



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

FORMER THIRD SECTION

**CASE OF ZHDANOV AND OTHERS v. RUSSIA**

*(Applications nos. 12200/08 and 2 others – see appended list)*

JUDGMENT

STRASBOURG

16 July 2019

**FINAL**

**16/10/2019**

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



**In the case of Zhdanov and Others v. Russia,**

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

Georgios A. Serghides, *President*,

Branko Lubarda,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková,

María Elósegui, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 25 June 2019,

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

**PROCEDURE**

1. The case originated in three applications (nos. 12200/08, 35949/11 and 58282/12) 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 four Russian nationals and three Russian non-profit organisations whose names are listed in the Appendix (“the applicants”), on 3 March 2008, 20 May 2011 and 20 August 2012 respectively.

2. The applicants were represented by lawyers whose names are listed in the Appendix. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicants alleged, in particular, that the refusal to register associations set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Russia had violated their right to freedom of association and had amounted to discrimination on grounds of sexual orientation. The applicants in application no. 58282/12 also alleged a violation of their right of access to a court.

4. On 11 March 2011 and 22 March 2016 the Government were given notice of the above complaints.

5. In addition to written observations by the Government and the applicants, third-party comments were received from the Human Rights Centre of Ghent University and jointly from the European Human Rights Advocacy Centre (EHRAC), the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) and the International Commission of Jurists (ICJ), which the President had

authorised to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. Application no. 12200/08 (*Zhdanov and Rainbow House v. Russia*)

6. The first applicant is the president of the second applicant, a regional public association for the protection of citizens' sexual rights.

##### *1. Background information*

7. In April 2005 the first applicant opened a gay nightclub which started to organise weekly gay parties.

8. On an unspecified day the police, masked and armed, stormed into the club, ordered that everyone should lie down on the floor and dragged the club visitors into a police bus. Several days later the lease for the premises of the nightclub was suddenly terminated without any explanation.

9. In August 2005 a group of gay activists notified the Tyumen Administration of their intention to hold a gay march on 5 September 2005. At the press conference of 17 August 2005 the head of the Interior Department of the Tyumen Region said that he had been extremely astonished when he had learnt that a gay march was being planned in Tyumen. He continued: "In my personal opinion, Tyumen is neither the Netherlands, nor Amsterdam. One cannot hold a gay march in our town." Representatives of the Orthodox Church also spoke publicly against the march. The Tyumen Administration refused permission to hold a gay march.

10. On 20 August 2005 it was publicly announced that a regional public association named "Rainbow House" (the second applicant) had been created with the aim of defending the rights of LGBT people.

##### *2. The first refusal of registration*

11. In June 2006 the first applicant submitted an application for registration of the second applicant with the local department of the Federal Registration Service of the Ministry of Justice (hereafter "the Tyumen registration authority").

12. The Tyumen registration authority commissioned an expert opinion from the Tyumen Institute of Legal Studies of the Interior Ministry of

Russia. The Institute studied the second applicant's articles of association and on 31 July 2006 prepared an expert opinion, which read as follows:

“The rights and legitimate interests of citizens of traditional sexual orientation, of society [as a whole] and of the State may be breached by activities related to the following stated aims of [the second applicant]:

Publication and distribution of mass media, print, film and video products and communication via the Internet of information about [the second applicant];

Participation in the drafting of laws aimed at improving protection of persons of non-traditional sexual orientation.

The above finding is based on the following consideration: realisation of these aims involves propaganda of non-traditional sexual orientation.

...

[The second applicant's] activities relating to propaganda of non-traditional sexual orientation may endanger the security of Russian society and the State for the following reasons:

- It will destroy the moral values of society;
- It will undermine the sovereignty and territorial integrity of the Russian Federation by decreasing its population.

It follows from the above that propaganda of non-traditional sexual orientation by [the second applicant] may be classified as extremist activities because the pursuit of the aims mentioned above involves not only the protection of the rights and legitimate interests of citizens of non-traditional sexual orientation, but also attempts to increase the number of such citizens by converting those who, without such propaganda, would have retained a traditional sexual orientation.

However, to confirm the above finding, it is necessary to perform a sociological study ...”

13. The first applicant received a copy of that expert opinion in October 2007.

14. On 29 December 2006 the Tyumen registration authority refused registration of the second applicant, finding that it represented a danger to Russia's national security. In particular, it considered that propaganda of non-traditional sexual orientation was capable of “destroying the moral values of society and undermining the sovereignty and territorial integrity of the Russian Federation by decreasing its population”. It further considered that the second applicant's activities might infringe the rights and freedoms of others, jeopardise the constitutionally protected institutions of family and marriage and encourage social and religious hatred and enmity. It concluded that the second applicant was an extremist organisation.

The Tyumen registration authority also noted irregularities in the document confirming the lease for the second applicant's office and reproached the first applicant for paying the registration fee several days before the second applicant had been founded.

15. The first applicant commissioned an expert opinion from a public association, the Independent Legal Expert Council. The expert opinion, dated 7 February 2007, indicates that the second applicant was not an extremist organisation. Its articles of association did not contain any indication that it would resort to propaganda of homosexuality, would encourage social or religious hatred or enmity or would endanger national security.

16. On 10 March 2007 the first applicant challenged the decision of 29 December 2006 before the Federal Registration Service of the Ministry of Justice (hereafter “the federal registration authority”). He submitted, in particular, that under Russian law, an association could be declared extremist by a judicial decision only. He further disputed the findings of the Tyumen registration authority, affirming that the second applicant had no intention to promote homosexuality or gay marriage. Its aims were to defend the rights of homosexuals and to promote tolerance of diversity among the population. Lastly, he complained of discrimination on account of sexual orientation.

17. On 18 April 2007 the federal registration service found that the decision of 29 December 2006 had been lawful.

18. On 15 August 2007 the first applicant appealed against the refusal of registration to the Taganskiy District Court of Moscow. He repeated the arguments set out in his complaint of 10 March 2007 and asked that the refusal to register the second applicant be declared unlawful and unfounded and that the Tyumen registration authority be required to remedy the breach of rights.

19. On 26 October 2007 the Taganskiy District Court dismissed the first applicant’s complaint. It referred to the expert opinion of 31 July 2006, repeated verbatim the Tyumen registration authority’s decision of 29 December 2006 and found that it was lawful, well reasoned and justified. It rejected the applicant’s argument that an association could be declared extremist by a judicial decision only, finding that that rule applied only to registered associations, whereas the second applicant had never been registered. The court refused to take into account the expert opinion of 7 February 2007 because it had not been submitted to the Tyumen registration authority together with the application for registration.

20. On 11 December 2007 the Moscow City Court upheld the judgment of 26 October 2007 on appeal, finding that it had been lawful, well reasoned and justified.

### *3. The second refusal of registration*

21. On 2 May 2007 the first applicant resubmitted an application for registration of the second applicant with the Tyumen registration authority.

22. On 1 June 2007 the Tyumen registration authority for a second time refused registration, repeating verbatim its previous reasoning of

29 December 2006 relating to the extremist nature of the second applicant's activities. It also noted minor irregularities in the application for registration and accompanying documents, such as the failure to staple the application form or a typing error in the name of the department that had issued the first applicant's passport. It also refused to accept the lease agreement for the second applicant's office, finding that it had been drawn up incorrectly. Finally, the Tyumen registration authority held that the second applicant's articles of association unlawfully vested the right to dispose of its property in the president, and that the competence and the procedure for appointment of one of the governing bodies were not clearly defined.

23. On 25 August 2007 the first applicant challenged the refusal before the Tsentralnyy District Court of Tyumen, asking that it be declared unlawful and that the Tyumen registration authority be required to remedy the breach of law by registering the second applicant. He repeated the arguments set out in his complaint of 10 March 2007. He also submitted that the second applicant was an existing public association functioning without State registration as permitted under Russian law. Such existing associations could only be declared extremist by a judicial decision following a prosecutor's warning. No such warnings had been issued in respect of the second applicant and its activities had never been classified as extremist by the competent authorities. Lastly, the first applicant submitted that the minor irregularities in the registration documents, such as a typing error in the name of the department that had issued the first applicant's passport, could be easily corrected through a special procedure provided for by law.

24. On an unspecified date the Tyumen registration authority commissioned expert opinions from the Tyumen Institute of Legal Studies of the Interior Ministry of Russia and from the Institute of Governmental and Legal Studies of the Tyumen State University.

25. On 17 October 2007 the Tyumen Institute of Legal Studies of the Interior Ministry of Russia found that the second applicant's activities might be extremist. The rights and legitimate interests of heterosexual citizens, of society as a whole and of the State might be breached if the second applicant created an information centre, issued and distributed printed, video and other material, or organised exhibitions, conferences, meetings, assemblies, marches or pickets. All those activities might involve propaganda of homosexuality and therefore might promote social discord. They might also destroy the moral values of society and undermine the national security and territorial integrity of the Russian Federation by decreasing its population. The second applicant's activities might be aimed not only at protecting the rights and legitimate interests of homosexual citizens, but also at increasing the number of such citizens by converting those who, without the second applicant's propaganda, would have retained a "traditional sexual orientation".

26. On the same day the Institute of Governmental and Legal Studies of the Tyumen State University also found that the second applicant was an extremist organisation. Firstly, the expression “the protection of citizens’ sexual rights” in the second applicant’s name was insulting to the moral, national and religious feelings of citizens. The Constitution guaranteed the right to respect for private life, which covered sexual relations. Any interference in the sphere of private life, including for its protection, was contrary to the Constitution and breached citizens’ rights. It followed that the sole purpose of the founders of the second applicant was to insult the morality and the religious feelings of others. Secondly, the distribution of printed, video and other material by the second applicant might incite religious discord because a majority of the traditional confessions in Russia viewed homosexuality negatively. Open propaganda of homosexuality would cause social tension and might provoke a violent response. Thirdly, “non-traditional sexual orientation” was a broad term that could include paedophilia, which was a criminal offence in Russia. Therefore, the second applicant’s activities might threaten public order. Finally, the support of persons suffering from HIV/AIDS, proclaimed as one of the aims of the second applicant, might violate the rights of those persons to confidentiality and respect for private life. It was impossible for a public association intending to advertise its activities to ensure the confidentiality and inviolability of private life.

27. On 7 November 2007 the Tsentralnyy District Court of Tyumen found that the decision of 1 June 2007 to refuse registration had been lawful and justified. It held that the refusal of registration did not breach the applicants’ right of association because the second applicant could continue to function without State registration. The decision of 1 June 2007 had not declared the second applicant an extremist organisation. It had instead found that there were indications of extremism in its articles of association and that it did not therefore comply with the requirements of domestic law.

28. The first applicant appealed.

29. On 17 December 2007 the Tyumen Regional Court upheld the judgment of 7 November 2007 on appeal, finding that it had been lawful, well reasoned and justified. It held:

“The first-instance court correctly rejected the plaintiff’s complaint, finding that [the Tyumen registration authority’s] decision to refuse legal-entity status to [Rainbow House] had been lawful and had not breached the plaintiff’s rights and legitimate interests. A legal analysis of that public association’s articles of association submitted for registration by the plaintiff revealed that its stated aims and objectives were contrary to the applicable laws, and in particular to the Russian Constitution.

This finding of the court is correct as it is based on the circumstances of the case as correctly established on the basis of the evidence in the case file, and on the applicable legal provisions.

In particular, the first-instance court correctly noted in its judgment that the registration authority had not declared [Rainbow House] an extremist organisation. It



only found that some provisions of its articles of association contained indications of extremism. That finding served as a lawful basis for the refusal of legal-entity status in accordance with section 23(1)(1) and (2) of the Public Associations Act.

