



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. 2727/2016*, **, ***

<i>Communication submitted by:</i>	Nikolai Alekseev
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	24 November 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 15 February 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	16 October 2020
<i>Subject matter:</i>	Right to peaceful assembly; non-discrimination
<i>Procedural issue:</i>	Lack of substantiation
<i>Substantive issues:</i>	Unjustified restrictions to 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, a national of the Russian Federation born in 1977. He claims that the State party has violated 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 not represented by counsel.

Facts as submitted by the author

2.1 The author submits that he is an activist for the rights of lesbian, gay, bisexual and transgender persons and is the President of the human rights project for lesbian, gay, bisexual and transgender persons of the Russian Federation, GayRussia.ru. Since May 2006, together

* 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, Christof Heyns, David H. Moore, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

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



with other activists, he has tried to hold peaceful protests (gay pride parades) in Moscow, but the planned demonstrations have been banned by the local authorities.

2.2 On 9 April 2014, together with other activists, the author submitted a notification to the head of Simferopol city administration concerning their intention to hold a gay pride parade in support of the rights and freedoms of gay persons in the Russian Federation and protesting against discrimination against them. The notification informed the authorities of the time, date and place of the planned protest.¹ The notification included guarantees that the participants would respect public order and observe the norms of public morals. The author also informed the authorities of the organizers' readiness to change the route of the parade if needed. On 11 April 2014, the Simferopol city administration informed the organizers that it would not be able to authorize the event and that, if the author went ahead with its organization, he would be held liable, because the parade would violate legislation banning the promotion of non-traditional sexual relations to minors, it "would provoke a negative reaction from society" and such events violated public order.² The author decided not to hold the parade.

2.3 The author thus cancelled the planned parade and, on 5 May 2014, filed a complaint with the Preobrazhensky District Court in Moscow. The author argued in his complaint that laws and regulations of the Russian Federation do not provide for a ban on parades if the purpose and conduct of the assembly do not contravene the legislation. On 3 June 2014, the Court rejected the complaint.

2.4 The author further complained to the Moscow City Court, which, on 12 August 2014, upheld the lower court's decision. The appeal in cassation before the panel of judges of the Moscow City Court was also unsuccessful and was rejected on 23 September 2014.

2.5 On 13 January 2016, the author added that, on 5 May 2014, he had submitted a complaint to the Zheleznodorozhny District Court in Simferopol, arguing that the laws and regulations of the Russian Federation do not provide for parades to be banned if their purpose and conduct do not contravene the legislation. On 2 July 2014, the Court rejected the complaint. On 22 July 2014, the author appealed that decision to the Appeal Court of the Republic of Crimea.³ On 3 December 2014, the Court quashed the decision of 2 July 2014, although it rejected the author's substantive claims.

2.6 The author further complained to the Supreme Court of the Republic of Crimea, which rejected that appeal on 29 June 2015. The author's appeal in cassation to the Supreme Court of the Russian Federation was rejected on 14 August 2015.

The complaint

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

3.2 The author claims that the State party violated his right to peaceful assembly as protected under article 21 of the Covenant, as it imposed a blanket prohibition on the parade that he had intended to organize. The authorities' refusal was not imposed "in conformity with the law" nor was it "necessary in a democratic society". In particular, national law does not prohibit an assembly whose aims and forms are lawful and peaceful. Moreover, the restriction imposed was not "necessary in a democratic society" and did not pursue any of the legitimate aims mentioned in article 21 of the Covenant. The authorities' refusal to propose an alternative location for the mass event in question and their assertion that such a parade conducted in a public place where Easter festivities were taking place and close to children's educational facilities would harm the moral development of minors demonstrated that the authorities' real aim was to prevent the gay and lesbian minority in the Russian

¹ The event was planned to be held in the centre of Simferopol from 11 a.m. to 1 p.m. on 21 April 2014.

² The initial document from the city administration, dated 11 April 2014, does not mention these reasons.

³ See General Assembly resolution 68/262 on the territorial integrity of Ukraine.

Federation from becoming visible to the public and attracting public attention to their concerns.

