



## Legislation in Russia banning the promotion of homosexuality breaches freedom of expression and is discriminatory

The case concerned a complaint brought by three gay rights activists about legislation in Russia banning the promotion of homosexuality, also known as the “gay propaganda law”. In a series of legislative acts – most recently in 2013 – “promoting non-traditional sexual relationships” among minors was made an offence punishable by a fine. As a protest against these laws, the three activists had staged demonstrations between 2009 and 2012. They were subsequently found guilty of administrative offences and given fines.

In today’s **Chamber** judgment<sup>1</sup> in the case of [Bayev and Others v. Russia](#) (application nos. 67667/09, 44092/12 and 56717/12) the European Court of Human Rights held, by six votes to one, that there had been:

**a violation of Article 10 (freedom of expression) of the European Convention on Human Rights, and a violation of Article 14 (prohibition of discrimination) in conjunction with Article 10 of the Convention.**

The Court found in particular that, although the laws in question aimed primarily at protecting minors, the limits of those laws had not been clearly defined and their application had been arbitrary. Moreover, the very purpose of the laws and the way they were formulated and applied in the applicants’ case had been discriminatory and, overall, served no legitimate public interest. Indeed, by adopting such laws the authorities had reinforced stigma and prejudice and encouraged homophobia, which was incompatible with the values of a democratic society.

### Principal facts

The applicants, Nikolay Bayev, Aleksey Kiselev and Nikolay Alekseyev, are Russian nationals who were born in 1974, 1984 and 1977, respectively. They live in Moscow and Gryazy (Russia). They are gay activists.

Introduced initially at regional level in 2003 and 2006 and then at federal level in 2013, the laws banning so-called “propaganda of homosexuality” constitute, according to the applicants, a virtually full prohibition on nearly any public mention of homosexuality. In particular, the Code of Administrative Offences was amended in 2013 to specifically ban “the promoting of non-traditional sexual relationships among minors, ... creating a distorted image of the social equivalence of traditional and non-traditional sexual relationships”.

As a protest against these laws, the three applicants had staged demonstrations between 2009 and 2012, first in front of a secondary school in Ryazan, then a children’s library in Arkhangelsk and lastly an administrative building in St Petersburg. They held banners stating that homosexuality is natural/normal and not a perversion. All the applicants were subsequently found guilty of administrative offences and given fines. They appealed, without success.

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

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

All their ensuing complaints to the Constitutional Court were also unsuccessful. The applicants notably challenged the compatibility of the new laws with the Constitution, and in particular with the principle of equal treatment and freedom of expression. In its decisions, the Constitutional Court essentially found that the ban was justified on the grounds of protection of morals, referring in particular to the potential dangers of “creating a distorted impression of the social equivalence of traditional and non-traditional marital relations” and of children being lead into non-traditional sexual relations.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) and Article 14 (prohibition of discrimination), the applicants complained about the ban on public statements concerning the identity, rights and social status of sexual minorities, alleging that it was discriminatory. They pointed out in particular that they had been convicted of administrative offences for displaying the most trivial and inoffensive of banners. They also highlighted the general impact of the ban on their daily lives, as it not only prevented them from campaigning for LGBT rights but also required them in effect to conceal their sexual orientation whenever a minor was present.

The applications were lodged with the European Court of Human Rights on 9 November 2009 and 2 July 2012.

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

Helena **Jäderblom** (Sweden), *President*,  
Luis **López Guerra** (Spain),  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Alena **Poláčková** (Slovakia),  
Georgios A. **Serghides** (Cyprus),  
Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### [Article 10 \(freedom of expression\)](#)

As admitted by the Government, the administrative proceedings against the applicants had constituted an interference with their freedom of expression. In deciding whether that interference had been justified, the Court decided to focus its assessment on the necessity of the laws banning the promotion of homosexuality (and non-traditional sexual relations) among minors in Russia as general measures.

