



## **“Homosexual Propaganda” Bans in Russia** A submission by ILGA-Europe

*9 October 2012*

ILGA-Europe is extremely alarmed by the recent trend in laws prohibiting “homosexual propaganda.” Laws banning “homosexual propaganda” have been adopted in nine regions in the Russian Federation, including Arkhangelsk (2011), Bashkortostan (2012), Kostroma (2012), Krasnodar (2012), Magadan (2012), Novosibirsk (2012), Ryazan (2006), Samara (2012), St. Petersburg (2012). Similar laws are currently being considered in other regions (Moscow, Kaliningrad, Kirov, Krasnoyarsk and Samara) and at the national level, where there is growing support for a bill proposed in the lower house of the federal Parliament (Duma). Legislators have attempted to justify such laws with reference to protecting the morals of minors. These laws all seek to prohibit public statements concerning “homosexuality” in public. In St. Petersburg and Kostroma, the laws also prohibit the propaganda of “sodomy, lesbianism, bisexuality and transgenderism.”

The laws include criminal laws provisions (except in Bashkortostan), including penalties that range from fines to prison terms. The sanctions for such actions vary depending on the regions but include fines that can amount to 500000 rubles (12500 €).

### **1. The impact of the “homosexual propaganda” ban laws**

It is still early to predict with certainty how these laws and regulations will be implemented and the extent to which they will impact on LGBT communities and their allies. It is clear, however, that by adopting such laws, public authorities inscribe discrimination based on sexual orientation and gender identity in law and thus legitimise social exclusion and stigmatisation of LGBT people. They perpetuate deeply misleading and harmful stereotypes by linking homosexuality and pedophilia in the same provisions. Finally, they condone homophobia and transphobia and contribute to a climate that is conducive to violence targeting LGBT individuals.

Several LGBT organisations and other human rights organisations are closely monitoring the implementation of the laws and regulations. As of September 2012, documented cases of the impact of the “homosexual propaganda” bans included:

- *Freedom of expression and assembly:* several individuals were arrested, in some cases detained and/or fined in Ryazan (in 2009) and in St. Petersburg (spring 2012) under the “homosexual propaganda” bans (see the country-per-country annexes at the end of this briefing paper)
- *Access to goods and services:* the Russian LGBT Network reported that clubs have refused to rent them premises for events, even when children were clearly not amongst the potential participants
- *Violence targeting LGBT people:* A Ukrainian LGBT rights organisation reported that attacks against LGBT activists have severely increased around the May LGBT festivals and cultural events (spring 2012). These events took place at a time when the draft law was starting to be debated in Parliament.
- *Media and access to information:* The Russian LGBT Network stated that local media had stopped covering its activities because they were afraid of being sued. In many cases, owners of local media would not be in a position to pay fines if found guilty of violating the law.

In addition to the consequences which have been observed so far, ILGA-Europe fears the negative impact the bans may have in many other spheres of life. Possible consequences of the bans include:

- *Prohibiting the dissemination of any information on sexual diversity.* In practice, the scope of this prohibition might expand to any information on sexual education, including the emotional aspects of sexual relationships, sexual and reproductive rights and safe sex techniques. This would curtail the activities of organisations that provide information and counseling on sexual and reproductive health, including prevention of sexually transmittable infections and other services which benefit everyone regardless of their sexual orientation or gender identity.
- *Monitoring of all local and international media by public authorities.* Owners of newspapers willing to provide information on sexual diversity issues or opposing those laws might not have sufficient resources to pay substantial fines repetitively. In addition, even the sales of international newspapers might be severely impacted, as they regularly comprise articles referring to LGBT issues or sexual and reproductive rights. It is also likely that those laws will hinder access to many websites.
- *Reinforcing the climate of stigmatisation of LGBT youth, in particular in schools.* This would contribute to homophobic and transphobic bullying, as well as to undermining the mental and physical well-being of many young people.
- *Legitimising discrimination by employers, service providers, health practitioners, teachers and other stakeholders against people on the basis of their sexual orientation, gender identity or gender expression.* Stripped of their right to freedom of expression, LGBT people will be even less likely to file complaints against or speak out to protest such discrimination.
- *Censoring cultural goods and services that make positive reference to homosexuality (even on an ad-hoc basis).* Books, movies, exhibitions or songs that would refer, even in general terms, to homosexuality would not be authorised.

