



# International Covenant on Civil and Political Rights

Distr.: General  
14 May 2021

Original: English

## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2635/2015\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Vladimir Ivanov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	17 January 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 22 July 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	18 March 2021
<i>Subject matter:</i>	Right to peaceful assembly; non-discrimination
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<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>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is Vladimir Ivanov, a national of the Russian Federation born in 1945. 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 Russian Federation on 1 January 1992. The author is not represented by counsel.

#### Facts as submitted by the author

2.1 The author is a documentary film director and an activist in the field of lesbian, gay, bisexual and transgender rights in the Russian Federation. Together with other activists, he made numerous attempts to organize peaceful assemblies on lesbian, gay, bisexual and

\* Adopted by the Committee at its 131st session (1–26 March 2021).

\*\* 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, Marcia V.J. Kran, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

\*\*\* An individual opinion by Committee member Gentian Zyberi (concurring) is annexed to the present Views.



transgender rights in Moscow, which were denied for nine consecutive years. On 10 April 2014, together with other activists, he informed the Lenin District administrative authority in Sevastopol of the intention to hold a gay pride parade on 23 April 2014, indicating the aims of the parade, its location and duration, and the number of participants (no more than 200 persons). The organizers also stated that they were ready to accept any proposal of the authorities if changes in the route of the parade were deemed necessary.

2.2 On 14 April 2014, the head of the Lenin District administrative authority refused to grant permission for the gay pride parade, citing considerations of public order and referring to the laws on the protection of the morality of minors and banning the dissemination among minors of propaganda on non-traditional sexual relations.

2.3 On 29 April 2014, the author lodged a complaint with Golovinsky District Court in Moscow challenging the decision of the Lenin District administrative authority. He argued that the Russian legislation did not impose a blanket ban on holding peaceful assemblies, and that if the authorities had believed the pride parade might trigger mass riots, they should have provided police protection for its participants or an alternative route. He also argued that the decision was discriminatory. The author referred to *Alekseyev v. Russia*<sup>1</sup> and to the Committee's Views in the case of *Fedotova v. Russian Federation*<sup>2</sup> in support of his argument.

2.4 On 20 May 2014, Golovinsky District Court rejected the appeal and maintained the decision of the Lenin District administrative authority. On 28 June 2014, the author appealed to Moscow City Court, which rejected the appeal on 18 August 2014. On 6 December 2014, he lodged a cassation appeal against the lower courts' decisions with the Presidium of Moscow City Court, which was rejected on 16 December 2014.

### **Complaint**

3.1 The author claims a violation of his rights under article 21 of the Covenant, because the authorities clearly interfered with his right to peaceful assembly by refusing permission to hold the gay pride parade.

3.2 The author also claims a violation of article 26, read in conjunction with article 21 of the Covenant, owing to the discriminatory grounds for the refusal to hold the parade. Reference to the federal law banning the dissemination among minors of propaganda of non-traditional sexual relations suggests that the authorities would not allow any public events to be held by sexual minorities owing to opposition from the majority in society and the necessity to protect the morality of minors. The authorities could not demonstrate any objective and reasonable justification for the different treatment deriving from the sexual orientation of the participants in, and the beneficiaries of, the parade and the ideas the public event was aimed at promoting.

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

4.1 In a note verbale dated 6 May 2016, the State party challenged the admissibility of the communication. It claims that in order to exhaust all domestic remedies, following the first cassation appeal at the regional level to the Presidium of Moscow City Court, the author should have lodged a cassation appeal also to the Supreme Court, which the State party claims is an effective remedy according to the decision of the European Court of Human Rights in *Abramyan and others v. Russia*.<sup>3</sup> The State party requests that the communication be declared inadmissible for non-exhaustion of domestic remedies.

4.2 In a note verbale dated 23 May 2016, the State party submitted its observations on the merits of the communication. It notes that the decision of the court of first instance was guided by article 31 of the Constitution, which guarantees the right of peaceful assembly, which may be restricted with the aim of protecting morals, public health and the rights and

---

<sup>1</sup> European Court of Human Rights, Applications No. 4916/07, No. 25924/08 and No. 14599/09, Judgment, 21 October 2010.

