

RUSSIA: ‘Gay propaganda’ law remains in place, but complaints against it continue

Summary

In 2013 Russia enacted a federal law prohibiting what it called “gay propaganda”, using the protection of children as an excuse to silence any public discussions or positive messages about LGBT rights. The law seriously affected children across Russia, effectively denying them their right to information about gender and sexual diversity. LGBT activists took the government to the European Court of Human Rights to argue that their rights to freedom of expression and freedom from discrimination were being trampled.

Background

Russia’s first “gay propaganda” law was brought into force in an administrative region not far outside of Moscow in 2006. Ostensibly focused on the “Protection of the Morality of Children”, the law in the Ryazan Oblast prohibited “public actions aimed at propaganda of homosexuality (sodomy or lesbianism) among minors”.

It was amended to make it an offence to take part in “the promotion of homosexuality among minors” in 2008, justified by citing the myth that gay men plan to “recruit” young people into becoming homosexual. These laws came into force at a time when openly homophobic rhetoric was rising in Russia, and LGBT rights organisations have since linked their adoption in Russia to [an increase in violence](#) against LGBT people and [a decrease in protection](#) for LGBT people from the State.

By 2013 the country’s children’s commissioner went so far as to say that protection of the “traditional family” was a matter of national security, and that politicians who opposed this priority [should be](#) “cursed for centuries as destroyers of the family and the human race”.

Russian LGBT activist Nikolay Bayev travelled to Ryazan specifically to publicly protest the law in early 2009. Setting up a picket outside a secondary school he unfurled two banners proclaiming: “Homosexuality is normal” and “I am proud of my homosexuality”. People noticed his protest and he was quickly charged with an administrative offence. The police issued him a fine of 1,500 Russian roubles, equivalent to about €34, and his appeal against the fine was denied by a District Court.

Another region, Arkhangelsk Oblast, approved similar measures in 2011 and saw near-identical protests. Two more LGBT activists, Aleksey Kiselev and Nikolay Alekseyev, travelled to a children's library in the region and displayed two banners. One claimed that a lack of information about LGBT rights contributed to Russia having the world's highest teenage suicide rate, while the other listed a number of prominent Russian public figures believed to be gay.

Like Bayev, they had travelled to stage a protest that would potentially see them fined under the region's "gay propaganda" law, in the hopes that they would be able to successfully contest either their fines or the constitutionality of the laws themselves. Their choice to protest outside a school and a children's library challenged the Russian authorities to arrest them for spreading information about LGBT rights to children. This challenge was readily accepted.

Both were arrested and fined, and Alekseyev was fined again in 2012 while protesting another "gay propaganda" law in St Petersburg, after holding a sign which read "Homosexuality is not a perversion. Field hockey and ice ballet are".

Challenging the law

At this time Dmitri Bartenev was working as a lawyer and helping Russian LGBT organisations with a number of different human rights cases. He was familiar with the defendants, especially Alekseyev, who he eventually helped win a case before the European Court of Human Rights in 2011 after the repeated cancellation of Moscow's Pride march.

From 2009 to 2014 Bartenev helped the activists take their cases to Russia's Constitutional Court, but only Bayev's was deemed admissible. However, even then his case did not proceed as they had hoped. The Constitutional Court opted to hear the complaint *in camera*, or in closed proceedings, which prevented any reporting until a final judgment was produced. This frustrated their efforts to gain public support, and while it was allowed, it was not the norm.

"I guess the court did this to avoid public attention because otherwise it would be an open hearing and it would be probably one of the most controversial and most interesting cases before the Constitutional Court", mused Bartenev.

"It could not afford a public discussion of this issue because it would bring in enormous public criticism, enormous attention to these laws. I think they tried to balance the ultimate result, which was predetermined by the political context. They could not strike down the law, by no means, but at the same time they preserved their role as an independent judiciary."

Knowing that Russian courts had previously taken into account rulings of United Nations bodies like the Committee on the Elimination of Discrimination Against Women, Bartenev had also referred to a 2012 [Human Rights Committee decision](#) in which Ryazan Oblast's "gay propaganda" law was found to have violated a protestor's right to freedom of expression.

But the Constitutional Court simply ignored these references in its ruling. When the decision was handed down in 2014 it found against the protestors, making references to “LGBT lifestyles” being potentially dangerous to children.

Bartenev also attempted to have another case heard by a city court in St Petersburg as an attempt to raise awareness about the impact the laws were having. Just as it was about to be considered the judge in charge of the case excused himself, effectively refusing to hear their arguments and delaying the judgment indefinitely. By the time their hearing was rescheduled the regional law he breached had been repealed, effectively ending their case, but it soon became clear they had not won.

