



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2830/2016*, **

<i>Communication submitted by:</i>	Ruslan Savolaynen (represented by counsel, Svetlana Gromova)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	25 December 2014 (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 26 October 2016
<i>Date of adoption of Views:</i>	19 July 2022
<i>Subject matter:</i>	Right of peaceful assembly; freedom of expression; non-discrimination
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Unjustified restrictions on the right of peaceful assembly and freedom of expression; discrimination against lesbian, gay, bisexual and transgender persons
<i>Articles of the Covenant:</i>	19, 21 and 26
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is Ruslan Savolaynen, a Russian national born in 1989. He claims to be a victim of a violation by the Russian Federation of his rights under articles 19, 21 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel, Svetlana Gromova.

Facts as submitted by the author

2.1 The author is a member of the lesbian, gay, bisexual and transgender community and a human rights activist for the community in Saint Petersburg, Russian Federation. On 31

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

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



March 2013, the International Transgender Day of Visibility, the author was planning to hold several pickets in different venues in Saint Petersburg and submitted requests to the relevant authorities seeking authorization to hold the events. However, all the requests were dismissed and the pickets were therefore not held.

2.2 In particular, on 25 March 2013, the author submitted a notification to the Committee for Justice, Legal Order and Safety of the Saint Petersburg City Administration with information on a picket planned for 31 March 2013 on Pionerskaya Square, in front of the Griboyedov monument, from 3 to 4 p.m., with up to 20 participants. The purpose of the event was to draw the attention of the general public and law enforcement officials to the discrimination faced by transgender and transsexual people and other gender minorities, and to increase the visibility of the transgender community to the authorities and to society in general. The author informed the City Administration of the purpose, date, time and place of the event and also indicated in the notification that the participants were planning to use banners, posters, leaflets and other means of visual propaganda. In his notification to the authorities, the author indicated that posters with the following slogans would be displayed during the event: “My gender - my choice”, “Transition to equality and respect” and “Anatomy doesn’t mean destiny”.

2.3 On 27 March 2013, a representative of the City Administration informed him on the telephone that it was not possible to hold the picket, because there was another event planned on the same day at the same location. As an alternative, the representative suggested conducting the picket at another time or at a different location. As an alternative location, the representative mentioned Novoselki, a suburb of Saint Petersburg. The author inquired at what other time the picket could be held on Pionerskaya Square, but the representative could not provide any coherent answer. The author also inquired as to what time the other event would commence and finish, but the representative stated that he did not know.

2.4 In a written response, also dated 27 March 2013, the City Administration informed the author that it was not possible to hold the picket on Pionerskaya Square, due to a mass sports event in orienteering organized by the district authorities at the same place on 31 March 2013, and that holding a picket at the same time would violate the rights of others who were not participating in the picket. The City Administration again suggested to the author that he consider changing the date and/or time of the planned event or, alternatively, hold it on the planned date and time but in a different location, in Novoselki in the Vyborg district of Saint Petersburg. The author was requested to inform the City Administration in writing of his decision regarding the suggested change. He was also informed that he would not be authorized to hold the event unless the suggested change was agreed upon.

2.5 On 24 April 2013, the author challenged the response by the City Administration before the Smolninsky district court of Saint Petersburg, complaining that the prohibition of the picket was unjustified, as the planned sports event did not automatically render the author’s picket impossible to conduct. He also complained that the alternative location proposed by the City Administration would not serve the purpose of the planned picket and would not reflect its social and political significance, owing to its remote location and the limited passage of people through it. Although the location was formally within the Saint Petersburg city boundaries, it was far from the city centre and it would take about two hours to get there by public transport. In contrast, Pionerskaya Square was located in the city centre and would be easily accessible for both participants and representatives of the media.

2.6 At the hearing before the district court on 30 April 2013, the author additionally submitted that Pionerskaya Square had been empty on 31 March 2013 and it seemed that no other event had been held there. He requested the court to summon as a witness a person who had been present on Pionerskaya Square on 31 March 2013, had observed it and had taken pictures. He also requested the court to admit in evidence the pictures demonstrating that the square was empty. However, both requests were dismissed.