The judgment lists these indications of extremism: propaganda of non-traditional sexual orientation which might [undermine] the security of the State and of society, create conditions for inciting social or religious hatred or enmity, or undermine the foundations of the family and marriage, contrary to Articles 29 and 38 of the Constitution of the Russian Federation, Articles 1 and 12 of the Family Code and section 16 of the Public Associations Act.

The arguments in the appeal submissions are based on an incorrect interpretation of the applicable legal provisions and an incorrect assessment of the relevant circumstances. They cannot therefore be taken into account.

The plaintiff's argument that [the registration authority's] decision had breached his rights as a member of a public association is unfounded. After correcting the above-mentioned defects in the articles of association, he may reapply for registration of legal-entity status."

30. Further applications for registration were refused in May and November 2010 for the same reasons as before.

#### **B. Application no. 35949/11 (*Alekseyev and Movement for Marriage Equality v. Russia*)**

31. The first applicant is the founder and the executive director of the second applicant, an autonomous non-profit organisation.

32. In November 2009 the first applicant decided to create an autonomous non-profit organisation called Movement for Marriage Equality with the aims of defending human rights in the sphere of marriage relations, combating discrimination on the grounds of sexual orientation and gender identity and promoting equality for LGBT people, in particular through the legalisation of same-sex marriage.

33. On 14 December 2009 the first applicant submitted an application to register the second applicant with the Moscow department of the Federal Registration Service of the Ministry of Justice (hereafter "the Moscow registration authority").

34. On 12 January 2010 the Moscow registration authority refused to register the second applicant, finding that its articles of association were incompatible with Russian law. In particular, the second applicant's aims as described in paragraph 3.1 of the articles of association were incompatible with section 2(2) of the Non-profit Organisations Act and Article 12 of the Family Code (see paragraphs 56 and 69 below). Moreover, the second applicant's rights as set out in paragraph 5.1 of its articles of association were those belonging to public associations. Paragraph 11.1, stating that the organisation could cease its activities in the event that it was to be reorganised, was incompatible with the Civil Code, which provided that a reorganisation did not always result in cessation of activities.

Paragraphs 12.1 to 12.3 provided that changes could be made to the second applicant's articles of association instead of to its constitutional documents. Some clauses contained in paragraph 7.1 describing the second applicant's sources of income were also incompatible with the law. The application for registration mentioned only one founder of the second applicant, while its articles of association mentioned that it had been founded by citizens. There was also a mistake in the address indicated in the application for registration.

35. On 5 April 2010 the first applicant challenged the refusal before the Gagarinskiy District Court of Moscow. He submitted, in particular, that the refusal to register the second applicant violated his freedom of association as guaranteed by Article 30 of the Russian Constitution and Article 11 of the Convention. He argued that the second applicant's aims were compatible with section 2(2) of the Non-profit Organisations Act. It pursued the social aim of promoting equality and combating discrimination, and the aim of defending human rights, specifically the right to marry for LGBT people. As regards the alleged incompatibility with Article 12 of the Family Code, the fact that the second applicant intended to promote an amendment to that Article to legalise same-sex marriage could not serve as grounds for refusing its registration. The first applicant also argued that the remaining grounds for the refusal of registration had not had any basis in law. Paragraph 5.1 of the articles of association did not mention any activities that were prohibited by law for non-profit organisations. Paragraph 11.1 only mentioned the possibility of ceasing activities in the event of a reorganisation in accordance with Russian law; it did not provide for the automatic cessation of activities. Paragraphs 12.1 to 12.3 provided that changes could be made to the second applicant's articles of association, which was its only constitutional document. Paragraph 7.1 did not mention any sources of income prohibited by law. Furthermore, although the first applicant admitted that there had indeed been a discrepancy between the application for registration, which mentioned one founder, and the articles of association, mentioned "founders" in the plural, that had been a technical error that could be easily corrected through a special procedure provided for by law. Lastly, he argued that the address indicated in the application had been correct.

36. On 20 July 2010 the Gagarinskiy District Court dismissed the first applicant's complaint. It held that section 2(2) of the Non-profit Organisations Act, enumerating permissible aims for non-profit organisations, was open-ended. It followed that a non-profit organisation could pursue any aims except for making profit, provided they were compatible with public order and morality. The court further held as follows:

“[The second applicant pursues aims] incompatible with basic morality as it aims to promote legalisation of same-sex marriage and to increase the number of citizens

belonging to sexual minorities, thereby undermining the conceptions of good and evil, of sin and virtue established in society. If these aims are attained it may trigger a public reaction and result in a decrease in the birth rate.”

The District Court further held that in accordance with national tradition, reflected in Article 12 of the Family Code, marriage was the union of a man and a woman with the aim of giving birth to and raising children. The second applicant’s aim of promoting legalisation of same-sex marriage was therefore incompatible with established morality, with the State policy of protecting the family, motherhood and childhood and with national law. The District Court noted that that finding did not breach Russia’s international obligations because, in particular, Article 12 of the Convention provided that the right to marry was to be exercised in accordance with national laws.

The District Court also found that the other grounds for the refusal of registration advanced by the Moscow registration authority had been lawful and justified.

37. On 20 December 2010, following an appeal by the applicants, the Moscow City Court upheld that judgment.

### **C. Application no. 58282/12 (*Alekseyev and Others v. Russia*)**

38. The first, second and third applicants are the founders of the fourth applicant, a public movement. The first applicant is the president of the board of directors of the fourth applicant.

39. In October 2011 the first, second and third applicants decided to create Sochi Pride House with the aims of developing sports activities for LGBT people, combating homophobia in professional sport, creating positive attitudes towards LGBT sportspeople, and providing a forum for the latter during the Sochi Olympic Games.

40. On 19 October 2011 they submitted an application for registration of the fourth applicant with the Krasnodar department of the Federal Registration Service of the Ministry of Justice (hereinafter “the Krasnodar registration authority”).

41. On 16 November 2011 the Krasnodar registration authority refused to register the fourth applicant, finding that its articles of association were incompatible with Russian law. In particular, the name of the fourth applicant contained words that did not exist in the Russian language, in breach of section 1(6) of the State Language Act (see paragraph 70 below). The articles of association did not indicate which type of association the fourth applicant was. Paragraph 4.2 mentioned, in breach of the domestic law, that legally incapacitated persons could not be members. The application for registration also contained several mistakes.

42. On 6 December 2011 the applicants challenged the refusal before the Pervomayskiy District Court of Krasnodar. They argued, firstly, that it was common practice to give public associations original names containing

words in a foreign language. In particular, according to official data, there were eleven registered associations whose names contained the word “pride” and more than forty associations with the word “house” as part of their names. Moreover, the expression “pride house” did not have an adequate equivalent in Russian. Secondly, paragraph 1.1 of the articles of association indicated the fourth applicant’s organisational type: a public movement. The remaining mistakes were minor and should not serve as a ground for refusing registration.

43. On 20 February 2012 the Pervomayskiy District Court dismissed the applicants’ complaint. It upheld the grounds for the refusal of registration cited by the Krasnodar registration authority, finding that they had been lawful and justified. The court also held as follows:

“The aims of combating homophobia and creating positive attitudes towards LGBT sportspeople are incompatible with basic morality as they may lead to increasing the number of citizens belonging to sexual minorities, thereby undermining the conceptions of good and evil, of sin and virtue established in society ...

The court does not see any reason to order that the respondent register [the fourth applicant] because its constitutional documents do not comply with the requirements of Russian law and its aims are incompatible with basic morality and the State policy of protecting the family, motherhood and childhood. Its activities amount to propaganda of non-traditional sexual orientation, which may undermine national security, cause social and religious hatred and enmity and undermine the sovereignty and territorial integrity of the Russian Federation by decreasing its population. They are therefore extremist in nature.”

44. The applicants did not attend the pronouncement of the judgment. The minutes of 20 February 2012 mentioned that the judgment had been pronounced on that date, without specifying whether it was the entire judgment or the operative part only that had been pronounced. The written text of the judgment was sent to the applicants by post on 27 March 2012. It did not mention the date on which it had been delivered in finalised form or the date when the time-limit for appeal started to run or ended.

45. On 5 March 2012 the case file was deposited with the District Court’s registry.

46. On 19 March 2012 the applicants dispatched by post a short version of their appeal submissions against the judgment of 20 February 2012. The applicants submitted a postal receipt showing that they had sent a letter to the Pervomayskiy District Court on 19 March 2012. A short version of the appeal submissions was received by the District Court on 26 March 2012.

47. On 25 March 2012 the applicants paid the appeal court fee.

48. On 26 March 2012 they dispatched by post a complete version of their appeal submissions. It was received by the District Court on 3 April 2012. The applicants submitted, in particular, that the aim of Sochi Pride House was to combat discrimination against LGBT sportspeople. It did not intend to perform any unlawful or extremist activities. Nor could homosexuality be considered to be immoral. Russian law did not prohibit

the creation of an association to defend LGBT rights. They also argued that sexual orientation was not a matter of choice and that its activities could not therefore increase the number of LGBT people. In any event, Sochi Pride House did not intend to resort to any propaganda of homosexuality. The refusal of registration had therefore amounted to discrimination on grounds of sexual orientation. Lastly, the applicants submitted that the District Court had relied on grounds that had not been cited by the Krasnodar registration authority in its refusal of registration of 16 November 2011. As those new grounds related to Sochi Pride House's aims, it was clear that registration would be refused even if the applicants corrected the purely formal defects mentioned by the Krasnodar registration authority. The applicants then repeated the arguments they had advanced in their complaint of 6 December 2011.

49. On 28 March 2012 the Pervomayskiy District Court returned the short version of the appeal submissions to the applicants, finding that the appeal had been lodged on 26 March 2012, that is, to say outside the one-month time-limit established by law. The applicants had not asked for an extension of the time-limit. Nor had they submitted the stamped envelope showing the date on which they had received the judgment of 20 February 2012.

50. On 4 April 2012 the Pervomayskiy District Court returned the complete version of the appeal submissions, finding that it had been received by the District Court on 3 April 2012, outside the time-limit established by law. The applicants had not asked for an extension of the time-limit. Nor had they submitted the stamped envelope showing the date on which they had received the judgment of 20 February 2012.

51. The applicants appealed against the decisions of 28 March and 4 April 2012. They submitted that under Article 321 § 2 of the Code of Civil Procedure, the one-month time-limit for lodging an appeal had started to run on the day when a written copy of the first-instance judgment had been made available to the parties (see paragraph 72 below). A written copy of the judgment of 20 February 2012 had been deposited with the court's registry on 5 March 2012. Therefore, the time-limit for lodging an appeal had expired on 5 April 2012. In any event, even if the time-limit had started to run on the date the judgment had been pronounced, they had still complied with the time-limit as they had dispatched the appeal submissions by post on 19 March 2012, that is to say, less than a month after the pronouncement of the judgment of 20 February 2012. They submitted a copy of the postal receipt confirming the dispatch date; they also argued that the date of dispatch could be found on the stamp on the envelope. They also enclosed a copy of the stamped envelope confirming the date of receipt of the judgment of 20 February 2012.

52. On 24 July 2012 the Krasnodar Regional Court upheld the decision of 28 March 2012 on appeal, repeating the reasons set out in that decision

and finding that it had been lawful, well reasoned and justified. It did not reply to the applicants' argument that they had dispatched the appeal on 19 March 2012.

53. It appears that the appeal against the decision of 4 April 2012 has never been examined.

## II. RELEVANT DOMESTIC LAW

### A. Constitution of the Russian Federation

54. Article 30 § 1 provides that everyone has the right to freedom of association, including the right to establish trade unions to protect his or her interests. The free activity of public associations is guaranteed.

