



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. 2757/2016*, **, ***

<i>Communication submitted by:</i>	Nikolai Alekseev
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	10 February 2016 (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 15 February 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	5 November 2020
<i>Subject matter:</i>	Right to peaceful assembly; non-discrimination
<i>Procedural issues:</i>	Abuse of the right of submission; lack of substantiation
<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>Articles of the Optional Protocol:</i>	2 and 5

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

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Bamariam Koita, Marcia V.J. Kran, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.

*** A joint opinion by Committee members Vasilka Sancin and Yuval Shany (dissenting) is annexed to the present Views.

¹ The author has previously submitted complaints to the Committee. See, for example, *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009).



Facts as submitted by the author

2.1 The author submits that he is an activist in the area of lesbian, gay, bisexual and transgender rights, and the president of the Russian LGBT Human Rights Project. Since May 2006, together with others, he has tried to hold peaceful protests (gay pride parades) in Moscow, all of which have been banned by the local authorities.

2.2 On 26 September 2014, together with other activists, he submitted a notification to the Mayor of Moscow concerning the organizers' intention to hold a gay pride parade in support of tolerance and the rights and freedom of gays in the Russian Federation on the occasion of International Coming Out Day. In the notification, he informed the authorities about the time, date and place of the event.² The notification provided guarantees by the applicant to respect public order and norms of public morality. The author also informed the authorities about the organizers' readiness to modify the itinerary of the parade. On 1 October 2014, the Moscow regional security and anti-corruption department informed the organizers that it would not authorize the event because its purposes violated legislation banning the promotion, among minors, of non-traditional sexual relations, would cause moral damage to minors who would see the event, would outrage the religious and moral sensibilities of others, and would provoke a negative reaction from society. It was also noted that the event would interfere with traffic.

2.3 The organizers thus cancelled the planned parade. On 10 October 2014, they filed a complaint with Sverdlov District Court in Kostroma, arguing that the laws and regulations did not allow for a ban on parades as long as their purpose and conduct conformed to the legislation. In addition, the authorities could take the steps necessary to ensure the peaceful conduct of the event and to protect the participants. An alternative itinerary could be envisaged. On the same day, the Court rejected the complaint and held that there had been no violation of the law.

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

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

Complaint

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

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

² The event was planned to be conducted from 1 to 2 p.m. in the centre of Moscow on 11 October 2014.

State party's submissions on admissibility

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

4.2 According to the State party, the submission of a communication on behalf of the victims on the same violations of the human rights referred to in previous submissions should be considered an abuse of the right of submission. In this regard, the State party observes that two other complaints from the author against the refusals to authorize the holding of gay pride parades in different cities in the Russian Federation during the period 2009–2015 are pending consideration before the European Court of Human Rights. In addition, on 21 October 2010, the European Court of Human Rights issued a judgment on three similar complaints by the author.³

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

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

5.2 The author submits that the European Court of Human Rights has taken decisions on several similar complaints, but that those complaints relate to different facts and dates.

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

State party's observations on admissibility and the merits

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

6.2 The State party notes that the Constitutional Court of the Russian Federation, having refused to consider the complainant's motion to clarify its earlier decision of 23 September 2014 No. 24–P, stated that article 6.21 (1) of the Code of Administrative Offences, on dissemination, among minors, of propaganda on non-traditional sexual relationships, did not allow for an expanded understanding of the prohibition envisaged under the article. The Court also underlined that in each particular case the compliance assessment of a planned event includes an examination and evaluation of all circumstances.

6.3 The State party further reiterates the facts of the case and submits that the decision to refuse to authorize the gay pride parade was taken by the government of Moscow based on the potential for violations of the law on the protection of children from information harmful to their health and development and the law on the basic guarantees of the rights of the child, whose provisions are aimed at preventing the dissemination of information that could lead minors, as persons deprived of the opportunity to evaluate critically and independently such information, to form a distorted view of non-traditional marriage relations as socially equivalent to traditional marriage relations. In its decision, the government of Moscow stated that the event had been planned in venues that were popular with families with children and tour groups including children. Thus, children could become involuntary witnesses of the gay pride parade, which could result in moral damage. This position was the subject of evaluation and assessment by the relevant domestic courts, and was found to be fully sustained.

³ *Alekseyev v. Russia*, Applications No. 4916/07, No. 25924/08 and No. 14599/09, Judgment, 21 October 2010.

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

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

7.1 On 21 December 2016, the author provided comments on the State party's observations. He submits that the European Court of Human Rights, in its judgment issued on 21 October 2010 in *Alekseyev v. Russia*, found that the refusal to allow the planned gay pride parades in 2006, 2007 and 2008 amounted to violations of articles 11 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). According to the author, the rights of sexual minorities are systematically violated in the Russian Federation.

