



## **“Homosexual Propaganda” Bans: Analysis and Recommendations**

The proposal and/or adoption of “homosexual propaganda” bans is a growing and worrying trend in Central and Eastern Europe. In 2006 the Russian region of Ryazan criminalised public acts “aimed at promoting homosexuality among juveniles”. In 2011 and 2012, similar laws were introduced in other Russian regions, while several city councils in Moldova adopted local ordinances against “propaganda of non-traditional sexual orientations”. National legislation banning the “promotion of homosexuality” is currently being discussed in the Ukrainian, Russian and Hungarian national Parliaments. Similar provisions were considered by the Lithuanian Parliament in 2010-2011 and eventually dropped, although the issue of banning “homosexual propaganda” remains on the legislative agenda in Lithuania through different provisions.

These laws and regulations are already having an impact on LGBT communities in the concerned countries. Lesbian, gay, bisexual, and trans (LGBT) organisations and other human rights organisations have documented cases of arrests and subsequent prosecution of individuals at public events, activists being denied the use of a meeting venue, journalists refusing to cover LGBT events, and increased violence targeting LGBT people. In addition, LGBT organisations are concerned about the negative impact the bans may have in other spheres of life such as education and access to information.

This joint briefing paper by the International Commission of Jurists (ICJ) and ILGA-Europe aims to provide an overview of the laws. It analyses the potential impact, places these laws in a human rights framework, and finally provides recommendations to national policy-makers and activists and international organisations on how to deal with these developments. ICJ and ILGA-Europe are extremely concerned about the “homosexual propaganda” bans. They believe that these laws are both impermissible restrictions on everyone’s right to freedom of expression and illegally discriminate against LGBT individuals. Under both the European Convention on Human Rights and the International Covenant on Civil and Political Rights, these laws are blatant violations of internationally guaranteed rights.

## **1. “Homosexual propaganda” bans – an overview of the country situations**

Several Central and Eastern European countries have considered and/or adopted bans on “homosexual propaganda” over the past years: Russia, Ukraine, Moldova, Lithuania, Hungary and Latvia. The type of legislation discussed or adopted varies from country to country, from regional laws with clear sanctions to city council ordinances with vague enforcement mechanisms. In some countries, proposals fortunately were rejected in Parliament (Lithuania). In other instances, the “homosexual propaganda” bans are becoming part of a political rhetoric of extreme-right political parties (e.g. Latvia and Hungary), which for the time being does not receive the support of the mainstream political parties.

This section summarises the state of the political debates and legal situation of “homosexual propaganda” ban laws proposed and adopted in the different countries from 2006 on. More details can be found in the country-per-country annex at the end of this briefing paper.

The **Russian Federation** was the first country to introduce such provisions, at the local level, when the Ryazan oblast adopted an administrative law on the protection of morals of minors in 2006. This law introduced severe fines of up to 20000 rubles (about 500 €) as a penalty for public acts aimed at “promoting homosexuality among juveniles”. Since then, four other regions have enacted similar provisions, including Arkhangelsk (September 2011), Kostroma (February 2012), St. Petersburg (March 2012) and Novosibirsk (June 2012). While the provisions adopted by the different regions are on the whole similar, some only refer to homosexuality while others also mention “sodomy, lesbianism, bisexuality and transgenderism”. Some regional laws also provide for higher levels of fines (up to 500000 rubles, or 12500 €). By the end of spring 2012, debates on the enactment of similar provisions had begun in other regions, including Moscow, Samara, Kirov, Krasnoyarsk and Kaliningrad. At the national level, there is growing support for a proposed bill in the lower house of the federal Parliament (Duma) of the Russian Federation. This bill, which aims at tackling the “spreading homosexual propaganda among minors”, includes criminal law provisions, with penalties up to 500000 rubles (12500 €).

In **Ukraine**, the national Parliament is considering the adoption of administrative laws providing sanctions against “propaganda of homosexuality”. The parliamentary debate revolves around two bills. Draft law No. 8711<sup>1</sup> was introduced in 2011 and Draft law No. 10290<sup>2</sup> was introduced in February 2012. The two bills are very similar, but the second one defines propaganda as the intentional distribution of any positive information about homosexuality. The relevant parliamentary committee endorsed both proposals in the spring of 2012. The first reading on the first bill is scheduled for the beginning of July 2012. The bills are receiving support from all the main political parties, making their adoption a likely prospect.

In **Moldova**, several town and district councils, all Communist Party-led, have adopted provisions to ban “propaganda of non-traditional sexual orientations”. On 23 February 2012, the city council of Bălți, Moldova’s second-largest city, decided to “prohibit aggressive propaganda of non-traditional sexual orientations in demonstrations, propaganda which the central authorities of the Republic of Moldova are seeking to impose on the municipality”. The move came in response to government proposals to introduce anti-discrimination legislation that would protect sexual orientation. Since

then, the cities of Cahul, Ceadâr Lunga, Drochia and Soroca, the districts of Anenii Noi and Basarabeasca and the village of Hiliuți have followed with similar measures. These bans have effect only at the municipal level.

In **Lithuania**, a law on the “Protection of Minors against the Detrimental Effect of Public information” was adopted and entered into force in March 2010. The law includes a provision that prohibits spreading information that “promotes sexual relations. In addition to this law, proposals to amend the Administrative Offences Code have been repeatedly submitted, withdrawn, and proposed again with modifications. The most recent ones are draft Article 214(30), entitled “Protection of constitutional moral values”, and draft Article 188(21), entitled “Denigration of constitutional moral values”. Both amendments say that penalties should be provided against the perpetrators of such actions, in the form of fines from 1000 to 6000 LTL (345 to 1740 €). While the first amendment was rejected in the spring 2012, the second amendment was subject to a parliamentary vote on 5 June 2012. The Parliament recommended that it should be “improved”. On 22 June 2012, the parliamentary party “Order and Justice” proposed a referendum on a law<sup>3</sup> amending article 38 of the Constitution which refers to family. The amendment aims at prohibiting the “propagation of homosexual relations”. It has already been supported by 47 members of the 141-member Parliament.

In **Hungary**, various proposals have been submitted in the national Parliament and in local councils (including Budapest). At the national level, the proposed bills include Constitutional amendments as well as amendments to the criminal code and laws on advertising, media, and misdemeanours. However, most of these proposals emanate from the extreme right opposition party Jobbik, and there has been no sign of support from other parties so far. As a result, it seems unlikely that such provisions could be adopted in the short term. This being said, the fact that the governing party in Budapest (Fidezs) proposed a local ordinance proposal is worrying, even if no such ordinance seems likely to be adopted at this point.

In **Latvia**, a member of the Public Order and Corruption Prevention Issues Committee of Riga City Council proposed a regulation criminalising “propaganda of homosexuality”. However, it was neither discussed nor adopted. It was aiming at prohibiting the Baltic Pride which eventually took place with no major incident.