State party's observations on admissibility and the merits

4.1 On 25 July 2016, the State party submitted its observations on admissibility and the merits and requested that the communication be declared inadmissible as not substantiated.

4.2 The State party submits that the decisions of the Zheleznodorozhny District Court and the Appeal Court of the Republic of Crimea were based on the application of the Constitution of the Russian Federation.⁴

4.3 The State party notes that freedom of association and freedom of expression can be subjected to restrictions. Such restrictions should be based on the law, should have a socially meaningful aim and should be proportionate.

4.4 The State party contends that, in the present case, the Appeal Court invoked the Federal Law on Protection of Children from Information Harmful to their Health and Development (arts. 5 (2) (4) and 16 (3)) and the Federal Law on the Basic Guarantees of the Children's Rights in the Russian Federation (art. 14 (1)), which are aimed at preventing the dissemination of information capable of forming a distorted view of the social equivalence of traditional and non-traditional marriage relations among persons unable to evaluate such information critically and independently. In its decision, the Court stated that the territory of Gagarin Park, where the parade was supposed to stop, was a public venue where large numbers of people, including children, gathered. There was also a school and a sports and recreation facility on the route of the parade.

4.5 The State party submits that, according to the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing, in cases when the information provided in a notification letter allows the conclusion to be drawn that the purpose or conduct of a proposed public event is not in compliance with the Constitution or other laws, the authorities must inform the organizers that, if the event is held, they will be held liable. The Court found that these provisions obligated the authorities not to authorize a public event until the organizers had rectified the aspects not in compliance with the law.

4.6 The State party notes that, in the present case, the purpose of the assembly was to support the rights and freedoms of homosexual persons in the Russian Federation and protest against discrimination against them. The Court concluded that this attempt to call for tolerance in relation to the presence of lesbian, gay, bisexual and transgender persons in venues that were traditional places of recreation for adults and children and close to the premises of children's educational facilities would pose a threat to the moral and spiritual development of children. Thus, the Court asserted that the restrictions imposed on the assembly to be held by the author were in accordance with the law. The aim of the restrictions was to protect children from information, propaganda and campaigning which could harm their moral and spiritual development and health. This aim is recognized in the provisions of the international agreements ratified by the Russian Federation.

4.7 The State party observes that the courts of appeal and cassation based their decisions on the provisions and requirements of the Family Code (arts. 1, 12 and 47) and the Law on the Basic Guarantees of the Rights of the Child in the Russian Federation (art. 14), which provide that the State authorities have an obligation to take measures to protect children from harmful information, including propaganda for non-traditional sexual relations. The need for such protection also comes from the jurisprudence of the treaty bodies⁵ and the human rights treaties.⁶

4.8 The State party also submits that the day of the planned assembly was the day on which Easter falls. Thus, the courts, having in mind the need to protect children from

⁴ Constitution of the Russian Federation, art. 17 (3): "The exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of other people"; and art. 38 (1): "Maternity and childhood, and the family shall be protected by the State."

⁵ See Committee on the Rights of the Child, general comment No. 4 (2003).

⁶ See the Convention on the Rights of the Child and the Declaration of the Rights of the Child.

information that could harm their moral and spiritual development and health, an aim that could only be achieved by imposing a restriction on the rights of the organizer, lawfully concluded that it was not possible to allow the assembly to be held on the proposed date.

4.9 The State party submits that the motive for the refusal to hold the parade did not include any manifestation of intolerance towards persons with non-traditional sexual orientation and was determined only by the need to protect children's rights.

4.10 The State party observes that the courts lawfully concluded that the local authorities were not obligated to propose another time and venue for the parade, since the aims of the event violated the provisions of the law, in that it was aimed at promoting homosexuality and violating the rights of children.

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

5.1 On 15 September 2015, the author provided comments on the State party's observations. He submits that the European Court of Human Rights, in its decision of 21 October 2010 on the case *Alekseyev v. Russia*,⁷ found that the refusal to allow planned gay pride parades in 2006, 2007 and 2008 revealed a violation of articles 11 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European on Human Rights).⁸

5.2 The author states that the European Commission for Democracy through Law (the Venice Commission), in its Opinion on the issue of the prohibition of so-called "propaganda of homosexuality" in the light of recent legislation in some member States of the Council of Europe (Opinion 707/2012), concluded that the statutory provisions prohibiting "propaganda of homosexuality" are incompatible with the provisions of the European Convention on Human Rights and international human rights standards, and therefore recommended that they should be repealed.