55. Article 13 § 4 provides that all public associations are equal before the law. Article 13 § 5 provides that it is prohibited to create and operate public associations which aim, or act with the aim, to make a forcible change to the foundations of the constitutional system of the Russian Federation, to undermine its territorial integrity or national security, to create paramilitary formations, or to incite social, racial, ethnic or religious discord.

### B. Non-profit Organisations Act

56. The Non-profit Organisations Act (Federal Law no. 7-FZ of 12 January 1996) provides that non-profit organisations can be created to pursue social, charitable, cultural, educational, scientific or managerial aims, aims of protecting public health, developing sports activities, answering spiritual and other non-material needs, defending rights and legitimate interests of citizens and organisations, resolving disputes and conflicts, providing legal services and any other aims relating to the furthering of the common good (section 2(2)).

57. A non-profit organisation must be registered in accordance with the procedure prescribed by law. It acquires legal-entity status – including the right to own property, to open bank accounts, to acquire and exercise pecuniary and non-pecuniary rights and obligations and to act as a party in judicial proceedings – from the moment it is registered with the State (sections 3(1) and (3) and 13.1).

58. State registration of a non-profit organisation may be refused in, *inter alia*, the following cases: (a) its articles of association do not comply with the requirements of Russian law; (b) the documents required for registration are incomplete or defective; or (c) the association's name is insulting to the moral, national or religious feelings of citizens (section 23.1(1)). If the documents required for registration are incomplete or

defective, the registration authority may suspend the registration procedure and set a time-limit for correcting the defects (section 23.1(1.1) as in force since 1 August 2009).

59. The refusal of registration may be appealed against to a higher registration authority or a court. Such a refusal does not prevent a new application for registration, provided that the defects identified have been remedied (section 23.1(5) and (6)).

60. A non-profit organisation may take one of the following organisational forms: a public association, an autonomous non-profit organisation or other forms (section 2(3)).

### **C. Public Associations Act**

61. The Public Associations Act (Federal Law no. 82-FZ of 19 May 1995) provides that a public association may obtain legal-entity status through State registration or carry on its activities without State registration and without legal-entity status (section 3(4)).

62. A public association may take one of the following organisational forms: a public movement, a public foundation, a political party, and so forth (section 7).

63. The establishment and functioning of public associations whose aims or activities are extremist is prohibited (section 16(1)).

64. A public association is established at a general conference, during which its articles of association are adopted and managing bodies are elected. From that moment on the public association acquires all rights and obligations under this Act, except the rights of a legal entity which are acquired at the moment of State registration (section 18(3) and (4)).

65. State registration of a public association may be refused, *inter alia*, in the following cases: (a) its articles of association do not comply with the requirements of Russian law; (b) the documents required for registration are incomplete or defective; or (c) the association's name is insulting to the moral, national or religious feelings of citizens. The refusal of registration may be appealed against to a higher authority or a court. Such a refusal does not prevent a new application for registration, provided that the defects identified have been remedied (section 23).

66. All public associations may disseminate information about their activities; hold public events; defend their rights and the rights of their members before the State and municipal authorities; make proposals and put forward initiatives to the State and municipal authorities concerning issues relating to their stated aims; and perform other activities allowed by law. In addition to the above activities, public association with legal-entity status may participate in the decision-making process of the State and municipal authorities; found mass-media outlets and carry out publishing activities; defend any person's interest before the State and municipal authorities;

make proposals and put forward initiatives to the State and municipal authorities concerning any issues; and participate in elections and referenda (section 27). Public associations with legal-entity status may also own property (section 30).

#### **D. Suppression of Extremism Act**

67. The Suppression of Extremism Act (Federal Law no. 114-FZ of 25 July 2002) defines “extremist activities” as, among others: (i) forcible change to the foundations of the constitutional system and violation of the integrity of the Russian Federation; and (ii) incitement of social, racial, ethnic or religious discord. It further defines an “extremist organisation” as a public or religious association or other organisation in respect of which, and on grounds provided for in the Act, a court has made a ruling that has entered into legal force for its dissolution or for the prohibition of its activities on account of the carrying out of extremist activity (section 1).

68. The creation and functioning of public or religious associations or other organisations whose objectives or activities are aimed at carrying out extremist activity is prohibited. If the authorities disclose indications of extremism in the activities of a public association, they must issue a warning to the association’s president. The authorities may set a time-limit for correction of the established defects. A warning may be appealed against to a court. If the warning is not appealed against, if it is upheld by the court, if the defects are not corrected within the established time-limit, or if within twelve months of the first warning indications of extremism are found for a second time in the association’s activities, a court may issue a dissolution order or, if the association does not have legal-entity status, ban its activities. A public association may also be dissolved or banned by a judicial decision if it carries out extremist activities which have resulted in a breach of the rights and freedoms of citizens or damage to the physical integrity or health of citizens, the environment, public order, public safety, property, the legitimate economic interests of natural or legal persons, the interests of society or the State, or which have created a real risk of such damage (sections 7 and 9).

#### **E. Family Code**

69. The Family Code provides that in order to conclude a marriage it is necessary for a man and a woman of marriageable age to express their free consent to the marriage (Article 12).



## **F. State Language Act**

70. The State Language Act (Federal Law no. 53-FZ of 01 June 2005) provides that when the Russian language is used as the State language it is not permissible to use words or expressions which are incompatible with the modern academic norms of the language, except when it is necessary to use foreign words that have no adequate equivalent in Russian (section 1(6)).

## **G. Code of Civil Procedure**

71. The 2002 Code of Civil Procedure provides that a procedural action for which a time-limit has been set may be performed before midnight on the last day of the specified period. The time-limit is complied with if the complaint, document or money concerned has been dispatched by post before midnight on the last day of the period in question (Article 108 § 3).

72. An appeal may be lodged within a month of the date when the first-instance judgment has been delivered in its finalised form (Article 321 § 2).

73. Ruling no. 13 of the Presidium of the Supreme Court of 19 June 2012 explains that the one-month time-limit for appeal starts to run from the day after a reasoned first-instance judgment has been delivered. If a reasoned judgment is not ready on the date of pronouncement, the judge pronounces the operative part of the judgment and informs the parties of the date when the reasoned judgment will be made available to them. The time-limit is complied with if the appellant has dispatched the appeal submissions by post before midnight on the last day of the period in question. In that case the date is established by a postmark, a postal receipt or any other document confirming the dispatch date (paragraph 6).

## **III. RELEVANT COUNCIL OF EUROPE DOCUMENTS**

74. Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity (adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies) states:

### **“II. Freedom of association**

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order ...

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

75. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications.

### II. ALLEGED ABUSE OF THE RIGHT OF INDIVIDUAL APPLICATION BY MR ALEKSEYEV

76. The Government submitted that Mr Alekseyev had abused the right of individual application by insulting the judges of the Court on his social networking accounts. The relevant Convention provision reads as follows:

#### Article 35

“3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

- (a) the application is ... an abuse of the right of individual application;
- ...”

77. By letter of 21 January 2019 the Government informed the Court that after the delivery of the judgment in the case of *Alekseyev and Others v. Russia* (nos. 14988/09 and 50 others, 27 November 2018), Mr Alekseyev, frustrated by the rejection of his claims in respect of non-pecuniary damage, had published insulting comments about the Court and the judges who had adopted that judgment on his Instagram and VKontakte social networking accounts. The Government submitted that those comments had amounted to an abuse of the right of individual application.

78. In reply, Mr Alekseyev denied having any personal social networking accounts.

## A. General principles

79. The Court reiterates that the concept of “abuse” within the meaning of Article 35 § 3 (a) of the Convention must be understood in its ordinary sense according to general legal theory – namely, the harmful exercise of a right for purposes other than those for which it is designed (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009; *Petrović v. Serbia* (dec.), no. 56551/11 and 10 other applications, 18 October 2011; and *De Luca v. Italy*, no. 43870/04, § 35, 24 September 2013).

80. The Court further reiterates that it has applied that provision, in particular, in two types of situations. Firstly, an application may be rejected as an abuse of the right of petition within the meaning of Article 35 § 3 (a) if it was knowingly based on untrue facts (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references). Secondly, it may also be rejected in cases where an applicant used particularly vexatious, contemptuous, threatening or provocative language in his communication with the Court – whether this was directed against the respondent Government, their Agent, the authorities of the respondent State, the Court itself, its judges, its Registry or members thereof. However, it does not suffice that the applicant’s language was sharp, polemical or sarcastic; to be considered an abuse, it must exceed the limits of normal, civic and legitimate criticism. If after a warning by the Court the applicant ceased to use the expressions in question, expressly withdrew them or, better still, offered an apology, the application may no longer be rejected as an abuse of the right of petition (see *Miroļubovs and Others*, cited above, § 64, with further references).

81. However, the notion of abuse of the right of application under Article 35 § 3 (a) of the Convention is not limited to those two instances and other situations can also be considered as an abuse of that right. In principle any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it can be considered as an abuse of the right of application (see *Podeschi v. San Marino*, no. 66357/14, § 86, 13 April 2017). For example, the Court found that an applicant’s conduct had been contrary to the purpose of the right of individual petition in cases where the applicant had lodged a succession of ill-founded and querulous complaints, creating unnecessary work which was incompatible with the Court’s real functions, and which hindered it in carrying them out (see *M. v. the United Kingdom*, no. 13284/87, Commission decision of 15 October 1987, Decisions and Reports (DR) 54, p. 214; *Philis v. Grece*, no. 28970/95, Commission decision of 17 October 1996, Decisions and Reports (DR) 54, p. 214; and *Petrović*, cited above); where the applicant had obtained evidence in support of his case before the Court by force in

blatant violation of the rights and the values protected by the Convention (see *Koch v. Poland* (dec.), no. 15005/11, 7 March 2017); or where the applicant had not meticulously abided by all the relevant rules of the procedure and thereby had failed to show a high level of prudence and meaningful cooperation with the Court (see, for example, *Bekauri v. Georgia* (preliminary objection), no. 14102/02, §§ 22-24, 10 April 2012, and *Eskerkhanov and Others v. Russia*, nos. 18496/16 and 2 others, §§ 23-29, 25 July 2017). It also found, in the context of critical statements made by the applicant party's leader to the press, that "vexing manifestations of irresponsibility and a frivolous attitude towards the Court", amounting to contempt, might also lead to the rejection of an application as abusive (see *The Georgian Labour Party v. Georgia* (dec.), no. 9103/04, 22 May 2007).

## **B. Application to the present case**

82. The Court notes at the outset that the Government did not name the social networking accounts to which they referred, except by mentioning that they were hosted by Instagram and VKontakte, or indeed cite any of the allegedly insulting statements. Mr Alekseyev, a well-known LGBT activist, is, however, a public figure who has given many interviews to the media and whose social networking accounts have hundreds of followers. These accounts can easily be found by typing his name and the name of the relevant social network in an Internet search engine. They contain personal information about him – for example, that he is an LGBT activist, the head of the GayRussia.Ru project and the founder of the Moscow Pride Movement – and personal photographs, as well as information about his previous and pending cases before the Court, including scanned copies of the Court's original letters to him. Moreover, while stating that those were not his "personal" accounts, Mr Alekseyev did not deny that he had been the author of the statements concerning the Court published on them.

83. The Court further observes that the statements about the Court and its judges published on the accounts in question are virulently and personally offensive and threatening. In particular, Mr Alekseyev published the judges' photographs with such captions as "alcoholic", "drug addict", "corrupt", and "this crone owes me 100,000 euros ... God will punish her". He also called the judges, among other terms, "European bastards and degenerates", "freaks", "venal scum" and "idiotic". He wished that they would "snuff it as soon as possible like dogs", threatened to "torture [them] ... with litres of vodka" and announced that "it [was] time to set fire to the European Court of Human Rights". He also stated: "We should not have given wench the right to vote ... They should be cooking soup". These statements clearly exceed the limits of normal, civic and legitimate criticism.

