

**Rule 9(2) submission to the Committee of Ministers of the Council of Europe
concerning implementation of the *Alekseyev and others v. Russia* and
Bayev and others v. Russia cases**

I Introduction

1. This submission is communicated by Coming Out¹ and ILGA-Europe² as non-governmental organisations under Rule 9(2) of the Rules of the Committee of Ministers (CM) for consideration at the meeting CM-DH 1230 (4 – 6 December 2018).
2. The *Alekseyev and others v. Russia* case addresses repeated bans on demonstrations promoting tolerance and respect for the human rights of LGBTI persons, and the absence of an effective remedy to challenge those bans. The European Court of Human Rights (the Court) found violations of Convention Articles 11 (right to freedom of assembly), 13 (right to an effective remedy), and 14 (prohibition of discrimination) taken in conjunction with Article 11.
3. The *Bayev and others v. Russia* case addresses violations of the right to freedom of expression and discrimination on account of fines imposed on the applicants for displaying banners considered to promote homosexuality among minors against the regional laws prohibiting such “propaganda”, adopted in several regions since 2006, and followed by a nation-wide law of 2013 similar to that effect (violations of Article 10 and of Article 14 in conjunction with Article 10).
4. The execution of judgments process in the Alekseyev case has now been proceeding for 7 ½ years. Over that time, in numerous Decisions, the CM has repeatedly expressed concern that the competent authorities have refused the majority of requests to hold public events similar to those in the Alekseyev judgment. It has also made numerous warnings against the introduction of regional and federal laws prohibiting so-called “propaganda of non-traditional sexual relationships” (the “propaganda” laws). These were ignored, and despite assurances by the Russian government to the contrary, these laws have been used on many occasions to refuse authorisation of public events in support of the rights of LGBTI persons.
5. The CM last considered the Alekseyev case in December 2016. In June 2017 the Court issued its judgment in *Bayev and others v. Russia*. Its condemnation of the “propaganda” laws supported concerns about this legislation that the CM had repeatedly expressed in its Decisions on the Alekseyev judgment.
6. This submission addresses the Action Plan of the Russian Federation dated 22 October 2018 (the Action Plan).³ In summary, notwithstanding the statements made in the Action Plan, freedom of assembly continues to be denied to those advocating for the rights of LGBTI people in all but the rarest of circumstances, while “propaganda” laws remain on the statute book and are used both to prohibit freedom of assembly and to restrict access to objective information on sexual orientation.

¹ Coming Out is a non-profit St. Petersburg organization. It works for the universal recognition of human dignity and equal rights of all regardless of sexual orientation or gender identity through advocacy, educational and cultural events, and providing psychological and legal services to LGBT persons, based on the principles of openness, visibility and non-violence.

² ILGA-Europe is the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association. It advocates at European level for the human rights of those who face discrimination on the grounds of their sexual orientation, gender identity, gender expression or intersex status. Its membership consists of over 550 NGOs from across Europe, whose members are mainly lesbian, gay, bisexual, transgender or intersex individuals.

³ DH-DD(2018)1047 - Action plan (22/10/2018) - Communication from the Russian Federation concerning the cases of Alekseyev and Bayev and Others v. Russian Federation (Applications No. 4916/07, 67667/09).

II General measures

Freedom of assembly

7. Section 8 of the Action Plan asserts that “There are no laws in Russia aimed against representatives of the LGBT community, the latter are afforded the opportunity to fully exercise the rights guaranteed by the Constitution and the Convention, including by using mass events format”.

8. In its Decision⁴ at its meeting in December 2016 the CM invited the Russian authorities to continue providing statistical information on applications by LGBT persons to hold freedom of assembly events. Such information would have offered the Russian authorities an opportunity to support the above assertion, but it was not provided. Instead, the Action Plan sets out a list of some 13 events conducted by the LGBTI community. However 12 of the 13 events are not public assemblies similar to that in the Alekseyev judgment. They are meetings, seminars, or sports events conducted for the most part in private spaces. Only one of the 13 events – a Rainbow flash mob in Perm on 14 May 2017, authorised we understand by the authorities - is similar to that in the Alekseyev judgment. The Action Plan does not therefore substantiate the claim that the LGBT community is afforded the opportunity to fully exercise the right to freedom of assembly.

9. A recent submission to the CM by two NGOs, Gay Russia and Moscow Pride,⁵ lists 250 cities in which LGBT rallies, pickets and gatherings were banned by the authorities in the period between February 2016 and July 2018, the majority on the basis of “propaganda” laws. Although this submission was published in August, the Russian authorities have not exercised their right to submit evidence to the CM challenging this information. It is therefore reasonable to assume that it is valid.

10. A Rule 9.2 submission by Coming Out and by ILGA-Europe in 2016 documented cases in which the authorities in St Petersburg had banned a number of freedom of assembly events associated with the LGBTI community in that year.⁶ In 2017, exceptionally, Coming Out was able to hold its International Day against Homophobia and Transphobia (IDAHOT) rally. However, it was not straightforward. Coming Out was denied permission by the city authorities to hold the event. They challenged the ban in court, but the court ruled that it was not a ban. They sent the court’s decision to the police, pressed the police for meetings, pressed the ombudsman of St Petersburg to intervene with the police, repeatedly, throughout the two weeks up until the day of the rally. In the absence of permission they went ahead with the event. Unexpectedly, despite the fact that there was supposed to be a “mass cultural and sports event” organised by the city administration at the exact place Coming Out were planning to meet, despite the fact they didn’t have permission from the administration to hold a rally, the police protected them, rather than detaining them.