2.7 On 30 April 2013, the district court rejected the author’s complaint, having found that the contested response by the City Administration was taken in accordance with the relevant provisions of domestic legislation and did not violate the author’s right to freedom of expression and of assembly. It found, in particular, that it was obvious that the public authorities could not approve the holding of several events at the same time and place, as this

would obviously violate the rights of participants in each of the events. The author was not deprived of the possibility to hold the event at the alternative venue suggested by the City Administration, or to come up with his own suggestion as to another place or time for holding the event.

2.8 The author appealed the decision of the district court to the Saint Petersburg city court. On 17 July 2013, the city court dismissed the appeal and, without providing its assessment of the grounds put forward by the City Administration in the contested response, found that the refusal to approve holding the picket at the venue and date chosen by the author was justified. The city court noted in this respect that the Griboyedov monument on Pionerskaya Square, where the event was planned, was located in the immediate proximity of a children's theatre, which meant that children of different ages passed through the square going to or coming from the theatre. With reference to the relevant provisions of domestic legislation, including federal laws No. 124-FZ on the basic guarantees of the rights of the child and No. 436-FZ on the protection of children from information harmful to their health and development, the city court found, in particular, that "the attempt of the participants in the picket planned for 31 March 2013 to distribute leaflets and other means of visual propaganda calling for tolerance towards transgender, transsexual and other gender minorities near the [children's theatre], while the slogans contained in the notification were not exhaustive, should be considered impossible due to its potential threat to the moral and spiritual development of children". It further found that "the non-approval by the [City Administration] of holding the picket by the [author] at Pionerskaya Square did not violate the [author's] rights, as it in fact prevented the dissemination, in the immediate vicinity of a cultural institution ... offering theatre performances for children, of information capable of forming distorted ideas about the social equality of traditional and non-traditional marital relationships among persons who are unable, due to their age, to critically assess such information independently".

2.9 The author lodged a cassation appeal before the Presidium of the Saint Petersburg city court. The appeal was rejected as unfounded on 18 October 2013.

Complaint

3.1 The author claims a violation of his rights under articles 19 and 21, as the refusal to permit the holding of the picket on 31 March 2013 constituted an interference with his rights, which was not provided for by the law, did not serve a legitimate aim and was not necessary in a democratic society.

3.2 The author further claims that the refusal to permit the holding of the picket on 31 March 2013 amounts to a violation of his rights under article 26 of the Covenant, as the refusal constituted a difference in treatment based on gender identity and, therefore, in the absence of a reasonable and objective justification of such difference in treatment, was discriminatory within the meaning of article 26 of the Covenant. The author notes, in particular, that the refusal to hold the picket in his case was related to the content and purpose of the public event and was a de facto prohibition of the dissemination of any information about transsexual and transgender persons and other gender minorities among minors. He also notes the general situation concerning public events held by the lesbian, gay, bisexual and transgender community in the State party and submits that between 2008 and 2013, the majority of notices on public events organized in support of that community that were submitted to various competent authorities were rejected.

State party's observations on admissibility and the merits

4.1 In a note verbale on 24 August 2017, the State party challenged the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. It claimed that the author had failed to exhaust the domestic remedies available to him under the domestic procedure by not submitting a cassation appeal against the decisions of the domestic courts to the Supreme Court. In that respect, the State party refers to the decision in the case of *Abramyan and others v. Russia*, in which the European Court of Human Rights found that the cassation procedure introduced through the amendments to the Civil Procedure Code by federal law

No. 353-FZ was effective and had to be exhausted for the purposes of admissibility of a complaint before the Court.¹

4.2 In order to demonstrate the effectiveness and accessibility of the new domestic remedy, the State party provides statistical information for the period 2014–2015, indicating the overall number of cases considered in the framework of the cassation procedure by the Civil and Administrative Chambers of the Supreme Court, the number of cassation appeals granted and the number of decisions of the lower courts upheld, changed or quashed with remittance of the case for fresh consideration or adoption of a new decision.²