84. The Court takes note of the fact that the above comments were made in reaction to the Court's judgment in the case of *Alekseyev and Others* (cited above), that is outside the context of the present case. However, it also takes into account that, by publishing the impugned statements on social networking accounts accessible to all, Mr Alekseyev sought to ensure the widest possible circulation of his accusations and insults and thereby provided evidence of his determination to harm and tarnish the image and reputation of the institution of the European Court of Human Rights and its members (see *Duringer and Grunze c. France* (dec.), nos. 61164/00 and 18589/02, 4 February 2003, and *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004). The Court therefore sent a letter to Mr Alekseyev referring to all his pending applications and warning him that such statements might amount to an abuse of right of petition. Mr Alekseyev has not however withdrawn his statements which are still visible on his social networking accounts. Most importantly, he has since published new offensive statements about the Court, in particular describing it as "a rubbish heap" and calling its judges "European corrupt scum" and "homophobic". These statements published after the warning that explicitly mentioned the present applications can therefore be considered to be connected with them.

85. The Court considers that by continuing to publish insults about the Court and its judges after the warning, the applicant has shown disrespect to the very institution to which he had applied for the protection of his rights. Indeed, it is unacceptable to seek the protection of a court in which the applicant has lost all trust. His conduct constitutes "a vexing manifestation of irresponsibility and a frivolous attitude towards the Court", amounting to contempt (see *The Georgian Labour Party*, cited above), and is therefore contrary to the purpose of the right of individual application, as provided for in Articles 34 and 35 of the Convention. It constitutes an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention.

86. It follows that the complaints lodged by Mr Alekseyev must be declared inadmissible as an abuse of the right of application, pursuant to Article 35 §§ 3 (a) and 4 of the Convention. This finding of inadmissibility, exclusive to Mr Alekseyev, does not prevent the Court from examining the merits of the case, and in particular of applications nos. 35949/11 and 58282/12 in so far as brought by the other applicants.

### III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

87. The applicants in application no. 58282/12 complained that the refusal to examine their appeal on the merits breached their right of access to a court. They relied on Article 6 § 1, the relevant parts of which read:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

## A. Admissibility

88. The Court has on several occasions found that Article 6 was applicable under its civil head to domestic proceedings concerning the rights to freedom of assembly or association (see, for example, *APEH Üldözötteinek Szövetsége and Others v. Hungary*, no. 32367/96, §§ 34-36, ECHR 2000-X; *Kuznetsov and Others v. Russia*, no. 184/02, §§ 79-85, 11 January 2007; *Sakellarpoulos v. Greece (dec.)*, no. 38110/08, 6 January 2011; and *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 494, 7 February 2017). It does not see any reason to depart from that finding in the present case.

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

## B. Merits

### 1. Submissions by the parties

90. The Government submitted that the applicants had lodged their appeal against the judgment of 20 February 2012 outside the one-month time-limit established by domestic law. That time-limit had started to run on 20 February 2012, when the District Court had pronounced its judgment. According to the Government, it appeared from the minutes of that hearing that the District Court had pronounced the entire text of the reasoned judgment, as it would otherwise have been indicated in the minutes that only the operative part had been pronounced. The applicants' argument that the time-limit had started to run on 5 March 2012, when a copy of the reasoned judgment had been deposited with the court's registry, was therefore erroneous. The applicants had been informed about the hearing of 20 February 2012 but had not attended. A copy of the judgment had been sent to them on 27 February 2012. They had not submitted to the District Court any documents, such as a stamped envelope, showing the date on which they had received it. They had not even claimed, let alone proved, that there had been a delay in providing them with a copy of the judgment of 20 February 2012. Nor had they asked for an extension of the time-limit. The domestic courts had therefore correctly found that the one-month time-limit had started to run on 20 February 2012, when the reasoned judgment had been pronounced.

91. The Government further submitted that a short version of the appeal submissions had been received by the District Court on 26 March 2012, more than a month after the time-limit had started to run. The District Court had found that the appeal had been lodged on 26 March 2012 because the applicants had not proved that they had dispatched it on 19 March 2012 as

they had claimed. The postal receipt submitted by them had been insufficient proof of the date of dispatch because it had not been clear from it that it concerned the short version of the appeal submissions. Moreover, they had paid the court fee on 25 March 2012.

92. Lastly, referring to the case of *Itslayev v. Russia* (no. 34631/02, 9 October 2008), the Government submitted that the requirement to lodge a judicial claim within a statutory time-limit was not in itself incompatible with Article 6 § 1 of the Convention. Such a requirement pursued the legitimate aim of proper administration of justice and of compliance, in particular, with the principle of legal certainty. Given that the national courts had refused to examine the applicants' appeal on the merits because of their failure to comply with the statutory time-limit for appealing, their right of access to a court had not been violated.

93. The applicants submitted that the judgment of 20 February 2012 had been deposited with the District Court's registry on 5 March 2012. The one-month time-limit had started to run on that date, as before it the applicants had not had any opportunity to study the reasons why their claim had been rejected. The time-limit could not in any event have started to run on 20 February 2012, as a copy of the judgment had not been sent to them by the District Court until 27 February 2012. The District Court had therefore known that they had received the judgment after 27 February 2012. However, even assuming that the one-month time-limit had started to run on 20 February 2012, the applicants had complied with it as they had dispatched their appeal submissions by post on 19 March 2012, as confirmed by a postal receipt.

## 2. *The Court's assessment*

94. The Court refers to the recapitulation of its general principles concerning access to a court in the recent Grand Chamber case of *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018).

95. As regards more specifically procedural time-limits governing the lodging of appeals, it is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts of appeal and of first instance, to resolve problems of interpretation of domestic legislation. The role of the Court is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or the lodging of appeals. Rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal are aimed at ensuring the proper administration of justice and compliance, in particular, with the principle of legal certainty. Litigants should expect those rules to be applied (see *Jensen v. Denmark*, no. 8693/11, § 35, 13 December 2016, with further references).

96. However, while time-limits are in principle legitimate limitations on the right to a court, the manner in which they are applied in a particular case may give rise to a breach of Article 6 § 1 of the Convention, for example if the time-limit for lodging an appeal starts to run at a moment when the party did not and could not effectively know the content of the contested court decision (see *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, § 37, ECHR 2000-I, and *Viard v. France*, no. 71658/10, § 38, 9 January 2014); or if the time-limit is so short and inflexible that the party in practice does not have sufficient time to lodge an appeal (see *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, §§ 46-50, *Reports of Judgments and Decisions* 1998-VIII, and *Gruais and Bousquet v. France*, no. 67881/01, §§ 29 and 30, 10 January 2006); or if the dismissal of an appeal for failure to comply with a time-limit is not a foreseeable reaction (see *Olsby v. Sweden*, no. 36124/06, § 51, 21 June 2012).

97. Consequently, the Court's task is essentially to determine whether, in the present case, the domestic courts calculated the start and end of the time-limit for appeal and determined the date on which the applicants lodged their appeal in a foreseeable and reasonable manner, without constituting a bar to the applicants' effective access to a court (see, *mutatis mutandis*, *Kurşun v. Turkey*, no. 22677/10, § 95, 30 October 2018).

98. Turning to the facts of the present case, the Court notes that the applicants' right to appeal was guaranteed by the Code of Civil Procedure, which clearly stated that the one-month time-limit for appeal started when the first-instance judgment had been delivered in its finalised form and ended at midnight on the last day of the period in question. It was complied with if the appeal submissions had been dispatched by post before midnight on that day (see paragraphs 71 to 73 above).

99. It is not clear from the documents in the case file when the judgment of 20 February 2012 was delivered in finalised form, that is, when the finalised text was made available to the parties. Neither the minutes nor the judgment mentioned that date. The date when the time-limit for appeal started to run could therefore not be clearly established on the basis of the documents in the applicants' possession. The only certain fact is that the finalised judgment was sent to the applicants by post on 27 March 2012. It therefore follows that the applicants had not known the contents of the judgment before that date. That circumstance was certainly known both to the Pervomayskiy District Court, which sent the judgment to the applicants, and to the Krasnodar Regional Court, to which the applicants submitted the stamped envelope showing the date on which they had received it (see paragraph 51 above). The domestic courts did not explain why in such circumstances they had taken 20 February 2012 as the starting date for the time-limit. The Court is therefore not convinced that the start of the time-limit for appeal was determined in a foreseeable manner.



100. However, even assuming that the time-limit started to run on 20 February 2012, the applicants considered that they had complied with the one-month time-limit by dispatching their appeal submissions by post on 19 March 2012. The domestic courts did not explain why they considered that the appeal had been lodged on 26 March 2012, that is, on the date of receipt of the appeal submissions by the Pervomayskiy District Court, rather than on the date of postal dispatch as required by domestic law (see paragraph 71 above). The date of dispatch had been confirmed by documentary evidence, in particular the postal receipt submitted by the applicants to the Krasnodar Regional Court and the post stamp on the envelope containing the appeal submissions, which was in the possession of the Pervomayskiy District Court (see paragraphs 51 above). The Regional Court did not explain why it did not take those documents into account although the courts had been instructed to do so by the recent ruling of the Supreme Court (see paragraph 73 above). It follows that the date on which the applicants lodged their appeal was also not determined in a foreseeable manner.

101. The Court accordingly finds that in the present case both the starting date for the time-limit and the date on which the appeal was lodged were determined by the domestic courts in a manner that was not foreseeable to the applicants, and without any reasoning explaining the departure from the established procedural rules. As a result, the applicants' appeal was not examined on the merits although they had seemingly followed the rules for lodging appeals as established by domestic law. That is sufficient for the Court to conclude that the applicants were deprived of an opportunity to appeal against the first-instance judgment and that the very essence of their right to effective access to a court was thereby impaired.

102. There has therefore been a violation of Article 6 § 1 of the Convention in application no. 58282/12.

#### IV. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

103. The applicants complained that the refusals to register the three applicant organisations had violated their freedom of association, guaranteed by 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.”

## **A. Admissibility**

### *1. Submissions by the parties*

104. The Government submitted that the applicants in application no. 12200/08 had not exhausted the domestic remedies because instead of asking for the refusal of registration of 1 June 2007 to be declared unlawful and unfounded and for the breach of his rights to be remedied, the first applicant had sought a declaration that the refusal of registration had interfered with his rights. Moreover, the first applicant had not contested before the domestic courts some of the grounds for the refusal of registration of 1 June 2007 concerning the irregularities in the documents submitted for registration – in particular, the irregularities concerning the failure to staple the application form, the incorrectly drawn up lease agreement for the office, and the irregularities in the articles of association concerning the right to dispose of property and the competence and the procedure for appointment of one of the governing bodies. Some of those required amendments to the second applicant’s articles of association.

105. The Government further submitted that the applicants in application no. 58282/12 had not exhausted the domestic remedies as they had not appealed against the judgment of 20 February 2012 within the time-limit established by domestic law.

106. Lastly, the Government submitted that Movement for Marriage Equality and Sochi Pride House had not been registered and did not therefore exist. Accordingly, they could not lodge an application with the Court.

107. The applicants in application no. 12200/08 submitted that the grounds that they had not contested had been minor technical errors in the documents – such as the failure to insert page numbers – which could easily have been corrected if the registration authority had afforded such an opportunity in accordance with established administrative practice. In any event, those minor purely technical defects could not serve as sufficient grounds for refusing registration under domestic law. The main reason for the refusal of registration had been the second applicant’s stated aim of combating discrimination on grounds of sexual orientation. That issue had been raised before the domestic courts, which had examined it in substance. The applicants had therefore exhausted domestic remedies.