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

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. In this regard, the Committee notes the State party's argument that three applications by the author were considered by the European Court of Human Rights, which issued its judgment on 21 October 2010. The applications concerned the State party's refusal to allow the author to conduct a parade in support of the rights of sexual minorities. Two other complaints from the author were pending before the Court. The State party submits that the complaints before the European Court of Human Rights and the present communication are of a similar nature, as they have been submitted by the same person, concern the rights of the same group (those belonging to sexual minorities) and concern the actions of the same authorities. The Committee further notes the author's explanation that the applications before the European Court of Human Rights concerned different factual circumstances, namely, the refusal to authorize the holding of pride marches or pickets in the period 2006 to 2015, while the present complaint concerns the refusal to authorize the holding of a gay pride parade in Moscow in support of the rights of sexual minorities on 11 October 2014.

8.3 The Committee recalls that the concept of "the same matter" within the meaning of article 5 (2) (a) of the Optional Protocol is to be understood as including the same authors, the same facts and the same substantive rights.⁴ The Committee notes that it appears from the information on file that the author's applications to the European Court of Human Rights concern the same person and relate to the same substantive rights as those invoked in the present communication. However, the Committee observes that the respective applications before that court do not relate to the same facts, that is, the particular event at the particular time referred to in the present communication. Consequently, the Committee considers that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the present communication.⁵

8.4 The Committee notes the author's claim that all available domestic remedies have been exhausted. It also notes that the State party has not challenged the communication on

⁴ See, for example, *Wallmann et al. v. Austria* (CCPR/C/80/D/1002/2001), paras. 8.4–8.5.

⁵ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), paras. 8.2–8.3.

this ground. Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.5 The Committee notes the author's claim that his rights under articles 21 and 26 were violated since he was denied an opportunity to hold a gay pride parade and 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 consideration of the merits.

Consideration of the merits

9.1 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.

9.2 The Committee has taken note of the author's claim of a violation of his rights under articles 21 and 26 of the Covenant. The Committee recalls that the right of peaceful assembly protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.⁶ 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.⁷

9.3 The Committee recalls that article 21 protects peaceful assemblies wherever they take place, including outdoors, indoors and online, and in public and private spaces.⁸ No restriction on the right is permissible unless it is: (a) imposed in conformity with the law; and (b) necessary in a democratic society in the interests of national security or public safety, public order, 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 protected by article 21 of the Covenant and to demonstrate that they do not serve as a disproportionate obstacle to the exercise of the right.⁹ The authorities must be able to show that any restrictions meet the requirement of legality and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or cause a chilling effect.¹⁰ Where this onus is not met, article 21 is violated.¹¹

9.4 The Committee notes that States parties moreover have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives.¹² 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,¹³ counterdemonstrators and private security providers.¹⁴

9.5 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 in Moscow on 11 October 2014 was an

⁶ Human Rights Committee, general comment No. 37 (2020), para. 1.

⁷ *Ibid.*, para. 25.

⁸ *Ibid.*, para. 6.

⁹ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4; and general comment No. 37, para. 36.

¹⁰ General comment No. 37, para. 36.

¹¹ *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

¹² 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 (*Turchenyak et al. v. Belarus*, para. 7.4). See also CCPR/C/BEN/CO/2, para. 33; A/HRC/20/27, para. 33; and Human Rights Council resolution 38/11.

¹³ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

¹⁴ General comment No. 37, para. 24.

interference with the author's right of assembly, but the parties disagree as to whether the restriction in question was permissible.

9.6 The Committee notes the State party's contention that its decision to refuse to allow 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 achieving the above-mentioned social aim, namely, to protect minors from information detrimental to their moral and spiritual development and health. The Committee also notes the State party's claim that the parade could outrage the religious and moral sensibilities of other people, could provoke a negative reaction from society, could cause those who do not share the author's position to engage in illegal acts, and could disrupt traffic. The Committee also notes the author's information that he was willing to realize his right to peaceful assembly with the announced purpose while guaranteeing to respect the public order and norms of public morality, and that he had informed the authorities about his readiness to modify the itinerary of the parade.

9.7 The Committee notes that restrictions on peaceful assemblies should only exceptionally be imposed for the protection of "morals". If used at all, this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination. 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.¹⁵

9.8 Restrictions imposed on an assembly on the ground that they are for the protection of the rights and freedoms of others may relate to the protection of Covenant or other rights of people not participating in the assembly. In this case, the Committee has a common approach with the European Court of Human Rights, and considers that there is no basis on which to assume that the "mere mention of homosexuality",¹⁶ or public expression of homosexual status, or the call for the respect of the rights of homosexuals, could have a negative effect on minors' rights and freedoms.

9.9 The Committee also recalls that the participants can freely determine the purpose of a peaceful assembly to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. Central to the realization of the right of peaceful assembly is the requirement that any restrictions must in principle be content neutral,¹⁷ 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.¹⁸ The Committee accordingly considers that in the present case, the State party's restrictions on the author's right to assembly were directly related to the chosen purpose and content of the assembly, namely, an affirmation of homosexuality and the rights of homosexuals.

9.10 The Committee also notes that the State party justifies the denial of permission to hold the parade in question as necessary in the interest of public safety. The Committee notes that freedom of assembly protects demonstrations promoting ideas that may be regarded as annoying or offensive by others and that, in such cases, States parties have a duty to protect the participants in a demonstration in the exercise of their rights against violence by others, including discriminatory attacks. It also notes that an unspecified and general risk of a violent counterdemonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration.¹⁹

¹⁵ *Ibid.*, 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.

