



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

FIRST SECTION

Application no. 67667/09
Nikolay Viktorovich BAYEV against Russia
and 2 other applications
(see list appended)

STATEMENT OF FACTS

THE FACTS

The full names of the applicants, their dates of birth and their places of residence are set out in the appendix. They are Russian nationals. They are represented before the Court by Mr D.G. Bartenev, a lawyer practising in St Petersburg.

A. The circumstances of the cases

1. Background facts

The facts of the cases, as submitted by the applicants, may be summarised as follows.

On 3 April 2006 the Ryazan Region Duma adopted the Regional Law on the Protection of Morals and Health of Minors, which prohibited propaganda of homosexuality among minors.

On 24 November 2008 the Ryazan Regional Duma adopted the Law on Administrative Offences which introduced administrative liability for propaganda of homosexuality among minors. The law entered into force on 4 December 2008.

On unidentified date the first and the third applicants brought proceedings before the Constitutional Court of the Russian Federation. They challenged the compatibility of Section 4 of the Ryazan Regional Law on the Protection of Morality and Health of Minors with the provisions of the Constitution, in particular with the principle of equal treatment and with the freedom of expression enshrined in Articles 19 and 29 of the Constitution, and also with the provisions of Article 55 § 3 setting out the conditions under which the rights and freedoms may be restricted.

On 19 January 2010 the Constitutional Court declared the complaint inadmissible, having held that the Law in question “did not provide for any

measures aimed at prohibition of homosexuality, did not contain its official condemnation, was not of discriminative nature and was not capable of allowing any excessive acts by the authorities”. Concerning the ban on “homosexual propaganda”, the Constitutional Court noted that homosexual propaganda was “the activity aimed at purposeful and uncontrolled dissemination of information which is able to cause damage to the moral and spiritual development or to the health of minors, inducing them to form warped perceptions that traditional and non-traditional marital relations are socially equal, bearing in mind that minors due to their age are not capable of critical independent assessment of such information”.

On 30 September 2011 the Arkhangelsk Regional Assembly of Deputies passed amendments to the Regional Law on Certain Measures for the Protection of Morals and Health of Children in the Arkhangelsk Region, which prohibited propaganda of homosexuality among minors.

On 21 November 2011 the Arkhangelsk Regional Assembly of Deputies passed amendments to the Regional Law on Administrative Offences. The amendments introduced administrative liability for propaganda of homosexuality among minors.

On 7 March 2012 the St Petersburg Legislative Assembly passed amendments to the Regional Law on Administrative Offences. The amendments introduced administrative liability for propaganda of homosexuality, bisexuality and transgender identity among minors; the same law introduced administrative liability for propaganda of paedophilia.

On 29 June 2013 the Federal Law introduced administrative liability for “propaganda of non-traditional sexual relations among minors”. It applies on the whole territory of the Russian Federation.

2. Administrative proceedings against the applicants

The applicants each made a public statement in respect of which they were found in breach of a ban on “propaganda of homosexuality among minors”. The facts relating to the administrative charges brought against the applicants are summarised below.

(a) Application by Mr Bayev (no. 67667/09)

The applicant is a gay rights activist.

On 30 March 2009 the applicant stood in front of the school no. 43 in Ryazan holding two banners stating “Homosexuality is normal” and “I am proud of my homosexuality”. He was charged of an administrative offence for doing so.

On 6 April 2009 the Justice of the Peace of Circuit no. 18 of the Oktyabskiy District of Ryazan found the applicant guilty of a breach of Section 3.10 of the Ryazan Law on Administrative Offences. He had to pay a fine of 1,500 roubles (RUB).

On 14 May 2009 the Oktyabrskiy District Court dismissed the applicant’s appeal.

(b) Application by Mr Kiselev (no. 44092/12)

The applicant is an entrepreneur and a gay rights activist.