108. The applicants in application no. 58282/12 argued that they had lodged their appeal within the established time-limit (see the summary of their arguments in paragraph 93 above).

109. Lastly, the applicants argued that public associations could exist without State registration, although their rights were limited in comparison

to registered associations (they referred to section 27 of the Public Associations Act, cited in paragraph 66 above). The applicant organisations in question therefore existed as unregistered public associations and could apply to the Court.

## 2. *The Court's assessment*

### (a) **Exhaustion of domestic remedies**

110. The rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against a State to use first the remedies provided by the national legal system, thus allowing States the opportunity to put matters right through their own legal systems before being required to answer for their acts before an international body. In order to comply with the rule, applicants should normally use remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

111. While in the context of machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally requires also that the complaints intended to be made subsequently at the international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

#### (i) *Application no. 12200/08*

112. As regards the allegedly incorrect formulation of the first applicant's complaint against the refusal of registration of 1 June 2007, the Court notes that, contrary to the Government's allegations, in his application for judicial review of that refusal the first applicant explicitly argued that the refusal of registration had been unlawful and requested that the registration authority be required to remedy the breach of the law by registering Rainbow House (see paragraph 23 above). He relied on arguments that were in substance the same as those he had then raised before the Court. Having examined his complaint, the domestic courts found that the refusal of registration had been lawful and justified and had not breached the applicants' right to freedom of association. The Court therefore considers that the complaint under Article 11 was properly raised and aired before the national courts.

113. As regards the Government's argument that the first applicant had not contested before the domestic courts some of the grounds for the refusal of registration of 1 June 2007 concerning the irregularities in the documents submitted for registration, the Court considers that this argument is so closely linked to the substance of the applicants' complaint that it falls to be examined on the merits under Article 11 of the Convention. It therefore decides to join this part of the Government's objection to the merits.

(ii) *Application no. 58282/12*

114. The Court has already found that the refusal to examine the applicants' appeal on the merits amounted to a breach of their right of access to a court (see paragraphs 98 to 102 above). The Court has in particular found that the applicants complied with the formal requirements for lodging appeals as established by domestic law. It therefore dismisses the Government's objection as to non-exhaustion of domestic remedies.

**(b) Standing to apply to the Court and victim status**

115. The Court notes that under Russian law, public associations, such as Rainbow House and Sochi Pride House, can exist without registration, whereas non-profit organisations, such as Movement for Marriage Equality, are considered to exist from the moment of State registration only. However, the Court's case-law does not make any distinction between applicant organisations on the basis of whether they legally exist under the national law at the moment their application is lodged with the Court. The Court has frequently recognised the standing of unregistered or dissolved organisations to submit an application without enquiring into whether the organisation is considered to legally exist in some form under the national law after its dissolution or refusal of registration (see, among many other authorities, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, §§ 49-50, ECHR 2003-II; *Republican Party of Russia v. Russia*, no. 12976/07, §§ 91 and 100, 1 April 2011; *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, §§ 81 and 149, ECHR 2013 (extracts); *Association of Victims of Romanian Judges and Others v. Romania*, no. 47732/06, §§ 11 and 20, 14 January 2014; and *Islam-Ittihad Association and Others v. Azerbaijan*, no. 5548/05, §§ 31 and 41, 13 November 2014). It follows that all three applicant organisations have the standing to lodge an application with the Court about the refusal of their registration.

116. The Court further notes that decisions by the authorities to refuse to register, or to dissolve, a group have been found to affect directly both the group itself and also its presidents, founders or individual members (see *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, § 101, 10 June 2010, with further references; see also *Islam-Ittihad Association*

*and Others*, cited above, § 58). It follows that all the applicants may claim to be victims of the alleged violations of Article 11.

**(c) Conclusion**

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

**B. Merits**

*1. Submissions by the parties*

**(a) The Government**

118. The Government submitted that the refusals of registration had not amounted to an interference with the applicants' rights under Article 11 of the Convention. In the alternative, they submitted that the refusals had been lawful and justified.

119. As regards application no. 12200/08, the Government submitted that registration of Rainbow House had been refused because its articles of association had not complied with the requirements of Russian law. The registration authority had in particular found that its intended activities would have amounted to propaganda of non-traditional sexual orientation. They might therefore destroy society's moral values and, by decreasing the population, negatively affect Russian sovereignty and territorial integrity. Rainbow House's activities might as a result undermine the safety of Russian society and the State. They might also jeopardise the constitutionally protected institutions of family and marriage. They might, moreover, incite social or religious hatred and enmity and therefore amount to extremist activities. In the Government's submission, that finding had not amounted to declaring the second applicant an extremist organisation. Lastly, there had been several irregularities in the documents submitted for registration. The refusal of registration had therefore been lawful and proportionate to the legitimate aim pursued. It had not been arbitrary. It was not the Court's task to act as a fourth-instance court and to question the findings made by the domestic courts.

120. As regards application no. 35949/11, the Government submitted that Movement for Marriage Equality's aim was to promote the legalisation of same-sex marriage. That aim was contrary to national traditions, to the State family policy and to Russian law, which provided that marriage was the union of a man and a woman with the aim of giving birth and raising children. The Government also stressed that Article 12 of the Convention guaranteed the right to marry in accordance with national laws. The fact that Russian law did not allow same-sex marriage did not affect the applicants'

rights. There had also been other irregularities in the documents submitted for registration.

121. As regards application no. 58282/12, the Government submitted that the articles of association of Sochi Pride House had also been incompatible with Russian law. Firstly, its name contained words in a foreign language. Such names were only allowed for commercial organisations and could not be used for non-commercial ones. The applicants' argument that foreign words were often used in the names of non-commercial organisations had been misconceived because those organisations had been registered before 2006, when registration had been performed by the tax authorities, which had no competence to verify whether an organisation's name was compatible with Russian law. There had also been other irregularities in the documents submitted for registration. The domestic courts had confirmed that the refusal of registration had been lawful. They had found, in particular, that the aims of Sochi Pride House had been incompatible with basic morality and State family policy and that its activities would amount to propaganda of non-traditional sexual orientation. Such activities might undermine Russian national security, sovereignty and territorial integrity and incite social and religious hatred and enmity; they were therefore extremist in nature. In the Government's opinion, there was no need to submit any proof for the finding that LGBT advocacy might lead to a decrease in population. Given the nature of childbearing, it was absurd to deny it. The Government also submitted that propaganda of non-traditional sexual relations aimed at minors was an administrative offence. The Constitutional Court had found that punishment of such propaganda was compatible with the Russian Constitution as it was aimed at protecting family values, as well as the health, morals and intellectual development of children.

122. Lastly, the Government submitted that the applicants in all three applications had never reapplied for registration, although they could have done so after correcting the irregularities identified by the registration authority.

**(b) The applicants**

123. The applicants submitted that the ability to establish a legal entity in order to act collectively in a field of mutual interest was one of the most important aspects of freedom of association, without which that right would be deprived of any meaning (they referred to *Church of Scientology Moscow v. Russia*, no. 18147/02, 5 April 2007). They argued that the refusals of registration had therefore amounted to an interference with the freedom of association. That interference had been unlawful, had not pursued any legitimate aim and had, moreover, been disproportionate.

124. The applicants submitted, firstly, that under the Russian Constitution, only those public associations could be prohibited which

sought to make a forcible change to the foundations of the constitutional system of the Russian Federation, to undermine its territorial integrity or national security, to create paramilitary formations, or to incite social, racial, ethnic or religious discord (see paragraph 55 above). The refusal of registration on other grounds had been therefore unlawful.

125. The applicants further submitted that the refusals of registration had also been unlawful because, contrary to the established practice endorsed by the Federal Registration Authority, the registration authority had not given the applicants an opportunity to correct the technical irregularities in the registration documents. They could easily have been corrected if the registration authority had afforded such an opportunity in accordance with established practice. In any event, given that the authorities had found that the associations' aims had been contrary to Russian law, the additional reasons relating to the purely technical irregularities in the documents had been insignificant. Even if the applicants had corrected them, they would still have been unable to have the associations registered, as the main reasons relating to the associations' aims would have remained.

126. Indeed, the main reason for the refusals of registration had been the applicants' aim of advocating and defending LGBT rights. It was clear from the reasoning of the domestic courts and the Government's submissions that the national authorities considered that any association advocating LGBT rights was extremist, dangerous for national security, immoral and offensive to the feelings of the majority of the population, as well as having a corrupting effect on minors, and therefore had to be prohibited.

127. The applicants argued that in a democratic society the principle of pluralism required that different concepts of morality should be allowed to coexist and that the expression of opinions challenging the traditional vision of morality should be permitted. They further argued that the mere possibility that an association's views or activities might confuse or even shock some parts of society could not be regarded as a sufficient ground for the refusal of its registration. In a democratic society a call to respect the rights of a minority could never be considered contrary to public morals. The Court had repeatedly stated that a democratic society was pluralistic, tolerant and broadminded (they referred to *Bączkowski and Others v. Poland*, no. 1543/06, § 63, 3 May 2007), and those principles were especially important when people were expressing unpopular or minority views. Therefore, though the protection of public morality was a legitimate aim under the Convention, it could not be used to justify interferences with minorities' rights based on the majority's disapproval.

128. Nor did the protection of LGBT rights amount to extremist activities, and indeed the domestic law, including the Suppression of Extremism Act, did not provide for any punishment or limitation of rights on grounds of sexual orientation or prohibit the creation of public associations for sexual minorities.

129. Relying on the Court's judgment in the case of *Alekseyev v. Russia* (nos. 4916/07 and 2 others, § 86, 21 October 2010), the applicants further submitted that there was no scientific evidence or sociological data 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 was only through fair and public debate that society could address such complex issues. Such a debate would benefit social cohesion by ensuring that representatives of all views were heard, including the individuals concerned. Similarly, even though there was no European consensus concerning same-sex marriage, it was obvious that the Convention protected the rights of LGBT people to advocate the recognition of same-sex unions, including by creating associations for that purpose.

130. The applicants also submitted that the Government's reference to the law prohibiting propaganda of non-traditional sexual relations among minors had been misconceived as that law had been passed in 2013, that is, after the facts of the present case.

131. Lastly, the applicants asserted that their activities had been limited to combating discrimination and promoting tolerance and respect for human rights of the LGBT people, particularly in the spheres of sports and marriage. They had not intended to promote nudity or other sexually explicit or provocative content or practices or to criticise the established moral norms or religious opinions. The applicants concluded that the domestic authorities and the Government had not shown that the applicant organisations could cause any real harm to society. On the contrary, society as a whole could only benefit from the advancement of the rights of LGBT people.

**(c) The third parties**

*(i) The Human Rights Centre of Ghent University*

132. The Human Rights Centre of Ghent University submitted that there was a growing global trend of States abusively relying on loosely interpreted legitimate aims to restrict human rights, and in particular the right to freedom of association. It argued that the legitimate aims enumerated in Article 11 § 2 of the Convention should be interpreted restrictively and that States' reliance on those aims should be more attentively scrutinised by the Court. In particular, States should substantiate by reasonable, objective and specific arguments the relevance of the legitimate aim cited by them to the facts of the case.

133. It further argued that homophobic or discriminatory purposes should never be considered legitimate aims under Article 11 § 2. Nor could the legitimate aims enumerated in that Article be used as a smokescreen for hiding ulterior homophobic or discriminatory motives. It urged the Court to



find that in such a case the interference did not pursue any legitimate aim, instead of examining the case from the point of view of the proportionality of the interference. By refraining from censuring an aim or an underlying motivation which was itself incompatible with the Convention or with the values of a democratic society and by concentrating its assessment on the proportionality of the interference instead, the Court would be sending a wrong signal that such a blatantly illegitimate aim was to be accorded weight in the balancing exercise and would therefore confer a certain legitimacy on it. Instead the Court should send a clear message that if an aim was illegitimate under the Convention, it could not justify any restriction of the Convention rights.

