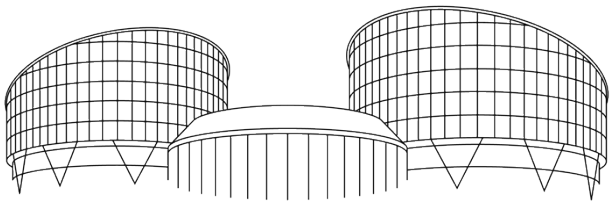

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ALEKSEYEV v. RUSSIA

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

JUDGMENT

STRASBOURG

21 October 2010

FINAL

11/04/2011

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Alekseyev v. Russia**,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 30 September 2010

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in three applications (nos. 4916/07, 25924/08 and 14599/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Nikolay Aleksandrovich Alekseyev ("the applicant"), on 29 January 2007, 14 February 2008 and 10 March 2009.

2. The applicant was represented by Mr D.G. Bartenev, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged a violation of his right to peaceful assembly on account of the repeated ban on public events he had organised in 2006, 2007 and 2008. He also complained that he had not had an effective remedy against the alleged violation of his freedom of assembly and that the Moscow authorities' treatment of his applications to hold the events had been discriminatory.

4. On 17 September 2009 the Court decided to give notice of the applications to the Government. It was also decided to join the applications and to rule on the admissibility and merits of the applications at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Moscow. He is a gay rights activist.

A. Pride March and picketing on 27 May 2006

6. In 2006 the applicant, together with other individuals, organised a march to draw public attention to discrimination against the gay and lesbian minority in Russia, to promote respect for human rights and freedoms and to call for tolerance on the part of the Russian authorities and the public at large towards this minority. The march was entitled "Pride March" that year, and "Gay Pride" in subsequent years, to replicate similar events held by homosexual communities in big cities worldwide. The date chosen for the march, 27 May 2006, was also meant to celebrate the anniversary of the abolition of criminal liability in Russia for homosexual acts.

7. On 16 February 2006 the Interfax news agency published a statement by Mr Tsoy, the press secretary of the mayor of Moscow, to the effect that "the government of Moscow [would] not even consider allowing the gay parade to be held". Interfax further quoted Mr Tsoy as saying: "The mayor of Moscow, Mr Luzhkov, has firmly declared: the government of the capital city will not allow a gay parade to be held in any form, whether openly or disguised [as a human rights demonstration], and any attempt to hold any unauthorised action will be severely repressed".

8. On 22 February 2006 Interfax quoted the mayor of Moscow as having said, on a different occasion, that if he received a request to hold a gay parade in Moscow he would impose a ban on it because he did not want "to stir up society, which is ill-disposed to such occurrences of life" and continuing that he himself considered homosexuality "unnatural", though he "tried to treat everything that happens in human society with tolerance".

9. On 17 March 2006 the first deputy to the mayor of Moscow wrote to the mayor about the imminent campaign to hold a gay parade in Moscow in May that year. She considered that allowing the event would be contrary to health and morals, as well as against the will of numerous petitioners who had protested against the idea of promoting homosexuality. Having noted that the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing ("the Assemblies Act") did not provide for the possibility of banning the event, she stated that the authorities could suggest changing the venue or time or that, if the event turned out to be a real public threat, it could be interrupted. She requested the mayor's agreement on developing an

effective action plan for the prevention of any actions – public or otherwise – aimed at promoting or holding a gay parade or festival.

10. On 24 March 2006 the mayor of Moscow instructed his first deputy, five other officials of his office and all prefects of Moscow "to take effective measures for the prevention and deterrence of any gay-oriented public or mass actions in the capital city". He called for action proposals based on the legislative and regulatory framework and demanded an "active mass-media campaign and social commercials with the use of petitions brought by individuals and religious organisations".

11. On 15 May 2006 the organisers submitted a notice to the mayor of Moscow stating the date, time and route of the intended march. It was to take place between 3 p.m. and 5 p.m. on 27 May 2006, with an estimated number of about 2,000 participants, who would march from the Moscow Post Office along Myasnitskaya Street to Lubyanskaya Square. The organisers undertook to cooperate with the law-enforcement authorities in ensuring safety and respect for public order by the participants and to comply with regulations on restriction of noise levels when using loudspeakers and sound equipment.

12. On 18 May 2006 the Department for Liaison with Security Authorities of the Moscow Government informed the applicant of the mayor's decision to refuse permission to hold the march on grounds of public order, for the prevention of riots and the protection of health, morals and the rights and freedoms of others. It stated, in particular, that numerous petitions had been brought against the march by representatives of legislative and executive State bodies, religious denominations, Cossack elders and other individuals; the march was therefore likely to cause a negative reaction and protests against the participants, which could turn into civil disorder and mass riots.

13. Having received the above reply, the organisers submitted a notice with a view to holding another event on the same date and time as the march for which permission had been refused. They informed the prefect of their intention to hold a picket in the park at Lubyanskaya Square.

14. On 19 May 2006 the applicant challenged before a court the mayor's decision of 18 May 2006 refusing permission to hold the march.

15. On 23 May 2006 the deputy prefect of the Moscow Central Administrative Circuit refused permission to hold the picket on the same grounds as those given for the refusal to hold the march.

16. On 26 May 2006 Interfax quoted the mayor of Moscow as saying in an interview to the radio station Russian Radio that no gay parade would be allowed in Moscow under any circumstances, "as long as he was the city mayor". He stated that all three "major" religious faiths – "the Church, the Mosque and the Synagogue" – were against it and that it was absolutely unacceptable in Moscow and in Russia, unlike "in some Western country more progressive in that sphere". He went on to say: "That's the way morals

work. If somebody deviates from the normal principles [in accordance with which] sexual and gender life is organised, this should not be demonstrated in public and anyone potentially unstable should not be invited." He stated that 99.9% of the population of Moscow supported the ban.