4.3 With regard to the merits of the case, the State party points out the contradictions between the arguments put forward by the author in his communication to the Committee and the circumstances of the case as established by the domestic courts, noting that in the proceedings before the domestic courts the author did not refer to the fact that he was a member of the lesbian, gay, bisexual and transgender community and that he had planned to hold numerous public events on 31 March 2013, but the authorities refused him permission to hold any of the events. The State party also notes that the information concerning the place of the planned picket is inaccurately indicated in the communication as “Pionerskaya Square, in front of the Griboyedov monument”, whereas in the notification of 25 March 2013, the place was indicated as “Pionerskaya Square (next to the Griboyedov monument)”.³ The latter wording, in the opinion of the State party, demonstrates that the author intended to hold the picket in the entire area of the square and not only in front of the monument, which justifies the application by the domestic courts of the relevant legislation relating to guarantees of the rights of minors.

4.4 The State party further submits that the information provided by the author on the content of his telephone conversation of 27 March 2013 with the representative of the City Administration has not been corroborated by any evidence. It also notes that the contested written response by the City Administration, also dated 27 March 2013, did not contain a refusal to hold the planned picket. In their response, the authorities rather offered the author the possibility of holding the event at a different time or in a different location owing to the necessity to respect the rights and interests of other persons who planned to hold a sports event on Pionerskaya Square on the date chosen by the author. The alternative location proposed to the author was within the city boundaries and was accessible by public transport

¹ Applications Nos. 38951/13 and 59611/13, Decision, 12 May 2015.

² The statistical information on file is as follows: “In 2014, the Civil Chamber of the Supreme Court examined 588 cases by way of the cassation procedure. In 541 cases, cassation appeals were granted. 271 decisions were quashed, 97 appellate rulings were upheld without quashing and changes, 103 appellate rulings ... were quashed with the case remitted for a fresh appeal examination and 20 cassation rulings were upheld without quashing or changes. In 3 cases, decisions were changed. In 47 cases, other rulings were adopted, with cassation (supervisory review) appeals granted.

During the specified period of time, the Administrative Chamber of the Supreme Court examined 70 cases by way of the cassation procedure, in 67 cases, cassation appeals were granted. In particular, 25 decisions were quashed, 12 appellate rulings were upheld without quashing and changes, 4 appellate rulings were quashed with the case remitted for a fresh appeal examination and 7 cassation rulings were upheld without quashing or changes.

In 2015, the Civil Chamber of the Supreme Court heard 27 cases in cassation proceedings. In 894 civil cases, cassation appeals were granted; 336 decisions were quashed, of which 147 decisions were quashed with the case remitted for fresh examination, 185 decisions were quashed with adoption of a new decision and 4 decisions were quashed leaving the application without consideration. Also, 506 appeal rulings were quashed, of which in 117 cases first instance decisions were upheld and 389 cases were remitted for a new appeal examination.

During the specified period of time, the Administrative Chamber of the Supreme Court examined 139 administrative cases by way of the cassation procedure, of which in 11 administrative cases cassation appeals were rejected, in 128 administrative cases cassation appeals were granted and, in particular, 63 judicial acts of the first and appellate instances were quashed; 14 administrative cases were remitted for fresh consideration to a first instance court; in 49 cases, a new judicial act was adopted; 33 appeal decisions were quashed; 10 administrative cases were remitted to the court of appeal for a fresh examination; in 23 cases, first instance court decisions were upheld.”

³ The original wording in Russian in the notification of 25 March 2013 reads as follows: “Пионерская площадь (у памятника А.С. Грибоедову).”

to any person interested in the author's event. In addition, the proposed alternative location was closer to the author's place of residence than Pionerskaya Square.

