



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2992/2017*, **

<i>Communication submitted by:</i>	Sasha Maimi Krikkerik (represented by counsel, Valentina Frolova)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Dates of communication:</i>	31 March 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 14 June 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	15 March 2023
<i>Subject matter:</i>	Failure of the authorities to investigate an alleged hate crime
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to peaceful assembly; non-discrimination
<i>Articles of the Covenant:</i>	2, 7, 17 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is Sasha Maimi Krikkerik, a national of the Russian Federation born in 1991. He claims that the State party has violated his rights under articles 2, 7, 17 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

1.2 On 23 November 2017, the Committee, acting through the Special Rapporteurs on new communications and interim measures, informed the author and the State party that the Committee had decided to examine the admissibility of the communication separately from the merits.

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



Facts as submitted by the author

2.1 The author submits that he takes an active part in lesbian, gay, bisexual and transgender-related causes and events. On 29 June 2013, the author participated in an authorized pride parade in Saint Petersburg, Russian Federation. The venue for the parade was a large park in the centre of town, the Field of Mars, which had been fenced off by police. A number of local police officers and federal riot police officers were deployed during the event. About 200 opponents of lesbian, gay, bisexual and transgender rights were also present and began to shout homophobic slogans and slurs as the parade started to move. While the parade was under way, the opponents started to throw stones, eggs and smoke bombs at the participants. The author submits that the police did not intervene.

2.2 During the event, the author walked out of the crowd with two of his friends to help A.P., who had lost consciousness. Approximately 30 unknown men suddenly surrounded him and his friends and started kicking and pushing them to the ground. The men shouted insults and spat on the author and his friends. The assault continued for about 10 minutes. At some point, the riot police were able to take the author and his friends to a nearby police bus, and they were transported to the seventy-sixth police district of Saint Petersburg.

2.3 Three hours later, the author was taken to Mariinskaya Municipal Hospital, where the doctors concluded that he had suffered contusions of the soft tissues of the left forearm and the right clavicle.¹ The same day, that information was provided to the police. The author filed a complaint with the police, denouncing the aggression and requesting the police to investigate the assault on the basis of article 116 (2) of the Criminal Code of the Russian Federation, that is, assault inflicted by reason of political, ideological, racial, national or religious hatred or animosity, or hatred or animosity towards a specific social group.²

2.4 On 9 July 2013, the police refused to initiate criminal proceedings in relation to the incident. Although they recognized the existence of animosity towards the supporters of lesbian, gay, bisexual and transgender causes, the police refused to initiate a criminal investigation under article 116 (2) of the Criminal Code. They advised the author and several other complainants that the assault fell under article 116 (1) – a simple assault, which would require the author and his friends to file a complaint directly with a magistrate judge by way of a private prosecution.³ On 15 July 2013, the decision was quashed by the prosecutor's office. An additional police investigation resulted in a decision, dated 23 October 2013, not to open a criminal case. The author submits that there were numerous decisions in which the police refused to initiate criminal proceedings,⁴ and that were all quashed by prosecutors as premature and ungrounded.⁵

2.5 On 9 June 2014, on the basis of the author's complaint, the Dzerzhinsky District Court declared the actions of the police as unlawful and instructed the relevant authorities to correct the mistakes. However, the case file was returned to the initial investigator. The author has not been informed of any progress in the investigation.

2.6 In the light of the refusal of the police to take any meaningful steps to investigate, the author started his own investigation, with the assistance of Coming Out, a lesbian, gay, bisexual and transgender support group. On 25 December 2013, he collected and submitted evidence of the above-mentioned hate crime to the police, with a request to initiate criminal proceedings. On 3 January 2014, the police authorities again refused to initiate an investigation.⁶ The author made a complaint to the district court about that decision. On

¹ The author has provided the relevant medical certificate.

² Russian Federation, Law No. 63-Fz (13 June 1996), art. 116. Battery (1) and (2). Available at <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.html>.

³ Under this procedure, the complainant, not the prosecutor's office, carries out the prosecution. The complainant has to provide the name and address of the attacker. The procedure is limited to a few less-serious crimes in the Criminal Code.

⁴ Police decisions dated 9 July 2013, 23 October 2013, 26 May 2014, 16 December 2014, 10 March 2015 and 23 June 2015.

⁵ Prosecutors' decisions dated 15 July 2013, 19 November 2013, 15 May 2014, 2 July 2014, 20 January 2015, 11 March 2015, 12 May 2015 and 3 July 2015.

