



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

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21 September 2009

FIRST SECTION

Applications nos. 4916/07, 25924/08 and 14599/09  
by Nikolay Aleksandrovich ALEKSEYEV  
against Russia  
lodged on 29 January 2007, 14 February 2008 and 10 March 2009

**STATEMENT OF FACTS**

THE FACTS

The applicant, Mr Nikolay Aleksandrovich Alekseyev, is a Russian national who was born in 1977 and lives in Moscow. He is represented before the Court by Mr D. Bartenev, a lawyer practising in St Petersburg.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicant, may be summarised as follows.

*1. Pride March and picketing on 27 May 2006*

In 2006 the applicant, together with other individuals, organised a march to draw public attention to the discrimination of 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 in subsequent years – “Gay Pride”, to replicate similar events held 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.

On 16 February 2006 the Interfax news agency published a statement by Mr Tsoy, the press-secretary of the Moscow Mayor, that “the government of Moscow [did] not even consider allowing the gay-parade to be held”. The Interfax further quoted Mr Tsoy saying: “The Mayor of Moscow, Mr Luzhkov, has firmly declared: the government of the capital city will not

allow holding a gay-parade in any form, whether open or disguised [as a human rights manifestation], and any attempt to hold any unauthorised action will be severely repressed”.

On 22 February 2006 the Interfax quoted the Mayor of Moscow saying, on a different occasion, that if he received a request to hold a gay-parade in Moscow he would have put a ban on it because he did not want “to stir up the 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 the human society with tolerance”.

On 17 March 2006 the First Deputy of the Mayor of Moscow wrote to the Mayor about the imminent campaign for holding a gay-parade in Moscow in May that year. She considered that allowing the event would be against health and morals, as well as against the will of numerous petitioners who protested against the idea of promoting homosexuality. Having noted that the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing (Law on Assemblies) did not provide for a possibility to ban the event, she stated that the authorities could suggest changing the venue or time or, 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 propagating or holding a gay-parade or festival.

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”.

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 the estimate number of participants of about 2,000 persons, who would march from the Moscow Post Office along Myasnitskaya street to Lubyanskaya square. The organisers undertook to co-operate with the law-enforcement authorities in ensuring the safety and the respect for public order by the participants and to comply with regulations on the restriction of the level of noise in using the loudspeakers and the sound equipment.

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

Having received the above reply, the organisers filed a notice for holding another event on the same date and time as the refused march. They

informed the Prefect of their intention to hold picketing in the park at Lubyanskaya square.

On 19 May 2006 the applicant challenged before a court the Mayor's decision of 18 May 2006 refusing the march.

On 23 May 2006 the Deputy Prefect of the Moscow Central Administrative Circuit refused the permission to hold the picketing on the same grounds as the refusal to hold the march.

On 26 May 2006 the Interfax quoted the Mayor of Moscow saying in an interview to the radio station "Russian Radio" that no gay-parade will be allowed in Moscow under any circumstances, "as long as he was the city Mayor". He stated that all three "major" religious confessions – "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 progressive in that sphere". He went on saying "That's the way morals works. If somebody has a deviation from the normal principles [in accordance with which] one's sexual and gender life is organised it should not be demonstrated in public and those potentially unstable should not be invited". He stated that 99.9% of the population of Moscow supported the ban.

On the same day the Tverskoy District Court of Moscow dismissed the applicant's complaint. It referred to provisions of the Law on Assemblies concerning the authorities responsible for ensuring safety of the events (articles 12 and 14), who were entitled to suggest changing the time and/or the venue of the proposed event on safety grounds (article 12). It also noted that a public event may be held at any suitable venue unless it threatens to cause collapse of buildings or constructions or bears safety risks to its participants (article 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 had they suggested a change thereof, and that it was prohibited to hold the event if the notice had not been given on time or if the organisers had failed to agree to a change of venue or time proposed by the authorities (article 5). Finally, the court noted that it was prohibited to the organisers, officials or other individuals to interfere with the expression of opinion by the participants of the public event unless they breached public order or the format of the event (article 18). It concluded on the basis of these provisions that the authorities could ban the public event on safety grounds and that it was for the organisers to file a notice about the change of venue and time to be considered by the authorities. It considered that the refusal for holding the event had legitimate grounds and that the applicant's right to hold assemblies and other public events had not been breached.