## **2. Impact of the “homosexual propaganda” bans**

“Homosexual propaganda” bans are quite recent. In many respects it is too early to predict with certainty how these laws and regulations will be implemented and the extent to which they will impact on LGBT communities and their allies. It is clear, however, that by adopting such laws, public authorities inscribe discrimination based on sexual orientation and gender identity in law and thus legitimise social exclusion and stigmatisation of LGBT people. By enacting such laws, public authorities condone homophobia and transphobia and contribute to a climate that is conducive to violence targeting LGBT individuals. In some cases, the bans perpetuate deeply misleading and harmful stereotypes by linking homosexuality and pedophilia in the same provisions.

Several LGBT organisations and other human rights organisations are closely monitoring the implementation of the laws and regulations. As of June 2012, documented cases of the impact of the “homosexual propaganda” bans included:

- *Freedom of expression and assembly:* several individuals were arrested, in some cases detained and/or fined in Ryazan (in 2009) and in St. Petersburg (spring 2012) under the “homosexual propaganda” bans (see the country-per-country annexes at the end of this briefing paper)
- *Access to goods and services:* the Russian LGBT Network reported that clubs have refused to rent them premises for events, even when children were clearly not amongst the potential participants
- *Violence targeting LGBT people:* A Ukrainian LGBT rights organisation reported that attacks against LGBT activists have severely increased around the May LGBT festivals and cultural events (spring 2012). These events took place at a time when the draft law was starting to be debated in Parliament.
- *Media and access to information:* The Russian LGBT Network stated that local media had stopped covering its activities because they were afraid of being sued. In many cases, owners of local media would not be in a position to pay fines if found guilty of violating the law.

In addition to the consequences which have been observed thus far, the ICJ and ILGA-Europe fear the negative impact the bans may have in many other spheres of life. Possible consequences of the bans include:

- *Prohibiting the dissemination of any information on sexual diversity.* In practice, the scope of this prohibition might expand to any information on sexual education, including the emotional aspects of sexual relationships, sexual and reproductive rights and safe sex techniques. This would curtail the activities of organisations that provide information and counseling on sexual and reproductive health, including prevention of sexually transmittable infections and other services which benefit everyone regardless of their sexual orientation or gender identity.
- *Monitoring of all local and international media by public authorities.* Owners of newspapers willing to provide information on sexual diversity issues or opposing those laws might not have sufficient resources to pay substantial fines repetitively. In addition, even the sales of international newspapers might be severely impacted, as they regularly comprise articles referring to LGBT issues or sexual and reproductive rights. It is also likely that those laws will hinder access to many websites.
- *Reinforcing the climate of stigmatisation of LGBT youth, in particular in schools.* This would contribute to homophobic and transphobic bullying, as well as to undermining the mental and physical well-being of many young people.
- *Legitimising discrimination by employers, service providers, health practitioners, teachers and other stakeholders against people on the basis of their sexual orientation, gender identity or gender expression.* Stripped of their right to freedom of expression, LGBT people will be even less likely to file complaints against or speak out to protest such discrimination.

- *Censoring cultural goods and services that make positive reference to homosexuality (even on an ad-hoc basis).* Books, movies, exhibitions or songs that would refer, even in general terms, to homosexuality would not be authorised.
- Many companies in various sectors may also be impacted by those laws as soon as they produce goods or provide services that may be seen as touching on to LGBT issues (“rainbow” in the name, or in the logo) or even if they allude to sexuality or mere feelings between young people (advertising for instance).

Ordinary individuals fear that their conduct would run afoul of the law. Lesbian mothers might be fined for telling their children that their family is just as good as any other family. Journalists don’t know whether reporting on LGBT stories would lead to arrest and punishment. A teacher might hesitate before answering a question concerning sexuality or same-sex relationships from a student. Concerts, plays, and poetry readings could be banned. Public health messages might be censored. Services ranging from counseling organisations to medical centers to dating sites might not know whether they could advertise to LGBT clientele.

### **3. “Homosexual propaganda” bans violate human rights**

Laws that prohibit the “propaganda of homosexuality” or “public actions aimed at promoting sodomy, lesbianism, bisexuality and transgenderism” run counter to everyone’s right to freedom of expression as well as the closely related rights to freedom of association and to peaceful assembly. They are simply not legitimate restrictions under international law for three reasons.

- They are impermissibly vague.
- They fail the tests of necessity and proportionality.
- They discriminate against individuals on the basis of sexual orientation, and, in some instances, gender identity as well.

*Similar laws have been repeatedly condemned by the European Court of Human Rights and the Special Procedures of the UN Human Rights Council.*

#### **3.1. Background: Rights to Freedom of Expression, Peaceful Assembly and Association under International Law**

Under international law, the right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. All forms of expression and their means of dissemination are protected, including spoken and written and sign language and non-verbal expression such as images. Freedom of association is the right of individuals to come together to express, promote, pursue and defend common interests. An assembly is an intentional and temporary gathering in a private or public space for a specific purpose.” Assemblies can include demonstrations, vigils, marches, and picket lines, whether indoors or outdoors.

The rights to freedom of expression, association and peaceful assembly are guaranteed respectively by Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR). For Council of Europe member States, Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms enshrine these rights using almost identical language.

These rights are closely intertwined because assemblies and associations have an

expressive purpose. That is, participants in assemblies and the members of associations typically intend to communicate a message. Freedom of expression is thus “integral to the enjoyment of the rights to freedom of assembly and association.”<sup>4</sup> The European Court has held that “the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association.”<sup>5</sup> All three are essential components of democratic, pluralistic society, enabling individuals to express and receive opinions, information and ideas and to raise their collective voices in public.<sup>6</sup> Furthermore, the Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1999, affirms the protection of these rights as essential for the work of human rights defenders.<sup>7</sup> As the Special Representative on human rights defenders has repeatedly emphasised, they are of fundamental importance for promoting and protecting human rights.<sup>8</sup>

*The protection of international law extends even to expression that may be unpopular, considered by some to be offensive, or disliked by a segment or even a majority of the population.*<sup>9</sup> The European Court, for example, has held that, subject to the limitations in Article 10(2), freedom of expression “is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”<sup>10</sup> Similarly, freedom of assembly “protects a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote.”<sup>11</sup> The UN Human Rights Committee, the supervisory body which interprets the obligations of the ICCPR, has likewise held that associations that “peacefully promote ideas not necessarily favourably received by the government or the majority of the population” are within the protection of the ICCPR.<sup>12</sup> The Special Rapporteur on the situation of human rights defenders has stated: “Ideas that “offend, shock, or disturb” are protected under the right of freedom of expression. Thus, associations that take controversial positions or criticize the Government in ways that “offend, shock or disturb” are fully protected under the Convention.”<sup>13</sup>

Protecting ideas that offend, shock and disturb is not the same as protecting speech that incites hatred. Under international law, restrictions are permitted to protect the rights of others. The European Court has stated: “Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner.” In *Vejdeland v. Sweden*, it extended this reasoning to homophobic hate speech, finding no violation of Article 10.

