



In partnership with Memorial Human Rights Centre (MHRC), the Georgian Young Lawyers' Association (GYLA) and Article 42 of the Constitution

## How gays and lesbians play a key role in the campaign for freedom of assembly in Russia

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2009 marks the 40th anniversary of the Stonewall riot when the gay community organised a spontaneous demonstration against a police raid in New York. This is often referred to as the start of the gay rights movement when homosexuals started to protest against police persecution.

In the 1970s, gay activists across Europe and the US started to march in the streets for gay rights. The first ever gay pride marches celebrating the

anniversary of the Stonewall riot took place in Los Angeles and New York on 28 June 1970. On 1 July 1972, the first gay pride march in Europe took place in London. Gays were allowed to march in the streets demanding equal rights, while in other countries homosexual acts were still illegal.

Europe has made much progress in the last 30 years. Several EU countries have given homosexuals complete equality by granting marriage and adoption rights. A second group of countries have granted partial rights, creating, for example, civil same sex partnerships. A

final group of countries, primarily the former Soviet bloc, have only decriminalised homosexuality. Russia's decriminalisation of male same sex relations in 1993 is often perceived to have been an obligatory step for Council of Europe membership.

However, in the countries of the former Soviet Union, the transition to a market economy, coupled with a difficult financial crisis, made any fight for gay rights seem frivolous in the eyes of a population that was fighting to discover the wonders of consumerism or some-

*continued on page 2*

continued from page 1

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times even just for survival.

In July 2005, I announced that the LGBT community would be holding, in May 2006, the first ever march in Russia demanding equal rights for sexual minorities. In December 2008 the Mayor of Moscow told the media that the only limitation he would impose on homosexuals was on their right to hold street protests. His refusal to respect Art. 31 of the Constitution, which grants freedom of assembly to all citizens, was backed by a violent anti-gay rhetoric from religious groups and numerous politicians.

Since 2006, 185 applications to hold street actions on issues concerning homosexuality have been made in Moscow, Tambov and Ryazan. The applications were systematically turned down on various grounds, such as the authorities' inability to guarantee the participants' safety or their concern for the rights of other citizens. The Russian courts held all the decisions to ban gay street actions lawful.

When other human rights or political groups make a request to hold a public action the authorities often decline the request for the proposed location, but suggest a different location that would be permitted. This has not been the case for the proposed gay rights actions.

The bans have always been challenged in the local and appeal courts. The judges have always refused to take into account or have disregarded the ECHR precedent in *Bączkowski & Others v Poland* (No. 1543/06) 3/5/07 in which the ECtHR held violations of Arts. 11 (freedom of assembly and association), 13 (right to an effective remedy) and 14 (prohibition of discrimination) ECHR. The first ban of Moscow Pride was specifically taken up to the Presidium of the Russian Supreme Court but without success.

On 17 September 2009, the combined case about the banning of Moscow

Pride 2006, 2007 and 2008 (*Alekseyev v Russia* (Nos. 4916/07, 25924/08 and 14599/09)) was communicated to the Russian Government, which has until 20 January 2010 to respond to the questions posed by the ECtHR. This case represents the banning of 163 public events and alleges violations of Arts. 11, 13 and 14. The ECtHR will consider the admissibility and merits of this case simultaneously and has emphasised homophobic statements made by Moscow officials in the Statement of Facts. Three other ECtHR cases concerning the banning of LGBT public events in Tambov and Ryazan and one case in which a request was made to President Medvedev to hold an event at a location that falls under his jurisdiction are pending communication. A case about hate speech on the part of the Governor of Tambov and another freedom of expression case are also pending admissibility.

Multiple ECHR complaints are deemed necessary as, in their justifications for banning the gay marches, the Russian authorities refer to different restrictions listed in Art. 11(2) ECHR. To avoid the situation whereby the Russian authorities could argue that one ECtHR judgment in respect of a particular restriction has no application to any of the other restrictions listed in Art. 11, it was decided to appeal all the different reasons for denials received at the ECtHR.

In 2009, a complaint against Russia was sent to the UN Human Rights Committee concerning the banning of a picket in front of the Iranian Embassy in July 2008. The action aimed to denounce the situation of gays and lesbians in the country. The complaint states that the Russian authorities breached Art. 21 of the International Covenant on Civil and Political Rights, which guarantees the right to freedom of peaceful assembly to everyone. In its answer to the Committee, Russia argued that the Covenant allows a country to ban an event on security grounds. A decision is expected in 2010.

The campaign for freedom of assembly launched by gay activists goes further than the right to hold a gay pride march, which some still consider frivolous in Russia. Russian officials' and Russian justice's systematic refusal to recognise Russian homosexuals' right to freedom of assembly has become a symptomatic and symbolic breach of human rights in the country. The issue is no longer limited to the rights of sexual minorities, as tomorrow a similar policy may be used against other social groups or minorities.

It is hoped that this campaign will set a precedent against the Russian authorities which could lead to significant positive changes to the law on public meetings and demonstrations. Today, one has to apply to hold a public event 10 to 15 days before it is scheduled to take place. If the request is refused, there is not time to appeal the decision in court before the planned event.

Where no effective remedies exist the ECtHR may find that Russian law violates Art. 13 ECHR. Even if a court hearing does take place before the planned date of the event, as was the case with Moscow Pride 2006, the court decision would only come into force 10 days later, which would definitely fall after the planned date of the event.

In 1993 Russia allowed male homosexuals to engage in sexual relations. In 1999 Russia removed homosexuality

from the list of mental disorders, following international standards. In 2008 the Government removed gays from the list of banned blood donors allowing slightly better, albeit symbolic, integration into society. Yet in 2009 the country has still not given sexual minorities the essential right to freedom of assembly, which is perhaps the most emblematic.

Until this right is respected either through the enforcement of an ECtHR judgment or after a shift in the authorities' policy towards the LGBT community, we will keep fighting for equal rights in Russia.