

RUSSIA: THE ANTI-PROPAGANDA LAW

On 29 June 2013 amendments to the federal law 'On the Protection of Children From Information Liable to be Injurious to their Health and Development' were signed into force by Vladimir Putin, President of the Russian Federation (**Anti-Propaganda Law**).¹ Russian federal law now prohibits any form of expression of homosexuality (referred to as 'non-traditional sexual values' and 'information promoting non-traditional sexual relations') to minors.

1. Purpose and Objectives of the Law

The Explanatory Note of the Anti-Propaganda Law in its bill form stated:

The promotion of homosexuality has sharply increased in modern-day Russia. This promotion is carried out via the media as well as via the active pursuit of public activities which try to portray homosexuality as a normal behaviour. This is particularly dangerous for children and young people who are not able to take a critical approach to this avalanche of information with which they are bombarded on a daily basis. In view of this, it is essential first and foremost, to protect the younger generation from exposure to the promotion of homosexuality ...

It is therefore essential to put in place measures which provide for the intellectual, moral and mental well-being of children, including a ban on any activities aimed at popularising homosexuality. A ban of this kind of propaganda as an activity involving the intentional and indiscriminate spreading of information which may be injurious to physical, moral and spiritual wellbeing, including instilling distorted ideas that society places an equal value on traditional and non-traditional sexual relations amongst people who are incapable, due to their age, of critically assessing this information on their own, cannot in itself be considered a breach of the constitutional rights of citizens.

... The bill confers the right of drawing up charge sheets relating to activities carried out in public which are aimed at promoting homosexuality to minors on officials of the authorities responsible for internal affairs (the police) and of considering any resulting cases – on the courts.

2. Offences and Penalties

Article 6.21 entitled 'Promotion of Non-Traditional Sexual Relations to Minors' provides as follows.

¹ Federal Law of 29 June 2013, No 135-FZ, 'On the introduction of amendments into article 5 of the Federal Law "On the protection of children from information liable to be injurious to their health and development" and individual legislative documents of the Russian Federation aimed at protecting children from information promoting the denial of traditional family values'.

Section	Provision	Penalty
1	Promoting non-traditional sexual relations to minors by spreading information aimed at instilling in minors non-traditional sexual arrangements, the attractiveness of non-traditional sexual relations and/or a distorted view that society places an equal value on traditional and non-traditional sexual relations or propagating information on non-traditional sexual relations making them appear interesting, provided that these activities do not involve criminal acts which are punishable under the law.	<p>Individuals: 4,000 – 5,000 RUB (81 – 101 EUR) fine.</p> <p>Officials: 40,000 – 50,000 RUB (812 – 1,105 EUR) fine.</p> <p>Legal Entities: 800,000 – 1,000,000 RUB (16,240 – 20,301 EUR) fine; or suspension of operations for up to 90 days.</p>
2	Activities in section 1, carried out using the mass media and/or information-telecommunications channels (including the internet) provided that these activities do not involve criminal acts which are punishable under the law.	<p>Individuals: 50,000 – 100,000 RUB (1,105 – 2,030 EUR) fine.</p> <p>Officials: 100,000 – 200,000 RUB (2,030 – 4,059 EUR) fine.</p> <p>Legal Entities: 1,000,000 RUB (20,301 EUR) fine or suspension of operations for 90 days.</p>
3	Activities in section 1, carried out by foreigners or stateless persons provided that these activities do not constitute criminal acts which are punishable under the law.	4,000 – 5,000 RUB (81 – 101 EUR) fine; plus detention for up to 50 days or deportation from the Russian Federation.
4	Activities in section 1, carried out by foreigners or stateless persons using mass media and/or information-telecommunications channels (including the internet) provided that these activities do not involve criminal acts which are punishable under the law	50,000 – 100,000 RUB (1,105 – 2,030 EUR) fine; plus deportation from the Russian Federation

3. Interpretation

The Service for Supervision of Communications, Information and Mass Media (**Roskomnadzor**), is the federal executive body tasked with monitoring the media, and ensuring compliance with federal laws and obligations.

In November 2013 Roskomnadzor issued further guidelines by way of a concept note on the enforcement of the Anti-Propaganda Law.² Section 11 of the concept note provides a list of the full spectrum of possible neutral or positive mentions of

² Full text of the concept note (in Russian): <http://rkn.gov.ru/mass-communications/p700p701>

homosexuality, bisexuality and transgender issues that might violate the Anti-Propaganda Law:

- ‘Discrediting the traditional family model’ and ‘promoting alternative models of family relations’ with the following explanation: ‘For example, many sites that promote non-traditional relations, quote statistical data on the adoption of children by homosexual and heterosexual couples. Taken out of broader context, this information can form in children and adolescents the idea that a gay couple can cope with parental responsibilities not worse than a heterosexual one.’
- ‘Using emotionally charged images for discrediting the traditional family model and promoting alternative family models. For example, a couple in non-traditional sexual relations can be represented as bright and charming. For example, a couple in a heterosexual marriage can be represented as rude or repulsive.’
- ‘Personalised examples. For example, stories and narratives of people who deny family values, who are in non-traditional sexual relations, who show disrespect for parents and (or) other family members.’
- ‘Lack of critical approach. For example, messages containing appeals, orders, comments, suggestions, etc. (containing information about non-traditional sexual relations [...] conscious and critical perception and understanding of which by a child is difficult ...).’
- ‘Alternative models of behaviour. For example, a clear demonstration (through images, photos or videos) of non-traditional sexual relations.’
- ‘Alternative standards for identification. For example, a clear demonstration (through images, photos or videos) of non-traditional sexual relations.’
- ‘Social approval. For example, direct or indirect approval of people who are in non-traditional sexual relations.’