17. On the same day the Tverskoy District Court of Moscow dismissed the applicant's complaint. It referred to provisions of the Assemblies Act concerning the authorities responsible for ensuring the safety of events (sections 12 and 14), who were entitled to suggest changing the time or venue, or both, of a proposed event on safety grounds (section 12). It also noted that a public event could be held at any suitable venue unless it threatened to cause the collapse of buildings or constructions or entailed safety risks for its participants (section 8). It then noted the organisers' right to hold the event at the venue and time indicated in the notice to the authorities, or at the venue and time agreed with the authorities if they had suggested a change, and stated that it was prohibited to hold the event if the notice had not been submitted on time or if the organisers had failed to agree to a change of venue or time proposed by the authorities (section 5). Finally, the court noted that the organisers, officials or other individuals were prohibited from interfering with the expression of opinion by the participants in the public event unless they breached public order or contravened the format of the event (section 18). It concluded on the basis of these provisions that the authorities could ban a public event on safety grounds and that it was for the organisers to submit a notice suggesting a change of venue and time for consideration by the authorities. It considered that the refusal to hold the event in the present case had legitimate grounds and that the applicant's right to hold assemblies and other public events had not been breached.

18. The applicant lodged an appeal, relying on section 12 of the Assemblies Act, which imposed an obligation on the authorities, and not the organisers, to make a reasoned proposal to change the venue or the time of the event as indicated in the notice. He also challenged the finding that the ban was justified on safety grounds, claiming that concerns for safety could have been addressed by providing protection to those taking part in the event.

19. On 27 May 2006 the applicant and several other persons participated in a conference celebrating the International Day Against Homophobia, at which they announced their intention to gather in the Aleksandrovskiy Garden to lay flowers at the war memorial, the Tomb of the Unknown Soldier, allegedly to commemorate the victims of fascism, including gay and lesbian victims, and to hold a fifteen-minute picket at the Moscow mayor's office to protest against the ban on the march and the picketing.

20. Later that day the applicant and about fifteen other persons arrived at the Aleksandrovskiy Garden to find the gates closed, with police patrolling the access. According to the applicant, there were about 150 policemen

from the special riot squad (OMON), and also about a hundred individuals protesting against the flower-laying event planned by the applicant and his fellow participants.

21. The applicant was arrested and taken to the police station to be charged with the administrative offence of breaching the conditions for holding a demonstration.

22. In the meantime, other participants in the flower-laying event proceeded towards the Moscow mayor's office, with protesters pursuing and attacking them. Several persons reportedly sustained slight injuries. According to the applicant, the OMON arrested about one hundred persons involved in attacking those taking part in the event.

23. The applicant submitted two reports by NGOs on the events of 27 May 2006, one prepared by the International Lesbian and Gay Association and another one by Human Rights Watch. These reports corroborated the applicant's account of events.

24. On 31 May 2006 Interfax quoted the mayor of Moscow as saying in a television interview: “Those gays trying to lay flowers at the Tomb of the Unknown Soldier ... it is a provocation. It was a desecration of a holy place” and reiterating the condemnation of the action on behalf of the public at large.

25. On 16 June 2006 the applicant challenged before a court the prefect's decision of 23 May 2006 refusing to allow the picketing. On 22 August 2006 the Taganskiy Disctrict Court of Moscow dismissed the complaint, finding that the ban had been justified on safety grounds. The applicant appealed.

26. On 19 September 2006 the Moscow City Court examined the appeal against the judgment of 26 May 2006. It upheld the first-instance judgment as lawful and justified in the circumstances.

27. On 28 November 2006 the Moscow City Court examined the appeal against the judgment of 22 August 2006 and dismissed it on essentially the same grounds.

B. Pride March and picketing on 27 May 2007

28. In 2007 the applicant, together with other individuals, decided to organise a march similar to the one attempted in 2006.

29. On 15 May 2007 the organisers submitted a notice to the mayor of Moscow, stating the date, time and route of the intended march and its purpose, all of which were identical to the march proposed the previous year, except that the estimated number of participants was 5,100.

30. On 16 May 2007 the Department for Liaison with Security Authorities of the Moscow Government informed the applicant that permission to hold the march had been refused on the grounds of potential breaches of public order and violence against the participants, with

reference to the events of the previous year. The organisers were warned that holding the event without permission would render them liable.

31. Having received the above reply, the organisers submitted a notice with a view to holding other events on the same date and time as the march for which permission had been refused. They informed the prefect of the Moscow Central Administrative Circuit of their intention to hold a picket in front of the Moscow mayor's office at Tverskaya Square and another one in Novopushkinskiy Park.

32. On 23 May 2007 the organisers were informed that the prefect had refused permission to hold the picket at both venues on the grounds of public order, prevention of riots and protection of health, morals and the rights and freedoms of others. They were warned that they would be held liable for holding any unauthorised picketing.

33. On 26 May 2007 the applicant and several other persons announced at the annual "LGBT Rights are Human Rights" conference that they would meet the following day in front of the Moscow mayor's office to file a petition together in protest against the ban on the march and the picketing.

34. On 27 May 2007 the applicant and about twenty other individuals were stopped by the police as they attempted to approach the mayor's office. The applicant and two other men were detained at the police station for twenty-four hours on charges of having committed the administrative offence of disobeying a lawful order from the police. On 9 June 2007 the applicant was found guilty of the administrative offence and had to pay a fine of 1,000 roubles. That decision was upheld by the Tverskoy District Court on 21 August 2007.

35. On 30 May 2007 the applicant challenged before a court the decision of 16 May 2007 by the mayor of Moscow refusing permission to hold the march. In particular, he alleged that under the Assemblies Act, the authorities were not entitled to ban public events, but could only propose changing their time and location, which in the present case they had not. He also argued that official disapproval of the purpose of a public event was not by itself a sufficient ground, in a democratic society, for a ban.

36. On 26 June 2007 the applicant challenged before a court the prefect's decision of 23 May 2007 refusing permission for the picketing.

37. On 24 August 2007 the Taganskiy District Court of Moscow dismissed the complaint concerning the ban on the picketing, finding that the ban had been justified on safety grounds. That judgment was upheld on 8 November 2007 by the Moscow City Court.

38. On 4 September 2007 the Tverskoy District Court dismissed the applicant's claim, upholding the grounds for the ban on the march and confirming the lawfulness of the authorities' acts. That judgment was upheld on 6 December 2007 by the Moscow City Court.

C. Pride Marches in May 2008 and picketing in May and June 2008

39. In 2008 the applicant, together with other individuals, decided to organise several marches similar to the ones attempted the two previous years.

40. On 18 April 2008 the organisers submitted a notice to the mayor of Moscow stating the date, time and route of ten intended marches to be held on 1 and 2 May 2008 in central Moscow.

