

Perils of a Gay Law That Lacks Definition

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The infamous amendments to the St. Petersburg Law on Administrative Offenses came into force March 17. The law stipulates fines for the public dissemination of propaganda of "homosexuality, lesbianism, bisexuality and transgenerness" among minors. The second part of the same law provides for increased liability for propaganda promoting pedophilia.

St. Petersburg has followed the examples of the Ryazan and Arkhangelsk legislatures, which passed similar laws, although St. Petersburg lawmakers made an attempt to limit potentially broad and arbitrary interpretation of the prohibited propaganda.

"Propaganda" is defined in the footnote to the law and includes "deliberate and uncontrolled dissemination (in a generally accessible way) of information capable of harming the health, moral and spiritual development of minors, including information forming misrepresented conceptions of social equivalence of traditional and nontraditional marriage relations."

It is worth noting that this definition was taken word for word from the 2010 decision of the

Constitutional Court in a case concerning a review of the similar law in the Ryazan region.

Will this particular definition of unlawful propaganda really help to protect St. Petersburg's LGBT community from prosecution? Technically, the law bans dissemination of that information only where it is "capable of harming the health, moral and spiritual development of minors." But who and on the basis of what kind of criteria can decide that the information is harming minors? The odd thing is that there has never been any case in Russia where it was ruled that a minor was harmed in any way by information about homosexuality. Of course we are not talking about sexually explicit information, the dissemination of which is already banned — be it heterosexual or homosexual. Why, then, is this law needed at all, and is it really about minors?

A gay activist is unlikely to go to a school to tell children how great it is to be gay with the aim of promoting homosexual behavior or converting them from straight to gay. However, a teacher protecting a gay teenager from bullying in school could easily be punished under this law if he or she decides to address the issue publicly — for example by calling on the class to be tolerant and to respect diversity. The Council of Europe Commissioner for Human Rights in its 2011 report "Discrimination on the grounds of sexual orientation and gender identity" recommended that countries should promote "respect and inclusion of LGBT persons at school and foster objective knowledge on issues concerning sexual orientation and gender identity in schools and other educational settings."

A commonly cited argument of the sponsors of the law is that it has nothing to do with banning homosexual relations as such because as long as they are kept private the state won't intervene. Thus, the paradox is that homosexuality is normal and lawful but disseminating information about it is unlawful. Here comes the core question — is homosexuality only about sex or is it about human relations? Sexual orientation is a much broader concept than sexual relations; it refers to a capacity for profound emotional, affectionate and sexual attraction to individuals of a different gender or the same gender. Last year, the European Court of Human Rights explicitly recognized that a same-sex relationship is a form of family life — and not just private life — protected by the European Convention, which is binding in Russia.

It is unfortunate but clear that the concept that underlies this law is the immorality of homosexual (and other nonconventional) relations: The ban on the propaganda of homosexuality is ranked alongside pedophilia. Thus, an awkward attempt to limit abusive application of the law by offering an elaborate definition of LGBT propaganda boils down to nothing but actually banning dissemination of any, including objective and neutral, information about homosexuality. If minors need to be protected from information forming "misrepresented conceptions of social equivalence of traditional and nontraditional marriage relations" does this really leave any space for LGBT organizations that protect the human rights of those people whose relations are socially less valuable than traditional heterosexual relations? This is the message the new law sends.

The Constitutional Court, having refused to find a violation of freedom of speech in the Ryazan law, made an important conclusion that seems to have been overlooked by the drafters of the St. Petersburg law: The court said that the challenged Ryazan law did not prohibit or disparage homosexuality as such. This, along with unequivocal international

human rights standards, should be taken into account by those who will be fighting against "gay propaganda" in St. Petersburg. The European Court of Human Rights stated in 2010 that there is no ambiguity about "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." In the same year Russia supported the recommendation of the Council of Europe to end discrimination on the grounds of sexual orientation or gender identity.

We can only theoretically speculate at this point how the law will be applied in practice, although in Arkhangelsk and Kostroma similar laws have recently been used for banning LGBT assemblies that had nothing to do with children. The unclear wording of the law makes it very easy, in the name of protecting children, to outlaw any visible actions by the gay community and legitimize discrimination against them. In 1993, criminal liability for homosexual relations was repealed in Russia and in 1996 Russia joined the Council of Europe — the organization established to protect Europeans against a return of Nazi ideology. Now in 2012 this ideology of "natural inequality" still prevents Russia from escaping its totalitarian past and building a truly democratic state based on pluralism and respect for diversity.

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