⁶ The author claims that he was never questioned by the police, nor were the medical records concerning his injuries examined. The attackers were not identified, although it could have been easily done using

1 December 2014, the prosecutor's office quashed the police decision of 3 January. The file was returned to the same investigator and the author has not been informed about any progress in the investigation to date.

2.7 On 3 November 2013, the author suffered a second instance of violence. He was attending a meeting in the office of a project for the lesbian, gay, bisexual and transgender community, when two unknown men with their faces covered by masks and scarves stormed into the office. While shouting homophobic insults, one man held an object that looked like a gun, and the other held a baseball bat. One of the author's friends, D.C., was shot in the face⁷ and the author was kicked in the back. The assailants ran away a few minutes later. The author went to a hospital, where he was diagnosed with bruises on his back.⁸

2.8 In relation to the attack of 3 November, on 4 November 2013, criminal proceedings were initiated for the crime of hooliganism committed by a group of persons under article 213 (2) of the Criminal Code. When questioned during the investigation, the author explained that it was a premeditated hate crime against lesbian, gay, bisexual and transgender individuals. On 24 December 2013, the author addressed a petition to the police officials in charge of the investigation to change the classification of the crime and include the motive of lesbian, gay, bisexual and transgender hatred. The petition was dismissed on 26 December 2013 on the basis that the hatred motive could not be confirmed, since the assailants had not been identified and could not be questioned regarding their motives.

2.9 On 24 December 2013 and 29 January 2014, the author filed complaints with the police, asking them to verify the involvement of a well-known homophobic group, Volk-homophobe,⁹ in the November 2013 attack. Both claims were dismissed owing to incomplete background information on the specific persons. Since December 2013, investigations have been extended, suspended and renewed multiple times.¹⁰ On 20 February 2014, the author filed an appeal with the Oktyabrsky District Court in Saint Petersburg, under article 125 of the Criminal Procedure Code of the Russian Federation, complaining about the lack of action by the investigator. His complaint was transferred to the Leninsky District Court in Saint Petersburg, which dismissed it on 22 May 2014. In its decision, the Court referred to the discretion of the investigator to determine the classification of a crime. The Court stated that classification of the actions of the suspects does not prejudice the constitutional rights and freedoms of participants in criminal proceedings or hinder the author's access to justice. The author filed an appeal with the Saint Petersburg City Court, which was dismissed on 8 July 2014. The author considers that further cassation appeal is not an effective remedy and, therefore, does not need to be exhausted. He claims that a cassation appeal is a supervisory procedure against court decisions that have entered into force; furthermore, a decision that is dependent upon the discretionary power of a judge constitutes an extraordinary remedy that does not need to be exhausted for the purpose of admissibility.¹¹

2.10 The author claims that the two episodes of homophobic violence have had a serious impact on his life and that he has suffered serious psychological trauma. As a result of those incidents, he feels unsafe and helpless. He has curtailed his public activity as a lesbian, gay, bisexual and transgender activist almost entirely and has sought the assistance of a private therapist. Owing to the hostile environment towards the lesbian, gay, bisexual and transgender community in Saint Petersburg, he moved to Moscow in 2014.

video recordings, including those he provided. The witnesses to whom the author referred were not questioned.

⁷ D.C. lost vision in his eye as a result of the trauma. According to the author, the bullet was close to damaging his brain.

⁸ The author has provided the relevant medical certificate.

⁹ The author submits that the group was formed on Vkontakte, a social media platform.

¹⁰ On 31 December 2013, extended until 4 February 2014; on 30 January 2014, extended until 4 March 2014; on 4 March 2014, suspended due to a failure to identify an accused party; the preceding decision was revoked on 12 March 2014 and suspended again on 26 April, 16 July and 10 December 2014 and 10 February 2015. In addition, decisions of suspensions were quashed on 8 May and 23 October 2014 and on 22 January and 17 February 2015; and suspended on 26 March 2015.

¹¹ *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009, annex); and European Court of Human Rights, *Berdzenishvili v. Russian Federation*, Application No. 31697/03.

Complaint

3.1 The author claims that the State party has violated his rights under articles 2, 7, 17 and 26 of the Covenant.

3.2 The author also claims that the State party should be held responsible for the two homophobic assaults against him and his friends. It is true that private persons committed the attacks; the State party has, however, failed to prevent such violations, investigate the acts properly or provide adequate redress for the victims, in violation of his rights under article 7 of the Covenant.