The applicant filed an appeal, relying on article 12 of the Law on Assemblies which imposed an obligation on the authorities, and not the organisers, to make a reasoned proposal for changing the event venue or the time indicated in the notice. He also challenged the finding that the ban was indeed justified on safety grounds claiming that the concerns for safety could have been addressed by providing the protection to the event participants.

On 27 May 2006 the applicant and several other persons participated in a conference celebrating the International Day Against Homophobia where

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 proceed to a 15-minute picketing of the Moscow Mayor's Office to protest against the ban on the march and the picketing.

Later on the same day the applicant and about fifteen other persons arrived at 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 squadron (OMON), and also about a hundred of individual protestors against the flower-laying event planned by the applicant and the fellow participants.

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

In the meantime, other participants of the flower-laying proceeded towards the Moscow Mayor's Office, with protestors pursuing and attacking them. Several persons reportedly sustained light injuries. According to the applicant, the OMON arrested about one hundred persons involved in attacking the event participants.

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.

On 31 May 2006 the Interfax quoted the Mayor of Moscow saying in a television interview: "Those gay trying to lay flowers to the Tomb of the Unknown Soldier ... it is a provocation. It was a desecration of a holy place" and reiterated the condemnation of the action on behalf of the public at large.

On 16 June 2006 the applicant challenged before a court the prefect's decision of 23 May 2006 refusing the picketing. On 22 August 2006 the Taganskiy District Court of Moscow dismissed the complaint, having found the ban justified on safety grounds. The applicant appealed.

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.

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.

## *2. Pride March and picketing on 27 May 2007*

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

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 was identical to the march proposed the previous year, except that the estimate number of participants was 5,100 persons.

On 16 May 2007 the Department for Liaison with Security Authorities of the Moscow Government informed the applicant that the agreement for the march was 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 lead to their liability.

Having received the above reply, the organisers filed a notice for holding other events on the same date and time as the refused march. They informed the Prefect of the Moscow Central Administrative Circuit of their intention to hold picketing in front of the Moscow Mayor's Office at Tverskaya square and another one in Novopushkinskiy park.

On 23 May 2007 the organisers were informed of the Prefect having refused the permission to hold the picketing in both venues on the grounds of public order, prevention of riots, protection of health and morals and rights and freedoms of others. They were warned of the liability for holding unauthorised picketing.

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

On 27 May 2007 the applicant and about 20 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 24 hours on the charges of having committed an administrative offence of disobeying a lawful order of the police. On 9 June 2007 the applicant was found guilty of the administrative offence and had to pay a 1,000 roubles fine. The decision was upheld by the Tverskoy District Court on 21 August 2007.

On 30 May 2007 the applicant challenged before a court the Moscow Mayor's decision of 16 May 2007 refusing his agreement to the march. In particular, he alleged that under the Law on Assemblies the authorities were not entitled to ban public events, but could only propose changing their time and location, which in the present cases they did not. He also argued that the official disapproval of the purpose of a public event was not by itself sufficient, in a democratic society, for a ban.

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

On 24 August 2007 the Taganskiy District Court of Moscow dismissed the complaint concerning the ban on the picketing, having found the ban justified on safety grounds. The judgment was upheld on 8 November 2007 by the Moscow City Court.

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

### *3. Pride Marches in May 2008 and picketing in May-June 2008*

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

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.

On 24 April 2008 the Department for Liaison with Security Authorities of the Moscow Government informed the applicant that the agreement for all marches was refused on the grounds of potential breaches of public order and violence against the participants.

Having received the above reply, on 22 April 2008 the organisers filed a notice for holding another 15 marches on 3-5 May 2008.

On 28 April 2008 the Department for Liaison with Security Authorities of the Moscow Government informed the applicant that the agreement for the 15 marches was also refused on the same grounds.

The applicant filed 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:

- (a) applications of 25 and 28 April 2008 (30 marches in total) refused on 5 May 2008;
- (b) application of 30 April 2008 (20 marches) refused on 7 May 2008;
- (c) application of 5 May 2008 (20 marches) refused on 8 May 2008;
- (d) application of 8 May 2008 (15 marches) refused on 13 May 2008;
- (e) application of 12 May 2008 (15 marches) refused on 16 May 2008;
- (f) application of 15 May 2008 (15 marches) refused on 21 May 2008;
- (g) application of 19 May 2008 (15 marches) refused on 23 May 2008.