On 11 January 2012 the applicant stood in front of the children's library in Arkhangelsk holding a banner stating "Russia has the world's highest rate of teenage suicide. A huge part of them are homosexuals. They take this step because of the lack of information about their nature. Deputies are child-killers. Homosexuality is good!"

The applicant was arrested by the police and escorted to the police station for drawing a report on the administrative offence.

On 3 February 2012 the Justice of the Peace of Circuit no. 6 of the Oktyabskiy District of Arkhangelsk found the applicant guilty of a breach of Section 2.13 § 1 of the Arkhangelsk Law on Administrative Offences. He had to pay a fine of RUB 1,800.

On 22 March 2012 the Oktyabrskiy District Court of Arkhangelsk dismissed the applicant's appeal.

(c) Application by Mr Alekseyev (no. 56717/12)

The applicant is a gay rights activist. He held two public manifestations in breach of the ban on propaganda of homosexuality.

(i) Picketing in St Petersburg

On 12 April 2012 the applicant stood in front of the St Petersburg City Administration holding a banner citing a popular quote from a famous Soviet-time actress: "Homosexuality is not a perversion. Grass hockey and ice ballet are."

The applicant was arrested by the police and escorted to the police station for drawing a report on the administrative offence.

On 5 May 2012 the Justice of the Peace of Circuit no. 208 of St Petersburg found the applicant guilty of a breach of Section 7.1 of the St Petersburg Law on Administrative Offences. He had to pay a fine of RUB 5,000.

On 6 June 2012 the Smolninskiy District Court of St Petersburg dismissed the applicant's appeal.

(ii) Picketing in Arkhangelsk

On 11 January 2012 the applicant stood in front of children's library in Arkhangelsk holding a banner stating: "Children have the right to know. Great people also happen to be gay, the gay people also become great. Homosexuality is natural and normal" and listing some names of famous people who had contributed to the Russian cultural heritage and who were thought to be gay. This manifestation took place at the same time as Mr Kiselev's, but it appears that they were holding solo pickets individually.

The applicant was arrested by the police and escorted to the police station for drawing a report on the administrative offence.

On 3 February 2012 the Justice of the Peace of Circuit no. 6 of the Oktyabrskiy District of Arkhangelsk found the applicant guilty of a breach of Section 2.13 § 1 of the Arkhangelsk Law on Administrative Offences. He had to pay a fine of RUB 2,000.

On 22 March 2012 the Oktyabrskiy District Court of Arkhangelsk dismissed the applicant's appeal.

B. Relevant domestic law and practice

The Russian Constitution guarantees equality of rights and freedoms to everyone regardless of, in particular, race, language, ethnic origin, sex, social status or employment position, religion, ideology, membership in public associations or other circumstances (Article 19 §§ 1-2). The Constitution guarantees the freedom of thought and expression, together with the freedom of the mass media (Article 29). It also provides that rights and freedoms may be restricted by federal laws for the protection of constitutional principles, public morals, health and the rights and lawful interests of others, and to ensure the defence and security of the State (Article 55 § 3).

Section 4 of the Ryazan Region Law on the Protection of Morality and Health of Minors no. 41-OZ of 3 April 2006 reads as follows:

“Public actions aimed at propaganda of homosexuality (sodomy or lesbianism) among minors shall not be allowed.”

Section 3.10 of the Ryazan Region Law on Administrative Offences no. 182-OZ of 4 December 2008 in so far as relevant reads as follows:

“Public actions aimed at propaganda of homosexuality (sodomy or lesbianism) among minors shall be punishable by an administrative fine of between RUB 1,500 and RUB 2,000; or of between RUB 2,000 to RUB 5,000 if perpetrated by a public official; or of between RUB 10,000 to RUB 20,000 if perpetrated by a legal entity.”

Section 10 of the Arkhangelsk Regional Law on Certain Measures for the Protection of Morals and Health of Children in the Arkhangelsk Region, amended by the Regional Law no. 336-24-03 of 30 September 2011, reads as follows:

“Public actions aimed at propaganda of homosexuality among minors shall not be allowed.”