<sup>2</sup> CCPR/C/106/D/1932/2010.

<sup>3</sup> Applications No. 38951/13 and No. 59611/13, Decision, 12 May 2015. With regard to the effectiveness of the remedy, the State party also referred to the changes introduced in the Civil Procedural Code.

freedoms of others. The State party further submits that such a provision was in accordance with article 20 (1) of the Universal Declaration of Human Rights, article 21 of the International Covenant on Civil and Political Rights and article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

4.3 In support, the State party refers to article 21 of the Covenant and articles 10 (2) and 11 (2) of the European Convention on Human Rights,<sup>4</sup> providing that the rights of peaceful assembly may be restricted in conformity with the law and as necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. In this regard, the State party also refers to the Committee's jurisprudence, notably *Poliakov v. Belarus*<sup>5</sup> and *Sekerko v. Belarus*,<sup>6</sup> as well as its general comment No. 34 (2011).

4.4 The State party further reiterates the facts of the case and notes that the aim of the gay pride parade, according to the author, was to draw the attention of the public and authorities to the human rights of persons with a homosexual orientation, to discrimination and homophobia, fascism and xenophobia. However, the court concluded that the intention of the participants to organize a parade calling for tolerance towards "sexual minorities", which would take place in recreational areas used by citizens with children and near educational institutions, violated the restrictions prescribed by law. The decision to refuse to authorize the gay pride parade was taken by the Lenin District administrative authority and confirmed by the first instance court on the basis of possible violations of Federal Law No. 436 of 2010 on the protection of children from information harmful to their health and development and of Federal Law No. 124 of 1998 on the basic guarantees of the rights of the child. By applying the provisions of these laws, the court aimed to prevent the dissemination of information that could lead to minors, as persons deprived of the opportunity to evaluate critically and independently such information, forming a view of traditional and non-traditional marriage relations as having socially equal value. Children, due to their physical and intellectual immaturity, need special protection and care, including appropriate legal protection. In its decision, the court took into consideration that several educational and school institutions were located in the immediate vicinity of the route of the parade. The purpose of the court decision was to protect minors from information, propaganda and agitation harmful to their health and moral and spiritual development.

4.5 The State party also notes that the date chosen for the parade, namely, 23 April 2014, fell within the period of the celebration of a religious holiday – Easter – and coincided with the celebration of the seventieth anniversary of the liberation of the city of Sevastopol from the German-fascist invaders. For these reasons, the court found that the date and route chosen were inappropriate.

4.6 The State party submits that the court found without merit the author's allegation concerning the discriminatory grounds of the refusal to hold the gay pride parade. It recalls that under article 21 of the Covenant, and according to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the right to peaceful assembly is not absolute. It is subject to restrictions provided by law and necessary in a democratic society in the interests of national security, public order, the protection of public health and morals or the protection of the rights and freedoms of others. Thus, in the present case, the refusal to permit the gay pride parade was the only measure possible to protect children from information and propaganda harmful to their health and moral and spiritual development.

4.7 According to the State party, the decision of the first instance court was upheld by the higher instances as lawful and well-founded, given that its aim was to protect minors from the negative influence of homosexual propaganda on their development.<sup>7</sup> The State party

---

<sup>4</sup> See also European Court of Human Rights, *Berladir and others v. Russia*, Application No. 34202/06, Judgment, 10 July 2012, para. 52.

<sup>5</sup> CCPR/C/111/D/2030/2011, para. 8.2.

<sup>6</sup> CCPR/C/109/D/1851/2008, para. 9.6.

<sup>7</sup> The State Party also refers to several United Nations instruments and documents relating to the rights of the child, in particular, the Convention on the Rights of the Child, arts. 8 (1), 13 and 16; and

endorses the position of the courts and maintains that the rights of the author under the Covenant were not violated.

