



Refusal to register three LGBT organisations was unjustified and discriminatory

The case [Zhdanov and Others v. Russia](#) (application no. 12200/08, 35949/11 and 58282/12) concerned the authorities' refusal to register organisations set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Russia.

In today's **Chamber judgment**¹ in the case the European Court of Human Rights decided, by a majority, to **declare inadmissible the complaints lodged by** one of the applicants, namely the well-known LGBT activist **Nikolay Alekseyev**, as an abuse of the right of application because of his offensive and threatening statements about the Court and its judges on social networking accounts.

As concerned the remaining applicants, it held, unanimously, that there had been:

a violation of Article 6 § 1 (access to court) of the European Convention on Human Rights in application no. 58282/12;

a violation of Article 11 (freedom of association) in all applications; and,

a violation of Article 14 (prohibition of discrimination) in conjunction with Article 11 in all applications.

The Court found in particular that the decisive ground for refusing to register the applicant organisations had been because they promoted LGBT rights. That ground could not be reasonably or objectively justified and had, moreover, amounted to discrimination on the grounds of sexual orientation.

Principal facts

The applicants are four Russian nationals, Aleksandr Zhdanov, Nikolay Alekseyev, Kirill Nepomnyashchiy and Aleksandr Naumchik, who were born respectively in 1980, 1977, 1981, and 1982 and three Russian organisations: the Regional Public Association *Rainbow House*, based in Tyumen; the Autonomous Non-Profit Organisation *Movement for Marriage Equality*, based in Moscow; and the Regional Public Sports Movement *Sochi Pride House*, based in Krasnodar (all in Russia). The individual applicants are the founders or presidents of these organisations. The first two organisations focus on defending LGBT rights, while *Sochi Pride House* was created to develop sport for LGBT people and combat homophobia.

Between 2006 and 2011 all the applicant organisations applied for registration. However, both the registration authorities and the domestic courts subsequently refused their requests because of formal irregularities in their applications and because their aim was to promote LGBT rights. They found in particular that the organisations' aims could "destroy the moral values of society", lead to a decrease in the population, interfere with the rights of the majority of Russians who found any display of same-sex relations offensive and cause social or religious enmity.

Rainbow House submitted its first application for registration in 2006, which was rejected by the authorities both on grounds related to its aims as well as irregularities with a lease and payment of

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

registration fees. It resubmitted an application in 2007, having corrected the technical errors, but was then told that it had failed to staple the application form and had made a typing error. During the judicial review, the courts did not rely on any further procedural irregularities, concluding that there were indications of “extremism” in its articles of association.

Movement for Marriage Equality and *Sochi Pride House* were also reproached for procedural errors in their applications, such as using foreign words in their names. However, the courts upheld the authorities’ refusal to register *Movement for Marriage Equality* in 2010 essentially on the basis that promoting legalisation of same-sex marriage was incompatible with “established morality”, State policy and national law, while they dismissed *Sochi Pride House’s* appeal against the first-instance decision in its case in 2012 as lodged out of time.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination), the applicants alleged that the refusal to register the applicant organisations had breached their freedom of association and had been discriminatory.

The applicants in application no. 58282/12, which included *Sochi Pride House*, also complained about the refusal to examine their appeal on the merits, in breach of Article 6 § 1 (access to court).

The application was lodged with the European Court of Human Rights on 3 March 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Georgios A. **Serghides** (Cyprus), *President*,
Branko **Lubarda** (Serbia),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
María **Elósegui** (Spain),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

The Court noted that Mr Alekseyev had published statements about the European Court and its judges on the social networking accounts, Instagram and VKontakte, which were virulently and personally offensive and threatening. In particular, following a judgment in another of his cases in 2018, he had published judges’ photographs with the captions “alcoholic”, “drug addict”, “corrupt” and “European bastards and degenerates”. He had also stated the wish that they would “snuff it as soon as possible like dogs” and that “it [was] time to set fire to the European Court of Human Rights”. These statements clearly exceeded the limits of normal, civic and legitimate criticism.