The fact that unpopular expression, as well as unpopular or politically or socially disfavored associations and assemblies, are protected by international law means that the voices of minorities cannot be silenced by the majority. In any society based on democracy and pluralism, minority viewpoints must be heard. As the European Court has emphasised: “[I]t would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were this so, a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention.”<sup>14</sup> Indeed the State obligation to secure effective enjoyment of these freedoms “is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation.”<sup>15</sup>

The rights to freedom of expression, association and peaceful assembly are not absolute. Rather they each may be subject to limitations or restrictions. The restrictions, however, must be provided for by law, serve a permissible purpose, and be necessary to attain that purpose.<sup>16</sup>

Permissible purposes under Article 19 of the ICCPR are respecting the rights or reputations of others, the protection of national security or of public order (ordre public) or of public health and morals.

*Freedom is the rule and restriction is the exception.* It is important to keep in mind that any restriction may not “put in jeopardy the right itself.”<sup>17</sup> Under the ICCPR, a State invoking a legitimate ground for a restriction “must demonstrate in specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”<sup>18</sup> The danger must be “real and not only hypothetical.”<sup>19</sup> Under the European Convention, the test for whether a restriction is compatible with

Convention rights is similar. The European Court frames the proportionality inquiry as whether the restriction is necessary in a democratic society, meaning that it meets a “pressing social need” and is “proportionate to the legitimate aim pursued.”<sup>20</sup>

*Restrictions on rights must not be applied for a discriminatory purpose.* Article 2 of the ICCPR, which governs all Covenant rights, requires that States respect and ensure rights without discrimination. Narrowing the scope of a right through a limitation for a discriminatory purpose contravenes Article 2. When interpreting permissible limitations, the UN Human Rights Committee emphasises that States should begin with “the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds . . . Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”<sup>21</sup> Similarly, the Siracusa Principles state: “No limitation on a right recognised by the Covenant shall discriminate contrary to Article 2, paragraph 1” of the ICCPR.<sup>22</sup>

### **3.2. Why Homosexual Propaganda Bans Fail International Law**

There is no question that the “homosexual propaganda” laws impermissibly interfere with the exercise of the rights to freedom of expression, association and peaceful assembly. Application of these restrictions would violate human rights law because they do not meet the conditions set forth in the ICCPR or the European Convention for limiting these rights. First, the laws are so vague that they fail to conform to the requirement that restrictions must be provided for by law. Second, the asserted reasons for the “homosexual propaganda” bans fail the tests of proportionality and necessity. Each justification is discussed separately below. Third and finally, the homosexual propaganda bans discriminate against LGBT people by prohibiting public discourse on issues that matter to LGBT lives.

#### **3.2.1. Restrictions Must be Provided for by Law**

*“Provided for by law” means not only that the restriction or interference with the right must have a legal basis, but also that the wording of the law must specifically indicate what conduct is prohibited.* A law “must be formulated with sufficient precision to enable an individual to regulate his or her

conduct accordingly.”<sup>23</sup> This requirement is a component of legality, a general principle of international law and well-established under all domestic legal systems.

Under these laws, it is impossible for an individual to determine what kind of expression is banned. In St. Petersburg, an activist was fined for holding up a sign that stated: “Homosexuality is not a perversion.”<sup>24</sup> In Ryazan, a woman was arrested when she displayed posters that read: “Homosexuality is normal” and “I am proud of my homosexuality.”<sup>25</sup> Thus the bans on “homosexual propaganda” do not meet the first hurdle of any restriction, namely that it be provided for by law.

### **3.2.2. The Restrictions are Neither Necessary for a Legitimate Purpose nor Proportional to that Achieve that Purpose**

- The justification of public morality

The protection of morals is a permissible aim under the ICCPR and the European Convention. However, justifications based on public morality have typically been viewed with great skepticism by both the European Court of Human Rights and the UN Human Rights Committee. The practice of the European Court is to limit public morality to expressions that are actually obscene. For example, in *Handyside v. United Kingdom*, the Court found no violation of Article 10 where authorities confiscated a publication aimed at schoolchildren that, among other things, appeared to encourage them to have underage sex and to view pornography. The Court found that the application of the UK Obscene Publications Act was linked to the protection of morals under Article 10.<sup>26</sup> Similarly, in *Muller v. Switzerland*, the European Court found no violation of Article 10 where the art work at issue depicted “in a crude manner sexual relations, particularly between men and animals” at an exhibition open to the general public.<sup>27</sup>

In other contexts, however, the Court has been much more reluctant to accept various grounds of public morality offered by States. It held “protection of morals” to be an insufficiently weighty reason to support laws criminalising same-sex sexual relationships in *Dudgeon v. United Kingdom* and *Norris v. Ireland* and, moreover, that the laws were not necessary to protect morals.<sup>28</sup> In *Open Door and Dublin Well Woman v. Ireland*, the European Court rejected Ireland’s claim that the protection of public morals required a complete prohibition on the provision of information about the availability of abortion services outside of Ireland. The interference with the right to freedom of expression was held to be disproportionate to the aims pursued.<sup>29</sup>

The Human Rights Committee is also wary of morality-based justifications. It found public morality an inadequate rationale for Tasmania’s sodomy law in the case of *Toonen v. Australia*.<sup>30</sup> In its latest general comment on Article 19, the Human Rights Committee recalled that because “the concept of morals derives from many social, philosophical and religious traditions,” any limitation imposed for the “purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.”<sup>31</sup>

*Public morality as used by States to defend “homosexual propaganda” bans does not pass the tests of necessity and proportionality because there is no evidence that public statements concerning same-sex families or relationships or sexual orientation or gender identity pose any kind of threat to public morals.* The consistent jurisprudence of the European Court affirms this. In three recent cases the Court has considered the legitimacy of restrictions on the right to freedom of assembly for LGBT



individuals and organisations and has each time found a violation of the Convention.

In *Bączkowski v. Poland*, *Alekseyev v. Russia*, and *Genderdoc-M v. Moldova*, the European Court held that bans on LGBT marches and parades violated the right to freedom of assembly and were discriminatory.

In *Bączkowski v. Poland*, authorities had denied LGBT individuals and organizations the right to hold an equality march and the Mayor of Warsaw had announced that there would be “no public propaganda about homosexuality.”<sup>32</sup> The European Court found a breach of the right to peaceful assembly as well as a violation of the right to enjoy rights without discrimination.<sup>33</sup>

Similarly, in *Genderdoc-M v. Moldova*, the Chisinau Municipal Council and the Mayor’s Office refused permission for a demonstration intended to encourage the adoption of laws to protect sexual minorities from discrimination. Authorities referred to the risk of public disorder and strong religious and moral opposition to same-sex relationships. The European Court ruled that there had been violations of *Genderdoc-M*’s rights to freedom of peaceful assembly, to an effective domestic remedy, and to be free from discrimination on the basis of sexual orientation. In its finding of discrimination, it noted that the reason for the ban was “the authorities’ disapproval of demonstrations which they considered to promote homosexuality.”<sup>34</sup>

In *Alekseyev v. Russia*, pride events in Moscow had been repeatedly banned by public authorities. The Mayor of Moscow had explained the gay parade ban by stating in a radio interview: “That’s the way morals work. If somebody deviates from the normal principles [in accordance with which] sexual and gender life is organised, this should not be demonstrated in public.”<sup>35</sup> The European Court, however, rejected as “disproportionate” the State’s arguments that “propaganda promoting homosexuality was incompatible with religious doctrines and the moral values of the majority, and could be harmful if seen by children or vulnerable adults.”<sup>36</sup> The Court first dismissed the claim that a “call for tolerance towards sexual minorities” would involve obscenity or “sexually provocative behavior.” Then it addressed the real reason behind the gay pride ban.

