



Systemic measures required to address issues of free assembly and discrimination as evidenced in ban on LGBT rallies

In today's **Chamber judgment**¹ in the case of **Alekseyev and Others v. Russia** (application no. 14988/09 and 50 others) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (right to freedom of assembly),

a violation of Article 13 (right to an effective remedy), and

a violation of Article 14 (right not to be discriminated against) of the European Convention on Human Rights.

The case, which brought together 51 applications from seven applicants, concerned the continued refusal by Russian authorities to approve organisers' requests to hold LGBT rallies.

The Court found that this case was relevantly similar to the case of *Alekseyev v. Russia*, on which it had adjudicated in 2010, and that it ought to replicate its judgment in that case in the present instance.

It thus found, in particular, that the decision to reject the applicants' requests to hold public LGBT events could not be justified by concerns over public disorder and was in breach of their right to freedom of assembly. It also found that the absence of any requirement on the authorities to make a decision on the events prior to the dates on which they were to be held had amounted to an absence of effective remedy. The decision to block the LGBT events had clearly been motivated by the authorities' disapproval of the theme of the demonstrations, and had thus amounted to discrimination, in violation of Article 14.

The Court reiterated the obligation of States to implement judgments and noted that Russia would need to make a sustained and long-term effort to adopt general measures, particularly in relation to issues of freedom of assembly and discrimination.

Principal facts

The case brought together 51 applications brought by seven Russian nationals. They were Nikolay Alekseyev, Irina Alekseyeva, Kirill Nepomnyashchiy, Aleksey Kiselev, Sofya Mikhaylova, Yaroslav Yevtushenko, and Irina Fedotova. They live in Moscow, Shushenskoye (Krasnoyarskiy region), Gryazi (Lipetskiy Region), Kemerovo, Sonchino (Voronezh Region), and Luxembourg.

At various points between 2009 and 2014, the applicants all submitted notices to local authorities informing them of their intention to hold public rallies on the issue of lesbian, gay, bisexual and transgender (LGBT) rights. In each instance the local authorities rejected the proposed date and location of the rally. The domestic courts, to whom every applicant appealed, upheld these decisions; in each case the result of the appeal was delivered after the proposed date of the rally.

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.

Complaints, procedure and composition of the Court

Relying on Articles 11, 13 and 14, the applicants complained that they had been banned from holding public LGBT events, that there had been no effective remedy to address this fact, and that, in their handling of the applicants' requests, the authorities had acted in a discriminatory manner.

The applications were lodged with the European Court of Human Rights between 6 February 2009 and 19 January 2015.

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

Vincent A. De Gaetano (Malta), *President*,
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Jolien Schukking (the Netherlands),
María Elósegui (Spain),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Admissibility

The Court found that 44 of the applications were inadmissible as they had not been lodged within six months of the authorities' decision not to approve a public LGBT event.

Articles 11, 13 and 14

Judgment in related case

The Court previously issued a judgment in 2010 in the case of *Alekseyev v. Russia* (application nos. 4916/07, 25924/08 and 14599/09) involving a similar complaint made by the first applicant in the present case. Then, the Court concluded that the authorities' refusal to grant permission for LGBT rallies, and subsequently-proposed pickets, had constituted a violation of Articles 11, 13 and 14 of the Convention.

In that judgment, the Court found that the Moscow authorities' decision to proscribe LGBT events, and thereby restrict the applicant's freedom of assembly, had not met the condition of "necessity in a democratic society". The risk of public disturbance as a result of counter demonstrations had not been sufficient to warrant a ban on LGBT events, especially as Moscow officials had not made adequate efforts to consider arrangements to avoid that disturbance. Nor could opposition to the events from a majority of society be considered legitimate grounds for banning LGBT rallies. The Court thus found a violation of Article 11.

In the same judgment, the Court found that the absence of any requirement on the authorities to make a decision on organisers' proposed events, prior to the dates on which they were to be held, had equated to the absence of an effective remedy, and had therefore constituted a violation of Article 13.

Moreover, the Court noted in that judgment that the primary motivation for denying permission for the LGBT events had been one of moral disapprobation, as illustrated by public statements in which the Mayor of Moscow had affirmed his personal opposition to LGBT rallies. The decision not to permit the events had thus been taken as a direct result of their LGBT-related message, and had therefore subjected the applicant to unjustified discrimination, in violation of Article 14.

Judgment in this case concerning the seven applications declared admissible

In its judgment today, the Court found no relevant differences between the case of *Alekseyev v. Russia* on which it had adjudicated in 2010, and the case of *Alekseyev and Others v. Russia* currently before it. Thus, the Russian authorities' decisions to ban public LGBT events, in the present case, had also constituted a violation of Articles 11, 13 and 14.

Article 46 (binding force and implementation)

Making specific reference to its judgment in 2010 on the case of *Alekseyev v. Russia*, the Court reiterated the undertaking by all Contracting Parties, under Article 46 of the Convention, to abide by the final judgments of the Court in cases to which they were parties.

While recognising that the question of how to implement Court judgments fell to the respondent State, under supervision from the Committee of Ministers, the Court nonetheless found it appropriate to emphasise that the nature of the violations found in the case of *Alekseyev v. Russia*, and the extent of the recurring problem at issue, required sustained and long-term efforts in the adoption of general measures, particularly if Russia was to overcome issues relating to freedom of assembly and prohibition of discrimination.

Article 41 (just satisfaction)

The Court held, by six votes to one, that the finding of violations of Articles 11, 13 and 14 of the Convention constituted, in itself, sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

Separate opinions

Judge Dedov expressed a concurring opinion and Judge Keller expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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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.