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

5.1 On 11 July 2016, the author submitted comments on the State party's observations. He challenges the State party's contention that the cassation appeal before the Supreme Court would be an effective remedy in the present case. He concedes that in *Abramyan and others v. Russia* the European Court of Human Rights considered that the new cassation procedure could be effective if, not only in theory and but also in practice, a violation could be admitted and remedied as a result of the submission of the cassation appeal. He notes that in the above-mentioned case, the determination of exhaustion of domestic remedies was linked to time limits: the Court had to determine the date on which the final decision had been taken in the case for the purpose of the six-month time limit. The author further notes that, according to the European Court, it was for the State party to prove that the remedy was effective both in theory and in practice. He maintains that the cassation instance judges, including of the Supreme Court, are not in a position to remedy the violation of his rights. The author thus claims that the cassation appeal to the Supreme Court would not be effective.

5.2 The author also refers to the European Court of Human Rights case *Kocherov and Sergeyeva v. Russia*,<sup>8</sup> in which the Court considered that, in a situation where the applicants had lodged their application with the Court before the Court had recognized the reformed two-tier cassation appeal procedure as an effective remedy, the applicants were not required to have pursued that procedure prior to lodging their application to the Court.

5.3 The author notes that he submitted his communication to the Committee on 17 January 2015, namely, as in *Kocherov and Sergeyeva v. Russia*, before the European Court of Human Rights had recognized the effectiveness of the new remedy. Thus, he invites the Committee to consider the Court's recognition of the reformed two-tier cassation appeal procedure as an effective remedy in light of the interpretation of the finding in *Kocherov and Sergeyeva v. Russia*.

5.4 In addition, the author submits that attempts to appeal, both in cassation proceedings and supervisory review proceedings before the Supreme Court, in similar cases concerning the rights of lesbian, gay, bisexual and transgender persons in the Russian Federation have failed, as the Supreme Court has upheld the lower-court decisions to refuse permission for such public events.

5.5 The author submits that two other applications submitted to the European Court of Human Rights<sup>9</sup> combined the claims of several organizers concerning the refusal of over 250 public events in several cities in the State party between 2008 and 2014, all in support of the rights of sexual and gender minorities and aimed at promoting tolerance. He emphasizes that in its observations of 8 June 2016, with regard to those applications, the State party did not raise the issue of exhaustion of domestic remedies, although in the majority of those cases the authors had not appealed on cassation to the Supreme Court. In the cases they had, all cassation appeals had been dismissed.

5.6 In a letter dated 23 July 2016, the author reiterates his previous comments in extenso. In support, he refers to the case law of the European Court of Human Rights, notably *Alekseyev v. Russia*, concerning the refusal of the Moscow City authorities to permit pride parades in 2006, 2007 and 2008, in which the Court found that the authorities had violated the right to peaceful assembly and the prohibition of discrimination.<sup>10</sup> He also refers to the

---

Committee on the Rights of the Child, general comment No. 4 (2003) and general comment No. 7 (2005).

<sup>8</sup> Application No. 168899/13, Judgment, 29 March 2016.

<sup>9</sup> *Alekseyev and others v. Russia*, Application No. 14988/09 and 50 others, Judgment, 27 November 2018; and *Alekseyev and others v. Russia*, Application No. 31782/15, Decision of inadmissibility, 30 June 2020.

<sup>10</sup> The author quotes extensively from the decision in European Court of Human Rights, *Alekseyev v. Russia*, Applications No. 4916/07, No. 25924/08 and No. 14599/09, Judgment, 21 October 2010, in particular paras. 78, 80–88 and 108.

jurisprudence of the Committee, in particular *Fedotova v. Russian Federation*,<sup>11</sup> and *Alekseev v. Russian Federation*.<sup>12</sup> The author notes also the European Commission for Democracy through Law (Venice Commission) opinion on the issue of the prohibition of so-called “propaganda of homosexuality” in the light of recent legislation in some member States of the Council of Europe.<sup>13</sup>

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 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.

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.