[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.<sup>37</sup>

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.” Given that there was “no scientific evidence or sociological data . . . suggesting that the mere mention of homosexuality, or open public debate about sexual minorities’ social status, would adversely affect children or vulnerable adults,” this justification was insufficient.<sup>38</sup> In short, the ban did not correspond to a pressing social need and was not necessary in a democratic society and thus violated the right to freedom of assembly.

- The justification of protecting children

The second asserted justification is the protection of the rights of children from information and messages about homosexuality and same-sex relationships. Although protecting the rights of others

is a permissible purpose for a limitation under the ICCPR and the European Convention, this justification too must fail and for similar reasons. *There is simply no evidence that promoting tolerance for LGBT individuals, asserting gay identities, or claiming equal rights for same-sex relationships and families harms children.* The European Court easily dismissed such arguments in *Alekseyev*, finding them to be entirely lacking in evidentiary support.

Furthermore, expression concerning “homosexuality, lesbianism, bisexuality or transgenderism” is fundamentally distinct from sexually explicit or pornographic material. Nothing in the ban is limited to the public display of sex, information about sexual activity, or expression that might otherwise be characterized as obscene. Indeed, each of these countries already has laws outlawing obscenity and public indecency, and these laws are neutral with regard to sexual orientation. None of the arrests made in Russia thus far were for statements or material that would be considered “obscene” under current obscenity laws.

To the contrary, international law supports the right to receive age-appropriate information concerning sexuality. Article 19 of the ICCPR involves both the right to impart and to seek and receive information and ideas of all kinds. Article 13 of the Convention on the Rights of the Child specifically guarantees this right to children. In General Comment No. 3, the Committee on the Rights of the Child stated that children “require relevant, appropriate, and timely information which . . . enables them to deal positively and responsibly with their sexuality in order to protect themselves from HIV infection. The Committee wishes to emphasize that effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information.”<sup>39</sup>

Children have the right to seek and receive information and ideas of all kinds, including age-appropriate information concerning sexuality and sexual health.

In 2002, when confronted with a law in the United Kingdom that was similar to the “homosexual propaganda” bans, the Committee on the Rights of the Child urged the U.K. government to repeal it.<sup>40</sup> Similarly, in 2007 the Special Rapporteur on the Right to Education raised concerns about proposed legislation that would ban the “promotion of homosexuality” in schools.<sup>41</sup> The Special Rapporteur expressed fear that students would be denied access to sexual health information. The 2010 annual report of the Special Rapporteur was devoted to the right to education on sexual and reproductive health.<sup>42</sup>

In 2009, the European Committee of Social Rights found violations of the right to non-discrimination and the right to health, both protected under the European Social Charter, with regard to a biology textbook used in Croatia that stigmatised homosexuality. The use of that text meant that Croatia had failed in its “positive obligation to ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education which does not perpetuate or reinforce social exclusion and the denial of human dignity.”<sup>43</sup>

### **3.2.3. Restrictions Must Not Be Discriminatory**

*The bans on “homosexual propaganda” discriminate on the basis of sexual orientation. Those laws that include “transgenderism” also discriminate on the basis of gender identity. Both forms of*

discrimination are forbidden under international law.<sup>44</sup> A number of UN Special Procedure mandate holders have repeatedly criticised the enactment or proposed enactment of similar laws.<sup>45</sup>

Laws that prohibit the “propaganda of homosexuality” – as opposed to the propaganda of heterosexuality or sexuality generally – target one particular kind of sexual preference for differential treatment. There is simply no justification for this difference in treatment based on sexual orientation. In the three European Court cases discussed above, the Court found that the subject State had not only violated rights to freedom of peaceful assembly but had also violated the non-discrimination guarantee of Article 14. In *Alekseyev*, for example, the Court concluded that because the only reason for the ban was “the authorities’ disapproval of demonstrations which they considered to promote homosexuality,” it was discriminatory, in violation of Article 14 of the Convention.<sup>46</sup> Similar findings about official disapproval of “homosexual propaganda” or “promoting homosexuality” were made in *Bączkowski* and *Genderdoc-M*. In all three cases, fears about promoting homosexuality were not only insufficient to justify an interference with the right to freedom of assembly but were also evidence of discrimination.

The use of public morality as a justification is typically nothing more than a pretext for prohibited discrimination. The protection of morals is frequently claimed as a justification for the restriction of the rights of LGBT individuals and, just as frequently, rejected by domestic and regional courts.<sup>47</sup> For example, in cases concerning bans on gays in the military and higher ages of consent for same-sex sexual activity, the European Court has held that “a predisposed bias on the part of a heterosexual majority against a heterosexual minority” cannot amount to a sufficient justification for interference with rights “any more than similar negative attitudes towards those of a different race, origin or colour.”<sup>48</sup> Around the world various courts have held that public morality is not a sufficient reason to justify a difference in treatment based on sexual orientation.<sup>49</sup>

Within the Council of Europe, the Committee of Ministers, the Parliamentary Assembly, and the Commissioner for Human Rights have all expressed concern about limitations on LGBT individuals’ rights of expression, assembly and association and the abuse of restrictions based on popular conceptions of morality.<sup>50</sup> Similarly, the OSCE Guidelines on Freedom of Peaceful Assembly state: “There should be a requirement of state neutrality that precludes moral judgments on, for example, preferences for any sexual orientation over another.”<sup>51</sup> The UN Human Rights Committee has emphasised that limitations based on morals “must be understood in the light of universality of human rights and the principle of non-discrimination.”<sup>52</sup>

Although the full impact of these laws and proposed laws on LGBT individuals and communities is not yet known, it is clear that these laws would violate individual rights to freedom of expression, as well as the related rights of freedom of peaceful assembly and association, and would undermine state obligations under international human rights law. The ICJ and ILGA-Europe believe that European and international institutions and human rights enforcement mechanisms have a duty to act to protect rights. The ICJ and ILGA-Europe further believe that there are concrete steps that can be taken at the international, regional and domestic level to prevent further violations of rights.