Section 2.13 of the Arkhangelsk Region Law on Administrative Offences of 3 June 2003, amended by the Regional Law no. 386-26-OZ on 21 November 2011, in so far as relevant reads as follows:

“Public actions aimed at propaganda of homosexuality among minors shall be punishable by an administrative fine of between RUB 1,500 and RUB 2,000; or of RUB 2,000 to RUB 4,000 if perpetrated by a public official; or of RUB 10,000 to RUB 20,000 if perpetrated by a legal entity.”

Section 7.1 of the St Petersburg Region Law on Administrative Offences of 31 May 2010, amended by the Regional Law no. 108-18 on 7 March 2012 in so far as relevant reads as follows:

“Public actions aimed at propaganda of sodomy, lesbianism, bisexuality or transgenderism among minors shall be punishable by an administrative fine of RUB 5,000; or of RUB 50,000 roubles if perpetrated by a public official; or of between RUB 250,000 to RUB 500,000 if perpetrated by a legal entity.

Explanatory note: public actions aimed at propaganda of sodomy, lesbianism, bisexuality or transgenderism among minors shall be understood, in this Section, as activity aimed at purposeful and uncontrolled dissemination of information capable of causing damage to health, moral and spiritual development of minors, in particular by forming warped perceptions that traditional and non-traditional marital relations are socially equal.”

On 29 June 2013 the Federal Law no. 135-FZ on Amendments to Section 5 of the Federal Law on Protection of Children from Information that Harm

their Health and Development and Certain Other Legislative Acts of the Russian Federation Aimed at Protection of Children from Information Denying Traditional Family Values entered into force. It introduced administrative liability for “propaganda of non-traditional sexual relations among minors”. New Article 6.21 of the Code of Administrative Offences reads in so far as relevant as follows:

“Propaganda of non-traditional sexual relations among minors in the form of dissemination of information aimed at forming non-tradition sexual conceptions in minors, raising attractiveness of non-traditional sexual relations, misrepresentation of social equivalence of traditional and non-traditional sexual relations, or imposing information about non-traditional sexual relations raising interest to such relations, unless such acts constitute a criminal offence, shall be punishable by an administrative fine of between RUB 4,000 to RUB 5,000; or of between RUB 40,000 to RUB 50,000 if perpetrated by a public official; or of between RUB 800,000 to RUB 1,000,000 if perpetrated by a legal entity, or a suspension of its activity for up to 90 days.”

COMPLAINTS

The applicants complain under Article 10 of the Convention about the ban on public statements concerning the identity, the rights and social status of sexual minorities. They maintain that the prohibition of “homosexual propaganda” introduced by the recent legislation constitutes a blanket ban on the mere mention of homosexuality and that it applies irrespective of the content of the message. They also complain that this ban is discriminatory, in breach of Article 14 of the Convention.

QUESTIONS

1. Has there been a violation of the applicants' right to freedom of expression, contrary to Article 10 of the Convention?
2. Do Russian legal provisions governing administrative liability for “propaganda of homosexuality among minors” meet the “quality of law” requirements contained in Article 10 § 2 of the Convention?
3. Have the applicants suffered discrimination in the enjoyment of their Convention rights, contrary to Article 14 of the Convention read in conjunction with Article 10?

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Represented by
1.	67667/09	09/11/2009	Nikolay Viktorovich BAYEV 11/11/1974 Moscow	Dmitriy Gennadyevich BARTENEV
2.	44092/12	02/07/2012	Aleksey Aleksandrovich KISELEV 11/05/1984 Gryazi, Lipetsk Region	Dmitriy Gennadyevich BARTENEV
3.	56717/12	02/07/2012	Nikolay Aleksandrovich ALEKSEYEV 23/12/1977 Moscow	Dmitriy Gennadyevich BARTENEV