4.5 Providing its assessment to the author's argument that the restriction on his rights was unlawful, unjustified and did not pursue a legitimate aim, the State party notes that the necessity of the restriction was confirmed in the framework of the proceedings before the domestic courts, as the purpose of the event formulated in the notification of 25 March 2013, the planned participation of up to 20 persons in the picket, the intention to use not only banners and posters but also to distribute leaflets, the content of which was not indicated in the notification, as well as the intention to ensure media coverage of the event, demonstrate that the planned event was not neutral and was in breach of Russian law.

4.6 Assessing the decision of 17 July 2013 adopted by the Saint Petersburg city court on appeal, the State party notes that the findings made by the city court were in conformity with the provisions of the Convention on the Rights of the Child and domestic legislation, including law No. 124-FZ on the basic guarantees of the rights of the child and law No. 436-FZ on the protection of children from information harmful to their health and development. The city court took into account the particular circumstances of the case, including the fact that the venue of the event planned by the author was in close proximity to a cultural institution for children; the date of the event coincided with the period of spring school holidays; and the content of the slogans proposed for distribution on posters, leaflets and other visual materials was not exhaustive. It found that it was prohibited to distribute near cultural institutions "information exploiting the interest of children under the age of 16 in sex, which may have a real negative impact on their moral and spiritual development".

4.7 The State party further submits that, in considering the case, the domestic courts took into account the possibility under certain circumstances of imposing restrictions on the rights at issue. The courts, based on the moral standards and rules of public order generally accepted in the State party, assessed the nature of the public event planned by the author. They found that the restriction on the author's right was prescribed by law and permissible. Furthermore, the State party notes that, as can be seen from the content of the contested response by the City Administration, the author was not refused permission to hold the public event in the chosen location but was rather invited to determine a different time for the event or to hold it at the desired time and date but in a different location. The State party submits that the author voluntarily waived his rights by not following the proposal of the authorities for an alternative venue or by not changing the time of his event. It further submits that the author sets out the circumstances of the case in such a way that he holds the authorities responsible for his own refusal to decide on an alternative place or time for holding the picket and presents the facts as if the authorities not only refused permission to hold the picket, but also threatened him with detention. It was open for the author not to follow the proposal made by the City Administration, but to decide on his own about changing the time of the event if the specific date of the picket was important to him.

4.8 The State party concludes that there has been no violation of the author's rights under articles 9, 21 and 26 of the Covenant.

Author's comments on the State party's observations

5.1 On 27 October 2017, the author submitted his comments on the State party's observations. On the issue of non-exhaustion of domestic remedies, he submitted that the new cassation procedure still constituted an extraordinary remedy and was ineffective in his particular case; the statistics provided by the State party in substantiation of the effectiveness of the new procedure were inaccurate, incoherent and irrelevant to his case; and the State party had failed to submit any statistics that would demonstrate that the new cassation review was an effective remedy in cases relating to freedom of expression and of peaceful assembly. The author further notes that he submitted his initial communication to the Committee on 25 December 2014, that is before the decision in the case of *Abramyan and others v. Russia* was adopted by the European Court of Human Rights on 12 May 2015, and that when he submitted his communication he could not reasonably have expected that the legislative reform introducing the new cassation procedure that had just been put in place would make the cassation procedure an effective remedy to be exhausted. He, therefore, did not submit a further cassation appeal to the Supreme Court, relying on the well-established case law,

according to which the fourth instance of judicial review in the Russian Federation was not an effective remedy to be exhausted.

5.2 The author further addresses each of the arguments raised by the State party in its observations concerning the merits of the case. He submits, in particular, that the information about similar public events planned for 31 March 2013 was irrelevant in the framework of the domestic proceedings in which he contested the 27 March 2013 decision by the City Administration in relation to his notification of 25 March 2013 to conduct the picket. The information on the outcome of other planned pickets was provided to the Committee in order to demonstrate the background and general pattern of discrimination against gender minorities and the lesbian, gay, bisexual and transgender community in general. As for the State party's observations relating to the place of the planned picket, the author notes that in his notification of 25 March 2013, he explicitly indicated the place as Pionerskaya Square, in front of the Griboyedov monument, which implied the area in the immediate vicinity of the monument and could not be understood as covering the entire square. The domestic courts correctly interpreted the information in his notification concerning the place of the planned picket and did not make any findings in the sense that he would actually be planning to spread the picket across the whole of Pionerskaya Square.