#### **4. Recommendations**

##### **To EU and CoE member states**

- In Russia and Moldova where respectively states (Oblasts) and cities have adopted laws and decisions banning homosexual propaganda, the central governments should unequivocally declare these practices unlawful and order local administrations to eliminate such rules and laws.
- In countries where national legislation is currently being discussed in Parliaments (Hungary, Ukraine, Russia), governments should make clear that such laws violate the guarantees of freedom of expression, peaceful assembly and association under international human rights law.

##### **To the Council of Europe**

- The Committee of Ministers should monitor the situation closely and draw to the attention of the member states concerned the fact that such laws conflict with their obligations under the European Convention on Human Rights and the Committee of Ministers Recommendation on combating discrimination on the grounds of sexual orientation or gender identity
- The Parliamentary Assembly should
  - i. Prepare a report detailing the scope and effects of these laws and setting out how they conflict with the provisions of the European Convention on Human Rights; and address a resolution to the member states concerned based on its findings
  - ii. In respect of those member states which are subject to monitoring, call for the repeal of the legislation, and emphasise that such repeal will be a condition for termination of monitoring
- The Council of Europe Commissioner for Human Rights should monitor developments related to these laws, and engage in constructive dialogue with countries where such laws are under discussion or have been adopted.
- The Congress of Local and Regional Authorities should prepare a report and address a resolution to the regional assemblies and cities concerned, emphasising their obligation to observe the provisions of the European Convention on Human Rights.
- The European Commission against Racism and Intolerance should monitor developments in its forthcoming five-year reporting cycle, and make recommendations to member states as appropriate.

##### **To the European Union**

Building on the resolution adopted by the European Parliament on 24 May 2012, and condemning homophobic laws and discrimination in Europe<sup>53</sup>, the European Commission, the European Council and the EU high representative for foreign affairs and security should strongly condemn the rise of these laws inside and outside of the European Union.

- Regarding EU member states where such laws have been debated:
  - i. The European Commission should, where appropriate, study compliance of these laws with the EU fundamental rights charter and the Employment Directive. Where member states fail to correct laws, the Commission should start infringement procedures.

- ii. The Fundamental Rights Agency should be mandated to test laws that are likely to contradict international standards.
- iii. In case of adoption of “anti-propaganda” laws by an EU member state, the Council may decide the use of the article 7 of the Treaty on the European Union.
- Regarding countries outside the EU where such laws have been debated or adopted:
  - i. The EU should raise developments in Moldova and Ukraine in the context of its European Neighborhood Policy, specifically within Human Rights Dialogues and the monitoring of the implementation of the Visa Liberalisation Action Plan. These laws clearly demonstrate that progress is stalled, and if maintained should thus delay further association negotiations.
  - ii. The EU should raise developments in Russia during political summits and in particular in the context of the ‘common spaces’ framework. If the current laws are upheld, then delaying visa liberalization should be considered.
  - iii. The External Action Service should, with use of the EU Toolkit on LGBT human rights, continuously monitor developments in concerning countries and engage in constructive dialogue where needed.

#### **To the United Nations**

- The Special Procedure mandate holders of the UN Human Rights Council should address the impact of these laws and proposed laws in their reports. The Special Procedure mandate holders should raise these laws in their communications with governments and in joint appeals or press releases. Specifically, attention from the Special Rapporteur on freedom of expression, the Special Rapporteur on assembly and association, and the Special Rapporteur on the situation of human rights defenders should take action.
- The UN treaty bodies, particularly the Human Rights Committee, the Committee on the Rights of the Child, and the Committee on Economic, Social and Cultural Rights should address these laws in their concluding observations on state reports. The Human Rights Committee will examine Lithuania in July 2012. It will adopt the list of issues for Ukraine at its October 2012 session.
- In the UPR process, states should raise question about the impact and purpose of these laws and point out their incompatibility with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Ukraine is next up for review in October 2012. Russia is next up for review in April 2013.

#### **To the Organization for Security and Cooperation in Europe**

OSCE/ODIHR and the participating States should prepare a reaction in defense of freedom of speech by the next Annual Ministerial Council (Dublin, December 2012), to reiterate that fundamental freedoms cannot be restricted in the case of minorities, regardless of them being defined on the basis of ethnicity, sexual orientation, gender identity or other fundamental characteristics.

## Country annex:

RUSSIA
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### Description of the adopted or proposed legislation

#### Local level:

- **Ryazan oblast:** Administrative law, law on the protection of morals of minors (Section 3.10)  
**Status:** adopted in 2006.  
**Nature of criminalised actions:** Public acts aimed at promoting homosexuality among juveniles.  
**Sanctions:** Fine up to 4000 rubles (100 €) for individuals and 10000 (250 €) to 20000 rubles (500 €) for legal entities.
- **Arkhangelsk oblast:** Administrative law, law on the protection of morals of minors  
**Status:** adopted in September 2011.  
**Nature of criminalised actions:** Public actions aimed at homosexual propaganda toward minors.  
**Sanctions:** Similar to Ryazan, plus increased fines for repeat offenders.
- **Kostroma oblast:** Administrative law, law on the protection of morals of minors  
**Status:** adopted in February 2012.  
**Nature of criminalised actions:** Public actions aimed at propaganda of sodomy, lesbianism, bisexuality, “transgenderism” amongst minors. It should be noted that the ban on “homosexual propaganda” was included with a ban on public actions aimed at the propaganda of pedophilia, which imposes a similar scale of fines.  
**Sanctions:** Fines possible up to 500000 rubles (12500 €).
- **St. Petersburg oblast:** Law on administrative offences<sup>54</sup>  
**Status:** adopted and entered into force at the end of March 2012  
**Nature of criminalised actions:** public actions aimed at propaganda of sodomy, “lesbianism”, bisexuality, “transgenderism” among minors.  
**Sanctions:** Fine of 5000 rubles (125 €) for citizens, 50000 rubles (1250 €) for officials, 250000 rubles (6250 €) and up to 500000 rubles (12500 €) for legal entities.
- **Novosibirsk oblast:** Administrative law, law on the protection of morals of minors,  
**Status:** adopted in June 2012  
**Nature of criminalised actions:** homosexual propaganda towards minors  
**Sanctions:** fines possible up to 500000 rubles (12500 €).
- **Other regions:** In Moscow, a bill was tabled, but later amended into provisions forbidding “propaganda of any sexual relations with minors”. In Samara, a bill was tabled for discussion by the local Parliament on 17 May 2012. In Kirov, Krasnoyarsk and Kaliningrad, discussions

have been held in Parliament on the possibility of such measures, but no draft has been proposed so far.

#### National level:

**Type of legislation:** Criminal law bill proposed in the lower house of the national Parliament.

**Status:** Being considered in the State Duma in June 2012.

**Nature of criminalised actions:** spreading homosexual propaganda among minors.

**Sanctions:** fine up to 500000 rubles (12500 €).

#### **Implementation and enforcement**

- **Ryazan oblast**

In March 2009, two activists were detained and fined for protesting against homophobia using placards ("homosexuality is normal", "I'm proud of my homosexuality"). They appealed but the Constitutional Court rejected their complaint. The Court said: "In itself the ban on this kind of propaganda - activities toward the purposeful and unregulated dissemination of information that could pose harm to health and moral and spiritual development, like forming 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." This decision has now used by other legislators to defend the "homosexual propaganda" bans. One of the activists, Irina Fedotova, currently has a case pending before the UN Human Rights Committee. Another has filed an application with the European Court of Human Rights.

