

The Backlash?

By Alli Jernow

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On 12 June 2012, the European Court of Human Rights handed down its decision in [Genderdoc-M v. Moldova](#). The case concerned the refusal by Chisinau authorities to allow a demonstration organised by an LGBT organisation. Before domestic courts, which upheld the ban, the Mayor of Chisinau had argued that “the holding of an assembly for the promotion of the rights of sexual minorities would endanger public order and social morality.” With little discussion, the European Court concluded that there were violations of the right to freedom of peaceful assembly (which Moldova eventually conceded) as well as to an effective remedy under national law and to freedom from discrimination on the basis of sexual orientation. It noted that the reason for the ban was “the authorities’ disapproval of demonstrations which they considered to promote homosexuality.” Moldova was ordered to pay damages and fees to Genderdoc-M.

The outcome is unsurprising. The European Court has long held that sexual orientation is protected under [Article 14 of the European Convention](#). See [Salgueiro da Silva Mouta v. Portugal](#). In the cases of [Bączkowski v. Poland](#) and [Alekseyev v. Russia](#), it addressed bans on LGBT parades and found violations of the rights to freedom of assembly and non-discrimination. In [Alekseyev](#), the Court stated:

[I]t was not the behaviour or the attire of the participants that the authorities found objectionable but the very fact that they wished to openly identify themselves as gay men or lesbians, individually and as a group. The Government admitted, in particular, that the authorities would reach their limit of tolerance towards homosexual behaviour when it spilt over from the strictly private domain into the sphere shared by the general public.

According to the Court, the “only factor taken into account by the Moscow authorities was the public opposition to the event, and the officials’ own views on morals.” In all three cases, official disapproval of homosexuality, masquerading as “public morality,” was both insufficient to justify a limitation on the right to freedom of assembly and evidence that the limitation was discriminatory.

But there are Strasbourg decisions and there are domestic realities:

In 2009, while the [Alekseyev](#) case was pending, a lesbian activist named Irina Fedotova was arrested for holding a poster that said “Homosexuality is normal” and “I am proud of my homosexuality” near a secondary school in the city of Ryazan. She was [convicted](#) under a provincial [law](#) that prohibited “public actions aimed at propaganda of homosexuality (sodomy or lesbianism) among minors.” The Constitutional Court of Russia refused to consider Fedotova’s appeal, stating that “distorted ideas about social equivalence between traditional and non-traditional marriage, among those who do not have the benefit of age to evaluate this kind of information independently cannot be considered a violation of the constitutional rights of citizens.” (Constitutional Court decision available in Russian [here](#); excerpted in English [here](#)). Fedotova now has a communication pending before the [UN Human Rights Committee](#) alleging a violation of Article 19 of the ICCPR. Her complaint will reportedly be considered at the July session of the Committee.

Since the Ryazan case, a number of other Russian provinces, including St. Petersburg, have adopted laws banning “homosexual propaganda.” (See posts [here](#), [here](#), and [here](#)). More than 20 million people are now affected by these laws. A similar law has been proposed in the State Duma. Although it was rejected in the past, there are [signs](#) that it may now [be considered](#). Already numerous [activists](#) have been [arrested](#) for holding LGBT-related signs and slogans.

In Moldova, city and district councils have adopted [laws banning](#) “aggressive propaganda of non-traditional sexual orientations.” Bans on “homosexual propaganda” have also been proposed in Ukraine, Latvia, Hungary and Lithuania.

Is this the backlash? Maybe.

Some of these legislative developments, such as the [Ryazan law](#), predated the European Court decisions. Pride parades across Eastern Europe continue to be contested – both in the courts and on the streets – and have been so for years. What is clear is that the twin rights of freedom of expression and freedom of assembly are being restricted in the name of protecting morality and the rights of others. In [Alekseyev](#), the European Court took pains to point out that the lack of European consensus on issues such as same-sex marriage or adoption did not imply any doubt about the right “to campaign for such rights.” It continued: “There is no ambiguity about the other member States’ recognition of the right of individuals to openly identify themselves as gay, lesbian or any other sexual minority, and to promote their rights and freedoms, in particular by exercising their freedom of peaceful assembly.”

There may be no ambiguity about the right but in Russia and other Eastern European states, the recognition of that right is now very much in doubt.

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