5.3 Commenting on the grounds for the refusal of the domestic authorities to authorize the holding of the picket on Pionerskaya Square because another public event was already planned at the same place and that holding two public events at the same time and place would be impossible, the author notes that domestic legislation does not prohibit the holding of two different events at the same venue. With reference to the case law of the Constitutional Court of the Russian Federation,⁴ the author notes that the public authorities could propose only such alternative options for changing the time and/or venue of the event that would allow for the purposes of the event to be realized. He further emphasizes that the conclusion of the domestic authorities as to the impossibility of conducting two different events at the same time was reached without their having examined the specific circumstances of the planned sports event and that of the author. The authorities did not take into account that the picket would involve no more than 20 participants, who were going to hold a stationary meeting for only one hour at a very specific point of Pionerskaya Square - in front of the Griboyedov monument. The author also notes that the City Administration failed to propose that he conduct the picket on the same day, but at a different time, before or after the sports event, and that the domestic courts did not duly assess this failure. Moreover, in the contested response of the City Administration, there was no indication of the exact time of the sports event, which excluded any possibility of a discussion about conducting the picket before or after that event on the same day. The author also submits that the State party did not advance any relevant arguments capable of demonstrating that the purpose of the event could be achieved in the proposed alternative venue, which is a remote area, with limited passage of people. He notes that the refusal to approve the picket in his case constituted an unjustified interference with his right to freedom of peaceful assembly, which could not be cured by a proposal to hold the picket in a deserted location on the outskirts of Saint Petersburg.⁵

5.4 Commenting on the State party's argument that the author voluntarily agreed not to conduct the picket in the circumstances of the case, the author submits that, in its response of 27 March 2013, the City Administration not only refused to approve the picket in the planned location, but also warned him about his liability if he conducted the picket without approval. Fearing possible detention and the liability that could be imposed on him for violating the rules for conducting public events, he was forced to abandon the idea of holding the picket. With reference to the findings of the European Court of Human Rights in the case of *Berladir and others v. Russia*,⁶ the author notes that, under Russian law, a public event could not be conducted lawfully if the organizer of the event had dismissed a proposal by the public

⁴ Reference is made to ruling No. 484-O-II of the Constitutional Court of the Russian Federation of 2 April 2009.

⁵ Reference is made to the jurisprudence of the Committee in *Evrzozov v. Belarus* (CCPR/C/117/D/2101/2011), para. 8.4, and that of the European Court of Human Rights in *Lashmankin and others v. Russia*, Applications Nos. 57818/09 and 14 others, Judgment, 7 February 2017, para. 422.

⁶ Application No. 34202/06, Judgment, 10 July 2012, para. 48.

authorities for another venue and/or timing of the event. If the organizer conducts an event at a non-approved location, such an event could be dispersed and its organizers and participants could be arrested and convicted for administrative offences. The author notes in this respect that conducting the picket on Pionerskaya Square after the authorities had refused to approve it would put the author and other participants at risk of prosecution for an administrative offence, while holding the picket at the location proposed by the authorities would deprive the picket of any sense.

5.5 Concerning the reasoning advanced by the Saint Petersburg city court in its decision of 17 July 2013 on appeal, the author submits that it reveals the discriminatory aim of the refusal to hold the picket, namely preventing gender minorities from becoming visible to the public and from attracting public attention to their concerns. The author submits that by implicitly invoking the prohibition of “propaganda of homosexuality/transgenderness” among minors in its reasoning, the city court reveals a predisposed bias against sexual and gender minorities.⁷ He notes that messages planned to be conveyed during the picket were not sexually explicit, aggressive or advocating for any particular sexual activities or behaviour. He further notes that domestic legislation already provides for criminal liability in respect of lecherous acts against minors and the dissemination of pornography to minors. The State party did not advance any reasons as to why those provisions were insufficient and why they considered that minors were more vulnerable to abuse in the context of transgender and transsexual issues than in the context of sexuality and gender in general.