3.3 The author claims that the State party maintains a hostile attitude towards lesbian, gay, bisexual and transgender people and that its lack of appropriate reaction to growing homophobia deprives such people, including himself, of a safe environment in society and in private life. The attacks against him are an example of the above. The lack of effective investigations into the author's allegations of hate crimes, the stereotypical and discriminatory approach of the police and the unlawfulness of their decisions have violated his rights under articles 7 and 17 of the Covenant.

3.4 The author asserts that the State party failed to protect him, as a member of the lesbian, gay, bisexual and transgender social group, against hate crimes, owing to a lack of relevant legislation and, as a result, a lack of effective response by the police to the attacks against him. He claims that criminal legislation does not include sexual orientation and gender identity among the grounds protected from discrimination. He submits that article 63 (1) (e) of the Criminal Code recognizes as an aggravated circumstance for the commission of an offence, *inter alia*, hatred or enmity or hate or hostility towards a given social group.¹² However, there is no definition of "social group", and the authorities have the discretion to determine whether a particular group can be understood as such. The author claims that the police failed to treat him as a member of a vulnerable social group and accord to him special protection against hate crimes. He states that, to guarantee effective investigation of hate crimes against lesbian, gay, bisexual and transgender people, the State party should adopt clear legal provisions, which would allow for the automatic classification as hate crimes of those crimes committed against lesbian, gay, bisexual and transgender people on the basis of their sexual orientation and gender identity.

State party's observations on admissibility

4.1 In a note verbale dated 15 August 2017, the State party submitted its observations on the admissibility of the present communication. The State party claims that, according to article 401 (2) (1) of the Criminal Procedure Code, the author has a right to bring to cassation appeals courts a cassation appeal against judgments that have entered into force. Such complaints can be brought by convicted or acquitted persons, by way of private prosecution, by representatives of such persons and by other persons whose rights and interests are affected by the relevant court decision. The author failed to file such a cassation claim with either the Saint Petersburg City Court or the Supreme Court of the Russian Federation.

4.2 The Committee's established jurisprudence is that authors must exhaust all domestic remedies to fulfil the requirements of article 5 (2) (b) of the Optional Protocol, if such measures are effective and available to them.

4.3 During the period 2014–2015, the chamber for criminal cases of the Supreme Court of the Russian Federation examined a total of 895 decisions that had come into force. In 494 of those cases, the court initiated reviews, accepting 354 cases for consideration under supervisory review. A total of 340 complaints, concerning 357 persons, were satisfied.¹³ Seventeen guilty verdicts were annulled. In 3 of the 17 cases, the case was sent to the lower court for reconsideration *de novo*. In cases that affected 8 persons, the crimes charged were reclassified to a lower category and the cases were discontinued.

¹² The Committee has observed that article 63 (1) (e) does not appear to have ever been applied to cases involving violence against LGBT individuals (CCPR/C/RUS/CO/7, para. 10 (c)).

¹³ No further information has been provided regarding this procedure.

4.4 The State party claims that, in addition, verdicts against 8 persons were annulled or changed owing to new circumstances. In cases that affected 149 persons, changes were made to the final verdict, including for 21 defendants whose verdicts were reclassified to lower-level crimes. For 128 defendants, verdicts were left intact but the courts reduced their sentences. The Supreme Court also annulled a number of appellate decisions of the regional courts, affecting 10 persons; those cases were sent for reconsideration and, as a result, decisions affecting 2 persons were changed. In 2015, the Supreme Court considered cassation appeals in 240 criminal cases involving a total of 313 persons. In 226 cases, affecting 298 persons, the court granted the remedies requested in the complaints. Verdicts relating to 10 persons were annulled and, from that group, cases related to 6 persons were sent for reconsideration. Cases affecting 3 persons were discontinued altogether. In an additional case affecting one person, the court annulled the lower court's decision to discontinue the case. The Court changed the verdict against 80 persons; of that group, 76 received lower sentences.

4.5 The Committee's decision in communication No. 1866/2009, *Chebotareva v. the Russian Federation*, concerns the ineffectiveness of the supervisory procedure under the Civil Procedure Code. The present case concerns the Criminal Procedure Code. Furthermore, in *Abramyan and others v. Russia*, the European Court of Human Rights established that the new cassation procedure, which the author interprets as a supervisory appeal, is an effective remedy that has to be exhausted.¹⁴ Accordingly, the State party claims that the author has not exhausted all available domestic remedies under article 5 (2) (b) of the Optional Protocol.