- **St. Petersburg**

Since the adoption of the ban in St. Petersburg, several individuals have been arrested:

- The first arrests made in St. Petersburg on the basis of the "propaganda" law took place on April 5th. However no charges were brought.
- On April 7th, two activists participating in a day of silent protest were arrested. They held a sign that read "There is no silencing of crimes against gays and lesbians." However, the court did not receive any police reports mentioning a violation of the "anti-propaganda" laws by the activists, so the court did not consider the propaganda law.
- On April 12th, an LGBT activist was arrested in front of the municipal administration building for solitary picketing. On May 5th, he was found guilty of "propaganda" by a magistrate court. On June 6th, the Smolninsky District Court upheld the ruling of the magistrate. The activist paid a fine of 5000 rubles.
- On May 1st, 17 people were arrested under the "homosexual propaganda" ban during a pro-democracy march for displaying rainbow flags and other such symbols. However, the police ended up charging the detained for shouting anti-Putin slogans and failure to comply with the police, and no mention of propaganda was made. The judge returned the case back to police for further investigation. The case must be brought to court by July 1st.

LGBT organisations have started to challenge the bans, and in one instance, were successful:

- On May 24th, the St. Petersburg Municipal Court rejected a petition by the LGBT organization "Coming Out" claiming that the "homosexuality propaganda" law was in violation of federal law. An appeal will be made to the Supreme Court of the Russian Federation by the end of June.
- On May 31st, the Smolninsky District Court ruled that the St. Petersburg Central District Administration acted unlawfully when it denied approval of two LGBT demonstrations - the Day of Silence (April 7th) and the International Day Against Homophobia and Transphobia (May 17th). The newly enacted St. Petersburg law prohibiting "homosexual propaganda" was the basis for both denials.
- On June 6th, a petition was made to the St. Petersburg Charter Court to consider the incompatibility of the "propaganda" law with the St. Petersburg city by-laws providing for equal rights on the basis of nationality and freedoms of religious choice and convictions.

UKRAINE
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#### Description of the proposed legislation

- **Type of legislation:** criminal law
- **Status:** bill presented to the Parliament in 2011 (Draft law No. 8711). An additional and similar bill was submitted to the Parliament in February 2012 (Draft law No. 10290).
- **Nature of criminalised actions:** Propaganda of homosexuality. The second bill defines propaganda as promotion aimed at children, including holding meetings, parades, actions, demonstrations and mass events aiming at intentional distribution of any positive information about homosexuality; educational lessons, thematic discussions, interactive games and other events connected to homosexuality; and distribution in media of messages about homosexuality and appeals in any form about homosexual way of life, which may negatively influence children. The same bill also adds that "popularisation of any ideas of tolerance towards people with homosexual orientation, also holding meetings, demonstrations, other events for rights of LGBT" may NOT be considered as homosexuality promotion (and hence may not be banned).
- **Sanctions:** Steep fines (up to 100 net minimum incomes or 300 net minimum incomes) or imprisonment up to five years.

MOLDOVA
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#### Description of the proposed legislation

- **Type of legislation:** Proclamation or decision of the municipal Council making of the city/district a "zone of support for Moldovan Orthodox Church and inadmissibility of aggressive propaganda of non-traditional sexual orientations".
- **Status:** Adopted in the city of Bălți (on 23 February 2012), Cahul, Ceadr Lunga, Drochia and Soroca, the districts of Anenii Noi and Basarabeasca and the village of Hiliuți
- **Nature of criminalised actions:** "Prohibit aggressive propaganda of non-traditional sexual orientation in any of its manifestation"



- **Sanctions:** No actual sanctions or procedures in the law.

### Implementation and enforcement

The towns and city councils which adopted the bans are all led by the Communist Party, which receives the support of the Orthodox Church. Following the adoption of the provision in Bălți, Vladimir Voronin, former President of Moldova and leader of the Communist Party, made a speech calling homosexuality “an abomination” and urging the country to “rebel” against LGBT people. “Let each municipality declare itself free from this nonsense which has been imported from Europe,” he said.

The non-governmental organisation GENDERDOC-M has demanded through court that the decision of Bălți be repealed. GENDERDOC-M argues that the decision is not constitutional. In another village (Chetris), when the Chancellery of State warned of the illegality of a similar measure, the local authorities repealed it.

LITHUANIA
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### Description of the proposed legislation

- **Type of laws:** New Article 188(21) in the Administrative Code entitled “Denigration of constitutional moral values”. It states that “the public denigration of constitutional moral values and the principles of family stipulated in the Constitution and the organisation of events contradicting social morality” should be a subject to a penalty.<sup>55</sup>
- **Status:** The amendment was proposed recently but not yet adopted. On 5 June a vote took place in the Parliament for it to be “improved”.
- **Nature of criminalised actions:** Criminalisation of a very wide variety of actions and activities: campaigning on human rights issues related to sexual orientation and gender identity, providing sexual health information to LGBT individuals, organisation of LGBT film festivals, Pride events etc.
- **Sanctions:** A penalty from 1000 to 3000 LTL (290 – 870 €). If the actions mentioned above are committed repeatedly, the fine amounts to 3000 – 6000 LTL (870 – 1740 €).

### Previous proposals

The same type of legislation had already been proposed earlier in Lithuania in 2010. In January 2011, the European Parliament (EP) adopted a resolution<sup>56</sup> calling on Lithuanian Members of Parliament to reject an amendment to the Lithuanian Code of Administrative Offences, which would punish the “public promotion of homosexual relations”. The Lithuanian Parliament eventually revised the amendment which they adopted in July 2011 to delete the reference to “homosexual relations”.<sup>57</sup>

In 2012, the Parliament also considered an amendment to the “Administrative Protection of constitutional moral values”. The proposed provision stated that “the public denigration of constitutional moral values and the principles of family stipulated in the Constitution and the

organisation of events contradicting social morality” should be a subject to penalties. This provision was rejected in the spring 2012. It would have criminalised public actions and campaigns, and public lectures in schools. The foreseen penalty ranged from 1000 to 3000 LTL (345-870 €), and increased to 3000 – 6000 LTL (870 – 1740 €) if offenses were committed repeatedly.