134. The Human Rights Centre of Ghent University therefore urged the Court to attentively examine whether the interferences in the present case had pursued any legitimate aims.

(ii) *The EHRAC, ILGA-Europe and the ICJ*

135. The EHRAC, ILGA-Europe and the ICJ submitted, jointly, that it was impossible to protect individual rights if citizens were unable to create associations to defend common needs and interests. The right to freedom of association was therefore a unique human right, respect for which served as a barometer of the general standard of human rights protection and the level of democracy in the country concerned. Any restrictions of that right therefore required a strong justification and, in particular, the scope of permissible legitimate aims should be interpreted narrowly.

136. As regards the aim of protecting morals, the interveners submitted that there had been only a few occasions where it had been successfully invoked to justify a restriction on the right to freedom of association. In the cases of *Lavissee v. France* (no. 14223/88, Commission decision of 5 June 1991, Decisions and Reports no. 70, p. 229) and *Larmela v. Finland* (no. 26712/95, Commission decision of 28 May 1997), the Commission had accepted that, given that the associations had advocated practices that were illegal under national law – namely surrogate motherhood and consumption of cannabis – the refusal to register them had been justified by the aim of protecting public decency and morals. The Court had, however, since changed that approach, finding that an association could be established to pursue a change in the law, including the legalisation of conduct that was illegal, so long as the means to be used and the outcome to be achieved were compatible with fundamental democratic principles, including in particular non-discrimination, pluralism and respect for human rights (the interveners cited *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, Reports 1998-I, and *Refah Partisi (the Welfare Party) and Others*, cited above).

137. Relying on the United Nations Human Rights Committee's opinion in *Fedotova v. Russia* (Communication no. 1932/2010,

CCPR/C/106/D/1932/2010), the interveners argued that the concept of morals derived from many social, philosophical and religious traditions; consequently, limitations for the purpose of protecting morals had to be based on principles not deriving exclusively from a single tradition. Any such limitations had to be understood in the light of the universality of human rights and the principle of non-discrimination. Accordingly, even if the government or some parts of society opposed certain activities on moral grounds, that was not in itself sufficient to justify restrictions on those activities, particularly if they were protected by the Convention or other human rights standards (the interveners cited, for example, *Sidiropoulos and Others v. Greece*, 10 July 1998, § 44, *Reports* 1998-IV).

## 2. *The Court's assessment*

### (a) **General principles**

138. The Court reiterates that the right to form an association is an inherent part of the right set forth in Article 11. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others*, cited above, § 40).

139. 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 the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, 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, and *Bączkowski and Others*, cited above, § 62).

140. The State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly

and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a “pressing social need”; thus, the notion of “necessary” does not have the flexibility of such expressions as “useful” or “desirable” (see *Gorzelik and Others*, cited above, §§ 94-95, with further references). In determining whether a necessity within the meaning of paragraph 2 of this Convention provision exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see *Sidiropoulos and Others*, cited above, § 40).

141. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey and Others*, cited above, § 47, and *Gorzelik and Others*, cited above, § 96).

**(b) Application to the present case**

*(i) Existence of an interference*

142. The Court reiterates that the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. The Court has found on many occasions that a refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to an interference with the exercise of the right to freedom of association (see, among other authorities, *Sidiropoulos and Others*, cited above, § 31; *Gorzelik and Others*, cited above, § 52; *Church of Scientology Moscow*, cited above, § 81; and *Jehovah’s Witnesses of Moscow and Others*, cited above, § 101).

143. The Court notes that under Russian law, non-profit organisations, such as Movement for Marriage Equality, cannot exist without State registration (see paragraph 57 above). Public associations, such as Rainbow House and Sochi Pride House, can exist without registration, but cannot possess or exercise the rights associated exclusively with the legal-entity status of a registered “public association” – such as, in particular, the right

to own property, carry out publishing activities, found mass-media outlets, participate in elections or referenda, and participate in the decision-making process of the State and municipal authorities. The possibilities for them to make proposals and to put forward initiatives to the State and municipal authorities and to defend the population's rights and interests are also limited as compared to registered public associations (see paragraph 66 above). Thus, the status afforded to unregistered public associations significantly restricts the right to freedom of association of the founders and members of such an association (compare *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, §§ 85-86, ECHR 2009; *Church of Scientology of St Petersburg and Others v. Russia*, no. 47191/06, § 38, 2 October 2014; and *Jehovah's Witnesses of Moscow and Others*, cited above, §§ 102 and 103, all concerning refusals to register religious organisations).

144. It follows that, as a result of the Russian courts' decisions, Movement of Marriage Equality could not be created, while Rainbow House and Sochi Pride House could not acquire legal-entity status and the rights associated with it. Those decisions therefore interfered with the freedom of association both of the applicant organisations and of the individual applicants, who were their founders or presidents (see *Jehovah's Witnesses of Moscow and Others*, cited above, §§ 101 and 103, with further references).

(ii) *Justification for the interference*

145. The Court notes at the outset that the registration authority and the domestic courts relied on two types of grounds for refusing to register the applicant organisations: grounds relating to the applicant organisations' aims and grounds relating to various irregularities in the registration documents. However, the grounds of the latter type appear to be secondary and inconsequential. Indeed, even if the applicants had successfully contested them or corrected the formal irregularities in the registration documents, their applications for registration would still have been refused with reference to the applicant organisations' aims. The example of Rainbow House is telling in this respect. Although the applicants corrected the irregularities identified by the registration authority in their first application for registration and resubmitted the application, the registration authority identified new irregularities it had not mentioned the first time. During the judicial review of the second refusal of registration, however, the Regional Court did not rely on any irregularities in the registration documents and limited its assessment to Rainbow House's aims. It is therefore clear that the domestic courts considered that the grounds relating to the organisation's aims alone were sufficient to justify a refusal of registration.

146. The Court is therefore not convinced by the Government's argument that the applicants could have resubmitted applications for

registration after correcting the irregularities in the registration documents identified by the registration authority. It is clear from the domestic authorities' decisions and the Government's observations that to obtain registration the applicant organisations would have had to change their aims, that is, to renounce promoting LGBT rights. The grounds relating to the applicant organisations' aims therefore played a decisive role in the decisions to refuse their registration. The Court notes that those grounds touched upon the very core of the applicant organisations and affected the essence of the right to freedom of association.

147. In view of the above considerations, the Court does not find it necessary to examine the grounds for the refusals of registration relating to various irregularities in the registration documents; it will concentrate its assessment on the grounds relating to the applicant organisations' aims. Nor is it therefore necessary to examine the Government's non-exhaustion objection relating to the failure by the applicants in application no. 12200/08 to contest some of the irregularities in their second application for registration.

148. The Court will next examine whether the refusals of registration on the grounds relating to the applicant organisations' aims were lawful, pursued a legitimate aim and were "necessary in a democratic society".

(a) "Prescribed by law"

149. The Court notes that the facts of the present case occurred before the adoption of the legislative ban on "propaganda of non-traditional sexual relations aimed at minors" examined in the case of *Bayev and Others v. Russia* (nos. 67667/09 and 2 others, 20 June 2017). "Propaganda of non-traditional sexual relations" was therefore not yet prohibited at the material time. The Government's reference to that ban is therefore misconceived. It is also significant that it was never claimed that the applicant organisations' activities were aimed at minors.

150. The Court does not, however, have any reason to doubt that the interferences in the present case had a basis in domestic law, namely in the Non-profit Organisations Act and the Public Associations Act. In so far as the applicants complained that the domestic courts had incorrectly applied some of the provisions of these Acts, the Court notes that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. The "law" is therefore the enactment in force as the courts with competence have interpreted it. While the Court should exercise a certain power of review in this matter, since failure to comply with domestic law entails a breach of Article 11, the scope of its task is subject to limits inherent in the subsidiary nature of the Convention, and it cannot question the way in which the domestic courts have interpreted and applied national law, except in cases of flagrant non-observance or arbitrariness (see *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, § 46, 8 March 2011;

*Galović v. Croatia* (dec.), no. 54388/09, § 58, 5 March 2013; *Lachowski v. Poland* (dec.), no. 9208/05, § 78, 6 May 2014; and *Elita Magomadova v. Russia*, no. 77546/14, § 59, 10 April 2018). The Court cannot discern any such flagrant non-observance of domestic law or arbitrariness in its interpretation or application in the present case. Nor have the applicants questioned the “quality” of the domestic law.

(β) Legitimate aim

151. The Court further notes that, although the Government did not refer to any legitimate aims, it follows from the domestic decisions that by refusing to register the applicant organisations the domestic authorities sought to pursue the following aims: to protect society’s moral values and the institutions of family and marriage; to protect Russia’s sovereignty, safety and territorial integrity, which they considered to be threatened by a decrease in the population caused by the activities of LGBT associations; to protect the rights and freedoms of others; and to prevent social or religious hatred and enmity, which in their view could be incited by the activities of LGBT associations and which might lead to violence. The Court will assess whether the refusals to register the applicants’ organisations served to advance those declared aims.

152. As regards the first aim, the Court has already found that restrictions on public debate on LGBT issues cannot be justified on the grounds of the protection of morals and cannot therefore be considered to pursue that legitimate aim (see *Bayev and Others*, cited above, §§ 65-71 and 83). It has also rejected the Government’s argument about the alleged incompatibility between maintaining family values and the institution of marriage as the foundation of society and acknowledging the social acceptance of homosexuality (see *Bayev and Others*, cited above, § 67).

153. The Court does not see any reason to reach a different conclusion in the present case. The aims of the applicant associations were to defend and promote the rights of LGBT people, including, in the case of Movement for Marriage Equality, the right to same-sex marriage. Although States are still free, under Article 12 of the Convention as well as under Article 14 taken in conjunction with Article 8, to restrict access to marriage to different-sex couples (see, as the most recent authority, *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, § 192, 14 December 2017, with further references), the issue in the present case is not whether same-sex marriage should be recognised in Russia. The crux of the present case is whether a refusal to register an association campaigning against discrimination on grounds of sexual orientation or for recognition of same-sex marriage may be justified on the grounds of the protection of morals.

154. The absence of a European consensus on the question of same-sex marriage is therefore 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 rights to freedom of peaceful assembly and association (see, *mutatis mutandis*, *Alekseyev*, cited above, § 84).

155. The Court concludes from the above that the refusal to register the applicant associations cannot be justified on the grounds of the protection of moral values or the institutions of family and marriage and cannot therefore be considered to pursue the legitimate aim of the protection of morals.

156. As regards the next aim advanced by the domestic authorities in their decisions – the aim of protecting Russia's sovereignty, safety and territorial integrity – it may be linked to the legitimate aims of the protection of national security and public safety. The Court reiterates that the concepts of “national security” and “public safety” must be applied with restraint and interpreted restrictively (see *Stoll v. Switzerland* [GC], no. 69698/01, § 54, ECHR 2007-V, and *Dmitriyevskiy v. Russia*, no. 42168/06, § 86, 3 October 2017). It notes that the national authorities considered that the applicant associations threatened Russia's sovereignty, safety and territorial integrity because their activities might result in a decrease in the population. The Court is not convinced that a refusal to register an association defending LGBT rights on such grounds may serve to advance the aims of protecting national security and public safety. Firstly, the Court has already found that there was no link between the promotion of homosexuality and the demographic situation, which depends on a multitude of conditions, such as economic prosperity, social-security rights and accessibility of childcare (see *Bayev and Others*, cited above, § 73). Secondly, neither the national courts nor the Government explained how a hypothetical decrease in the population could affect national security and public safety; nor did they provide any assessment of such an impact.