Author's comments on the State party's observations on admissibility¹⁵

5.1 On 25 October 2017, responding to the State party's challenge to the admissibility of the communication, the author submitted that he considered cassation appeals to the Saint Petersburg City Court and to the Supreme Court of the Russian Federation, under article 401 (2) (1) of the Criminal Procedure Code, as ineffective remedies. Even in the cases in which the requested procedure is granted, the court does not review the verdict and the sentence of the lower court on the basis of the substance of the case. The European Court of Human Rights, in its decision in *Kashlan v. Russia*¹⁶ considered such a remedy as ineffective.

5.2 The author submits that the new cassation appeal in the Russian Federation has all the characteristics of an ineffective remedy. For example, there is no time limit to submit a cassation appeal, the courts have discretionary power to accept or reject appeals and appeals are available only for major violations of the Criminal Code and the Criminal Procedure Code and not on the facts and substance of the case.

5.3 The author also argues that, even if a cassation appeal is considered by the court, it is unlikely to bring relief. The author refers to the European Court of Human Rights jurisprudence that it is not necessary to exhaust a remedy that is unlikely to bring relief.¹⁷ The author has submitted numerous complaints regarding the two attacks against him, but these complaints did not result in an effective investigation. He therefore submits that he has exhausted all available and effective domestic remedies.

State party's observations on the merits

6.1 On 23 March 2018, the State party submitted its observations on the merits of the communication. The State party summarizes the domestic proceedings undertaken by the author. On 5 March 2014, the Dzerzhinsky District Court in Saint Petersburg received a complaint concerning a lack of effective investigation of the assault on the author, which had taken place on 29 June 2013. On 2 December 2014, the Court partially granted the author's request in the complaint and found that the police had failed to question the author and identify the witnesses and the police officers present at the event. On 30 July 2015, the Court considered the author's complaint, dated 28 May 2014, and again partially granted another

¹⁴ Applications No. 38951/13 and No. 59611/13, Decision of 12 May 2015.

¹⁵ In support of his October 2017 submission, the author included written comments by the International Service for Human Rights on the situation of lesbian, gay, bisexual and transgender persons in the Russian Federation, which also refer to international standards on the protection of such persons.

¹⁶ Application No. 60189/15, Decision, 19 April 2019.

¹⁷ CEDAW/C/39/D/5/2005.

part of the complaint, ordering the police to carry out measures necessary to identify the police officers involved and the witnesses.

6.2 On 4 April 2014, the Leninsky District Court in Saint Petersburg received a complaint from the author under article 125 of the Criminal Procedure Code against the 26 December 2013 refusal by the investigator to change the classification of the crime to include the motive of hatred. On 22 May 2014, the Court dismissed the author's complaint. According to the Court, under article 38 of the Criminal Procedure Code, the investigator is independent in directing the investigation and in taking procedural decisions in the case. A judge should not prejudge matters which can subsequently be considered by the court in a criminal trial. In particular, judges are not authorized to draw conclusions on facts of the case, or assess the evidence or classification of the actions.

6.3 The State party refers to the domestic legislation. According to article 17 of the Criminal Procedure Code, investigators shall assess the evidence according to their own judgment based on the totality of the evidence presented in the particular criminal case. They shall rely on the law and their inner convictions. In an investigation, the investigator relies exclusively on concrete facts, evidence and expert conclusions, and acts in accordance with the provisions of the Criminal Procedure Code. The persons who assaulted the author have not been identified. Other motives, including the motive of hatred and an intention to cause serious bodily harm to the author, cannot be ascertained at present. Motives for a crime manifest themselves in the inner psychological attitude of the person in relation to the offence, thus it is impossible to identify the motive without identifying the offenders. There is a possibility of reclassifying the actions once the offenders are identified.

6.4 The State party submits that the authorities have undertaken all possible measures to find and identify the offenders. The Admiralteysky District investigative department has carried out verification activities in the criminal case of hooliganism against the author, registered on 4 November 2013. The domestic courts took relevant decisions to address the inaction and incompleteness of the investigation by the police.

6.5 The State party submits that the author disagrees with the evaluation of the facts of the case and the application of domestic law by the authorities. The State party concludes that there has been no violation of the author's rights.

Author's comments on the State party's observations on the merits

7.1 On 1 July 2018, the author submitted his comments in respect of the State party's observations, repeating his initial claims.

