

# DECISION

## OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

on refusal to accept for consideration an appeal of the citizens Alekseev Nikolai Aleksandrovich, Baev Nikolai Viktorovich and Fedotova Irina Borisovna about violation of their constitutional rights under article 4 of the Law of Ryazan region *On Protection of Morals of Children in Ryazan Region* and article 3.10 of the Law of Ryazan region *On Administrative Offences*.

Saint-Petersburg City

19 January 2010

The Constitutional Court of the Russian Federation composed of the President V.D. Zorkin, justices N.S. Bondar, G.A. Gadjeiev, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, S.M. Kazantsev, M.I. Kleandrov, S.D. Knyazev, L.O. Krasavchikova, S.P. Mavrin, Yu. D. Rudkin, N.V. Seleznev, A.Ya. Sliva, V.G. Strekoza, V.G. Yaroslavl'tsev,

having heard in a plenary session the conclusion of Justice G.A. Gadjeiev, who based on article 42 of the Federal Constitutional Law *On the Constitutional Court of the Russian Federation* conducted preliminary examination of the claim of the citizens N.A. Alekseev, N.V. Baev and I.B. Fedotova,

has established:

1. In their appeal to the Constitutional Court of the Russian Federation citizens N.A. Alekseev, N.V. Baev and I.B. Fedotova are requested to recognise article 4 of the Law of Ryazan region *On Protection of the Morals of Children in Ryazan Region* according to which public actions aimed at propaganda of homosexuality (sodomy and lesbianism) are not allowed and article 3.10 of the Law of Ryazan region of 4 December 2008 #182-OZ *On Administrative Offences* according to which public activities, aimed at propaganda homosexuality (sodomy and lesbianism) among minors are administratively punishable in the form of a fine contradicting articles 19, 29 and 55 (part 3) of the Constitution of the Russian Federation.

As it follows from the presented materials the decision of the justice of peace, left unchanged by the decision of the Oktyabr district court of Ryazan City, I.B. Fedotov and N.V. Baev who were displaying posters saying "Homosexuality is normal" and "I am proud of my homosexuality" near a school building were found guilty of committing an administrative offence under article 3.10 of the Ryazan Region Law *On Administrative Offences*.

By the decision of the Soviet district court of Ryazan City of 23 April 2009, left unchanged by the decision of the judicial collegiums on civil cases of Ryazan Region Court of 1 July 2009 with reference to article 4 of the Law of Ryazan Region *On Protection of Morals of Children in Ryazan Region* and article 3.10 of the Law of Ryazan Region *On Administrative Offences*, satisfaction of the

complaint of Alekseeva about refusal of the administration of Ryazan City to coordinate conducting the announced marches and pickets was denied.

2. According to articles 2 of the Constitution of the Russian Federation, a human being, his rights and freedoms are the highest value; recognition, respect and protection of rights and freedoms of a human being and a citizen is an obligation of the state.

Part of the constitutional human rights protection mechanism formed by the provisions of the preamble of the Constitution of the Russian Federation as well as its article 1 (part 1), 2 and 18 is the provision of article 72 (item 6 of part 1) according to which protection of rights and freedoms of a human being a citizen are mutual responsibility of both the Russian Federation and its subjects. This constitutional provision is systemically connected to article 71 of the Constitution of the Russian Federation, its item "б" ascribing regulation and protection of rights and freedoms of a person and a citizen under the responsibility of the Russian Federation.

Ascribing by the Constitution of the Russian Federation of protection of rights and freedoms of a person simultaneously under responsibility of the Russian Federation and mutual responsibility of the Russian Federation and its subjects means that responsibility for establishing and ensuring proper function of legal mechanisms lie both on the Russian Federation and at the same time with the Russian Federation and each of the subjects of the Russian Federation. At the same time, it follows from the legal position of the Constitutional Court of the Russian Federation of 11 March 2008 # 4-II, legal regulations introduced by the subjects of the Russian Federation is not regulation of the rights and freedoms of a person and citizen as is meant by article 71 (item "б"), it has a secondary nature, derived from the base one, which is established by the Constitution of the Russian Federation and federal laws in accordance with the principle of unity of legal regulation as follows from articles 4(2), 15(1), 17, 18, 71(item "б"), 72(item "6" para. 1) and 76 of the Constitution of the Russian Federation, and concretises the normative provisions contained in it.