5.6 The author finally submits that the refusal to approve the picket in his case was based on negative stereotypes and prejudices about transsexual and transgender persons and other gender minorities, and therefore was discriminatory and not necessary in a democratic society.

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 due note of the State party’s reference to the jurisprudence of the European Court of Human Rights regarding the changes introduced through the Civil Procedure Code, as amended by federal law No. 353-FZ of 2010, and of the conclusion of that court about the effectiveness of the new cassation procedure. The Committee also notes the submission by the author that he did not exhaust the new cassation procedure for the reasons mentioned in paragraph 5.1 above. The Committee refers in that respect to its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the authors.⁸ The Committee also recalls that mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting available domestic remedies.⁹

6.4 In the present case, the author does not argue that he did not have access to the new cassation procedure, which was available to him. The author, however, contests the

⁷ The author refers to the jurisprudence of the European Court of Human Rights on the subject matter, in particular the cases of *Bayev and others v. Russia*, Applications Nos. 67667/09 and two others, Judgment, 20 June 2017; and *Alekseyev v. Russia*, Applications Nos. 4916/07, 25924/08 and 14599/09, Judgment, 21 October 2010.

⁸ See, for example, *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.

⁹ *Leghaei and others v. Australia* (CCPR/C/113/D/1937/2010), para. 9.3.

effectiveness of such a procedure in his particular case, namely the holding of a public event organized by him as a member of the lesbian, gay, bisexual and transgender community in the context of a general pattern of discrimination against gender minorities and that community in the State party.

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-FZ of 2010, which entered into force on 1 January 2012, allows for the revision, on points of law only, of court decisions that have entered into force. The decision on whether to refer a case for hearing by the cassation court is discretionary in nature and is made by a single judge. That means that such cassation reviews contain elements of an extraordinary remedy. The State party must therefore show that there is a reasonable prospect that such a procedure would provide an effective remedy in the circumstances of the case in question.¹⁰ The Committee notes in this respect that the State party provided statistical information in substantiation of its argument that the cassation procedure before the Supreme Court constituted an effective domestic remedy to be exhausted. The Committee notes, however, that the statistical information is of a general nature and does not reflect the cases involving claims of violation of the rights to freedom of assembly and of expression, in particular with regard to the lesbian, gay, bisexual and transgender community. The Committee further notes the State party's reference to the decision of 12 May 2015 of the European Court of Human Rights, in which it found that the cassation procedure introduced through the amendments to the Civil Procedure Code by federal law No. 353-FZ was effective and had to be exhausted for the purposes of admissibility of a complaint before the Court. The Committee considers that the application of the State party's legislation to assemblies concerning lesbian, gay, bisexual and transgender issues by the authorities, taking into account the support of such a practice by the Constitutional Court of the State party, the absence of any information from the State party as to the effectiveness of the new cassation appeal procedure in such cases, renders a successful outcome for the author under the new cassation appeal procedure improbable.¹¹ The Committee therefore 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 the admissibility of the communication. 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 considers that the author's claims under articles 19, 21 and 26 of the Covenant have been sufficiently substantiated for the purpose of admissibility. It therefore declares them admissible and proceeds with examination of the merits.

Consideration of the merits

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

7.2 The Committee has taken note of the author's claims of a violation of his rights under article 21 of the Covenant. It recalls its general comment No. 37 (2020), in which it noted that the right of peaceful assembly protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.¹² 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.¹³

7.3 The Committee further recalls in general comment No. 37 (2020) that no restriction on the right of peaceful assembly is permissible unless it is (a) imposed in conformity with the law and (b) necessary in a democratic society in the interests of national security or public

¹⁰ *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6.

¹¹ See, for example, *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.

¹² Para. 1.