## HUNGARY

### Description of the proposed legislation

#### National level

- Amendment to Constitution to deny freedom of assembly to organisers of events that “propagate disorders of sexual behaviour – especially sexual relations between members of the same sex”; and to define “propagation of disorders of sexual behaviour” as a misuse of freedom of expression (bills n° 6719<sup>58</sup> and 6720<sup>59</sup>).
- Amendment to advertising law to ban ads propagating “disorders of sexual behaviour” as socially acceptable and desirable, as well as events and venue propagating it<sup>60</sup>.
- Amendment to media laws to ban publishing/broadcasting of media and advertising propagating such “disorders”.
- Amendment to criminal code to define as a crime a crime the “propagation of disorders of sexual behaviour”.
- Amendment to misdemeanours law to define as a misdemeanour the “deceptive presentation of disorders of sexual orientation”.
- **Status:** the bills were presented to the Parliament by the extreme right party Jobbik. The relevant parliamentary committee refused to put them on their agenda on 7 May. Jobbik may ask for a plenary vote (not confirmed).
- **Sanctions:** in the criminal law amendments, up to three years of imprisonment, in certain cases up to eight years. In the amendments on law on misdemeanours: up to 150000 HUF (495 €).

#### Local level

- Local ordinance (Budapest) creating a new misdemeanour: “propagation of same-sex relations”. The amount of the fine proposed in the Budapest local ordinance amounts to 150000 HUF (495 €).
- Local ordinance (Budapest) aiming at “limiting obscene marches”.
- Local ordinance proposed by the Jobbik party in Pécs (5<sup>th</sup> largest city).
- **Status:** The 1<sup>st</sup> proposal was presented to the Budapest Assembly by the same party (Jobbik), and voted down on 25 April 2012. The 2<sup>nd</sup> proposal was presented by the governing party Fidesz in the Budapest Assembly. It was dropped without a vote, but there are fears that it may be reintroduced later. The 3<sup>rd</sup> measure was voted down on 31 May.
- **Nature of criminalised actions:** propaganda of disorders of sexual behaviour, explicitly including same-sex relations (e.g. in Pécs: “propaganda of same-sex relations” and “being

open about one's attraction to the same-sex in a way contradicting good taste and public morality" in public spaces and institutions of the local government).

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<sup>1</sup> Text of the draft law is accessible on the official web site of the Verkhovna Rada (Parliament) of Ukraine at [http://w1.c1.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?id=&pf3511=40734](http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=40734).

<sup>2</sup> Text of the draft law is accessible on the official web site of the Verkhovna Rada (Parliament) of Ukraine at [http://w1.c1.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?id=&pf3511=43007](http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=43007).

<sup>3</sup> [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=428148](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=428148)

<sup>4</sup> HRC, General Comment No. 34, UN Doc. CCPR/C/GC/34 at para. 4.

<sup>5</sup> *ÖZDEP v. Turkey*, Application no. 23885/94, Judgment of 8 December 1999, at para. 37

<sup>6</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/HRC/14/23 at paras. 26-29; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, at para.12.

<sup>7</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly Resolution 53/144, UN Doc. A/RES/53/144, Articles 5, 6 & 7.

<sup>8</sup> Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, UN Doc. A/59/401 (human rights defenders and freedom of association); Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, UN Doc. E/CN.4/2001/94, para. 89(b); Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, UN Doc. A/61/312 (human rights defenders and freedom of assembly).

<sup>9</sup> HRC, General Comment No. 34 at para. 11 ("The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive."); Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Abid Hussain, UN Doc. E/CN.4/1995/32, at para. 29 (noting that "freedom of expression is applicable not only to information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.") & para. 55 (recognizing the importance to protect the freedom of expression of minority views including those views that might be offensive or disturbing to a majority); Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, para. 64 ("The Special Rapporteur recognizes that the formation of associations embracing minority or dissenting views or beliefs may sometimes lead to tensions, but he emphasizes the duty of the State to ensure that everyone can peacefully express their views without any fear.").

<sup>10</sup> *Handyside v. United Kingdom*, Application no. 5493/72, Judgment 7 December 1976, at para. 49;

<sup>11</sup> *Stankov & UMO Ilinden v. Bulgaria*, Application nos. 29221/95 and 29225/95, Judgment 2 October 2001, at para. 86.

<sup>12</sup> *Viktor Korneenko et al. v. Belarus*, UN Doc. CCPR/C/88/D (2006), at para. 7.3.

<sup>13</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN Doc. A/64/226, at para. 29.

<sup>14</sup> *Alekseyev v. Russia*, Application nos. 4916/07, 25924/08 and 14599/09, Judgment of 21 October 2010, para. 81.

<sup>15</sup> *Alekseyev v. Russia*, para. 70

<sup>16</sup> The language varies slightly in Articles 21 and 22. Article 21 provides: "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." Article 22 provides: "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." Under the European Convention, limitations must be prescribed by law and necessary in a democratic society for certain enumerated interests, including national security, public safety, the prevention of disorder or crime, the protection of health or morals, and the protection of the reputation or rights of others. See Articles 10 & 11.

<sup>17</sup> HRC, General Comment No. 34, at para. 21.

<sup>18</sup> HRC, General Comment No. 34, at para. 35; see also HRC, General Comment No. 31, para. 6 ("Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.").

<sup>19</sup> *Lee v. Republic of Korea*, U.N. Doc. CCPR/C/84/D/1119/2002 (2005), at para. 7.2.

<sup>20</sup> *Vogt v. Germany*, Application no. 17851/91, Judgment of 26 September 1995, at paras. 45 & 52.

<sup>21</sup> HRC, General Comment No. 22, UN Doc. CCPR/C/21/Rev.1/Add.4; see also HRC, General Comment No. 34, UN Doc. CCPR/C/GC/34 at para. 26.

<sup>22</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1984/4 (1984), Principle 9.

<sup>23</sup> HRC, General Comment No. 25. "A norm cannot be regarded as a 'law' unless it is formulated with sufficient prevision to enable the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances,

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the consequences which a given action may entail." *Muller v. Switzerland*, Application no. 10737/84, Judgment 24 May 1988, at para. 29.

<sup>24</sup> Nikolai Alexeyev, Russian Gay Rights Activist, Fined Under 'Propaganda' Law, Huffington Post, 4 May 2012.

<sup>25</sup> Human Rights Committee, Communication No. 1932/2010 (*Fedotova v. Russia*).

<sup>26</sup> *Handyside v. United Kingdom*, Application no. 5493/72, Judgment 7 December 1976, at para. 46.

<sup>27</sup> *Muller v. Switzerland*, Application no. 10737/84, Judgment 24 May 1988, at para. 36.

<sup>28</sup> *Dudgeon v. United Kingdom*, Application no. 7525/76, Judgment 22 October 1981; *Norris v. Ireland*, Application no. 10581/83, Judgment 26 October 1988.

<sup>29</sup> *Open Door and Dublin Well Woman v. Ireland*, Application no. 14234/88; 14235/88, Judgment of 29 October 1992, at para. 80.

<sup>30</sup> *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992, 4 April 1994.

<sup>31</sup> HRC, General Comment No. 34, at para. 32.

<sup>32</sup> *Bączkowski v. Poland*, Application no. 1543/06, Judgment 3 May 2007.

<sup>33</sup> *Bączkowski v. Poland* at paras. 27, 97-101.