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 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that all available domestic remedies have been exhausted. It also notes that, in the present case, the State party has not submitted any challenges regarding the exhaustion of all available domestic remedies. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee also notes the author's claim that his rights under articles 21 and 26 have been violated since he was denied the opportunity to hold a gay pride parade and he was discriminated against on the basis of his sexual orientation. The Committee considers that these claims have been sufficiently substantiated for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

⁷ European Court of Human Rights, *Alekseyev v. Russia*, Applications Nos. 4916/07, 25924/08 and 14599/09, Judgment of 21 October 2010.

⁸ The author also cites the Committee's findings in *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010) and *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009).

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 claim of a violation of his rights under articles 21 and 26 of the Covenant. The Committee 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 (para. 1). 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 (para. 25).

7.3 The Committee further recalled in that same general comment that article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online and in public and private spaces (para. 6). 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 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 (para. 36).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. Where this onus is not met, article 21 is violated (*ibid.*).¹⁰

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.¹¹ States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public,¹² counterdemonstrators and private security providers.¹³

7.5 In the present case, the Committee observes that both the State party and the author agree that the refusal to permit the holding of a gay pride parade in the centre of Simferopol from 11 a.m. to 1 p.m. on 21 April 2014 was an interference with the author's right of assembly, but the parties disagree as to whether the restriction in question was permissible.

7.6 The Committee notes the State party's contention that its decision not to authorize the parade with the announced purpose – promotion of the rights and freedoms of sexual minorities – was necessary and proportionate and the only measure possible in a democratic society in view of the social aim of protecting minors from information detrimental to their moral and spiritual development and health. The Committee also notes the State party's claims that the parade could outrage the religious and moral sensibilities of other people, that it would provoke a negative reaction from society and illegal action by the section of the population which did not share the author's position and that it could disrupt traffic. The

⁹ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

¹⁰ *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

¹¹ Since its decision in *Turchenyak v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), the Committee has often repeated that steps taken by States in response to an assembly "should be guided by the objective to facilitate the right" (para. 7.4). See also CCPR/C/BEN/CO/2, para. 33; A/HRC/20/27, para. 33; and Human Rights Council resolution 38/11, operative para. 4.

¹² *Alekseev v. Russian Federation*, para. 9.6.

¹³ General comment No. 37 (2020), para. 24.

Committee also notes the information provided by the author that he was willing to guarantee that, while realizing his right to peaceful assembly with the announced purpose, he would respect public order and the norms of public morality and that he had informed the authorities of his readiness to modify the itinerary of the parade.

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 (para. 46).

7.8 Restrictions imposed for the protection of “the rights and freedoms of others” may relate to the protection of the Covenant or other human rights of people not participating in the assembly. In the present 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”,¹⁴ public expression of homosexual identity or a call for respect for the rights of homosexuals could have a negative effect on minors’ rights and freedoms.

7.9 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 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 (para. 22).¹⁵ A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation (para. 48). 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 homosexual persons.

7.10 The Committee notes the author’s claim that, by refusing to authorize the planned gay pride parade, the authorities subjected him to discrimination on the ground of sexual orientation. The Committee also notes the State party’s claim that the motive for the refusal to authorize the parade did not include any manifestation of intolerance towards persons with non-traditional sexual orientation and was determined only by the need to protect minors’ rights.

7.11 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 (para. 25).

7.12 The Committee recalls that, in paragraph 1 of its general comment No. 18 (1989) on non-discrimination, 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, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With reference to its jurisprudence,¹⁶ the Committee recalls that the prohibition against discrimination under article 26 also covers discrimination based on sexual orientation and gender identity.¹⁷

¹⁴ European Court of Human Rights, *Alekseyev v. Russia*, para. 86; *Zhdanov and others v. Russia*, Applications Nos. 12200/08, 35949/11 and 58282/12, decision of 16 October 2019; *Alekseyev and others v. Russia*, Applications Nos. 14988/09 and 50 others, decision of 6 May 2019.

