

## **ALEKSEYEV v. RUSSIA**

**(Applications nos. 4916/07, 25924/08 and 14599/09)**

### **1. Reference Details**

Jurisdiction: European Court of Human Rights (First Section)

Date of decision: 21 October 2010

Case Status: Concluded.

Link to full court judgment:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=875961&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

### **2. Facts**

The applicant, Mr Nikolay Aleksandrovich Alekseyev, is a gay rights activist living in Moscow. In the two years between May 2006 and May 2008, Mr Alekseyev attempted to organise several gay pride marches in Moscow to draw attention to discrimination against the gay and lesbian minority in Russia. As required by law, Mr Alekseyev provided notification of the details of each march to the then mayor of Moscow, Mr Yuri Luzhkov. On every occasion, the mayor refused permission to hold the march on grounds of public order and prevention of violence against the participants.

During the period in which Mr Alekseyev was attempting to organise such marches, Mr Luzhkov made numerous statements confirming that he would not permit gay parades to take place in Moscow as he did not wish “to stir up society, which is ill-disposed to such occurrences of life”. He suggested that 99.9% of the population of Moscow supported the ban of such events, including all three of the major faiths – “the Church, the Mosque and the Synagogue” and that deviance from “the normal principles” should not be demonstrated in public.

Both the District Court and City Court of Moscow rejected Mr Alekseyev’s challenges against the decisions of the mayor on the basis that the ban of the proposed marches was, in each case, justified on safety grounds.

### **3. Law**

#### **National Law**

- Constitution of the Russian Federation
- The Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing (no. 54-FZ of 18 August 2004) (Assemblies Act)

#### **European Convention of Human Rights**

- Article 11 (freedom of assembly and association)

- Article 13 (effective remedy)
- Article 14 (prohibition of discrimination)

#### **4. Legal Arguments**

The applicant argued that the ban imposed by the Moscow authorities on the proposed gay pride marches was a violation of his right to peaceful assembly which was not in accordance with law, did not pursue any legitimate aim and was not necessary in a democratic society. He argued that neither the Assemblies Act nor any other national legislation provided for such a ban on public events, but rather required the authorities to suggest an alternative venue where the initial proposal was not acceptable. He submitted that the Government's argument relating to the protection of morals was not justified as it only took into consideration the attitudes of dominant public opinion and ignored notions of diversity and pluralism. The applicant further argued that he did not have an effective remedy against the alleged violation of his freedom of assembly, and that the manner in which the Moscow authorities had treated his application to hold the public events was discriminatory on the grounds of his sexual orientation and that of other participants in the proposed marches.

The Government argued that, in prohibiting the marches from taking place in order to protect public safety, prevent disorder, protect morals and the rights and freedoms of others, the Moscow authorities had acted lawfully and within their margin of appreciation. The marches had to be banned for the protection of morals given that the promotion of homosexuality was incompatible with the religious doctrines of the majority of the population. If the marches had been allowed to proceed, the Government would have been in breach of the rights of those people whose religious and moral beliefs included a negative attitude towards homosexuality. The Government considered its margin of appreciation to be wide in this case given the lack of consensus between the Council of Europe member states regarding the acceptance of homosexuality. The Government contested the applicant's allegation that he did not have an effective remedy on the basis that he had availed himself of the opportunity to bring judicial proceedings. The Government contested the applicant's allegation of discrimination stating that the ban was not intended to discriminate against the applicant.

#### **5. Decision**

In a unanimous decision, the Court found violations of Article 11, 13 and 14.

##### *Article 11*

The Court held that the interference with the Applicant's freedom of peaceful assembly was not necessary in a democratic society given that the Government had not provided sufficient evidence that (i) the marches would cause public disorder and violence, or (ii) any anticipated public disorder and violence could not have been addressed through adequate security arrangements. It further held that the fact that the marches may have offended the

religious doctrines and moral values of the majority in Moscow was not a sufficient ground for banning these events. It stated that:

*"[I]t would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority".*

The Court stated that there is a long-standing European consensus on the rights of individuals to openly identify themselves as gay, lesbian or any other sexual minority, and to promote their rights and freedoms, in particular by exercising their freedom of peaceful assembly. As such, it rejected the Government's argument that it was entitled to apply a wide margin of appreciation on issues relating to sexual orientation.

#### *Article 13*

The Court found that the domestic remedy available to the applicant did not guarantee effective redress before the proposed date of each march and therefore represented a violation of Article 13 in conjunction with Article 11 of the Convention.

#### *Article 14*

The Court found that there was a violation of Article 14 in conjunction with Article 11 of the Convention. It reiterated that sexual orientation is covered by Article 14, and stated that:

*"[W]hen the distinction in question operates in this intimate and vulnerable sphere of an individual's private life, particularly weighty reasons need to be advanced before the Court to justify the measure complained of. Where a difference of treatment is based on sex or sexual orientation the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require the measure chosen to be suitable in general for realising the aim sought; it must also be shown that it was necessary in the circumstances. Indeed, if the reasons advanced for a difference in treatment were based solely on the applicant's sexual orientation, this would amount to discrimination under the Convention."*

Following the above reasoning, the Court held that as the main reason for the ban imposed on the events organised by the Applicant was the fact that such events were viewed as promoting homosexuality, as evidenced by the expressed personal opinions of the mayor of Moscow, the applicant suffered discrimination on the ground of the applicant's sexual orientation and that of other participants in the proposed events.