Russian lawmakers amended the country’s Code of Administrative Offences in June 2013, introducing a new offence related to “the promotion of non-traditional sexual relations among minors”. The regional laws the activists had been fighting were now repealed locally, only to be applied across the whole nation.

Before the European Court

Seeing that the Russian courts would not budge, Bartenev took the complaints to the next level, appealing to the European Court of Human Rights to rule on whether or not his clients’ rights to freedom of expression were being violated.

They argued that a ban on expressing their sexuality around children was effectively a ban on their expressing their identity in public, as they would always need to be mindful of whether or not children could see or hear them. On top of that, they argued that campaigning for LGBT rights is political speech and in the public interest, meaning the government should have very little scope to limit it in law.

In its response the Russian government admitted it had interfered with their right to freedom of expression, but asserted that it was allowed to limit expression which offended other people’s “intimate personal convictions”. Russia further alleged that by targeting children the activists had sought to “corrupt” their perception of traditional families, claimed that same-sex couples were more likely to contract HIV and argued that same-sex relationships “impeded population growth”.

The court’s [2017 judgment](#) found against Russia. While the judges accepted there were instances where governments could limit free expression in exceptional circumstances, they ruled that there was a clear consensus in Europe that LGBT individuals had a right to openly identify themselves and fight for their rights in public.

The judges ruled that Russia had failed to demonstrate how freedom of expression on LGBT issues would adversely affect “traditional families” and said the European Court would not begin to endorse policies “which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority”. The court condemned Russia’s attempts to draw parallels between homosexuality and paedophilia and argued that, in fact, the presentation

of objective information about sex and gender identity should be considered an indispensable part of public-health policy.

Finally, the court dismissed the government's allegations that children could be enticed into a "homosexual lifestyle" on the grounds that there was no evidence at all to that effect. It also pointed out that the protestors did not seek to directly interact with minors, and noted that none of their messages were inaccurate, sexually explicit or aggressive.

The ruling ultimately found that Russia's "gay propaganda" law was open to abuse in individual cases and reinforced stigma and prejudice against LGBT people. The court ruled that by implementing and applying the law, Russia had breached the applicants' right to freedom of expression, and their right to be free from discrimination.

Impact

While online media in Russia and abroad quickly picked up on the ruling, the lasting effects have been more muted. Bartenev half expected the Russian Constitutional Court to review the decision and declare it incompatible with Russia's constitution. Most countries accept European rulings as final, but Russia's Constitutional Court has its own mechanism to overrule and refuse to implement cases the Russian government has lost. For now, it has let the judgment lie, not implementing it and removing the law, but not striking down the European Court's decision either.

Bartenev explained that other LGBT cases concerning Russia could expect a similar treatment, as the government has an ideological stance on LGBT rights that was not likely to be moved by evidence. "The rest of the cases they might disagree on the facts, there might be some nuances, but in principle Russia does not deny that torture is bad, that arbitrary detention is bad and so on", he noted, "But with LGBT rights there is a principled position".

With that said, Bartenev did express some hope, saying that even if the government disregarded the outcome, and even if courts continued to ignore references to the Bayev decision in LGBT cases, Russian judges did at least consider European jurisprudence when making decisions of their own. He added: "It definitely has contributed to a change in legal academia, which no longer sees LGBT rights as something alien or something odd."

Although the message from the national courts seems to be that LGBT rights will not be respected in Russia, Bartenev believes that younger people no longer see LGBT rights as incompatible with Russian values and that other countries have been dissuaded from enacting similar laws of their own for fear of being hauled before the European Court. Between 2013 and 2015 [Moldova](#), [Ukraine](#) and [Lithuania](#) either abolished or withdrew similar "gay propaganda"-style legislation, marking a move away from discrimination in law.

While the "gay propaganda" law continues to be used in Russia, more challenges to it are continuing to come forward. Bartenev has several other cases before the European Court of Human Rights, including a school teacher who was fired because of her sexuality, and the continued censorship of a website providing support and information to LGBT children.

In 2018 the Russian teenager Maxim Neverov was the first person under the age of 18 to be charged under the law. After [appealing against a conviction for sharing “gay propaganda”](#) he was shocked to see his sentence reversed. Others falling foul of the law have not been so lucky. Despite the stated aim of the law existing to protect children, all of the evidence, including testimony from [psychologists working in Russia](#), seems to point to it doing just the opposite.

Further information

- Read CRIN’s case summary of [Bayev and others v Russia](#).
 - Find out more about [strategic litigation](#).
 - Read CRIN’s report on [access to justice for children in Russia](#).
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