6.3 The Committee notes the State party’s argument that the author has failed to exhaust domestic remedies, namely the cassation procedure before the Supreme Court. The Committee has taken note of the jurisprudence of the European Court of Human Rights regarding changes introduced by the Civil Procedure Code, as amended by Federal Law No. 353 of 2010, and of the conclusion of the European Court about the effectiveness of the new cassation procedure. The Committee also notes the submission by the author that he did appeal on cassation to the Presidium of the Moscow City Court, yet did not exhaust the new cassation procedure for several reasons (see para 5.1 above). The Committee refers 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 them.<sup>14</sup> The Committee also recalls that mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting available domestic remedies.<sup>15</sup>

6.4 In the present case, the author does not argue that he did not have access to the new cassation procedure, which was de facto available to him. The author, however, contests the effectiveness of such a procedure in his particular case, namely, concerning public events organized by the lesbian, gay, bisexual and transgender community in the context of overall State opposition to such events. In this respect, the Committee notes the author’s assertion, undisputed by the State party, that between 2008 and 2014, at least 252 public events on lesbian, gay, bisexual and transgender-related topics in several cities in the State party could not be organized owing to persistent refusals by the authorities, and that to date there had not been a single court judgment quashing negative decisions of municipal authorities concerning assemblies related to lesbian, gay, bisexual and transgender topics.

6.5 In assessing the effectiveness of the new cassation procedure in relation to the present communication, the Committee notes 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 having the force of *res judicata*. 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 lead the Committee to believe that such cassation reviews contain elements of an extraordinary remedy. In addition, the Committee notes that, in the cassation procedure, the only grounds for the quashing or modification of binding judgments are significant violations of substantive or procedural law. The State party must therefore show that there is a reasonable prospect that such a procedure would provide

<sup>11</sup> Paras. 10.6–10.8.

<sup>12</sup> See CCPR/C/109/D/1873/2009.

<sup>13</sup> Adopted by the Venice Commission on 18 June 2013 at its 95th plenary session.

<sup>14</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>15</sup> *Leghaei et al. v. Australia* (CCPR/C/113/D/1937/2010), para. 9.3.

an effective remedy in the circumstances of the case at stake.<sup>16</sup> The Committee notes that the municipal authorities and domestic courts have consistently denied the author and other activists the possibility of organizing rallies, basing the decisions on legislation banning the promotion, among minors, of non-traditional sexual relations. In this regard, the Committee refers to paragraph 10 (d) of its concluding observations on the seventh periodic report of the Russian Federation,<sup>17</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 considers that the systematic application of this legislation to lesbian, gay, bisexual and transgender assemblies by the authorities, and the support of this practice by the courts, in particular by the Constitutional Court of the State party, render improbable a successful outcome for the author in the cassation appeal procedure.<sup>18</sup> In the absence of information from the State party on changes to the legislation or administrative practice on this matter, and on the potential effectiveness of the new cassation recourse to challenge the application of this legislative scheme, and in the absence of examples of judicial decisions quashing administrative decisions denying authorization of lesbian, gay, bisexual and transgender assemblies since 2015, the Committee finds that, in the circumstances of the present case, the cassation procedure under the Civil Procedure Code is not to be considered a remedy that the author was required to exhaust for the purpose of admissibility. The Committee therefore finds that it is not precluded by article 5 (2) (b) of the Optional protocol from examining the present communication.

6.6 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 its examination of the merits.

#### *Consideration of the merits*

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

7.2 The Committee has taken note of the author's claim of violations 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.<sup>19</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>20</sup>

7.3 The Committee recalls that article 21 protects peaceful assemblies wherever they take place, including outdoors, indoors and online, and in public and private spaces.<sup>21</sup> No restriction on the right is permissible unless it is: (a) imposed in conformity with the law; and (b) is necessary in a democratic society in the interests of national security or public safety, public order, 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 the limitations on the right

---

<sup>16</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>17</sup> CCPR/C/RUS/CO/7.

<sup>18</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.

<sup>19</sup> Committee on Human Rights, general comment No. 37 (2020), para. 1.

<sup>20</sup> *Ibid.*, para. 25.

<sup>21</sup> *Ibid.*, para. 6.

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.<sup>22</sup>

7.4 The Committee considers that the authorities must 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.<sup>23</sup> Where this onus is not met, article 21 is violated.<sup>24</sup>

7.5 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.<sup>25</sup> States must promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and must 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,<sup>26</sup> counterdemonstrators and private security providers.<sup>27</sup>

7.6 In the present case, the Committee observes that both the State party and the author agree that the failure to authorize a gay pride parade to be held in Moscow on 23 April 2014 was an interference with the author's right of assembly, but the parties disagree as to whether the restriction in question was permissible.