41. On 24 April 2008 the Department for Liaison with Security Authorities of the Moscow Government informed the applicant that permission to hold all the marches had been refused on the grounds of potential breaches of public order and violence against the participants.

42. Having received the above reply, on 22 April 2008 the organisers submitted a notice with a view to holding a further fifteen marches from 3 to 5 May 2008.

43. On 28 April 2008 the Department for Liaison with Security Authorities of the Moscow Government informed the applicant that permission to hold the fifteen marches had also been refused on the same grounds.

44. The applicant submitted a number of alternative proposals for holding marches on different dates in May 2008 and in various locations. These proposals were refused, on the same grounds, as follows:

(i) applications of 25 and 28 April 2008 (30 marches in total), refused on 5 May 2008;

(ii) application of 30 April 2008 (20 marches), refused on 7 May 2008;

(iii) application of 5 May 2008 (20 marches), refused on 8 May 2008;

(iv) application of 8 May 2008 (15 marches), refused on 13 May 2008;

(v) application of 12 May 2008 (15 marches), refused on 16 May 2008;

(vi) application of 15 May 2008 (15 marches), refused on 21 May 2008;

(vii) application of 19 May 2008 (15 marches), refused on 23 May 2008.

45. On 16 May 2008 the applicant gave notice to the President of Russia of his intention to hold a march in the Aleksandrovskiy Garden on 31 May 2008. He received no reply to the notice.

46. From 28 April 2008 to 17 June 2008 the applicant brought several court actions challenging the decisions by the mayor of Moscow refusing permission to hold the marches. The Tverskoy District Court joined these applications and on 17 September 2008 it dismissed the applicant's claim, upholding the grounds for the bans on the marches and confirming the lawfulness of the authorities' acts. That judgment was upheld on 2 December 2008 by the Moscow City Court.

47. In the meantime, the applicant also attempted to organise picketing to call for criminal charges to be brought against the mayor of Moscow for hindering the holding of public events. The picket intended to be held on 17 May 2008 was prohibited on 13 May 2008 on the same grounds as those

given for the previous events. This decision was reviewed and upheld by the Taganskiy District Court on 22 July 2008 and, on appeal, by the Moscow City Court on 14 October 2008.

48. On 1 June 2008 the applicant, in a group of twenty individuals, held a picket on Bolshaya Nikitskaya Street for about ten minutes.

II. RELEVANT DOMESTIC LAW

49. Article 30 of the Constitution of the Russian Federation provides that everyone has the right to freedom of association. Article 55 § 3 provides that rights and freedoms may be restricted by federal laws for the protection of constitutional principles, public morals, health and the rights and lawful interests of others, and to ensure the defence and security of the State.

50. The Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing (no. 54-FZ of 18 August 2004 – "the Assemblies Act") provides in so far as relevant as follows:

Section 5: Organisation of a public event

"...

3. The organiser of a public event shall have the right:

(i) to hold meetings, demonstrations, marches and pickets at the venues and time specified in the notice on holding the public event or as altered by agreement with the executive authority of the subject of the Russian Federation or the municipal body; to hold assemblies at a venue that has been specially allocated or adapted to ensure the safety of citizens while such assemblies are held;

...

(v) in holding assemblies, meetings, demonstrations and marches, to use sound-amplifying technical devices (audio, video and other equipment) with a level of sound corresponding to the standards and norms established in the Russian Federation.

4. The organiser of the public event must:

(i) submit to the executive authority of the subject of the Russian Federation or the municipal body a notice on holding the public event in accordance with the procedure prescribed by section 7 of this Federal Law;

(ii) no later than three days prior to the holding of the public event (except in the case of an assembly or picket held by a single participant), notify in writing the executive authority of the subject of the Russian Federation or the municipal body of the acceptance (or non-acceptance) of its proposal to alter the venue and/or time of the public event as specified in the notice of the event;

(iii) ensure compliance with the conditions for holding the public event as specified in the notice of the event or with any conditions that have been altered as a result of an

agreement reached with the executive authority of the subject of the Russian Federation or the municipal body;

(iv) require the participants in the public event to observe public order and comply with the conditions for holding the public event. Persons who fail to comply with the lawful requirements of the organiser of the public event may be expelled from the venue of the public event;

(v) ensure, within their competence, public order and the safety of citizens when holding the public event and, in instances specified by this Federal Law, perform this obligation jointly with the authorised representative of the executive authority of the subject of the Russian Federation or the municipal body and the authorised representative of the Ministry of the Interior and comply with all their lawful requirements;

...

5. The organiser of the public event shall have no right to hold it if the notice on holding the public event has not been submitted in due time or no agreement has been reached with the executive authority of the subject of the Russian Federation or the municipal body on their reasoned proposal as to the alteration of the venue and/or time of the public event."

Section 8: Venue for holding a public event

"A public event may be held at any venue suitable for holding the event if its conduct does not create a threat of the collapse of buildings or structures or other threats to the safety of the participants in the public event. Conditions governing bans or restrictions on holding a public event at particular venues may be specified by federal laws.

..."

Section 12: Obligations of the executive authority of the subject of the Russian Federation and the municipal body

"1. The executive authority of the subject of the Russian Federation or the municipal body, upon receiving notice of the public event, must:

...

(ii) inform the organiser of the public event, within three days of receipt of the notice on holding the event (or, if a notice on holding a picket by a group of individuals is submitted within less than five days before its intended date, on the day of its receipt), of a reasoned proposal to alter the venue and/or time of the public event, as well as of any proposal for the organiser of the event to bring the aims, form or other conditions for holding the event as indicated in the notice into line with the requirements of this Federal Law;

(iii) designate, depending on the form of the public event and the number of participants, an authorised representative to assist the event organisers in conducting the event in accordance with this Federal Law. The authorised representative shall be

formally appointed by a written order which must be forwarded to the organiser of the public event in advance [of the event];

...

(v) ensure, within its competence and jointly with the organiser of the public event and the authorised representative of the Ministry of the Interior, public order and safety of citizens while holding the event and, if necessary, provide them with urgent medical aid;

..."

Section 14: Rights and obligations of the authorised representative of the Ministry of the Interior

"...