4. Application and Enforcement

Examples of charges brought before the courts under the Anti-Propaganda Law are rare. To date:

- Five cases were brought to court under regional versions of the Anti-Propaganda Law against lesbian, gay, bisexual, trans and intersex (**LGBTI**) activists staging street protests.³
- One other case was successfully brought against the promoters of a Lady Gaga concert in St Petersburg who were fined 20,000 roubles due to pro-gay comments made during her concert.
- Another case involved a far-eastern newspaper ‘Molodoi Dalnevostochnik’ that had published an article on the sacking of a teacher due to his sexual

³ Since 2006, ten regions of the Russian Federation enacted laws prohibiting the ‘propaganda’ of homosexuality among minors (the Republic of Bashkortostan, the regions of Krasnodar, Arkhangelsk, Kostroma, Magadan, Novosibirsk, Ryazan, Samara and Kalingrad, and the city of St Petersburg).

orientation. Roskomnadzor, the Federal Media Monitoring service, was dissatisfied with the use of a quote from the teacher that, '[m]y very existence is effective proof that homosexuality is normal'.⁴

- Three activists have been found guilty of 'propaganda' and arrested, detained and fined under the federal Anti-Propaganda Law in December 2013. Two activists in Arkhangelsk and one in Kazan were involved in one-person pickets with slogans in support of LGBTI equality.

However, aside from actual enforcement, the Anti-Propaganda Law is often used as extrajudicial grounds for refusing the authorisation of LGBTI street protests and marches.

The indirect impact of the Anti-Propaganda Law also extends to other areas and includes the following effects:

- legitimisation of discrimination by employers, service providers, health practitioners and teachers against LGBTI people who are now less likely to complain or protest against such discrimination;
- an upsurge in violence targeting LGBTI people by non-State actors;
- reinforcing a climate of stigmatisation of LGBTI people including LGBTI youth in schools.

5. Analysis

The Anti-Propaganda Law violates the rights to freedom of expression, freedom of association and peaceful assembly and non-discrimination and equality before the law.

Moreover, the drafting of the law to avoid its characterisation as a criminal sanction rather than merely an administrative penalty, is not decisive on the issue. The punitive and deterrent nature of the penalties imposed by the Anti-Propaganda Law may result in the law still being considered as dealing with a criminal offence.⁵ Indeed, the law criminalises an essential aspect of the very identity of LGBTI people.

In November 2012 the UN Human Rights Committee held in *Irina Fedotova v Russian Federation* that a conviction under a regional version of the Anti-Propaganda Law in Ryazan Oblast constituted a violation of the rights to freedom of expression and equality before law (Articles 19(2) and 26 of the International Covenant on Civil and Political Rights (**ICCPR**) respectively).⁶ Notwithstanding this,

⁴ 'Regional newspaper suspected of breaking "gay propaganda" law', *The Moscow Times*, 14 November 2013, <http://www.themoscowtimes.com/news/article/regional-newspaper-suspected-of-breaking-gay-propaganda-law/489518.html>

⁵ For the purposes of its proceedings coming within the protection of the right to a fair trial; see e.g. *Engel and Others v Netherlands*, Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, 8 June 1976 (European Court of Human Rights); *Ziliberberg v Moldova*, Application no 61821/00, 1 February 2005 (European Court of Human Rights) where a fine for participating in an unauthorised demonstration was considered to be as 'criminal'.

⁶ *Fedotova v Russian Federation*, Communication no. 19932/2010, Views adopted by the United Nations Human Rights Committee at its 106th session (15 October – 2 November 2012).

the Russia Federation proceeded to enact its own version of the Anti-Propaganda Law.

At the European Court of Human Rights (**ECtHR**), the banning of pride marches on the basis of homosexual propaganda has been held to violate the right to freedom of assembly in conjunction with the right to non-discrimination (Articles 11 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms). The leading case of *Alekseyev v Russia* concerned one such instance of an arrest of a lone political activist for holding up a placard outside City Hall in St Petersburg.⁷

While the rights of freedom of expression and assembly are not absolute, the courts in each of the abovementioned cases have rejected the contention that the protection of children constitutes a legitimate purpose for these measures and have ruled that the measures are not proportional in achieving the stated purpose.