- Many companies in various sectors may also be impacted by those laws as soon as they produce goods or provide services that may be seen as touching on to LGBT issues (“rainbow” in the name, or in the logo) or even if they allude to sexuality or mere feelings between young people (advertising for instance).

## **2. “Homosexual propaganda” ban laws are a violation of internationally guaranteed human rights**

Laws that prohibit the “propaganda of homosexuality” or “public actions aimed at promoting sodomy, lesbianism, bisexuality and transgenderism” violate internationally guaranteed human rights recognised in the International Covenant on Civil and Political Rights and the European Convention on Human rights. Such laws run counter to everyone’s right to freedom of expression as well as the closely related rights to freedom of association and to peaceful assembly. They are simply not legitimate restrictions under international law for three reasons.

- They are impermissibly vague.
- They fail the tests of necessity and proportionality.
- They discriminate against individuals on the basis of sexual orientation, and, in some instances, gender identity as well.

The rights to freedom of expression, association and peaceful assembly are guaranteed respectively by Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR). For Council of Europe member States, Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms enshrine these rights using almost identical language. The right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. Freedom of association is the right of individuals to come together to express, promote, pursue and defend common interests. An assembly is an intentional and temporary gathering in a private or public space for a specific purpose.” Assemblies can include demonstrations, vigils, marches, and picket lines, whether indoors or outdoors. These rights are closely intertwined because assemblies and associations have an expressive purpose: participants in assemblies and the members of associations typically intend to communicate a message. In addition, the protection of international law extends even to expression that may be unpopular, considered by some to be offensive, or disliked by a segment or even a majority of the population. This means that the voices of minorities (in this case LGBT minorities) cannot be silenced by the majority.

The rights to freedom of expression, association and peaceful assembly are not absolute. Rather they each may be subject to limitations or restrictions. The restrictions, however, must be provided for by law, serve a permissible purpose, and be necessary to attain that purpose. There is no question that the “homosexual propaganda” laws impermissibly interfere with the exercise of the rights to freedom of expression, association and peaceful assembly, because they do not meet the conditions set forth in the ICCPR or the European Convention for limiting these rights.

- **Restrictions must be provided for by law.** This *means not only that the restriction or interference with the right must have a legal basis, but also that*

*the wording of the law must specifically indicate what conduct is prohibited. A law “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.”*<sup>1</sup> Under the laws adopted and discussed in Russia, it is impossible for an individual to determine what kind of expression is banned. In St. Petersburg, an activist was fined for holding up a sign that stated: “Homosexuality is not a perversion.”<sup>2</sup> In Ryazan, a woman was arrested when she displayed posters that read: “Homosexuality is normal” and “I am proud of my homosexuality.”<sup>3</sup> Thus the bans on “homosexual propaganda” do not meet the first hurdle of any restriction, namely that it be provided for by law.

- **The restrictions are neither necessary for a legitimate purpose nor proportional to achieve that purpose.**

*The justification of public morality:* the protection of morals is a permissible aim under the ICCPR and the ECHR. However, justifications based on public morality have typically been viewed with great skepticism by both the European Court of Human Rights and the UN Human Rights Committee. The practice of the European Court is to limit public morality to expressions that are actually obscene. In other contexts, the Court has been much more reluctant to accept various grounds of public morality offered by States. It held “protection of morals” to be an insufficiently weighty reason to support laws criminalising same-sex sexual relationships in *Dudgeon v. United Kingdom* and *Norris v. Ireland* and, moreover, that the laws were not necessary to protect morals.<sup>4</sup> In its latest general comment on Article 19, the Human Rights Committee recalled that because “the concept of morals derives from many social, philosophical and religious traditions,” any limitation imposed for the “purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.”<sup>5</sup>

*Public morality as used by States to defend “homosexual propaganda” bans does not pass the tests of necessity and proportionality because there is no evidence that public statements concerning same-sex families or relationships or sexual orientation or gender identity pose any kind of threat to public morals:* the consistent jurisprudence of the European Court affirms this. In three recent cases the Court has considered the legitimacy of restrictions on the right to freedom of assembly for LGBT individuals and organisations and has each time found a violation of the Convention (*Bączkowski v. Poland*, *Genderdoc-M v. Moldova*, *Alekseyev v. Russia*).