First, the Court rejected the Government’s claim that regulating public debate on LGBT issues had been justified by the need to protect morals. It noted the Government’s assertion that the majority of Russians disapproved of homosexuality, which was generally seen as contradicting traditional family values. However, the Government had failed to demonstrate how freedom of expression on LGBT issues would devalue or otherwise adversely affect actual and existing “traditional families” or would compromise their future. Indeed, the Court has consistently refused to endorse policies and decisions which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority. The legislation at hand is an example of such predisposed bias, unambiguously highlighted by its domestic interpretation and enforcement, and embodied in formulas such as “creating a distorted image/impression of the social equivalence of traditional and non-traditional sexual/marital relationships”. In contrast, there was a clear European consensus about the

recognition of individuals' right to openly identify themselves as gay, lesbian or any other sexual minority, and to promote their own rights and freedoms.

Nor did the Court accept the other arguments put forward by the Government, namely the protection of health and of the rights of others (notably minors who needed to be shielded from the risk of being induced into adopting a different sexual orientation), to justify restricting freedom of speech on same-sex relationships. Quite the contrary, such measures were likely to be counterproductive.

As concerned any risk to public health, disseminating knowledge on sex and gender identity issues and raising awareness of associated risks as well as of methods of protection, would be an indispensable part of a disease-prevention campaign and a general public-health policy.

As concerned the risk of minors being "converted" to homosexuality, the Court found that the Government had been unable to provide any explanation of the mechanism by which a minor could be enticed into "[a] homosexual lifestyle", let alone science-based evidence that one's sexual orientation or identity was susceptible to change under external influence. Moreover, in staging their demonstrations, the applicants had not sought to interact with minors, nor intrude into their private space. Nothing on their banners had been inaccurate, sexually explicit or aggressive; nor could their messages have been interpreted as an invitation for tuition on gender issues. Indeed, to the extent that the minors who witnessed the applicants' campaign had been exposed to ideas of diversity, equality and tolerance, the adoption of those views could only be conducive to social cohesion.

The Court also pointed out the vagueness of the terminology used in the legal provisions concerned and the potentially unlimited scope of their application. Those legal provisions were thus open to abuse, as evidenced in the applicants' cases. Thus, one of the applicants was fined for a demonstration which had taken place in front of the St Petersburg City Administration, a public place that is not specifically assigned to minors. That apparently meant that an incidental or potential sighting of a minor in any venue would constitute an offence. Furthermore, even such statements as "Homosexuality is not a perversion" and "Homosexuality is natural" had been considered to not be sufficiently neutral and to amount to promoting homosexuality.

Above all, by adopting such laws the Court found that the authorities had reinforced stigma and prejudice and encouraged homophobia, which was incompatible with the values – of equality, pluralism and tolerance – of a democratic society.

The Court therefore concluded that, in adopting the various general measures in question and by implementing them in the applicants' cases, the Russian authorities had overstepped the room for manoeuvre ("margin of appreciation") they had under Article 10 to restrict freedom of speech. There had therefore been a violation of Article 10.

#### [Article 14 \(prohibition of discrimination\) in conjunction with Article 10](#)

The Court has previously stressed that differences based solely on considerations of sexual orientation were unacceptable under the European Convention. The wording of the Code of Administrative Offences, in concert with the Constitutional Court's position, specifically states that same-sex relationships are inferior to opposite-sex relationships. As found above, this embodied a predisposed bias on the part of the heterosexual majority against the homosexual minority. The Government had not therefore provided convincing and weighty reasons to justify treating the applicants differently, in violation of Article 14 taken in conjunction with Article 10.

#### [Article 41 \(just satisfaction\)](#)

The Court held, by six votes to one, that Russia was to pay 8,000 euros (EUR) to Mr Bayev, EUR 15,000 to Mr Kiselev and EUR 20,000 to Mr Alekseyev in respect of non-pecuniary damage.

Mr Kiselev and Mr Alekseyev were also awarded EUR 45 and EUR 180, respectively, in respect of pecuniary damage. A total of EUR 5,963 was awarded for costs and expenses.

### Separate opinion

Judge Dedov expressed a dissenting opinion which is annexed to the judgment.

*The judgment is available only in English.*

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