<sup>34</sup> *Genderdoc-M v. Moldova*, Application no. 9106/06, Judgment 21 June 2012, at para. 54.

<sup>35</sup> *Alekseyev v. Russia*, at para. 16.

<sup>36</sup> *Alekseyev v. Russia*, Application nos. 4916/07, 25924/08 and 14599/09, Judgment 21 October 2010, at para. 78.

<sup>37</sup> *Id.* at para. 82.

<sup>38</sup> *Id.* at para. 86.

<sup>39</sup> CRC, General Comment No. 3 (HIV/AIDS and the Rights of the Child), UN Doc. CRC/GC/2003/3, at para. 16. A number of other treaty bodies, including the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, and the Committee on Economic, Social and Cultural Rights, have issued similar recommendations. See Report of the Special Rapporteur on the Right to Education, Vernor Munoz Villalobos, UN Doc. A/65/162, at paras. 24-30 (collecting treaty body recommendations).

<sup>40</sup> CRC, Concluding Observations (United Kingdom of Great Britain and Northern Ireland), UN Doc. CRC/C/15/Add.188, at para. 44(d).

<sup>41</sup> Report of the Special Rapporteur on the Right to Education, Vernor Munoz Villalobos, UN Doc. A/HRC/8/10/Add.1, at paras. 79-84.

<sup>42</sup> Report of the Special Rapporteur on the Right to Education, Vernor Munoz Villalobos, UN Doc. A/65/162.

<sup>43</sup> European Committee of Social Rights, *INTERIGHTS v. Croatia*, 45/2007 (30 March 2009).

<sup>44</sup> *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992, 4 April 1994; *Young v. Australia*, Communication No. 941/2000, CCPR/C/78/D/941/2000; *X v. Colombia*, Communication No. 1361/2005, CCPR/C/89/D/1361/2005; Committee on Economic Social and Cultural Rights, General Comments No. 20 (Non-discrimination in Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, at para. 32; No. 19 (The Right to Social Security), E/C.12/GC/19, 4 February 2008, para. 29; No. 18 (The Right to Work), E/C.12/GC/18, 6 February 2006, at para. 12(b); No. 15 (The Right to Water), E/C.12/2002/11, 30 January 2002, at para. 13; No. 14 (The Right to the Highest Attainable Standard of Health), E/C.12/2000/4, 11 August 2000, para. 18; Committee on the Rights of the Child, General Comment No. 13 (The right of the child to freedom from all forms of violence), CRC/GC/2011/13, at paras. 60 and 72(g); General Comment No. 4 (Adolescent health and development in the context of the Convention on the Rights of the Child); CRC/GC/2003/4, 1 July 2003, at para. 6; CRC, General Comment No. 3 (HIV/AIDS and the Rights of the Children), CRC/GC/2003/3, 17 March 2003, at para. 8; Committee Against Torture, General Comment No. 2 (Implementation of Article 2 by States Parties), CAT/C/GC/2, 24 January 2008, at para. 21; Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28 (on the core obligations of States parties under article 2), CEDAW/C/GC/28, 16 December 2010, at para. 18; General Recommendation No. 27 (Older women and the protection of their rights), CEDAW/C/GC/27, 16 December 2010, at para. 13. See also *Salgueiro da Silva Mouta v. Portugal*, Application no. 33290/96, Judgment 21 December 1999 (sexual orientation covered by Article 14 of the European Convention); *P.V. v. Spain*, Application no. 35159/09, 30 November 2010 (gender identity covered by Article 14).

<sup>45</sup> See, e.g., Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, UN Doc. A/HRC/4/37/Add.1, at para. 511; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Abid Hussein, UN Doc. E/CH.4/2001/64, at para. 176; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/HRC/14/23/Add.1, at paras. 1400-1414 & para. 2511; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/HRC/17/27/Add.1, at para. 676.

<sup>46</sup> *Id.* at para. 109.

<sup>47</sup> See, e.g., *Dudgeon v. United Kingdom*, Application no. 7525/76, Judgment of 22 October 1981, at paras. 57-61 (rejecting public morality as a justification for criminalizing same-sex sexual relationships); *Toonen v. Australia*, UN Doc. CCPR/50/D/488/1992, at paras. 8.4 & 8.6 (same).

<sup>48</sup> See *Lustig-Prean and Beckett v. United Kingdom*, Application Nos. 31417/96 and 32377/96, Judgment 27 September 1999, at para. 89; *Smith and Grady v. United Kingdom*, Application nos. 33985/96 and 33986/96, Judgment 27 September 1999, at para. 97; *S.L. v. Austria*, Application no. 45330/99, Judgment 9 January 2003, at para. 44; *L and V v. Austria*, Application nos. 39392/98 and 39829/98, Judgment 9 January 2003, at para. 52.

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<sup>49</sup> See, e.g., *Romer v. Evans*, 517 U.S. 620, 634 (U.S. Supreme Court 1996); *Lawrence v. Texas*, 539 U.S. 558, 582 (U.S. Supreme Court 2003); *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, (Constitutional Court of South Africa 1998); *Ang Ladlad LGBT Party v. Commission on Elections* (Supreme Court of the Philippines 2010); *Naz Foundation v. Union of India* (High Court of Delhi 2009); *Secretary for Justice v. Yau Yuk Lung* (Hong Kong Court of Appeals 2006); *Nadan & McCoskar v. State* (High Court of Fiji 2005).

<sup>50</sup> Committee of Ministers Recommendation (2010)5 at para. 16; Parliamentary Assembly Resolution 1728 (2010), at para. 6; Commissioner for Human Rights Annual Activity Report, CommDH(2010)8, at para. 3.4.

<sup>51</sup> Organization for Security and Cooperation in Europe, Guidelines on Freedom of Peaceful Assembly (Warsaw 2007) at para. 69.

<sup>52</sup> HRC, General Comment No. 34, at para. 32.

<sup>53</sup> European Parliament resolution of 24 May 2012 on the fight against homophobia in Europe, P7\_TA(2012)0222.

<sup>54</sup> See text in Russian <http://www.gov.spb.ru:3000/noframe/law?d&nd=537913971&prevDoc=891831166>

<sup>55</sup> [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=425637](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=425637)

<sup>56</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0019+0+DOC+XML+V0//EN&language=EN>

<sup>57</sup> <http://www.lgbt-ep.eu/press-releases/meps-welcome-lithuania-new-progressive-law-advertising/>

<sup>58</sup> [http://www.mkogy.hu/internet/plsql/ogy\\_irom.irom\\_adat?p\\_ckl=39&p\\_izon=6719](http://www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6719)

<sup>59</sup> [http://www.mkogy.hu/internet/plsql/ogy\\_irom.irom\\_adat?p\\_ckl=39&p\\_izon=6720](http://www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6720)

<sup>60</sup> [http://www.mkogy.hu/internet/plsql/ogy\\_irom.irom\\_adat?p\\_ckl=39&p\\_izon=6721](http://www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=6721)