157. Further, as regards the aim of protecting the rights and freedoms of others, also advanced by the domestic authorities in their decisions, the Court notes that it is the right not to be confronted with any display of same-sex relations or promotion of LGBT rights or with the idea of equality of different-sex and same-sex relations – which the majority of Russians apparently resented and considered to be offensive, disturbing or shocking – that the national authorities sought to protect by refusing to register the applicant associations.

158. The Court reiterates in this connection that the Convention does not guarantee the right not to be confronted with opinions that are opposed to one's own convictions (see *Bayev and Others*, cited above, § 81, with further references). Moreover, 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, assembly and association would become merely theoretical rather than practical and effective as required by the Convention (see *Barankevich v. Russia*, no. 10519/03, § 31, 26 July 2007, and *Alekseyev*, cited above, § 81). The Court has therefore consistently declined to endorse policies and decisions which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 102, ECHR 1999-VI; *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, §§ 34-36, ECHR 1999-IX; and *L. and V. v. Austria*, nos. 39392/98 and 39829/98, §§ 51-52, ECHR 2003-I).

159. The Court is therefore not convinced that the refusals to register the applicant associations could be considered to pursue the legitimate aim of the protection of the rights of others.

160. Lastly, as regards the aim of preventing social or religious hatred and enmity incited by the activities of LGBT associations and which might, in the domestic authorities' opinion, lead to violence, this may correspond to the legitimate aim of the prevention of disorder. The Court accepts that social or religious hatred and enmity represents a danger for the social peace and political stability of democratic States (see, *mutatis mutandis*, *Féret v. Belgium*, no. 15615/07, §§ 69 and 73, 16 July 2009) and is likely to lead to violence (see, *mutatis mutandis*, *Dilipak v. Turkey*, no. 29680/05, § 62, 15 September 2015). It therefore accepts that the declared aim of preventing such hatred and enmity corresponds to the legitimate aim of prevention of disorder (see, for example, *Féret*, cited above, § 59) and will proceed on the assumption that the contested measures pursued that aim.

(γ) "Necessity in a democratic society"

161. The Court observes that the risk of hatred and enmity capable of leading to disorder was apparently inferred by the national authorities in the present case from their belief that the majority of Russians disapproved of homosexuality and resented any display of same-sex relations or promotion of LGBT rights. It was never claimed that the applicants themselves intended to commit any violent, aggressive or otherwise disorderly actions. Instead, the authorities considered that the applicants might potentially become victims of aggression by persons who disapproved of homosexuality.

162. The Court reiterates in this connection that genuine and effective respect for freedom of association 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 or with that of the Convention in general. There may thus be positive obligations to secure the effective enjoyment of the right to freedom of association even in the sphere of relations between individuals. Accordingly, it is incumbent upon public authorities to guarantee the proper functioning of associations or political



parties, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to promote. Their members must be able to hold meetings without having to fear that they will be subjected to physical violence by their opponents. Such a fear would be liable to deter other associations or political parties from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right of association (see *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 37, ECHR 2005-X (extracts), with further references).

163. The positive obligation to secure the effective enjoyment of the right to freedom of association and assembly is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation (see *Bączkowski and Others*, cited above, § 64). The Court considers that reference to the consciousness of belonging to a minority, the preservation and development of a minority's culture or the defence of a minority's rights cannot be said to constitute a threat to "democratic society", even though it may provoke tensions. The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see, *mutatis mutandis*, *Ouranio Toxo and Others*, cited above, § 40; see also *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX, and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 107, ECHR 2005-XI).

164. It follows that it was the duty of the Russian authorities to take reasonable and appropriate measures to enable the applicant organisations to carry out their activities without having to fear that they would be subjected to physical violence by their opponents. The Court observes that the domestic authorities had a wide discretion in the choice of means which would have enabled the applicant organisations to function without disturbance, such as for instance making public statements to advocate, without any ambiguity, a tolerant, conciliatory stance, as well as to warn potential aggressors of possible sanctions (see, for similar reasoning, *Identoba and Others v. Georgia*, no. 73235/12, § 99, 12 May 2015). There is no evidence that the Russian authorities considered taking any such measures. Instead, they decided to remove the cause of tension and avert a risk of disorder by restricting the applicant's freedom of association. In such circumstances the Court cannot accept that the refusal to register the applicant organisations was "necessary in a democratic society".

165. There has therefore been a violation of Article 11 of the Convention in respect of all the applicants.

## V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

166. The applicants complained that the refusals to register the applicant organisations amounted to discrimination on grounds of sexual orientation. They relied on Article 14 of the Convention, taken in conjunction with Article 11. Article 14 reads as follows:

“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.”

### A. Admissibility

#### 1. *Applicability of Article 14*

167. As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded thereby. 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 them. The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide. This principle is well entrenched in the Court’s case-law (see, among many other authorities, *E.B. v. France* [GC], no. 43546/02, §§ 47-48, 22 January 2008).

168. It has not been disputed between the parties that the case falls within the ambit of Article 11 of the Convention. Indeed, the Court has found that the contested decisions amounted to an interference with the applicants’ right to respect for their freedom of association (see paragraph 144 above). It follows that Article 14 of the Convention, taken in conjunction with Article 11, is applicable in the present case.

#### 2. *Victim status*

169. The Government submitted that Rainbow House (application no. 12200/08) could not claim to be a victim of discrimination on grounds of sexual orientation.

170. The Court notes that it has previously found that a non-governmental organisation could claim to be a victim of a violation of Article 14 on account of such a personal characteristic as religion. For example, a religious association could exercise on behalf of its adherents the

rights guaranteed by Article 9 of the Convention, taken alone and in conjunction with Article 14 (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, §§ 72 and 87, ECHR 2000-VII; see also *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 88, 31 July 2008).

171. The Court has also accepted that a non-governmental organisation could claim to be a victim of a violation of Article 14 on account of sexual orientation in cases concerning restrictions on, or the failure to protect, the public assemblies organised by the applicant organisations (see *Bączkowski and Others*, cited above, §§ 1 and 101; *Genderdoc-M v. Moldova*, no. 9106/06, §§ 41 and 48-55, 12 June 2012; and *Identoba and Others*, cited above, § 100).

172. The Court does not see any reason to reach a different conclusion in the present case. The applicant organisations are LGBT associations created with the aim of defending LGBT rights. They were directly affected by the authorities' refusals to register them (compare and contrast *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 48, ECHR 2013 (extracts), and *La Ligue des Musulmans de Suisse and Others v. Switzerland* (dec.), no. 66274/09, 28 June 2011). They may therefore claim to be victims of a violation of Article 14 on grounds of sexual orientation.

### 3. Conclusion on admissibility

173. 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. Submissions by the parties

#### (a) The Government

174. The Government submitted that the refusals of registration had not amounted to discrimination on grounds of sexual orientation. The registration had been refused because the applicant organisations' articles of association had not complied with the requirements of Russian law rather than for any discriminatory motive against their founders or members.

#### (b) The applicants

175. The applicants submitted that the refusals of registration had amounted to discrimination on grounds of sexual orientation. Indeed, the main reason for the refusals had been the disapproval of homosexuality by the majority of the Russian population and the public officials' view that

homosexuality was immoral. For example, even before the refusal to register Rainbow House, the local and religious authorities had publicly expressed their outrage at the possibility of such registration.

176. The applicants further submitted that sexual orientation was one of the protected grounds under Article 14 of the Convention (they referred to *Kozak v. Poland*, no. 13102/02, § 92, 2 March 2010). In the applicants' opinion, the present case was similar to the cases of *Bączkowski and Others* and *Alekseyev and Others* (both cited above), where a violation of Article 14 had been found.

**(c) The third parties**

177. The Human Rights Centre of Ghent University submitted that it was inadmissible to rely on discriminatory motives for restricting Convention rights. In particular, the argument that LGBT rights advocacy could incite people to become homosexual propagated the idea that LGBT people sought to "recruit" or "convert" heterosexuals. That idea was stigmatising and could inspire fear and, as a result, hatred or violence. It reinforced stereotypes about LGBT people.

*2. The Court's assessment*

178. It is the Court's established case-law that in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in relevantly similar situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background, but the final decision as to the observance of the Convention's requirements rests with the Court (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008, and *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 125 and 126, ECHR 2012 (extracts)).

179. With specific regard to differences in treatment based on sexual orientation, the Court has held that the State's margin of appreciation is a narrow one; in other words, such differences require particularly convincing and weighty reasons by way of justification (see *X and Others v. Austria* [GC], no. 19010/07, § 99, ECHR 2013, and the cases cited therein). The Court has stressed that differences based solely on considerations of sexual orientation are unacceptable under the Convention (see *E.B. v. France*, cited above, §§ 93 and 96, and *Salgueiro da Silva Mouta*, cited above, § 36).

180. The Court has already found that the decisive ground for refusing to register the applicant organisations was their aim of promoting LGBT

rights (see paragraphs 145 and 146 above). It is immaterial that the domestic authorities also referred to other grounds relating to various irregularities in the registration documents. The Court reiterates in this connection that in discrimination cases where more than one ground forms part of an overall assessment of the applicant's situation, grounds should not be considered alternatively, but cumulatively. Consequently, the illegitimacy of one of the grounds has the effect of contaminating the entire decision (see *E.B. v. France*, cited above, § 80).

181. Given that the applicant organisations' aim of promoting LGBT rights was a decisive factor leading to the decision to refuse them registration, they suffered a difference in treatment on grounds of sexual orientation (see, for similar reasoning, *E.B. v. France*, cited above, §§ 89 and 90).

182. The Court has already found above that the refusals to register the applicant organisations on the ground that they promoted LGBT rights cannot be said to be reasonably or objectively justified.

183. The foregoing findings also give rise to a violation of Article 14 of the Convention taken in conjunction with Article 11.

## VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

184. Lastly, the Court has examined the other complaints submitted by the applicants in application no. 12200/08 and, having regard to all the material in its possession and in so far as the complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

185. 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

186. The applicants in application no. 12200/08 claimed 10,000 euros (EUR) each in respect of non-pecuniary damage. Mr Nepomnyashchiy and Mr Naumchik (application no. 58282/12) claimed between EUR 100,000 and EUR 200,000 in respect of non-pecuniary damage.

187. The Government submitted that the claims for non-pecuniary damage were excessive and unsubstantiated.

188. The Court observes that it has found violations of Article 11 taken alone and in conjunction with Article 14 in respect of all the applicants. It has also found a violation of Article 6 in respect of the applicants in application no. 58282/12. Having regard to the nature of the violations found in respect of each applicant and to the principle *ne ultra petitem*, the Court awards the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable:

- Mr Zhdanov: EUR 10,000;
- Mr Nepomnyashchiy: EUR 13,000;
- Mr Naumchik: EUR 13,000.

189. As regards Rainbow House, the Court considers that the finding of a violation provides sufficient just satisfaction for any non-pecuniary damage it may have suffered (see *Kimlya and Others*, cited above, § 108).

## **B. Costs and expenses**

190. Relying on invoices, a legal-fee agreement and the lawyer's timesheets, the applicants in application no. 12200/08 claimed EUR 6,590 for transport expenses and legal fees incurred in the domestic proceedings and before the Court.

191. The Government submitted that the quality of the invoices submitted by Mr Zhdanov was poor.

192. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 6,500 jointly to the applicants in application no. 12200/08, plus any tax that may be chargeable to the applicants.