7.2 The author claims the authorities failed to take measures to protect him from the attacks during the pride event on 29 June 2013, although the authorities were well aware that the counter-demonstrators posed a serious risk of aggression and violence towards the participants in the pride event. In his 2012 and 2013 reports, the Human Rights Ombudsman of the Russian Federation highlighted discrimination against the lesbian, gay, bisexual and transgender community in Saint Petersburg. In their decisions refusing to open a criminal case, the police often mentioned the existence of a consistently hostile attitude towards participants in pride events. The authorities were thus well aware of the negative attitude towards lesbian, gay, bisexual and transgender persons in Saint Petersburg and should have paid particular attention to their safety; when the authorities are aware of a risk of violence against participants in a peaceful demonstration, they are obliged to take sufficient and effective measures to prevent possible ill-treatment. The author also claims that nothing in the behaviour of the authorities indicated that they had considered the specific risks connected to the organization of a pride event in Saint Petersburg. During the demonstration, the police did not publicly condemn the openly discriminatory and offensive slogans shouted by the counter-demonstrators, nor did they intervene when the counter-demonstrators threw stones and eggs at the author and other participants. On the contrary, police actions were directed against the participants. By erecting a metal fence around the parade location, the police effectively put the participants in a cage, exposing them to insults and objects thrown by counter-demonstrators.

7.3 The author further claims that the authorities failed to carry out an effective investigation of two violent incidents against him, one that occurred on 29 June 2013 and the

other on 3 November 2013. The author refers to his original submission, which contains the details. The author claims that the State party asserts that measures were taken to investigate the assaults but that it does not specify exactly what was done during the past five years or provide the results of any investigation. Concerning the event of 29 June 2013, the author submits that the criminal case was never opened; that the author himself was never questioned; that the assailants have not been identified despite the existence of a number of video recordings and photos of the attack; and that the authorities have not evaluated the video recordings and photos provided by the author, reviewed the list of video cameras in the area or examined the screenshots from VKontakte social media platform, which show that certain individuals posted calls to violence against the participants in the pride event in question. Moreover, during one of the court hearings, the author learned that the case file containing his complaint and the evidence that he had provided had been lost. The State party has not commented on this matter. The authorities ignored the author's claim that the attack was prepared in advance and based on homophobic hatred. The records of police decisions to refuse the opening of a criminal case were very similar. The prosecutors' and court decisions finding the investigation ineffective did not lead to an effective investigation or to restitution for the violation of the author's rights.

7.4 The author alleges that the second episode of violence against him, on 3 November 2013, was not qualified as a hate crime; that the police did not verify the involvement of the Volk-homophobe group, which posted information on the VKontakte social media platform about a possible attack before it happened; that the assailants have not been identified; and that the investigation has been suspended many times. The length of the investigation does not meet the criteria of effectiveness.

7.5 The author submits that, to be effective, the investigation of a hate crime against lesbian, gay, bisexual and transgender persons has to account for all the circumstances in the specific context of the case. The position of the State party that the motivation of hatred can be established only after the offenders are questioned contradicts its obligation to investigate hate crimes effectively.

7.6 The author also submits that the criminal legislation of the State party does not list hatred on the basis of sexual orientation and gender identity as a possible motive for hate crimes or as an aggravating circumstance. Although the Constitutional Court of the Russian Federation concluded that persons of a certain sexual orientation could be seen as a social group,¹⁸ the concept of "social group" is not clearly defined in criminal legislation. The investigator has full discretion to decide whether a certain group forms a social group for the purposes of criminal investigation. In addition, the law does not provide an option for victims to appeal the investigator's decision. The Supreme Court, moreover, explicitly prohibits courts from considering the classification of the crime in complaints made under article 125 of the Criminal Procedure Code.

7.7 The author submits that stigmatization and prejudice affect the willingness of lesbian, gay, bisexual and transgender persons to seek the protection of the police. Long-standing discrimination hinders their access to justice. Of the 322 cases of homophobic violence documented by lesbian, gay, bisexual and transgender organizations in the six years preceding the present submission by the author, 75 included a request for the opening of criminal proceedings. While 23 of those requests were successful, none of the cases were classified by the authorities as a hate crime.

7.8 The author asks the Committee to recommend that the State party adopt a number of general measures,¹⁹ as well as the following individual remedies: apologize to the author for

¹⁸ Constitutional Court decision No. 24-P of 23 September 2014 on the constitutionality of art. 6.21, part 1, of the Administrative Offences Code, in connection with the complaint of N.A. Alekseev, Ya.N. Evtushenko and D.A. Isakov.