3. The authorised representative of the Ministry of the Interior must:

(i) facilitate the conduct of the public event;

(ii) ensure, jointly with the organiser of the public event and the executive authority of the subject of the Russian Federation or the municipal body, public order and safety of citizens and compliance with the law while holding the public event."

Section 18: Securing the conditions for holding a public event

"1. The organiser of the public event, officials or other individuals may not prevent the participants in the event from expressing their opinion in a manner that does not breach public order or the conditions for holding the public event.

..."

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

51. The following are extracts from Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe to member States on measures to combat discrimination on grounds of sexual orientation or gender identity:

"...

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order ..."

52. On 6 June 2006 the Council of Europe Commissioner for Human Rights issued the following press release:

"In a statement given in St Petersburg yesterday, Commissioner Hammarberg stressed that the rights to freedom of expression and peaceful assembly belong to all people and that the authorities have a duty to protect peaceful demonstrators. The Commissioner regrets that his statement has been misrepresented by the news agency RIA Novosti (Report by RIA Novosti dated 5 June 2006 at 13:33)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

53. The applicant complained of a violation of his right to peaceful assembly. He claimed that the ban repeatedly imposed by the Moscow authorities on holding the Pride March and the picketing had not been in accordance with the law, had not pursued any legitimate aim and had not been necessary in a democratic society. He relied on Article 11 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

54. The Government contested that argument. They submitted that the authorities had acted lawfully and within their margin of appreciation when deciding to prohibit the events at issue.

A. Admissibility

55. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

56. The Government contended that the ban on the events organised by the applicant had been imposed in accordance with the law, had pursued a legitimate aim and had been necessary in a democratic society.

57. They first pointed out that Article 55 § 3 of the Constitution and section 8(1) of the Assemblies Act should be construed as providing for restrictions on public events on safety grounds and for the protection of public order. In the present case, the events which the applicant had sought to hold had carried an obvious risk of confrontation between the participants and their opponents. They claimed to have received numerous public petitions from various political, religious, governmental and non-governmental organisations calling for the ban, some of which included threats of violence should the events go ahead. They were therefore concerned about the safety of the participants and the difficulties in maintaining public order during the events.

58. The Government further claimed that Article 11 § 2 should be interpreted as providing for a wide margin of appreciation within which the authorities should be able to choose measures appropriate for maintaining public order. They referred to the cases of *Barankevich v. Russia* (no.10519/03, 26 July 2007) and *Plattform "Ärzte für das Leben" v. Austria* (21 June 1988, Series A no. 139) for principles governing the authorities' conduct at public events marked by a high probability of violence. In the present case, the Government asserted that they could not have avoided banning the event, because no other measure could have adequately addressed the security risks. They further claimed that if the Court were to give an assessment different from that of the domestic authorities it would put itself in the position of a "court of fourth instance".

59. In addition to that, the Government submitted that the event in question had had to be banned for the protection of morals. They emphasised that any promotion of homosexuality was incompatible with the "religious doctrines for the majority of the population", as had been made clear in the statements by the religious organisations calling for the ban. They contended that allowing the gay parades would be perceived by believers as an intentional insult to their religious feelings and a "terrible debasement of their human dignity".

60. The Government relied on the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which guaranteed individuals respect for and protection of their religious and moral beliefs and the right to bring up their children in accordance with them. They claimed that authorising gay parades would breach the rights of those people whose religious and moral beliefs included a negative attitude towards homosexuality. They further noted that in the case of *Otto-Preminger-Institut v. Austria* (20 September 1994, §§ 52 and 56, Series A no. 295-A) the Court had recognised the great role of religion in people's everyday life, which should be taken into account in order to prevent religious beliefs from becoming the subject of unreasonable and insulting accusations. They concluded on that basis that the State must take into account the requirements of the major religious associations and that "the democratic State must protect society from destructive influence on its moral fundamentals, and protect the human dignity of all citizens, including believers". In the present case, the ideas of the event organisers were not neutral to the rest of society, but had actually encroached on the rights, lawful interests and human dignity of believers.

61. The Government also alleged that there was no consensus between the Council of Europe member States as to the extent to which homosexuality was accepted in each country. According to them, "[s]uch relations are allowed in some countries, in other countries they are considerably restricted". For this reason they claimed that the domestic authorities were better informed as to what might insult believers in the respective communities. To illustrate this point they referred to the case of *Dudgeon v. the United Kingdom* (22 October 1981, §§ 56-58, Series A no. 45), in which the Court had discussed the diversity of moral and cultural values in the context of criminal liability for homosexual conduct, which had existed at the material time in Northern Ireland, while stressing that they did not adhere to the conclusion arrived at by the Court in that case. They also cited at length the case of *Müller and Others v. Switzerland* (24 May 1988, Series A no. 133), where the Court had upheld measures by the authorities restricting general access to an exhibition of paintings depicting "crude sexual relations, particularly between people and animals". They suggested that gay parades should be viewed from the same standpoint, taking into account the interests of involuntary spectators,

especially children. In their opinion, any form of celebration of homosexual behaviour should take place in private or in designated meeting places with restricted access. They added that such clubs, bars and entertainment facilities existed aplenty in Moscow (listing twenty-four examples of such places) and were well frequented, their operation not being hindered by the authorities.

62. In the Government's view, in Moscow the public was not yet ready to accept the holding of gay parades in the city, unlike in Western countries, where such celebrations were regular occurrences. It was thus the authorities' duty to demonstrate sensitivity to the existing public resentment of any overt manifestation of homosexuality. To that end they quoted a Russian celebrity performer, whose stage image capitalised on exaggeration of homosexual stereotypes, as saying that gay parades should not be conducted. They also referred to a statement apparently made by an organisation called "The Union of Orthodox Citizens", which promised to conduct a mass protest "should the homosexuals try to hold the march in Moscow". Likewise, the Orthodox Church was quoted as objecting to the gay parade as propaganda promoting sin, as had the Supreme Mufti for Russia, who had threatened mass protests by Muslims of Russia "as well as by all normal people" should the parade go ahead. They also quoted, although referring to his statement as extreme, the head Muslim authority of Nizhniy Novgorod, who had said that "as a matter of necessity, homosexuals must be stoned to death".

63. Finally, the Government claimed that the prohibition of the gay parades in Moscow had been supported by the Council of Europe Commissioner for Human Rights. They relied on the statement reported in the news, although they did not mention that this statement had been denied by the Commissioner (see paragraph 52 above).