7.7 The Committee notes the State party's contention that its decision to refuse the holding of the parade with the stated purpose – promotion of the rights and freedoms of sexual minorities – was necessary and proportional, and its contention that it was the only possible measure in a democratic society for protecting minors from information detrimental to their moral and spiritual development and health. The Committee also notes the State party's claim that it would not be possible to hold the parade owing to the fact that it would coincide with the celebration of a religious holiday – Easter – and the celebration of the seventieth anniversary of the liberation of Sevastopol from the German-fascist occupation. The Committee also notes the author's statement that he was willing to exercise his right to peaceful assembly with the announced purpose while guaranteeing respect for public order and norms of public morality, and that he had informed the authorities about his readiness to modify the route of the parade.

7.8 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. 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.<sup>28</sup>

7.9 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 considers that there is

<sup>22</sup> *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4; *Alekseev v. Russian Federation* (CCPR/C/130/D/2757/2016); and general comment No. 37, para. 36.

<sup>23</sup> General comment No. 37, para. 36.

<sup>24</sup> *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

<sup>25</sup> Since its decision in *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), the Committee has often reiterated that steps taken by States in response to an assembly should be guided by the objective to facilitate the right. See also CCPR/C/BEN/CO/2, para. 33; A/HRC/20/27, para. 33; and Human Rights Council resolution 38/11.

<sup>26</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

<sup>27</sup> General comment No. 37, para. 24.

<sup>28</sup> *Ibid.*, para. 46. See also *Fedotova v. Russian Federation*, paras. 10.5–10.6; *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6; and *Alekseev v. Russian Federation* (CCPR/C/130/D/2757/2016).

no evidence suggesting that the “mere mention of homosexuality”,<sup>29</sup> or public expression of homosexual status, or the call for the respect of the rights of homosexuals, could have a negative effect on minors.

7.10 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 realization of the right of peaceful assembly is the requirement that any restrictions must in principle be content neutral,<sup>30</sup> and thus not be related to the message conveyed by the assembly. A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation.<sup>31</sup> The Committee accordingly considers that in the present case, the State party’s restrictions imposed 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. The Committee therefore concludes that the State party has not shown that the restriction imposed on the author’s rights were necessary in a democratic society in the interests of the protection of public health or morals or the protection of the rights and freedoms of others. Accordingly, the Committee considers that the facts as submitted reveal a violation of the author’s rights under article 21 of the Covenant.<sup>32</sup>

7.11 The Committee further notes the author’s claim that by prohibiting the parade, the authorities subjected him to discrimination on the basis of his sexual orientation in violation of article 26. It also notes the State party’s claim that the motive for prohibiting 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.

7.12 The Committee recalls 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.<sup>33</sup> With reference to its case law,<sup>34</sup> the Committee recalls that the prohibition against discrimination under article 26 also extends to discrimination based on sexual orientation and gender identity.<sup>35</sup>

7.13 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.

7.14 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<sup>36</sup> and it pursues a legitimate aim under the Covenant.<sup>37</sup> In the circumstances of the present case, the State party was obliged to protect the author in the exercise of his rights under the Covenant and not to contribute to suppressing

---

<sup>29</sup> See *Alekseev v. Russian Federation* (CCPR/C/130/D/2757/2016). See also European Court of Human Rights, *Alekseyev v. Russia*, Applications No. 4916/07, No. 25924/08, and No. 14599/09, para. 86; *Zhdanov and others v. Russia*, Application No. 12200/08 and two others, Judgment, 16 July 2019; and *Alekseyev and others v. Russia*, Application No. 14988/09 and 50 others.

<sup>30</sup> General comment No. 37, para. 22; and *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

<sup>31</sup> General comment No. 37, para. 48.

<sup>32</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

<sup>33</sup> Committee on Human Rights, general comment No. 18 (1989), para. 1.

<sup>34</sup> *Toonen v. Australia*, communication No. 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>35</sup> *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.3; and *Alekseev v. Russian Federation* (CCPR/C/130/D/2757/2016).