¹⁹ As follows: (a) to include "sexual orientation and gender identity" as one of the prohibited grounds for discrimination, as an aggravating circumstance in article 63 of the Criminal Code and as a motive for hate crimes; (b) to carry out an independent investigation of the underlying causes of crimes against lesbian, gay, bisexual and transgender persons, including gaps in legislation, and of the lack of effective investigation thereof, and to afford public discussion of the results of such investigation; (c) to take steps to improve the situation of lesbian, gay, bisexual and transgender persons and guarantee their

violation of his rights, provide fair compensation and carry out an investigation of attacks against the author, in line with Covenant standards.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's argument that the author has failed to exhaust all available domestic remedies because he has not appealed to either the Saint Petersburg City Court or the Supreme Court of the Russian Federation under the cassation review procedure. The Committee also notes the author's argument that further appeals would be ineffective and unlikely to bring any relief. The Committee recalls that, for the purposes of article 5 (2) (b) of the Optional Protocol, domestic remedies must be both effective and available, and must not be unduly prolonged.²⁰ In that regard, the Committee notes that the new cassation review procedure came into force on 1 January 2013 and was therefore available to the author at the time of submission of the present communication to the Committee. The Committee therefore has to decide whether the procedure could have been effective.

8.4 The Committee notes that the cassation review procedure set out under article 401 (2) (1) of the Criminal Procedure Code concerns the revision, only on points of law, of court decisions that have entered into force. The decision on whether to refer a case for hearing by the cassation court is discretionary in nature, does not have a time limit and is made by a single judge. The characteristics of the procedure lead the Committee to conclude that such cassation review contains elements of an extraordinary remedy. The State party must therefore show that there is a reasonable prospect that the procedure would provide an effective remedy in the circumstances of the case.²¹ In the present case, the State party indicates that of the 895 criminal cases examined by the criminal chamber of the Supreme Court of the Russian Federation in 2014, 354 were reviewed under the cassation appeal procedure. The State party indicated that the criminal chamber of the Supreme Court considered 240 cases under the procedure in 2015.²² The State party failed, however, to provide information to show that there is a chance of success in cases where a motion for prosecution for violent crimes has not been granted. In the absence of any clarification from the State party on the effectiveness of the cassation review procedure in cases similar to the present one, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.5 The Committee observes that the claim under article 2 of the Covenant, raised by the author, should be considered under article 2 (3), in conjunction with his claims under article 7 of the Covenant. The author's claims under articles 7, 17 and 26 of the Covenant have been sufficiently substantiated for purposes of admissibility.

access to justice; (d) to abandon the practice of the investigator refusing to classify crimes as hate crimes until the offenders have been identified and questioned; (e) to develop standards of investigation of hate crimes based on sexual orientation and gender identity; and (f) to collect statistical information on crimes against lesbian, gay, bisexual and transgender persons.

²⁰ *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 6.3.

²¹ *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8; and *Dorofeev v. the Russian Federation* (CCPR/C/111/D/2041/2011), para. 7.1.

²² The State party provided the number of cases considered under the procedure, but did not state the total number of complaints for 2015 (see para. 4.4 above).

Consideration of the merits

9.1 The Committee has considered the communication in the light of the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's allegation that the State party violated his right not to be subjected to cruel treatment under article 7, read alone and in conjunction with article 2 (3), of the Covenant, on two grounds. First, it failed to protect him from violent attacks by counter-demonstrators during the pride event on 29 June 2013. Second, the State party failed to carry out an effective investigation of the author's allegations regarding the pride event attacks and the incident that took place on 3 November 2013 (see para. 2.7 above).

9.3 Regarding the author's claim that the State party failed to protect him from treatment contrary to article 7 on 29 June 2013 during the pride event, the Committee recalls that the obligations under the Covenant cannot be viewed as a substitute for domestic criminal or civil law.²³ However, the positive obligations on States parties to ensure Covenant rights will be fully discharged only if individuals are protected by the State party, not only against violations of Covenant rights by its agents but also against acts committed by private persons.²⁴ It is the duty of the State party to afford everyone protection, through legislative and other measures as may be necessary, against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.²⁵ There may be circumstances in which a failure to ensure Covenant rights would give rise to a violation as a result of a State party permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts.²⁶ Applying an approach analogous to protection of the right to life under article 6 of the Covenant, in relation to the due diligence obligation to take reasonable, positive measures in response to reasonably foreseeable threats, the Committee notes that article 7 cannot be expected to impose an impossible or disproportionate burden on the State party.²⁷ Thus, the positive obligation of a State party to prevent a violation of article 7 of the Covenant by an individual, beyond adopting necessary criminal law provisions, can be expected only in the case of reasonably foreseeable threats.²⁸

9.4 The Committee notes that the incident took place during a peaceful and authorized parade. In that regard, the Committee refers to paragraph 24 of its general comment No. 37 (2020) on the right of peaceful assembly, according to which the States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly, without discrimination, and put into place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public, counter-demonstrators and private security providers.