(b) The applicant

64. The applicant contested the Government's submissions on every point. First, he disagreed that the ban on the public events he had sought to hold had been imposed in accordance with the law. He pointed out that neither the Assemblies Act nor any other legislative instrument provided for a ban on public events. The restrictions set out in section 8(1) of the Act on holding events in venues which were unsuitable for safety reasons required the authorities to suggest another venue, as set out in section 12 of the Act, and not to ban the event. In any case, even if the Court were to accept that the alleged impossibility of avoiding public disorder at any venue could provide a justification for the ban under domestic law, the applicant maintained that the ban did not comply with two other requirements of Article 8 § 2 of the Convention, in that it had failed to pursue a legitimate aim and had not been necessary in a democratic society.

65. As regards the three legitimate aims referred to by the Government, namely the protection of public safety and the prevention of disorder, the protection of morals and the protection of the rights and freedoms of others, the applicant considered all of them inapplicable. He argued that the reference to the protection of morals was not justified because the Government's definition of "morals" included only attitudes that were dominant in public opinion and did not encompass the notions of diversity and pluralism. Moreover, the events at issue could not by their nature affect morals because they had been intended as a demonstration in favour of human rights and civil liberties for the protection and equality of sexual minorities. No intention to demonstrate nudity or sexually explicit or provocative behaviour or material had ever been expressed by the organisers in their applications or public statements. The Government had not shown that any harm would have been caused to society or third persons by the proposed events. On the contrary, the applicant argued, the events would have been of benefit to Russian society by advocating the ideas of tolerance and respect for the rights of the lesbian and gay population.

66. He further contested the aims of protection of public safety and prevention of disorder because the planned marches and picketing had been intended to be strictly peaceful and orderly events by themselves. As regards the potential riots to be caused by the counter-demonstrators, the Government had not at any stage assessed the scale of possible clashes with the events' opponents and therefore their argument of inability to provide sufficient protection to the gay parades was unsubstantiated. In the three reference years the applicant had submitted numerous applications suggesting different formats and venues for the events, and the authorities had never given reasons as to why it was not possible to make security arrangements for any of them.

67. Finally, the applicant contended that the ban imposed on the events throughout the reference period had not been necessary in a democratic society. He referred to the Court's established case-law, stating that the mere possibility of confusing and even shocking part of society could not be regarded as a sufficient ground for such a sweeping measure as a total ban on the events in question (he referred to *Bączkowski and Others v. Poland*, no. 1543/06, § 64, ECHR 2007-VI). He submitted that the measure repeatedly taken in the present case was gravely disproportionate to the aims allegedly pursued by the authorities and was incompatible with the notion of a democratic society which was "pluralistic, tolerant and broadminded" (ibid., § 63). He argued that the authorities had failed even to attempt to comply with their obligation under Article 11 to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully. They had banned the events, which in their view were likely to be attacked, instead of protecting them. Moreover, they had endorsed the disapproval expressed by the events' opponents, claiming that they were

immoral and thus depriving the minority of a lawful right to hold a peaceful demonstration, a right that was inherent in a society striving to be democratic.

2. The Court's assessment

68. The Court observes that the Moscow authorities imposed a ban on the Pride March and picketing in 2006, 2007 and 2008 and enforced the ban by dispersing events held without authorisation and by finding the applicant and other participants who had breached the ban guilty of an administrative offence. There is accordingly no doubt that there has been an interference with the exercise of the applicant's freedom of peaceful assembly guaranteed by Article 11 § 1 of the Convention. In fact, the existence of the interference in the present case is not in dispute between the parties.

69. The Court further notes that the parties disagreed as to whether the Moscow authorities' acts were prescribed by law. They also disagreed as to whether the interference served a legitimate aim. However, the Court may dispense with ruling on these points because, irrespective of the aim and the domestic lawfulness of the ban, it fell short of being necessary in a democratic society, for the reasons set out below. To the extent that these issues are relevant to the assessment of the proportionality of the interference they will be addressed in paragraphs 78-79 below (see *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 53, ECHR 2006-II).

70. In so far as the proportionality of the interference is concerned, the Court observes that the relevant principles were set out in its judgment in *Bączkowski and Others* (cited above):

> "61. As has been stated many times in the Court's judgments, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11, and likewise of Articles 8, 9 and 10 of the Convention, the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a 'democratic society' (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86-89, ECHR 2003-II, and *Christian Democratic People's Party*, [cited above]).
>
> 62. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes are also important to the proper functioning of democracy. For pluralism is also built on genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs and artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through

belonging to associations in which they may integrate with each other and pursue common objectives collectively (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, ECHR 2004-I).

63. Referring to the hallmarks of a 'democratic society', the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see *Young, James and Webster v. the United Kingdom*, 13 August 1981, Series A no. 44, § 63, and *Chassagnou and Others v. France* [GC], nos. 25088/95 and 28443/95, § 112, ECHR 1999-III).

64. In *Informationsverein Lentia and Others v. Austria* (24 November 1993, § 38, Series A no. 276) the Court described the State as the ultimate guarantor of the principle of pluralism. Genuine and effective respect for freedom of association and assembly cannot be reduced to a mere duty on the part of the State not to interfere; a purely negative conception would not be compatible with the purpose of Article 11 nor with that of the Convention in general. There may thus be positive obligations to secure the effective enjoyment of these freedoms (see *Wilson and the National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 41, ECHR 2002-V, and *Ouranio Toxo v Greece*, no. 74989/01, § 37, ECHR 2005-X). This obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation."

71. Turning to the circumstances of the present case, the Court observes that the Government put forward two reasons for imposing the ban on the events organised by the applicant.

72. Their first argument, which also formed the ground on which the events were banned by the domestic authorities, related to concerns for the participants' safety and to the prevention of disorder. They alleged that the Moscow authorities, having received numerous protest petitions, had realised that any such event would cause a large-scale controversy with various groups who objected to any demonstrations supporting or promoting the interests of lesbians, gays or other sexual minorities. The petitions cited by the Government (paragraph 62 above), however, were not all of identical gist. Some petitioners, such as the Orthodox Church, simply expressed their objection to the events and to the general idea of people being homosexual and identifying themselves as such. Others, such as the Supreme Mufti, informed the authorities of their intention to hold a protest against the events, whereas the senior Muslim authority in Nizhniy Novgorod threatened violence.

