



Bayev and Ors. v. Russia

Applications nos. 67667/09, 44092/12, and 56717/12

Country:

Region: Europe

Year: 2017

Court: European Court of Human Rights

Facts

The applicants were three Russian nationals, Mr. Bayev, Mr. Kiselev and Mr. Alekseyev, who had filed applications against the Russian Federation, in response to the legislative ban on "propaganda of non-traditional sexual relations aimed at minors" which was introduced, in part, for the protection of the morality and health of children in Russia.

The three applicants were gay rights activists and were found guilty, by the Justice of the Peace of Circuit, of the administrative offense of "public activities aimed at the promotion of homosexuality among minors" after they held up pro-homosexuality banners in front of a school and children's library. The applicants challenged the constitutionality of S. 4 of the Law on Protection of the Morality and Health of Children and S. 7 of the Law on Administrative Offences in St Petersburg on the ground that it violated the principle of equal treatment and the freedom of expression enshrined in Articles 19 which guarantees right to Equality and Article 29 guarantees freedom of speech and expression of the Constitution. The Constitutional Court declared the complaint to be inadmissible on the basis that the State bodies in the Russian Federation were allowed to take steps to protect the health, moral, spiritual and psychological development of children.

The applicants then individually approached the European Court of Human Rights (hereinafter the Court) and alleged violation of Article 10 of the European Convention on Human Rights (hereinafter the Charter). They argued that the legislative ban violated their Right to Freedom of Expression and was discriminatory, contesting the Government's allegation that an open public discussion of homosexuality would undermine the protection of minors or would adversely affect their harmonious physical and psychological development. The Court found the complaint admissible and joined the three applications, noting the similar factual and legal background of the cases.

The government attempted to justify the differential treatment between the heterosexual majority and homosexual minority on the ground of "health risks", including, harm to "the child's healthy physical and psychological development". The government also contended that compared to the traditional family, same-sex relations were associated with greater health risks, in particular, that of contracting HIV and that they impeded population growth

Decision and Reasoning

The Court held that the legislation in question did not serve to advance the legitimate aim of the protection of morals and that such measures were likely to be counterproductive in achieving the declared legitimate aims of the protection of health and the protection of rights of others. It further held that the legislation which outlawed the promotion of homosexuality and non-traditional sexual relations among minors amounted to an interference of the applicants' freedom of expression.

The Court rejected the Government's claim that regulating public debate on LGBT issues may be justified on the grounds of the "protection of morals". In doing so it acknowledged that it consistently declines to endorse policies and/or decisions which embody a predisposed bias on the part of a heterosexual majority against a homosexual minority. The Court also held that such legislation was not justified on the grounds of the protection to health. The Court further rejected the Government's argument that stressed the potential risk of minors being induced or forced into adopting a different sexual orientation which touched upon issues concerning the personal autonomy of minors.

The Court held that the Russian government had violated Article 14 of ECHR in addition to Article 10 of ECHR. The applicants were awarded damages.

Dissenting Opinion: Judge Dedov wrote in his dissenting opinion that there was no violation of Article 10 of the Charter by the respondent State as the State had a legitimate aim to protect public morals, public health,

and rights of others. Judge Dedov argued that the Court has failed to strike a balance between the right to freedom of expression and the right to private and family life. He asserted that the State's positive obligation towards children and their families had made the impugned measure necessary for the society, which was overlooked by the Court.

Decision Excerpts

“the Court considers it improbable that a restriction on potential freedom of expression concerning LGBT issues would be conducive to a reduction of health risks. Quite the contrary, disseminating knowledge on sex and gender identity issues and raising awareness of any associated risks and of methods of protecting oneself against those risks, presented objectively and scientifically, would be an indispensable part of a disease-prevention campaign and of a general public-health policy.” (Para 72)

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