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

From 28 April 2008 to 17 June 2008 the applicant filed several court actions challenging the Moscow Mayor's decisions refusing the marches. The Tverskoy District Court joined these applications and on 17 September 2008 dismissed the applicant's claim, having upheld the grounds for the bans on the marches and having confirmed the lawfulness of the authorities' acts. The judgment was upheld on 2 December 2008 by the Moscow City Court.

In the meantime, the applicant also attempted to organise picketing to call for criminal charges to be brought against the Mayor of Moscow under Article 149 of the Criminal Code for banning the public events. The picketing intended to be held on 17 May 2008 was refused on 13 May 2008 on the same grounds as 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.

On 1 June 2008 the applicant, among 20 individuals, held picketing on Bolshaya Nikitskaya Street for about 10 minutes.

## **B. Relevant domestic law**

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

### **Article 5 Organisation of public event**

“...

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

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

...

(v) for 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 article 7 of this federal law;

(ii) no later than three days prior to the holding of the public event (except for an assembly or picketing held by a single participant) notify the executive authority of the subject of the Russian Federation or the municipal body in writing of accepting (or not accepting) its proposal to alter the venue and/or time of holding the public event specified in the notice on holding the public event;

(iii) ensure compliance with the conditions for holding the public event specified in the notice of holding the public event or with those that have been altered as a result of agreement reached with the executive authority of the subject of the Russian Federation or the municipal body;

(iv) require that the participants in the public event to respect public order and to comply with the order of 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 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 Interior and complying 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 filed 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 holding the public event.”

### **Article 8 Venue for holding a public event**

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

...”

**Article 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 a notice of holding the public event, must:

...

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

(iii) designate, depending on the form of the public event and the number of its participants, an authorised representative for assisting the event organisers in conducting that public 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) to ensure, within its competence and jointly with the organiser of the public event and the authorised representative of the Interior, public order and safety of citizens while holding the public event and, if necessary, to provide them with urgent medical aid;

...”

**Article 14 Rights and obligations of the authorised representative of the Interior**

“...

3. The authorised representative 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 the compliance with law while holding the public event.”

**Article 18 Securing the conditions for holding a public event**

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

...”

## COMPLAINTS

The applicant complains under Article 11 of the Convention about a violation of his right to peaceful assembly. He claims that the ban on



holding the Pride March and the picketing was not in accordance with law, did not pursue any legitimate aim and was not necessary in a democratic society.

The applicant complains 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 alleges that the time-limits for lodging a notice of the proposed event provided for by article 7 § 1 of the Law on Assemblies – that is no earlier than 15 days and no later than 10 days before the date of the event – did not allow him to obtain a final judicial decision on the lawfulness of the ban. He referred to article 257 § 1 of the Code of Civil Procedure and the provisions of the Code concerning the entry of the judgment into force and 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 for holding the event would be retrospective and futile.

Finally, the applicant complains about the discriminatory manner in which the Moscow authorities treated the application for holding the public events solicited by him. He relies on Article 14 in conjunction with Article 11 of the Convention.

### **QUESTIONS TO THE PARTIES**

1. Has there been an interference with the applicants' freedom of peaceful assembly, within the meaning of Article 11 § 1 of the Convention?

2. Assuming there was such an interference, did it comply with the requirements set forth by Article 11 § 2 of the Convention, in particular:

(a) was it prescribed by law? In particular, did the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing provide for a possibility for the authorities to ban a public event and if so, did the authorities comply with the conditions and the procedure set out in the law?

(b) did it pursue a legitimate aim?

(c) was it necessary in a democratic society?

3. Did the statutory limitation periods for notification about the public event and those for the judicial review of the decisions banning the organisation of the event allow for a final judicial decision to be given before the intended date of the event? If not, has there been a violation of Article 13 of the Convention in conjunction with Article 11 of the Convention?

4. Has the applicant suffered discrimination in the enjoyment of his freedom of assembly contrary to Article 14 of the Convention read in conjunction with Article 11?