73. The Court has previously stressed in this connection that freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95,

§ 86, ECHR 2001-IX). The participants must be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents. It is thus the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully (see *Plattform "Ärzte für das Leben"*, cited above, §§ 32 and 34).

74. The Court cannot accept the Government's argument that these petitions should be viewed as a general indication that the Pride March and the picketing had the potential to cause public disorder. The first group of petitions, calling for the events to be prohibited because the petitioners considered them immoral, without a threat of immediate counteraction at the site of the events, were irrelevant to safety considerations. They could only be taken into account for the purpose of restrictions to be imposed for the protection of morals, an issue that will be specifically addressed below.

75. The next group of petitions, indicating the authors' intention to engage in protest actions at the site of the events because they found them objectionable, should, on the contrary, have been carefully assessed from the standpoint of security arrangements. As a general rule, where a serious threat of a violent counter-demonstration exists, the Court has allowed the domestic authorities a wide discretion in the choice of means to enable assemblies to take place without disturbance (see *Plattform "Ärzte für das Leben"*, loc. cit.). However, the mere existence of a risk is insufficient for banning the event: in making their assessment the authorities must produce concrete estimates of the potential scale of disturbance in order to evaluate the resources necessary for neutralising the threat of violent clashes (see *Barankevich*, cited above, § 33). In the present case, no preliminary assessment of the risks posed by counter-demonstrations had been carried out. The subsequent events revealed that there was a potential total of about a hundred counter-protesters, a figure that is significant but by no means overwhelming on the scale of a city such as Moscow. The Court observes, moreover, that only a few of the petitions cited by the Government expressed determination on the part of the counter-protesters to proceed by unlawful means. The Government did not make any submissions as to whether any of the petitioners had attempted to give notice of their counter-demonstration. Had they done so, the authorities could have made arrangements to ensure that both events proceeded peacefully and lawfully, allowing both sides to achieve the goal of expressing their views without clashing with each other. It was for the Moscow authorities to address potential counter-protesters – whether by making a public statement or by replying to their petitions individually – in order to remind them to remain within the boundaries of the law when carrying out any protest actions.

76. As regards any statements calling for violence and inciting offences against the participants in a public event, such as those by a Muslim cleric from Nizhniy Novgorod, who reportedly said that homosexuals must be

stoned to death (see paragraph 62 above), as well as any isolated incidents of threats of violence being put into practice, they could have adequately been dealt with through the prosecution of those responsible. However, it does not appear that the authorities in the present case reacted to the cleric's call for violence in any other way than banning the event he condemned. By relying on such blatantly unlawful calls as grounds for the ban, the authorities effectively endorsed the intentions of persons and organisations that clearly and deliberately intended to disrupt a peaceful demonstration in breach of the law and public order.

77. In the light of the above findings, the Court concludes that the Government failed to carry out an adequate assessment of the risk to the safety of the participants in the events and to public order. It reiterates that if every probability of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 107). In the present case, the Court cannot accept the Government's assertion that the threat was so great as to require such a drastic measure as banning the event altogether, let alone doing so repeatedly over a period of three years. Furthermore, it appears from the public statements made by the mayor of Moscow, as well as from the Government's observations, that if security risks played any role in the authorities' decision to impose the ban, they were in any event secondary to considerations of public morals.

78. The Court observes that the mayor of Moscow on many occasions expressed his determination to prevent gay parades and similar events from taking place, apparently because he considered them inappropriate (see paragraphs 7, 8, 10, 16 and 24 above). The Government in their observations also pointed out that such events should be banned as a matter of principle, because propaganda promoting homosexuality was incompatible with religious doctrines and the moral values of the majority, and could be harmful if seen by children or vulnerable adults.

79. The Court observes, however, that these reasons do not constitute grounds under domestic law for banning or otherwise restricting a public event. Accordingly, no such arguments were put forward in the domestic proceedings, which remained focused on security issues. The Court is not convinced that the Government may at this stage substitute one Convention-protected legitimate aim for another one which never formed part of the domestic balancing exercise. Moreover, it considers that in any event the ban was disproportionate to either of the two alleged aims.

80. The Court reiterates that the guarantees of Article 11 of the Convention apply to all assemblies except those where the organisers and participants have violent intentions or otherwise deny the foundations of a "democratic society" (see *G. v. Germany*, no. 13079/87, Commission

decision of 6 March 1989, Decisions and Reports (DR) 60, p. 256, and *Christians against Racism and Fascism v. the United Kingdom*, Commission decision of 16 July 1980, DR 21, p. 138). As the Court stated in *Sergey Kuznetsov v. Russia* (no. 10877/04, § 45, 23 October 2008): "any measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it."

81. The Court further reiterates that it 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. Were this so, a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37, and *Barankevich*, cited above, § 31).

82. In the present case, having carefully studied all the material before it, the Court does not find that the events organised by the applicant would have caused the level of controversy claimed by the Government. The purpose of the marches and picketing, as declared in the notices of the events, was to promote respect for human rights and freedoms and to call for tolerance towards sexual minorities. The events were to take the form of a march and picketing, with participants holding banners and making announcements through loudspeakers. At no stage was it suggested that the event would involve any graphic demonstration of obscenity of a type comparable to the exhibition in the case of *Müller and Others* (cited above) referred to by the Government. The applicant submitted, and it was not contested by the Government, that the participants had not intended to exhibit nudity, engage in sexually provocative behaviour or criticise public morals or religious views. Moreover, it transpires from the mayor's comments (see, in particular, paragraphs 16 and 24 above) and the Government's observations (see paragraph 61 above) that it was not the behaviour or the attire of the participants that the authorities found objectionable but the very fact that they wished to openly identify themselves as gay men or lesbians, individually and as a group. The Government admitted, in particular, that the authorities would reach their limit of tolerance towards homosexual behaviour when it spilt over from the strictly private domain into the sphere shared by the general public (ibid., *in fine*).