¹³ Para. 25.

safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The onus is on States parties to justify restrictions on the right protected by article 21 of the Covenant and to demonstrate that they do not serve as a disproportionate obstacle to the exercise of that right.¹⁴ The authorities must be able to show that any restrictions meet the requirement of legality and are 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, be aimed at discouraging participation in assemblies or cause a chilling effect. Where this onus is not met, article 21 is violated.¹⁵

7.4 The Committee notes, moreover, that States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives.¹⁶ States must 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 that right can be exercised effectively.

7.5 In the present case, the Committee observes that both the State party and the author agree that the refusal to authorize the holding of the picket on Pionerskaya Square in Saint Petersburg was an interference with the author's right to freedom of peaceful assembly, but the parties disagree as to whether the restriction in question was permissible.

7.6 The Committee notes the State party's contention that its decision not to authorize the picket with the announced purpose of drawing the attention of the general public and law enforcement officials to the discrimination faced by transgender and transsexual persons and other gender minorities, as well as increasing the visibility of the transgender community to the authorities and society was lawful, necessary and proportionate, in view of the aim of protecting the rights of others, namely minors from information detrimental to their moral and spiritual development, and participants of another public event organized at the same venue and date (paras. 4.4–4.6 above).

7.7 In its general comment No. 37 (2020), the Committee noted that restrictions on peaceful assemblies should only exceptionally be imposed for the protection of "morals". If used at all, this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination. Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.¹⁷

7.8 The Committee also noted in general comment No. 37 (2020) that peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.¹⁸ Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed or of the general public. While the time, place and manner of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience.¹⁹ Any restriction on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned.²⁰

7.9 Restrictions imposed for the protection of "the rights and freedoms of others" may relate to the protection of the Covenant or of other human rights of people not participating

¹⁴ Para. 36. See also *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

¹⁵ *Chebotaeva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

¹⁶ General comment No. 37 (2020), para. 24; and *Turchenyak v. Belarus* (CCPR/C/108/D/1948/2010 and CCPR/C/108/D/1948/2010/Corr.1), para. 7.4. See also Human Rights Council resolution 38/11, para. 4.

¹⁷ General comment No. 37 (2020), para. 46. See also *Fedotova v. Russian Federation*, (CCPR/C/106/D/1932/2010) paras. 10.5–10.6; and *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6, and (CCPR/C/130/D/2757/2016), paras. 9.5–9.12.

¹⁸ General comment No. 27 (2020), para. 55.

¹⁹ *Ibid.*, para. 22.

²⁰ *Ibid.*, para. 38.

in the assembly.²¹ In the present case, the Committee considers that, similarly to its approach in cases concerning public expression of homosexual identity,²² a public call for respect for the rights of transgender, transsexual persons and other gender minorities, drawing attention to the discrimination faced by such persons in society, could not have a negative effect on minors' rights and freedoms. In its general comment No. 37 (2020), the Committee also recalled that States must leave it to the participants to determine freely the purpose of a peaceful assembly to advance ideas and aspirational goals in the public domain and to establish the extent of support for or opposition to those ideas and goals. Central to the realization of the right to freedom of peaceful assembly is the requirement that any restriction must in principle be content neutral and thus not be related to the message conveyed by the assembly.²³ A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation, which allows people to advance ideas and establish the extent of the support that they enjoy.²⁴ The Committee accordingly considers that in the present case, the State party's restrictions on the author's right to freedom of assembly were directly related to the chosen purpose and content of the assembly, namely the rights of transgender and transsexual persons and other gender minorities, and do not appear to meet the standards of necessity and proportionality under article 21 of the Covenant.

7.10 As to the aim of protecting the rights of persons participating in another public event planned for the same venue, the Committee notes in this respect that neither the City Administration nor the domestic courts have provided any justification based on an individualized assessment of the two planned public events as to how, in practice, the author's public events would have violated the rights and freedoms of others, as set out in article 21 of the Covenant. The State party has also failed to show that sufficient alternative measures were taken to facilitate the exercise of the author's rights under article 21. The Committee observes in this respect that limiting pickets to certain isolated locations does not appear to meet the standards of necessity and proportionality under article 21 of the Covenant.