<sup>36</sup> See, inter alia, *Broeks v. Netherlands*, communication No. 172/1984, para. 13; *Zwaan-de Vries v. Netherlands*, communication 182/1984, para. 13; *Müller and Engelhard v. Namibia* (CCPR/C/74/D/919/2000), para. 6.7; *Derksen and Bakker v. Netherlands* (CCPR/C/80/D/976/2001), para. 9.2; and *Fedotova v. Russian Federation*, para. 10.6.

<sup>37</sup> General comment No. 18, para. 13. See, inter alia, *O’Neill and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3.



those rights.<sup>38</sup> The Committee further notes that it previously concluded that the laws banning the promotion, among minors, of non-traditional sexual relations in the State party exacerbated negative stereotypes against lesbian, gay, bisexual and transgender individuals and represented a disproportionate restriction of their rights under the Covenant, and called for the repeal of such laws.<sup>39</sup> 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 of the assembly planned by the author therefore amounted to a violation of his rights under article 26 of the Covenant.

8. 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 articles 21 and 26 of the Covenant.

9. 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 regard, the Committee reiterates that, pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation and practice 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.

10. 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 to have them widely disseminated in the official language of the State party.

---

<sup>38</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

<sup>39</sup> CCPR/C/RUS/CO/7, para. 10. See also Committee on the Rights of the Child (CRC/C/RUS/CO/4-5), paras. 24–25, 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.

## Annex

### Individual opinion by Committee member Gentian Zyberi (concurring)

1. I agree with the decision of the Committee on the merits, finding that the facts before it disclose a violation by the State party of articles 21 and 26 of the Covenant. Similar to my concurring opinion in *Alekseev v. Russian Federation* (CCPR/C/130/D/2727/2016, annex), the present concurring individual opinion highlights the general unlawful situation before us, since the violation happened in the city of Sevastopol, Ukraine, whose military annexation in early 2014 by the Russian Federation<sup>1</sup> remains a contentious matter of international concern. The complaint was brought against the Russian Federation on 17 January 2015, whereas the author was planning for the gay pride parade to be held on 23 April 2014. While the Committee is rightly driven by its primary concern to ensure that civil and political rights under the Covenant are protected at all times and in all places, including in occupied territory, this unlawful situation needs to be given some attention. This follows from several General Assembly resolutions on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine and general public international law considerations.

2. The General Assembly addressed the situation in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, through several resolutions in the period between March 2014 and December 2020, affirming its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders.<sup>2</sup> In its resolution 68/262, the General Assembly underscored that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, could not form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol. Moreover, it called on all States, international organizations and specialized agencies to refrain from any action or dealing that might be interpreted as recognizing any such altered status.

3. The difficulties concerning the protection of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, have been repeated over the years by the General Assembly.<sup>3</sup> In its resolution 72/190, the General Assembly demanded that the Russian Federation respect obligations under international law with regard to respecting the laws in force in Crimea prior to occupation. Reiterating calls made in resolutions 73/263 and 74/168, the Assembly, in its resolution 75/192, called upon all international organizations and specialized agencies of the United Nations system, when referring to Crimea in their official documents, communications, publications, information and reports, including with regard to statistical data of the Russian Federation or provided by the Russian Federation, as well as those placed or used on official United Nations Internet resources and platforms, to refer to “the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation”, and encouraged all States and other international organizations to do the same.

4. Given that the Human Rights Committee is a part of the United Nations system, reporting annually to the General Assembly on its activities, it must consider relevant resolutions and recommendations of the General Assembly in the course of its work. Hence, in my view, whenever the Committee deals with individual complaints arising from Crimea, it should include in the section on “consideration of admissibility” a short explanation stating that the case arises in respect of “the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation”.

---

<sup>1</sup> The Russian Federation militarily annexed Crimea between February and March 2014. Since then it has administered Crimea as two Russian federal subjects – the Republic of Crimea and the federal city of Sevastopol.

<sup>2</sup> General Assembly resolutions 68/262, 71/205, 72/190, 73/263, 74/168 and 75/192.

<sup>3</sup> See footnote 2.

5. In this manner, the Committee would be following the recommendations of the General Assembly contained in several of its resolutions, as well as general international law obligations related to non-recognition of an unlawful situation.

---