83. To justify this approach the Government claimed a wide margin of appreciation in granting civil rights to people who identify themselves as gay men or lesbians, citing the alleged lack of European consensus on issues relating to the treatment of sexual minorities. The Court cannot agree with that interpretation. There is ample case-law reflecting a long-standing

European consensus on such matters as abolition of criminal liability for homosexual relations between adults (see *Dudgeon*, cited above; *Norris v. Ireland*, 26 October 1988, Series A no. 142; and *Modinos v. Cyprus*, 22 April 1993, Series A no. 259), homosexuals' access to service in the armed forces (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI), the granting of parental rights (see *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, ECHR 1999-IX), equality in tax matters and the right to succeed to the deceased partner's tenancy (see *Karner v. Austria*, no. 40016/98, ECHR 2003-IX); more recent examples include equal ages of consent under criminal law for heterosexual and homosexual acts (see *L. and V. v. Austria*, nos. 39392/98 and 39829/98, ECHR 2003-I). At the same time, there remain issues where no European consensus has been reached, such as granting permission to same-sex couples to adopt a child (see *Fretté v. France*, no. 36515/97, ECHR 2002-I, and *E.B. v. France* [GC], no. 43546/02, ECHR 2008-...) and the right to marry, and the Court has confirmed the domestic authorities' wide margin of appreciation in respect of those issues. This, however, does not dispense the Court from the requirement to verify whether in each individual case the authorities did not overstep their margin of appreciation by acting arbitrarily or otherwise. Indeed, the Court has consistently held that the State's margin of appreciation goes hand in hand with European supervision (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24). The Government's reference to the concept of a “court of fourth instance” (see § 58 above) cannot prevent the Court from exercising its duties in that regard in accordance with the Convention and established case-law.

84. In any event, the absence of a European consensus on these questions is of no relevance to the present case because conferring substantive rights on homosexual persons is fundamentally different from recognising their right to campaign for such rights. There is no ambiguity about the other member States' recognition of the right 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 the Government rightly pointed out, demonstrations similar to the ones banned in the present case are commonplace in most European countries. It is also worth noting that in the case of *Bączkowski and Others* it was the domestic authorities which first acknowledged the illegal nature of the ban initially imposed on similar marches, when the ban was quashed by the appeal court (cited above, § 22).

85. The Court is therefore unable to accept the Government's claim to a wide margin of appreciation in the present case. It reiterates that any decision restricting the exercise of freedom of assembly must be based on an acceptable assessment of the relevant facts (see, among other authorities, *Christian Democratic People's Party*, cited above, § 70). The only factor

taken into account by the Moscow authorities was the public opposition to the event, and the officials' own views on morals.

86. The mayor of Moscow, whose statements were essentially reiterated in the Government's observations, considered it necessary to confine every mention of homosexuality to the private sphere and to force gay men and lesbians out of the public eye, implying that homosexuality was a result of a conscious, and antisocial, choice. However, they were unable to provide justification for such exclusion. There is no scientific evidence or sociological data at the Court's disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children or "vulnerable adults". On the contrary, it is only through fair and public debate that society may address such complex issues as the one raised in the present case. Such debate, backed up by academic research, would benefit social cohesion by ensuring that representatives of all views are heard, including the individuals concerned. It would also clarify some common points of confusion, such as whether a person may be educated or enticed into or out of homosexuality, or opt into or out of it voluntarily. This was exactly the kind of debate that the applicant in the present case attempted to launch, and it could not be replaced by the officials spontaneously expressing uninformed views which they considered popular. In the circumstances of the present case the Court cannot but conclude that the authorities' decisions to ban the events in question were not based on an acceptable assessment of the relevant facts.

87. The foregoing considerations are sufficient to enable the Court to conclude that the ban on the events organised by the applicant did not correspond to a pressing social need and was thus not necessary in a democratic society.

88. There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

89. The applicant complained under Article 13 of the Convention in conjunction with Article 11 of the Convention that he did not have an effective remedy against the alleged violation of his freedom of assembly. He alleged in particular that he had not had at his disposal any procedure which would have allowed him to obtain a final decision prior to the date of the planned demonstrations. Article 13 of the Convention reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

90. The Government contested this allegation, claiming that the applicant had had the possibility of bringing judicial proceedings and had availed himself of it.

A. Admissibility

91. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

92. The Government first indicated that the authorisation procedure was different for marches and picketing and submitted that the applicant had challenged the refusal of permission in respect of both types of events in separate sets of proceedings. His claims had been examined by the courts and rejected in reasoned decisions. All judicial hearings had proceeded expeditiously and in any event within the time-limits set by law.

93. The Government also pointed out that the applicant had not always taken procedural steps as soon as he could have done. In particular, it had taken him one month and fifteen days to appeal against the judgment of 26 May 2006, following an extension granted to him by the court after the expiry of the statutory time-limit of ten days. Likewise, his appeal against the judgment of 22 August 2006 had been lodged two months and ten days after the judgment, again after the extension of the time-limit.

(b) The applicant

94. The applicant contended that the judicial proceedings of which he had availed himself to challenge the ban were not an effective remedy because the general time-limits provided for by law did not allow a final decision to be taken before the date of the disputed event. He referred to the time-limits for giving notice of a proposed event as set out in section 7(1) of the Assemblies Act, that is, no earlier than fifteen days and no later than ten days before the date of the event. Under Article 257 § 1 of the Code of Civil Procedure and the provisions of the Code concerning the entry of judgments into force, he argued that any decision in the case – be it the first-instance judgment or the appeal decision – was bound to become final only after the planned date of the event. Therefore, the judicial reversal of the authorities'

refusal of permission to hold the events would in any case have been retrospective and therefore futile.

95. He also contested the Government's allegation that he had unduly delayed appealing against the first-instance judgment. He asserted that the appeals had been lodged as soon as the full text of the judgment had been made available to him. Moreover, he contended that the appeal proceedings had in any event been bound to take place after the intended date of the event. Thus, the event intended to be held on 27 May 2006 had been banned by the first-instance court on 26 May 2006, only one day before the event. There had been no possibility of having the appeal against the first-instance judgment examined on the same day so that the event could have taken place had the final decision been favourable to the applicant. The notices he had submitted for the picketing had suffered a similar fate. The 2007 and 2008 applications had likewise been refused at final instance long after the intended dates of the events. The applicant further contended that there would have been no possibility of obtaining a final decision before the event in question even if the first-instance judgment had allowed the demonstration. A first-instance judgment, if not appealed against, entered into force ten days after the date of its adoption. This time-frame made it impossible for the organisers of an event, even with their best efforts and forward planning, to obtain a final decision before the scheduled date of the event, because neither the administrative authorities nor the courts were required to complete the proceedings before that date.