*The justification of protecting children:* the second asserted justification is the protection of the rights of children from information and messages about homosexuality and same-sex relationships. Although protecting the rights of others is a permissible purpose for a limitation under the ICCPR and the European Convention, this justification too must fail and for similar reasons. *There is simply no evidence that promoting tolerance for LGBT individuals, asserting gay identities, or claiming equal rights for same-sex relationships and families harms children.* The European Court easily dismissed such arguments in *Alekseyev*, finding them to be entirely lacking in evidentiary support. Furthermore, expression concerning “homosexuality, lesbianism,

bisexuality or transgenderism” is fundamentally distinct from sexually explicit or pornographic material.

- **Restrictions Must Not Be Discriminatory.** *The bans on “homosexual propaganda” discriminate on the basis of sexual orientation. Those laws that include “transgenderism” also discriminate on the basis of gender identity.* Both forms of discrimination are forbidden under international law.<sup>6</sup> Laws that prohibit the “propaganda of homosexuality” – as opposed to the propaganda of heterosexuality or sexuality generally – target one particular kind of sexual preference for differential treatment. There is simply no justification for this difference in treatment based on sexual orientation. In the three European Court cases discussed above, the Court found that the subject State had not only violated rights to freedom of peaceful assembly but had also violated the non-discrimination guarantee of Article 14.

### **3. Recommendations**

- The regions of Arkhangelsk, Bashkortostan, Kostroma, Krasnodar, Magadan, Novosibirsk, Ryazan, Samara and St. Petersburg should repeal their “homosexual propaganda” ban laws;
- The Russian Federal government should unequivocally declare the “homosexual propaganda” laws adopted by several regions (Oblasts) unlawful and order local administrations to eliminate such rules and laws;
- In view of the current debate on a similar legislation in other regions and at federal level, the Russian government should make clear that such laws violate the guarantees of freedom of expression, peaceful assembly and association under international human rights law;
- The Russian federal government and regional authorities should acknowledge that such laws conflict with their obligations under the European Convention on Human Rights, the ICCPR and the Council of Europe’s Committee of Ministers Recommendation on combating discrimination on the grounds of sexual orientation or gender identity.
- In the UPR process, states should raise question about the impact and purpose of these laws and point out their incompatibility with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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<sup>1</sup> HRC, General Comment No. 25.

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<sup>2</sup> Nikolai Alexeyev, Russian Gay Rights Activist, Fined Under 'Propaganda' Law, Huffington Post, 4 May 2012.

<sup>3</sup> Human Rights Committee, Communication No. 1932/2010 (Fedotova v. Russia).

<sup>4</sup> *Dudgeon v. United Kingdom*, Application no. 7525/76, Judgment 22 October 1981; *Norris v. Ireland*, Application no. 10581/83, Judgment 26 October 1988.

<sup>5</sup> HRC, General Comment No. 34, at para. 32.

<sup>6</sup> *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992, 4 April 1994; *Young v. Australia*, Communication No. 941/2000, CCPR/C/78/D/941/2000; *X v. Colombia*, Communication No. 1361/2005, CCPR/C/89/D/1361/2005; Committee on Economic Social and Cultural Rights, General Comments No. 20 (Non-discrimination in Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, at para. 32; No. 19 (The Right to Social Security), E/C.12/GC/19, 4 February 2008, para. 29; No. 18 (The Right to Work), E/C.12/GC/18, 6 February 2006, at para. 12(b); No. 15 (The Right to Water), E/C.12/2002/11, 30 January 2002, at para. 13; No. 14 (The Right to the Highest Attainable Standard of Health), E/C.12/2000/4, 11 August 2000, para. 18; Committee on the Rights of the Child, General Comment No. 13 (The right of the child to freedom from all forms of violence), CRC/GC/2011/13, at paras. 60 and 72(g); General Comment No. 4 (Adolescent health and development in the context of the Convention on the Rights of the Child); CRC/GC/2003/4, 1 July 2003, at para. 6; CRC, General Comment No. 3 (HIV/AIDS and the Rights of the Children), CRC/GC/2003/3, 17 March 2003, at para. 8; Committee Against Torture, General Comment No. 2 (Implementation of Article 2 by States Parties), CAT/C/GC/2, 24 January 2008, at para. 21; Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28 (on the core obligations of States parties under article 2), CEDAW/C/GC/28, 16 December 2010, at para. 18; General Recommendation No. 27 (Older women and the protection of their rights), CEDAW/C/GC/27, 16 December 2010, at para. 13. See also *Salgueiro da Silva Mouta v. Portugal*, Application no. 33290/96, Judgment 21 December 1999 (sexual orientation covered by Article 14 of the European Convention); *P.V. v. Spain*, Application no. 35159/09, 30 November 2010 (gender identity covered by Article 14).