The federal legislator based on the fact that administrative and administrative procedural legislation are placed under mutual responsibility of the Russian Federation and its subjects (article 72, item "к" para. 1, of the Constitution of the Russian Federation) enshrined in article 1.3 of the Code of Administrative Offences of the Russian Federation objects which are under the responsibility of the Russian Federation in the area of legislation of administrative offences. Accordingly, outside the sphere identified by the said provision legislation on administrative responsibility is the responsibility of the subjects of the Russian Federation, the laws of which – as provided by the constitutional-legal nature of mutual responsibility and based on article 72 and 76 of the Constitution of the Russian Federation – must not contradict federal laws.

Thus, establishing administrative responsibility by a law of a subject of the Russian Federation itself cannot be considered a violation of constitutional rights of citizens.

3. The Constitution of the Russian Federation, adopted, according to its preamble, by its multination people based on responsibility for its motherland before the present

and future generations, announces that motherhood and childhood, family are under protection of the state (article 38(1)). According to article 72 (item “ж” para. 1) of the Constitution of the Russian Federation protection of childhood and motherhood are placed under common responsibility of the Russian Federation and the subjects of the Russian Federation.

As it follows from the above provisions, family, motherhood and childhood in their traditional understanding perceived from the ancestors are those values which ensure continuous change of generations, act as a prerequisite for preserving and developing multinational people of the Russian Federation and thus require special protection on behalf of the state.

Regulating relationships emerging due to realisation of the guarantees of rights and lawful interests of children as representatives of young generation of the Russian Federation, the federal legislator proceeds from the fact that lawful interests of the minors form an important social value and that the goal of the state policy in the interests of children is inter alia protection from the factors which negatively impact their physical, intellectual, psychological, spiritual and moral development (Article 4(1) of the Federal law of 24 July 1998 #124-FZ *On the Basic Guarantees of the Rights of the Child in the Russian Federation*). Item of article 14 of the said Federal law directly enshrines on protection of the child from information, propaganda and agitation which harm his health, moral and spiritual development.

In accordance with the mentioned requirements the legislator of the Ryazan region adopted measures aimed at ensuring intellectual, moral and psychiatric security of children in Ryazan region, including prohibition to take public actions aimed at homosexuality propaganda (article 4 of the Law of Ryazan region *On Protection of Moral of Children in Ryazan Region*). Prohibition of such propaganda itself – an activity on targeted and uncontrolled dissemination of information capable of harming health, moral and spiritual development, including creating a deformed understanding of social equivalence of traditional and non-traditional family relationship – among persons who are deprived due to their age of a possibility to independently critically assess such information, cannot be considered as violating constitutional rights of citizens.

4. In the Russian Federation everyone is guaranteed freedom of thought and speech; everyone has a right to freely disseminate information by any lawful means (article 29 (1 and 4) of the Constitution of the Russian Federation). Ensuring these freedom can entail laminations (formalities, circumstances) which are established by law, which is necessary in a democratic society in the interests of state security, territorial integrity or public safety, with the aim of preventing riots and crimes, for the protection of health and morals, protection of reputation or rights of others, preventing dissemination of information received confidentially or ensuring the authority and impartiality of justice (article 10(2) of the Convention for the protection of human rights and basic freedoms).

The laws of Ryazan region *On protection of the Morals of Children in Ryazan Region* and *On Administrative Offences* do not enshrine any measures aimed at prohibition of homosexuality or its official dispraise, do not contain features of discrimination and

do not by their meaning allow for excessive actions of the bodies of public authorities. Accordingly, the provisions of these laws challenged by the applicants cannot be considered as excessively limiting freedom of speech.

Based on the aforesaid and being guided by item 2 para. 1 of article 43 and para. 1 of article 79 of the Federal Constitutional Law *On the Constitutional Court of the Russian Federation* the Constitutional Court of the Russian Federation

has decided:

1. To deny acceptance for consideration of the complaint of citizens Alekseev Nikolai Aleksandrovich, Baev Nikolai Viktorovich and Fedotova Irina Borisovna as it does not comply with the requirements of the Federal Constitutional Law *On the Constitutional Court of the Russian Federation*, in accordance with which a complaint is considered admissible.
2. Decision of the Constitutional Court of the Russian Federation on this claim is final and not subject to appeal.

President  
of the Constitutional Court  
of the Russian Federation

Zorkin

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