Despite the Court sending a warning letter specifically mentioning the present applications and the risk of an abuse of right of petition, Mr Alekseyev had not withdrawn his statements. Indeed, he had since published statements, calling the Court’s judges “European corrupt scum” and “homophobic”. The Court considered that those statements, which had been made following the Court’s warning, were connected with the present applications.

The Court considered that Mr Alekseyev’s conduct amounted to contempt for the very institution to which he had applied for the protection of his rights. It followed that his complaints had to be declared inadmissible as an abuse of the right of individual application. That finding did not, however, prevent the Court from examining the complaints brought by the other applicants.

Article 6 (access to court)

Sochi Pride House and its founders had followed the rules under domestic law for lodging an appeal against the first-instance decision in its case, that is, within one month of the date of that judgment delivered in its finalised form. However, the domestic courts had dismissed their appeal as out of time, without any explanation how they had calculated the starting date of the time-limit or the date on which they considered that the applicants had lodged their appeal.

As a result, their appeal had not been examined on the merits, impairing the very essence of their right to effective access to a court, in breach of Article 6 § 1.

Article 11 (freedom of association)

The Court found that the Russian courts' decisions refusing registration had interfered with the freedom of association of the applicant organisations and of their founders or presidents, the individual applicants. In particular, the decisions had had the result that *Movement of Marriage Equality*, a non-profit organisation, could not be created because, under Russian law, non-profit organisations could not exist without State registration. *Rainbow House* and *Sochi Pride House*, which were public associations, could exist without registration but could not acquire the status of a legal entity and the rights associated with it.

That interference had had a basis in domestic law, namely the Non-profit Organisations Act and the Public Associations Act.

Unlike the Government, the Court was not convinced that refusing to register the organisations had pursued the legitimate aims of protecting morals, national security and public safety, and the rights and freedoms of others. The only legitimate aim put forward by the authorities for the interference, which the Court assumed to be relevant in the circumstances, was prevention of hatred and enmity, which could lead to disorder. In particular, the authorities believed that the majority of Russians disapproved of homosexuality and that therefore the applicants could become the victims of aggression.

However, the Court considered that the role of the authorities in such circumstances was not to simply remove the cause of tension, but to ensure that the competing groups tolerated one another. It was, moreover, their duty to take reasonable and appropriate measures to enable organisations such as the applicants to carry out their activities without fear of physical violence. There was no evidence that the authorities had taken any such measures. Instead, they had simply decided to avert a risk of disorder by restricting the applicants' freedom of association. The Court could not accept that the refusal to register the applicant organisations had been "necessary in a democratic society" and there had therefore been a violation of Article 11.

Article 14 (prohibition of discrimination)

The Court had previously stressed that differences based solely on sexual orientation were unacceptable under the European Convention.

It was clear from the Russian courts' decisions that the decisive ground for refusing to register all three applicant organisations had been because they promoted LGBT rights. It was immaterial that the authorities had referred to other grounds, namely irregularities in their registration documents. Indeed, the Court was not convinced that the applicants could have resubmitted applications for registration after correcting technical irregularities in their documents. In particular, although *Rainbow house* had corrected errors in their first application and resubmitted it, the registration authority had then identified new irregularities.

Given that the applicant organisations' aim of promoting LGBT rights had been a decisive factor for refusing their registration, the Court found that they had suffered a difference in treatment on grounds of sexual orientation, in violation of Article 14 taken in conjunction with Article 11.

Article 41 (just satisfaction)

The Court held, unanimously, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by *Rainbow House*.

It also held, by four votes to three, that Russia was to pay: Mr Zhdanov 10,000 euros (EUR) and Mr Nepomnyashchiy and Mr Naumchik EUR 13,000 each in respect of non-pecuniary damage; and, the applicants in application no. 12200/08 EUR 6,500, jointly, in respect of costs and expenses. Lastly, it dismissed, by four votes to three, the remainder of the applicants' claim for just satisfaction.

Separate opinion

Judges Keller, Serghides and Elósegui expressed a joint partly dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.