9.5 The Committee notes the author's claim that the authorities had been duly notified of the pride event and that they made preparations such as the installation of a fence and the deployment of police with the aim of maintaining order during the event. The Committee also notes the author's claim that the State party was aware of widespread homophobia towards lesbian, gay, bisexual and transgender persons in Saint Petersburg. On the basis of the author's un rebutted allegations, the Committee observes that, instead of protecting the participants, the measures undertaken by the State party resulted in further exposure of the participants to violence from counter-demonstrators. A metal fence erected by the police

²³ General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8.

²⁴ *Ibid.*

²⁵ General comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 2.

²⁶ *Ibid.*, para. 8; and *Neklyayev v. Belarus* (CCPR/C/126/D/2383/2014), para. 7.2.

²⁷ General comment No. 36 (2018) on the right to life, para. 21.

²⁸ *Ibid.*; and *Y. Sh. v. Russian Federation* (CCPR/C/128/D/2815/2016), para. 8.5.

created a cage-like enclosure for participants, who then faced humiliating and aggressive verbal attacks, as well as having stones and eggs thrown at them by the counter-demonstrators. The Committee notes the author's claim that, apart from erecting a fence, the police otherwise remained inactive. They did not advise the counter-demonstrators not to attack, tell them to cease throwing objects at the participants and insulting them, or take any action to stop the violence or protect the participants. In the preceding circumstances, the Committee finds that the State party, being aware of the risks of violence against the author as a participant in a pride event, did not undertake sufficient measures to guarantee his safety. The Committee therefore finds that the failure of the State party to prevent a foreseeable attack on the author during the pride event of 29 June 2013 amounts to a violation of article 7 of the Covenant.²⁹

9.6 The Committee notes the author's claim that, by failing to carry out an effective investigation of his allegations of two attacks against him, the State party failed to meet its obligations under article 7 of the Covenant. The Committee reiterates its jurisprudence that the Covenant does not provide a right for individuals to require that the State party criminally prosecute another person.³⁰ It recalls, nonetheless, that the State party is under a duty to thoroughly, promptly and impartially investigate alleged violations of human rights, to prosecute the suspects and punish those held responsible for such violations³¹ and to provide other forms of reparation, including compensation.³² The Committee has also recognized the obligation to punish violations by both State and non-State actors.³³ The State party should not avoid its responsibilities under the Covenant by pointing to the fact that the domestic courts have already dealt with or are still dealing with the matter, when it is clear that the remedies granted or pending in the State party have been unduly prolonged and would be ineffective.³⁴ The Committee notes in this regard that the police refused numerous times to initiate criminal proceedings in relation to the incident of 29 June 2013. The criminal investigation of the incident of 3 November 2013 was suspended and reopened multiple times. Despite the orders of the prosecutors and the courts, the police took no further steps to identify the offenders or question the witnesses or the author, and the decisions of the police after additional investigations were identical to the initial one. The information supplied by the author, such as video and audio recordings of the event, the list of proximate video cameras and online links that may have led to the identification of the offenders, were not examined by the investigators. Those facts, as well as information from the State party that, 5 years after the second incident, the investigation was still ongoing without any documented results, lead the Committee to conclude that there has been no effective investigation, thus there has been a violation of article 7, read in conjunction with article 2 (3) of the Covenant.

9.7 Regarding the author's allegation that his rights under article 26 of the Covenant were violated, the Committee notes that the author claims that police officers acted in a discriminatory way when they failed to take into account the homophobic and discriminatory nature of attacks against him and classify them as such. The Committee notes that the author alleges that the behaviour of the police was enabled by lack of clear legal provisions requiring the treatment of lesbian, gay, bisexual and transgender people as a social group to be protected from discrimination. In particular, the Committee notes the author's submission that "sexual orientation" and "gender identity" are not listed as grounds protected from discrimination in criminal legislation. The Committee also notes that, while lesbian, gay, bisexual and transgender people could be regarded as falling under the definition of "the other social group", following Constitutional Court decision No. 24-P of 23 September 2014, such decision was left to the discretion of the authorities, who exercised that discretion when they refused to investigate the allegations of homophobic acts.