¹⁵ *Alekseev v. Russian Federation*, para. 9.6.

¹⁶ *Toonen v. Australia* (CCPR/C/50/D/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.

¹⁷ *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.3.

7.13 The Committee notes the State party's claims that the authorities' decision did not include any manifestation of intolerance towards persons with non-traditional sexual orientation; and that State policy protects minors from factors that negatively influence their spiritual and moral development. The Committee considers, however, that the authorities disagreed with the homosexual content of the proposed parade, expressly drawing a distinction based on sexual orientation and gender identity, and that the decision thus constituted a distinction on grounds prohibited under article 26.

7.14 The Committee further recalls its jurisprudence that not every distinction based on the grounds listed in article 26 of the Covenant amounts to discrimination, as long as it is based on reasonable and objective criteria and pursues a legitimate aim under the Covenant. 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 that the restriction on peaceful assembly was based on reasonable and objective criteria. Moreover, no evidence which would point to the existence of factors that might justify that assessment has been advanced.

7.15 In such circumstances, the obligation of the State party was to protect the author in the exercise of his rights under the Covenant and not to contribute to suppressing those rights.¹⁸ The Committee further notes that it has previously concluded that the laws banning the "promotion of non-traditional sexual relations to minors" in the State party exacerbate 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 has called for the repeal of such laws.¹⁹ Accordingly, the Committee 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, in pursuit of an aim that was legitimate under the Covenant, and that the prohibition therefore amounted to a violation of the author's rights under articles 21 and 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. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the rights under articles 21 and 26 of the Covenant may be fully enjoyed in the State party.

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

¹⁸ *Alekseev v. Russian Federation*, para. 9.6.

¹⁹ CCPR/C/RUS/CO/7, para. 10. See also CRC/C/RUS/CO/4-5, paras. 24–25.

Annex

Individual opinion of Committee member Gentian Zyberi (concurring)

1. I agree with the decision of the Committee on the merits, finding that the facts before it disclose a violation by the State party of articles 21 and 26 of the Covenant. My individual opinion concerns matters of admissibility and reference, since the violation occurred in Simferopol, the capital of the Autonomous Republic of Crimea, whose military annexation in 2014 by the Russian Federation remains a contentious matter of international concern. The complaint is brought against the Russian Federation, given the fact that it exercises de facto control over the territory. While the Committee is driven by its primary concern to ensure that civil and political rights under Covenant are protected at all times and in all places, including in occupied territory, this issue needs to be given some consideration. This also follows from the General Assembly resolutions on the human rights situation in Crimea and general public international law.

General Assembly resolutions on the human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine

2. The General Assembly of the United Nations has addressed the situation in the Autonomous Republic of Crimea through several resolutions in the period between March 2014 and December 2019, affirming its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders.¹ In its resolution 68/262 of March 2014, the General Assembly underscored that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol. Moreover, it called on all States, international organizations and specialized agencies to refrain from any action or dealing that might be interpreted as recognizing any such altered status.

3. The difficulties concerning the protection of human rights in the Autonomous Republic of Crimea have been repeated over the years by the General Assembly.² In its resolution 72/190 of December 2017, the General Assembly demanded that the Russian Federation respect obligations under international law with regard to respecting the laws in force in Crimea prior to occupation. More recently, in December 2019, in its resolution 74/168, the General Assembly called upon all international organizations and specialized agencies of the United Nations system, when referring to Crimea in their official documents, communications and publications, including with regard to statistical data of the Russian Federation, to refer to “the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation”, and encouraged all States and other international organizations to do the same.

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

5. In this manner, the Committee would be following the recommendations of the General Assembly contained in its 2014 and 2019 resolutions, as well as general international law requirements related to non-recognition of an unlawful situation.

¹ General Assembly resolutions 68/262, 71/205, 72/190, 73/263 and 74/168.

² Ibid.