## **C. Default interest**

193. The Court considers it appropriate that the default interest rate 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**

1. *Decides*, unanimously, to join the applications;

2. *Decides*, by a majority, to declare the complaints lodged by Mr Alekseyev inadmissible as an abuse of the right of application;
3. *Decides*, unanimously, to join to the merits the respondent Government's objection concerning the non-exhaustion of domestic remedies in application no. 12200/08 and *declares* the complaints concerning the alleged violations of the right to freedom of association in all applications, the alleged discrimination on grounds of sexual orientation in all applications, and the alleged violation of the right of access to a court in application no. 58282/12 admissible and the remainder of application no. 12200/08 inadmissible;
4. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention in application no. 58282/12;
5. *Holds*, unanimously, that there has been a violation of Article 11 of the Convention in all applications;
6. *Holds*, unanimously, that there has been a violation of Article 14 of the Convention in conjunction with Article 11 in all applications;
7. *Holds*, unanimously, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by Rainbow House;
8. *Holds*, by four votes to three,
  - (a) that the respondent State is to pay the applicants, 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 the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) the following amounts, plus any tax that may be chargeable, in respect of non-pecuniary damage:
      - to Mr Zhdanov: EUR 10,000 (ten thousand euros);
      - to Mr Nepomnyashchiy: EUR 13,000 (thirteen thousand euros);
      - to Mr Naumchik: EUR 13,000 (thirteen thousand euros);
    - (ii) jointly to the applicants in application no. 12200/08: EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
  - (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;

9. *Dismisses*, by four votes to three, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Georgios A. Serghides  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Keller, Serghides and Elósegui is annexed to this judgment.

G.A.S.  
F.A.



## JOINT PARTLY DISSENTING OPINION OF JUDGES KELLER, SERGHIDES AND ELÓSEGUI

1. This judgment belongs to a series of landmark cases concerning LGBTQ rights in Russia. It goes without saying that we absolutely agree on the merits. Our dissent relates exclusively to point 2 of the operative part (as a consequence of which we voted against points 8 and 9 of the operative part). We disagree with the Court’s finding that Mr Alekseyev’s application in his own capacity should be dismissed for abuse of the right of application under Article 35 § 3 (a) of the Convention. In our view, the applicant should therefore also have been awarded just satisfaction on the basis of Article 41 of the Convention.

### **(a) Punishment of conduct unconnected to this application**

2. Mr Alekseyev’s posts about individual judges and the Court plainly went beyond the limits of ordinary criticism. We have no objection to the Court’s characterisation of his language as “virulently and personally offensive” (see paragraph 83 of the judgment). He also made false and misleading statements about judges, which is a cause for great concern. While we do not believe that his statements conveyed an actual, tangible threat, we also accept that the judges targeted may have found his comments “threatening” (*ibid.*). Nonetheless, we do not believe that Mr Alekseyev’s conduct jeopardises the integrity of the Court in this case.

3. As the majority concede, the comments were made in reaction to the Court’s judgment in a separate case in which Mr Alekseyev was the applicant (see *Alekseyev and Others v. Russia*, nos. 14988/09 and 50 others, 27 November 2018), and in which he was dissatisfied with the outcome and with the refusal of the Grand Chamber to examine the case. The Court has never declared an application inadmissible on the basis of aggressive language with no connection to the proceedings at issue.

4. The use of offensive language is a ground for rejecting the application in “certain exceptional cases” (see *Emars v. Latvia*, no. 22412/08, § 46, ECHR 2014). So far, the Court has found such extraordinary circumstances only where they pertained to conduct or submissions within the framework of the Court proceedings. Indeed, this is the only reasonable reading of the language of Article 35 § 3:

“The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) *the application* is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application” (emphasis added).

A faithful *prima facie* interpretation of this provision leads us to conclude that *the application itself* must be an abuse of the right, not any conduct or behaviour unconnected to the application.

5. Thus, for instance, in *Stamoulakatos v. the United Kingdom* (no. 27567/95, Commission decision of 9 April 1997), and *L.R. v. Austria* (no. 2424/65, Commission decision of 24 May 1966), the series of unjustified allegations by the applicants, which were insulting and abusive to the respondent Government and the Court, led to the dismissal of the case. However, the offensive language in these cases was contained exclusively in the written submissions to the Court. By contrast, there is no allegation that Mr Alekseyev used such language in any of his submissions in the case at hand.

6. Even where the offensive language did not form a part of the Court proceedings, the statements had to be of such a direct nature that they could be regarded as “submissions” to the Court (see *Duringer and Others v. France* (dec.), nos. 61164/00 and 18589/02, ECHR 2003-II). In *Duringer*, the applicant had sent numerous communications by letter and e-mail containing serious accusations which cast doubt on the integrity of certain judges. In similar fashion to Mr Alekseyev, the applicant was systematically trying to cast aspersions on judges of the Court, members of its Registry and politicians of the respondent State, and accused in particular certain judges of extremely serious crimes. However, the critical difference between Mr Alekseyev and Mr Duringer is that the latter sent the communications directly to the Court. These were in effect like submissions, in that they challenged the Court’s authority in the case before it.

7. Our case is also distinct from *Georgian Labour Party v. Georgia* ((dec.), no. 9103/04, 22 May 2007), on which the majority partly rely. In *Georgian Labour Party*, the applicant’s offensive statements about the Government in media interviews could have been an abuse of the right of application had they reached a more serious level; however, in that case the applicant was complaining about proceedings that were ongoing at the time. This situation is clearly distinguishable from Mr Alekseyev’s complaints, which stemmed from a final judgment in the past.

8. To this concern, the majority respond that “these statements published after the warning that explicitly mentioned the present applications can therefore be considered to be connected with them” (see paragraph 84 of the judgment). This reasoning goes too far. A warning from the Court that “mentions” the applications before it demonstrates nothing about the intention of the applicant; the Court cannot put words in an applicant’s mouth by assuming assent by silence. Subsequent posts by Mr Alekseyev after these warnings revealed no indication that they were aimed at the current application.

**(b) The “chilling effect” on the freedom of speech**

9. The judgments and decisions of this Court are always weighty, and often controversial. The Court is to a certain degree accountable to the public; discussion – negative or positive – about its work is inevitable and necessary in a democratic society. We believe therefore that the Court should be extremely careful not to set a precedent that could have a chilling effect on the active engagement of the public with the Court.

10. Indeed, it is difficult to understand what purpose rejecting Mr Alekseyev’s application serves. On the contrary, we are disturbed by the risk of appearing to retaliate against the applicant’s offensive remarks about the formation that heard the case. After all, “not only must Justice be done; it must also be seen to be done”<sup>1</sup>. To put it differently, the public should not be given the impression that the Court is engaging in revenge instead of delivering justice.

11. In particular, we are concerned that the majority characterised Mr Alekseyev’s use of social networking accounts as an effort “to ensure the widest possible circulation of his accusations and insults”, which in their view is “evidence of his determination to harm and tarnish the image and reputation of the institution of the European Court of Human Rights and its members” (see paragraph 84 of the judgment).

12. In today’s digital age, with its vastly different and complex challenges to freedom of expression, we are hesitant to declare – so simply and with no limitations – that Mr Alekseyev’s Instagram account belongs to the public domain. How far does this public domain reach? If an applicant’s Instagram account has twenty followers, is that still public space? Will the Court take into account what the applicant wrote on his personal blog, on his NGO websites, or even in his emails? Even if the applicant deletes the posts at issue, they will remain accessible for years on the Internet; how far back in time is the Court going to scrutinise the posts on an applicant’s social networking account? Now that the Court does not require a nexus between the offensive statements and the actual case at hand, would future applications from Mr Alekseyev all be inadmissible because of these posts?

13. Furthermore, the majority do not tell us exactly which statements have cost Mr Alekseyev the right to seek recourse before the Court. Some of his statements constituted mere expressions of frustration, while others amounted to serious defamation. An indiscriminate, general condemnation of all critical statements about this Court sends a worrisome message to the domestic courts and future applicants.

14. The decision today comes dangerously, unacceptably close to scrutinising an applicant’s online presence and conduct outside the Court. Moreover, we fear that this decision could be an invitation to Governments

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1. *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256, 259.

to engage in surveillance of future applicants in the hopes of finding statements that could be offensive to the formation of the Court hearing the case.

15. In sum, the decision to declare Mr Alekseyev's application an abuse of the right of application touches on the much weightier and more sensitive issue of freedom of speech in the digital era. We are not convinced that the Court has carefully considered its impact and ramifications.

### **(c) The applicant's right to access the Court**

16. The right of individual application under Article 34 is fundamental to the Convention system. The Court exists to protect and realise this right for all applicants, regardless of their manners or propriety. Taking this right away from an applicant altogether should be done only in the most exceptional circumstances.

17. In this case, fortunately, Mr Alekseyev's claims were accompanied by the application on behalf of his NGO, which allowed some adjudication of the violations at stake. However, other applicants may not be so lucky. Imagine a case at the national level in which an applicant posts on her social networking page that all the judges of the appellate court are idiots, and as a result the appellate court declares an application inadmissible for abuse of rights, notwithstanding the clear merits of the applicant's case. Would our Court not find a violation of Article 6 § 1 of the Convention?

18. Mr Alekseyev is a well-known activist for LGBTQ rights in Russia. He spares no effort and takes personal risks in order to advance the cause of equal rights. Many applications submitted by him to this Court have triggered meaningful advances in LGBTQ rights in that country. In this context, we consider it disproportionate to sanction his statements so severely on this first occasion. One alternative which the Court should have considered would be to send the applicant an official letter with a clear indication that if he does not retract his false and derogatory comments about individual judges, his applications will no longer be dealt with in the future.

19. In short, depriving an individual of the ability to seek remedy from this Court must always be considered a problematic reaction *per se* and should be used only as an *ultima ratio* after a very careful balancing of the interests at stake. We are strongly against the Court depriving applicants of what is often the only recourse left to them in order to restore their fundamental rights.

20. For the reasons set out above, we respectfully disagree with the Court's decision to declare Mr Alekseyev's application inadmissible as an abuse of the right of application under Article 35 § 3 (a) of the Convention.

## APPENDIX

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
1	12200/08	03/03/2008	<p><b>Mr Aleksandr ZHDANOV</b> 30/09/1980 The Tyumen region</p> <p><b>REGIONAL PUBLIC ASSOCIATION “RAINBOW HOUSE” (Тюменская региональная общественная организация “Радужный Дом”)</b> Tyumen</p>	<b>Mr P. CHIKOV</b>
2	35949/11	20/05/2011	<p><b>Mr Nikolay Aleksandrovich ALEKSEYEV</b> 23/12/1977 St Petersburg</p> <p><b>AUTONOMOUS NON-PROFIT ORGANISATION “MOVEMENT FOR MARRIAGE EQUALITY” (Автономная некоммерческая организация “Движение за брачное равноправие”)</b> Moscow</p>	Initially <b>Mr D. BARTENEV</b> and then <b>Mr E. DACI and Mr B. CRON</b>

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Represented by
3	58282/12	20/08/2012	<p><b>Mr Nikolay Aleksandrovich ALEKSEYEV</b> 23/12/1977 Moscow</p> <p><b>Mr Kirill Sergeyevich NEPOMNYASHCHIY</b> 05/12/1981 The Krasnoyarsk region</p> <p><b>Mr Aleksandr Sergeyevich NAUMCHIK</b> 16/03/1982 The Moscow region</p> <p><b>REGIONAL PUBLIC SPORTS MOVEMENT</b> <b>“SOCHI PRIDE HOUSE”</b> (<i>Краснодарское краевое региональное спортивное общественное движение “Прайд-хаус в Сочи”</i>) Krasnodar</p>	Initially <b>Mr D. BARTENEV</b> and then <b>Mr E. DACI</b> and <b>Mr B. CRON</b>