¹⁶ See European Court of Human Rights, *Alekseyev v. Russia*, Applications No. 4916/07, No. 25924/08 and No. 14599/09, Judgment, 21 October 2010, 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, Judgment, 27 November 2018.

¹⁷ General comment No. 37, para. 22. *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

¹⁸ General comment No. 37, para. 48.

¹⁹ General comment No. 37, paras. 27 and 52.

9.11 The Committee also notes that, moreover, the mere fact that there may be some disturbance of the traffic is in itself not a ground to prohibit the assembly, especially where the organizers have indicated their willingness to adjust the location of the demonstration.²⁰

9.12 The Committee notes that the State party has not provided the Committee with any information in the present case to support the claim that a “negative reaction” to the author’s proposed gay pride parade by members of the public would present a severe threat to the organizers’ safety and that the police would not have the capacity to contain such a threat. In such circumstances, the obligation on the State party is to facilitate the exercise of the rights by the author under the Covenant and not to contribute to a suppression of those rights. 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 interest of public safety, and thus that it violated article 21 of the Covenant.²¹

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

9.14 The Committee recalls that in paragraph 1 of its general comment No. 18 (1989), it states that article 26 entitles all persons to equality before the law and equal protection of the law, prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With reference to its earlier jurisprudence,²² the Committee recalls that the prohibition against discrimination under article 26 also extends to discrimination based on sexual orientation and gender identity.²³

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

9.16 The Committee further recalls its jurisprudence that not every differentiation based on the grounds listed in article 26 of the Covenant amounts to discrimination, as long as it is based on reasonable and objective criteria²⁴ and it pursues a legitimate aim under the Covenant.²⁵ While the Committee recognizes the role of the State party’s authorities in protecting the welfare of minors, it observes that the State party failed to demonstrate how the restriction on the peaceful assembly was based on reasonable and objective criteria. Moreover, no evidence that would point to the existence of factors that might justify such an assessment was advanced.

9.17 In such circumstances, the obligation of the State party was to protect the author in the exercise of his rights under the Covenant and not to contribute to a suppression of those rights.²⁶ 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 exacerbated negative stereotypes against individuals on the grounds of sexual orientation and gender identity and represented a disproportionate restriction of their rights under the

²⁰ Ibid., para. 7.

²¹ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

²² *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.

²³ *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.3.

²⁴ 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.

²⁵ See, inter alia, *O’Neill and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3.

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

Covenant, and has called for the repeal of such laws.²⁷ The Committee accordingly considers that the State party has failed to establish that the restriction imposed on the author's right to peaceful assembly was based on reasonable and objective criteria and in pursuit of a legitimate aim under the Covenant. The prohibition therefore amounted to a violation of the author's rights under article 26 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under article 21 and article 26 of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated, including adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this 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.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official language of the State party.

²⁷ CCPR/C/RUS/CO/7, para. 10. See also Committee on the Rights of the Child, concluding observations on the combined fourth and fifth periodic reports of the Russian Federation, in which the Committee expressed concern that such laws encouraged the stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex persons, including children, and children from lesbian, gay, bisexual, transgender and intersex families, and urged that such laws be repealed (CRC/C/RUS/CO/4-5, paras. 24–25).

Annex

Joint opinion of Committee members Vasilka Sancin and Yuval Shany (dissenting)

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

2. Article 3 of the Optional Protocol requires the Committee to find inadmissible communications that it considers an abuse of the right of submission. Although to date the Committee has applied this concept mostly in connection with unjustified delays in submissions,¹ the language of the Optional Protocol allows the Committee to consider other forms of abuse, including the exercise of the right to submit in a manner that illegitimately or unjustifiably impedes the ability of States parties to exercise their own rights under the Optional Protocol.²

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

4. In paragraph 8.3 of the Views, the majority of the Committee held that:

It appears from the information on file that the author's applications to the European Court of Human Rights concern the same person and relate to the same substantive rights as those invoked in the present communication. However, the Committee observes that the respective applications before that court do not relate to the same facts, that is, the particular event at the particular time referred to in the present communication.

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

6. In practical terms, the choice by the author to simultaneously submit essentially the same matter to the European Court of Human Rights and the Committee resulted in a legal outcome that runs contrary to the object and purpose of the article 5 (2) (a), which is to avoid litigation of the same human rights complaint before more than one international complaints

¹ Human Rights Committee, rules of procedure, rule 99 (c). See also, however, *J.J.C. v. Canada*, communication No. 367/1989, para. 5.2; and *Lubicon Lake Band v. Canada*, communication No. 167/1984, para. 32.3.

² See Alexandre Kiss, "Abuse of rights", in *Max Planck Encyclopedias of International Law* (2006).

mechanism. Such double litigation has negative implications for the system of international protection of human rights, as it might generate inconsistent decisions and entail ineffective use of scarce international judicial or quasi-judicial resources for dealing with the same human rights matter. Furthermore, it effectively undercuts the legally protected interest of States parties to the Optional Protocol to minimize their exposure to multiple proceedings in different forums over the same matter.

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