7.11 The Committee therefore concludes that the State party has not shown that the restriction imposed on the author's rights was necessary in a democratic society in the interests of the protection of public health or morals or the protection of the rights and freedom of others. Accordingly, the Committee considers that the facts as submitted reveal a violation of the author's right under article 21 of the Covenant.

7.12 In the light of the finding above, the Committee decides not to consider separately a possible violation of article 19 of the Covenant.

7.13 The Committee further notes the author's claim that by refusing to authorize the planned event, the authorities subjected him to discrimination on the grounds of gender identity in violation of article 26 of the Covenant. The Committee also notes the State party's claim that one of the motives for the refusal to authorize the event was determined by the need to protect the rights of minors (paras 4.5–4.6 above).

7.14 The Committee notes that, in its general comment No. 37 (2020), it recalled that States must not deal with assemblies in a discriminatory manner, for example on the basis of sexual orientation or gender identity. Particular efforts must be made to ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination. Moreover, States have a duty to protect participants from all forms of discriminatory abuse and attacks.²⁵

7.15 The Committee recalls that in paragraph 1 of its general comment No. 18 (1989), it observed that article 26 of the Covenant entitles all persons to equality before the law and equal protection of the law, prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race,

²¹ *Ibid.*, para. 47.

²² *Alekseev v. Russian Federation* (CCPR/C/130/D/2757/2016), para. 9.8, and (CCPR/C/130/D/2727/2016), para. 7.8.

²³ General comment No. 37 (2020), paras. 22 and 48. See also *Alekseev v. Russian Federation*, (CCPR/C/109/D/1873/2009), para. 9.6.

²⁴ General comment No. 37 (2020), para. 48.

²⁵ General comment No. 37 (2020), para. 25. See also *Fedotova v. Russian Federation*, para. 10.4.

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With reference to its jurisprudence,²⁶ the Committee recalls that the prohibition against discrimination under article 26 also extends to discrimination based on sexual orientation and gender identity.²⁷

7.16 The Committee considers that the authorities were opposed to the content of the proposed event (paras. 2.8 and 4.5–4.6 above) and expressly drew a distinction based on sexual orientation and gender identity, which constituted a differentiation based on grounds prohibited under article 26 of the Covenant.²⁸

7.17 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 criteria²⁹ and pursues a legitimate aim under the Covenant.³⁰ While the Committee recognizes the role of the State party's authorities in protecting the welfare of minors, it observes that the State party has failed to demonstrate that the restriction imposed on the proposed peaceful assembly was based on reasonable and objective criteria. Moreover, no evidence that would point to the existence of factors that might justify that restriction has been advanced by the State party.

7.18 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 a suppression of those rights.³¹ The Committee further notes that it has previously concluded that the laws banning the promotion among minors of non-traditional sexual relations in the State party have exacerbated negative stereotypes of individuals on the grounds of sexual orientation and gender identity and represent a disproportionate restriction of their rights under the Covenant, and it has called for the repeal of such laws.³² Accordingly, the Committee considers that the State party has failed to establish that the restriction imposed on the author's right to freedom of 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 the author's 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 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 that regard, 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.

²⁶ *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.

²⁷ *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.3.

²⁸ *Alekseev v. Russian Federation* (CCPR/C/130/D/2757/2016), para. 9.15.

²⁹ *Brooks v. Netherlands*, communication No. 172/1984, para. 13; *Zwaan-de Vries v. Netherlands*, communication No. 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.

³⁰ General comment No. 18, para. 13. See also *O'Neill and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3.

³¹ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

³² CCPR/C/RUS/CO/7, para. 10. See also *Alekseev v. Russian Federation* (CCPR/C/130/D/2757/2016), para. 9.17, and (CCPR/C/130/D/2727/2016), para. 7.15.

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 disseminate them widely in the official language of the State party.