96. The applicant reiterated that the date for the events in issue had been chosen intentionally, on account of its symbolic meaning as the anniversary of the abolition of criminal liability in Russia for homosexual acts. Therefore, it was essential for the demonstration, if allowed, to be held on that day.

2. The Court's assessment

97. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (see, among many other authorities, *Chahal v. the United Kingdom*, 15 November 1996, § 145, *Reports of Judgments and Decisions* 1996-V). In the present case the Court has found that the applicant's rights under Article 11 were infringed (see paragraph 88 above). Therefore, he had an arguable claim within the meaning of the Court's case-law and was thus entitled to a remedy satisfying the requirements of Article 13.

98. The Court reiterates that, bearing in mind that the timing of public events is crucial for the organisers and participants, and provided that the

organisers have given timely notice to the competent authorities, the notion of an effective remedy implies the possibility of obtaining a ruling concerning the authorisation of the event before the time at which it is intended to take place (see *Bączkowski and Others*, cited above, § 81). It is therefore important for the effective enjoyment of freedom of assembly that the applicable laws provide for reasonable time-limits within which the State authorities, when giving relevant decisions, should act (ibid., § 83).

99. The Court observes that in the present case, the applicable laws provided for time-limits for the applicant to give notice of the events. In contrast, the authorities were not obliged by any legally binding time-frame to give their final decisions before the planned date of the march or the picketing. The Court is therefore not persuaded that the judicial remedy available to the applicant in the present case, which was of a *post-hoc* character, could have provided adequate redress in respect of the alleged violations of the Convention.

100. Therefore, the Court finds that the applicant has been denied an effective domestic remedy in respect of his complaint concerning a breach of his freedom of assembly. Consequently, the Court concludes that there has been a violation of Article 13 in conjunction with Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

101. Lastly, the applicant complained of the discriminatory manner in which the Moscow authorities had treated the application to hold the public events organised by him. Relying on Article 14 in conjunction with Article11 of the Convention, he contended that he had suffered discrimination on the grounds of his sexual orientation and that of other participants. Article 14 of the Convention reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

102. The Government disagreed with this allegation, claiming that the ban had never been intended to discriminate against the applicant.

A. Admissibility

103. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

104. The Government denied that the ban imposed in the present case was discriminatory in nature. They stated that the existence of sexual minorities was recognised by the authorities, as well as the necessity to make provision for the absence of discrimination against them. However, in view of their antagonistic relations with religious groups, it could prove necessary to place restrictions on the exercise of their rights.

105. The applicant, on the contrary, alleged that the ban on the events had been discriminatory. Despite the absence of express reference to sexual orientation as grounds for the ban, it was clear that the main reason for its refusal was the official disapproval of the participants' moral standing. The authorities had relied, in particular, on the disapproval of the events by religious and other groups. In addition to that, the mayor of Moscow had made a number of discriminatory statements, and there was a clear link between the statements and the ban.

2. The Court's assessment

106. The Court has repeatedly held that Article 14 is not autonomous but has effect only in relation to Convention rights. This provision complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among other authorities, *Van Raalte v. Netherlands*, 21 February 1997, § 33, *Reports* 1997-I, and *Gaygusuz v. Austria*, 16 September 1996, § 36, *Reports* 1996-IV).

107. It is common ground between the parties that the facts of the case fall within the scope of Article 11 of the Convention. Hence, Article 14 is applicable to the circumstances of the case.

108. The Court reiterates that sexual orientation is a concept covered by Article 14 (see, among other cases, *Kozak v. Poland*, no. 13102/02, 2 March 2010). Furthermore, when 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 (ibid, § 92).

109. It has been established above that the main reason for the ban imposed on the events organised by the applicant was the authorities' disapproval of demonstrations which they considered to promote homosexuality (see paragraphs 77-78 and 82 above). In particular, the Court cannot disregard the strong personal opinions publicly expressed by the mayor of Moscow and the undeniable link between these statements and the ban. In the light of these findings the Court also considers it established that the applicant suffered discrimination on the grounds of his sexual orientation and that of other participants in the proposed events. It further considers that the Government did not provide any justification showing that the impugned distinction was compatible with the standards of the Convention.

110. Accordingly, the Court considers that in the present case there has been a violation of Article 14 in conjunction with Article 11 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

112. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

113. The Government contested the claim as excessive and unreasonable. They requested the Court, if it were to find a violation in the present case, to award the applicant the minimum amount possible.

114. Having regard to the fact that the present case involved banning multiple demonstrations for three consecutive years in violation of Articles 11, 13 and 14 of the Convention, the Court, ruling on an equitable basis, awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

115. The applicants also claimed 18,700 Russian roubles (approximately EUR 483) for the costs and expenses incurred before the domestic courts and EUR 17,027 for those incurred in the proceedings before the Court. He submitted itemised claims, bills and supporting documents.

116. The Government considered this part of the claims unsubstantiated. They pointed out that the lawyer's travel expenses for attending the hearings in the domestic courts were unrelated to the proceedings before the Court and were therefore not eligible for reimbursement. They further argued that these costs and expenses could not be regarded as "actually and necessarily incurred", given that the three applications forming part of this case were very similar and did not require the lawyer to develop a separate line of argument for each case.

117. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the costs and expenses relate to three consecutive sets of domestic proceedings and were incurred over a period of three years. Throughout these years the applicant was represented by Mr Bartenev, the lawyer who also represented him before the Court. Although the three applications have been joined in one case and therefore the applicant was dispensed from the requirement to submit separate sets of comments on the Government's observations for each of them, the original applications and the accompanying documents had to be prepared separately. The amounts incurred by the applicant on account of legal fees do not appear excessive or disproportionate to the work performed. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the amounts claimed in full. It makes an aggregate award of EUR 17,510, plus any tax that may be chargeable to the applicant.

C. Default interest

118. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applications admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds* that there has been a violation of Article 13 in conjunction with Article 11 of the Convention;

4. *Holds* that there has been a violation of Article 14 in conjunction with Article 11 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 17,510 (seventeen thousand five hundred and ten euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President