²⁹ *Neklyayev v. Belarus* (CCPR/C/126/D/2383/2014), para. 7.2; and European Court of Human Rights, *Milanović v. Serbia*, Application No. 44614/07, Judgment, 14 December 2010, para. 89.

³⁰ See, for example, communications No. 213/1986, *H.C.M.A. v. Netherlands*, para. 11.6; No. 275/1988, *S.E. v. Argentina*, para. 5.5; Nos. 343–345/1988, *R.A.V.N. et al. v. Argentina*, para. 5.5; and *Rajapakse v. Sri Lanka* (CCPR/C/87/D/1250/2004), para. 9.3.

³¹ *Rajapakse v. Sri Lanka*, para. 9.3.

³² For example, *Gapirjanov v. Uzbekistan*, (CCPR/C/98/D/1589/2007), para. 10; and *Peiris et al. v. Sri Lanka* (CCPR/C/103/D/1862/2009), para. 9.

³³ General comment No. 20 (1992), para. 13.

³⁴ *X. v. Sri Lanka* (CCPR/C/120/D/2256/2013), para. 7.4.

9.8 The Committee recalls that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.³⁵ With reference to its jurisprudence, the Committee recalls that the prohibition against discrimination under article 26 also covers discrimination based on sexual orientation and gender identity.³⁶ The Committee notes the author’s assertion that, despite numerous requests, the investigators refused to classify the attacks against him as perpetrated out of hatred for lesbian, gay, bisexual and transgender people. According to the State party, the perpetrators had to first be identified and questioned before their motives could be ascertained. The Committee notes the author’s submissions that, during both incidents, the attackers accompanied their physical aggression with hateful and violently worded slogans. This is unrefuted by the State party. From the wording of the slurs and slogans provided by the author, it is clear to the Committee that the attackers’ comments referred to the sexual orientation of the victims and called for violence against them. The Committee is therefore of the opinion that the behaviour of the attackers clearly demonstrated hatred against a protected social group (lesbian, gay, bisexual and transgender persons), as claimed by the author. From the information provided by the author, it is clear that the police acknowledged that there was animosity towards supporters of lesbian, gay, bisexual and transgender causes (see para. 2.4 above). Accordingly, the reasoning provided by the investigators for their refusal to classify the attacks against the author as a hate crime was unjustified.

9.9 The Committee recalls that the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance.³⁷ The principle of equality sometimes requires States parties to take action to diminish or eliminate conditions that cause or help to perpetuate discrimination prohibited by the Covenant.³⁸ For example, in a State where the general conditions of a certain part of the population, such as lesbian, gay, bisexual and transgender persons, prevent or impair their enjoyment of human rights, including through violent attacks against them, the State should take specific action to correct those conditions.³⁹ Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds.⁴⁰ In the present case, those principles obliged the State party to enact clear legal provisions and apply them to provide effective protection to the author as a member of a targeted social group – lesbian, gay, bisexual and transgender persons – instead of leaving it to the discretion of an investigator. Failure to establish a clear legal basis left the clearly homophobic attacks against the author unpunished. It also contributed to furthering a hostile environment where the author, as a member of a targeted social group, was deprived of the opportunity to exercise his fundamental rights equally with other persons.

9.10 The above considerations lead the Committee to conclude that the State party violated article 26 of the Covenant by failing to establish a clear legislative basis for protecting lesbian, gay, bisexual and transgender people from discrimination, which resulted in the discriminatory treatment of the author by police investigators.

9.11 In the light of its finding that there has been a violation of articles 7 and 26 of the Covenant, the Committee decides not to examine separately the author’s claims under article 17 of the Covenant.

³⁵ General comment No. 18 (1989) on non-discrimination, para. 7.

³⁶ *Toonen v. Australia* (CCPR/C/50/D/488/1992), para. 8.7; *Young v. Australia* (CCPR/C/78/D/941/2000), para. 10.4; *X v. Colombia* (CCPR/C/89/D/1361/2005), para. 7.2; and *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.3.

³⁷ General comment No. 18 (1989), para. 8.

³⁸ *Ibid.*, para. 10.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, para. 12.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party articles 2 (3), 7 and 26 of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to provide the author with adequate compensation, including reimbursement of the court fees and legal expenses incurred by him; and to provide the author with psychological rehabilitation, if required. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by bringing its domestic legislation into line with the Covenant and by implementing policies and practices concerning protection of the rights of lesbian, gay, bisexual and transgender persons, in accordance with the Covenant.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.
