matter before multiple international fora. Such a practice on the part of the author constitutes in our opinion an abuse of the right of submission, which should have rendered the communication inadmissible under article 3 of the Optional Protocol.

1. \* Adopted by the Committee at its 130th session (12 October – 6 November 2020). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Bamariam Koita, Marcia V.J. Kran, David Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. [↑](#footnote-ref-3)
3. \*\*\* A joint opinion by Committee members Vasilka Sancin, and Yuval Shany, (dissenting) is annexed to the present Views. [↑](#footnote-ref-4)
4. The author has previously submitted complaints to the Committee (for example, Alekseev v Russian Federation, 1873/2009). [↑](#footnote-ref-5)
5. The event was planned to be conducted from 13.00 until 14.00 in the centre of Moscow on 11 October 2014. [↑](#footnote-ref-6)
6. ECtHR,Alekseyev v. Russia, (№ 4916/07, 25924/08, 14599/09, decision of 11 April 2011) [↑](#footnote-ref-7)
7. ECtHR, Alekseyev v. Russia, (Nos 4916/07, 25924/08, 14599/09, decision of 11 April 2011). [↑](#footnote-ref-8)
8. See for example, communication No. 1002/2001, *Wallmann et al.* v. *Austria*, Views adopted on 1 April 2004, para. 8.4, 8.5. [↑](#footnote-ref-9)
9. *Alekseev v. Russian* Federation, (CCPR/C/109/D/1873/2009), paras. 8.2-8.3. [↑](#footnote-ref-10)
10. General Comment No. 37 (2020), para. 1. [↑](#footnote-ref-11)
11. General comment No. 37, para. 25. [↑](#footnote-ref-12)
12. Ibid para 6. [↑](#footnote-ref-13)
13. See *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4. General comment No. 37, para. 36. [↑](#footnote-ref-14)
14. General comment No. 37, para. 36. [↑](#footnote-ref-15)
15. *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3. [↑](#footnote-ref-16)
16. Since its decision in Turchenyak *v. Belarus* (CCPR/C/108/D/1948/2010), 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). Also see CCPR/C/BEN/CO/2, para. 33. C.f. A/HRC/20/27, para. 33; Human Rights Council Resolution 38/11, OP 4. [↑](#footnote-ref-17)
17. *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6. [↑](#footnote-ref-18)
18. General comment No. 37, para. 24. [↑](#footnote-ref-19)
19. Ibid., para. 46. [↑](#footnote-ref-20)
20. Ibid., para. 46. *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), paras. 10.5–10.6; *Alekseev v. Russian Federation*, para. 9.6. [↑](#footnote-ref-21)
21. ECtHR, *Alekseyev v Russian Federation*, Nos 4916/07, 25924/08, 14599/09, decision of 11 April 2011).para. 86; ECtHR, Zhdanov and others v. Russia, N 12200/08, decision of 16/10/2019; ECtHR, Alekseyev and others v. Russia, N 14988/09, decision of 06/05/2019. [↑](#footnote-ref-22)
22. General comment No. 37, para. 22. *Alekseev v. Russian Federation*, para. 9.6. [↑](#footnote-ref-23)
23. General comment No. 37, para 54. [↑](#footnote-ref-24)
24. General comment 37, paras 27 and 52. [↑](#footnote-ref-25)
25. Ibid., para 7. [↑](#footnote-ref-26)
26. *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6. [↑](#footnote-ref-27)
27. See *Toonen* v. *Australia*, para. 8.7; *Young* v. *Australia*, para. 10.4; and communication No. 1361/2005, *X.* v. *Colombia*, Views adopted on 30 March 2007, para. 7.2. [↑](#footnote-ref-28)
28. See *Nepomnyashchiy v Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.3. [↑](#footnote-ref-29)
29. See, inter alia, *Broeks v. Netherlands* (CCPR/C/29/D/172/1984), para. 13; *Zwaan-de Vries v. Netherlands* (CCPR/C/29/D/182/1984), para. 13; *Müller and Engelhard v. Namibia* (CCPR/C/74/D/919/2000), para 6.7; *Derksen v. Netherlands* (CCPR/C/80/D/976/2001), para. 9.2; and *Fedotova v. Russian Federation*, para. 10.6. [↑](#footnote-ref-30)
30. See, inter alia, O’Neill *and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3. [↑](#footnote-ref-31)
31. Alekseev v. Russian Federation, para. 9.6. [↑](#footnote-ref-32)
32. See CCPR/C/RUS/CO/7, para. 10. See also Committee on the Rights of the Child, concluding observations on the combined fourth and fifth periodic reports of the Russian Federation, in which the Committee expressed concern that such laws encouraged the stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex persons, including children, and children from lesbian, gay, bisexual, transgender and intersex families, and urged that such laws be repealed (CRC/C/RUS/CO/4-5, paras. 24−25). [↑](#footnote-ref-33)
33. Human Rights Committee, Rules of Procedure, Rule 99(c). But see Communication No. 367/1989, J.J.C. v. Canada, Views of the Committee of 5 November 1991, at para 5.2; Communication No. 167/1984, Lubicon Lake Band v. Canada, Views of the Committee of 26 March 1990, at para. 32.3. [↑](#footnote-ref-34)
34. *Cf.* Alexandre Kiss, Abuse of Rights, in Max Planck Encyclopedias of International Law [MPIL] (Online, 2006). [↑](#footnote-ref-35)