Currently three cases before the ECtHR are directly challenging regional versions of the anti-propaganda laws.⁸

6. Reactions

UN Committee on the Rights of the Child

The Committee is also concerned at the recent legislation of the State party prohibiting “propaganda of unconventional sexual relationships”, generally intended to protect children, but which encourages the stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, including children, and children from LGBTI families. The Committee is particularly concerned that the vague definitions of propaganda used lead to the targeting and ongoing persecution of the country’s LGBTI community, including through abuse and violence, in particular against underage LGBTI-rights activists.

The Committee recommends that the State party repeal its laws prohibiting propaganda of homosexuality and ensure that children who belong to LGBTI groups or children from LGBTI families are not subjected to any forms of discrimination by raising the public’s awareness of equality and non-discrimination on the basis of sexual orientation and gender identity.⁹

See: <http://www.refworld.org/docid/52f89e2b4.html>

Office of the High Commissioner for Human Rights

Human Rights Adviser Claude Cahn, speaking at a meeting on 14 August 2013 in Kiev, Ukraine, stated:

⁷ *Alekseyev v Russia*, Application Nos. 4916/07, 25924/08 and 14599/09, Judgement dated 21 October 2010. See also, *Bączkowski v Poland*, Application No 1543/06, Judgement dated 3 May 2007; *Genderdoc v Moldova*, Application No. 9106/06, Judgment dated 12 June 2012.

⁸ *Bayev v Russia*, Application No. 67667/2009 (Ryazan Law on Administrative Offences); *Kiselev v Russia*, Application No. 44092/2012 (Arkhangelsk Law on Administrative Offences) and *Alekseyev v Russia*, Application No. 56717/2012 (St Petersburg Law on Administrative Offences).

⁹ *Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation*, CRC/C/RUS/CO/4-5, 25 February 2014, paras. 24-25.

Such laws chill public debate about sexual orientation and gender identity, in a region of the world which has never benefited from fact-based information about LGBT persons and groups ... Rather than banning so-called homosexual propaganda or non-traditional sexual relationships, legislators and political leaders across the region have a duty publicly to condemn violence and discrimination against LGBT people, and publicly affirm the importance of taking a stand against homophobia.

See: <http://www.ohchr.org/EN/NewsEvents/Pages/RightsOfLGBTPersonsInEasternEurope.aspx>

Prior to President Putin signing the Anti-Homosexuality Law, several of the Office's rights experts also advised that the bill be withdrawn.

- Special Rapporteur on the right to health, Anand Grover:

[B]anning 'propaganda of homosexuality' may not only penalize those who promote sexual and reproductive health among LGBT people, but will also undermine the right of children to access health-related information in order to safeguard their physical and mental health.

- Special Rapporteur on freedom of opinion and expression, Frank La Rue:

The law could potentially be interpreted very broadly and thereby violate not only the right to freedom of expression but also the prohibition of discrimination.

- Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya:

The draft legislation could further contribute to the already difficult environment in which these defenders operate, stigmatizing their work and making them the target of acts of intimidation and violence, as has recently happened in Moscow.

- Special Rapporteur in the field of cultural rights, Farida Shaheed:

We fear that such laws, in practice, will exacerbate an already difficult situation for LGBT individuals wishing to express their identity, and will hamper the organization of cultural events or dissemination of artistic creations addressing LGBT issues.

See: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12964&LangID=E>

UN Secretary-General Ban Ki Moon

While Ban Ki-Moon did not refer specifically to Russia's Anti-Propaganda Law, his remarks at the 126th Session of the International Olympic Committee in Sochi, Russian Federation, on 6 February 2014 condemned attacks on the LGBTI community by state and non-state actors following the passage of such laws. His plea to speak up would constitute a violation of the Anti-Propaganda Law.

Many professional athletes, gay and straight, are speaking out against prejudice. We must all raise our voices against attacks on lesbian, gay, bisexual, transgender or intersex people.

... We must oppose the arrests, imprisonments and discriminatory restrictions they face.

See: <http://www.un.org/sg/statements/index.asp?nid=7446>

Spokesperson of European Union High Representative Catherine Ashton on LGBTI rights in Russia, 20 June 2013

The High Representative believes that this law could stigmatise particular groups and individuals and lead to discriminatory practices and discourse against them, and is therefore in contradiction with the European Convention on Human Rights.

See: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137541.pdf

European Commission for Democracy Through Law (Venice Commission)

The Venice Commission adopted the opinion expressed in *On the Issue of the Prohibition of So-Called 'Propaganda of Homosexuality' in the Light of Recent Legislation in Some Member States of the Council of Europe* at its 95th Plenary Session on 14-15 June 2013. The Commission concluded that:

On the whole, it seems that the aim of these measures is not so much to advance and promote traditional values and attitudes towards family and sexuality but rather to curtail non-traditional ones by punishing their expression and promotion.¹⁰

See: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282013%29022-e>

¹⁰ European Commission for Democracy Through Law (Venice Commission), *On the Issue of the Prohibition of So-Called 'Propaganda of Homosexuality' in the Light of Recent Legislation in Some Member States of the Council of Europe*, 14-15 June 2013, para. 82.