11. In 2018 Coming Out submitted 7 notifications to the St Petersburg city authorities for an IDAHOT rally to be held on May 17. All of them were declined with reference to the federal law on “propaganda”. Challenges to these bans in the Krasnoselsky District Court of St Petersburg were rejected on the ground that the “public event... does not exclude propaganda of non-traditional sexual relationships among minors”, and thus could not be authorized. The court repeatedly stated that “a legal ban aimed at the protection of children’s health cannot be regarded as discriminatory”, and that “one cannot agree with the arguments of the administrative lawsuit that the decision of the

⁴ 1273rd meeting – 6-8 December 2016 - Item H46-23 - paragraph 9.

⁵ DH-DD(2018)775 Communication from a NGO (30/07/2018) in the case of ALEKSEYEV v. Russian Federation (Application No. [4916/07](#)).

⁶ DH-DD(2016)1319 - Communication from NGOs (Coming Out and ILGA-Europe) (18/11/2016) in the case of Alekseyev against Russian Federation (Application No. [4916/07](#)).

district administration [on refusal to authorize the IDAHOT public event] contradicts the norms of international law and the case-law of the European Court of Human Rights”.

12. The Krasnoselsky District Court issued its ruling⁷ on May 16, 2018, almost a year after the Court passed the judgment in *Bayev and Others v. Russia*. Thus it is evident that Russian authorities do not wish to implement this judgment and to observe the measures outlined in the Court’s position.

13. In the event the activists ignored the ban. They carried out the IDAHOT rally, but faced significant difficulties including undertaking additional security measures, limiting the number of participants and holding the event away from the centre of St. Petersburg in a place where no one was present except the participants in the rally. Thus, the goals of IDAHOT were largely frustrated.

14. On August 4, 2018, the organizers of St. Petersburg Pride were prevented from holding a peaceful public event on Palace Square in the centre of St. Petersburg. The police detained 30 participants who were holding rainbow symbols or supported the protesters. As of the current date, the courts have imposed administrative fines on the participants totalling more than 450 thousand rubles, including a fine on one participant in the amount of 150 thousand rubles.

15. It will be evident that the experience of Coming Out in St Petersburg supports the picture provided by the Gay Russia and Moscow Pride submission. Indeed, Coming Out is not aware of any occasions when public demonstrations in support of the rights of the LGBTI community in Russia during the last two years have taken place, beyond those already mentioned.⁸

16. Paragraphs 1, 2 and 5 of the Action Plan section on General Measures list a series of measures which the Russian authorities claim to have taken in recent years. It will be evident that these have been completely ineffectual.

Freedom of expression and the *Bayev and others v. Russia* case

17. So far as the *Bayev and others v. Russia* case is concerned, the Action Plan proposes no general measures. In essence, paragraph 6 of the section on General Measures repudiates the judgment of the Court. In doing so it relies on a judgment of the Russian Constitutional Court to the effect that the “propaganda” laws are consistent with the Constitution of the Russian Federation.

18. The federal “propaganda” law continues to be used to suppress access to information about homosexuality, as demonstrated by the following examples:

- In 2017, the police roused a community center for LGBT youth in St. Petersburg. As a result of the police raid, the community centre was forced to close down. This has created a “chilling effect”: none of St Petersburg’s LGBT organizations works with LGBT adolescents, fearing police interference and forced cessation of their activities due to the existence of the “propaganda” law.
- In January 2018, a court in the Altai Territory blocked the largest Internet portal on LGBT health “Parni Plus” on the ground of the portal’s violation of the “propaganda” law, since the information posted on the portal could be available to children. In October 2018, Coming Out achieved the cancellation of the court decision, but the portal was forced to restrict the access of minors to materials containing neutral information about the health of LGBT people.

⁷ Case No. 2a-3876/2018n.

⁸ This excludes pickets by single individuals on LGBTI issues, which are occasionally conducted without consequences.

- In the spring of 2018, the oldest LGBT portals telling about the life of LGBT people in Russia - Gay.ru and Lesbi.ru - were also blocked, citing violation of the “propaganda” law. In order to be unblocked, they were forced to restrict the spreading of neutral information about LGBT people by installing a service for checking the age of portal visitors.
- On October 24, 2018, State Duma deputy Vitaly Milonov attempted to disrupt the opening of the “Side by Side” LGBT film festival in St. Petersburg. Upon inspection, he suspected “LGBT propaganda among minors”, and appealed to law enforcement officers. The police arrived at the ceremony for the opening of the festival. Deputy Milonov blocked the entrance to the venue, shouting: “Homosexual and perverted citizens, please leave this event”. His allegation of “propaganda” was not confirmed. However the authorities did not attempt to verify his allegation nor censure him for his behaviour.

In all the afore-mentioned cases the Russian authorities did not apply the legal positions set out in the *Bayev and others v. Russia* judgment, effectively ignoring them and continuing the policy of discrimination against LGBT people in Russia, restricting their rights to freedom of assembly and freedom of expression.

III Recommendations

19. In view of the complete failure of the Russian authorities to implement the Alekseyev judgment, we can only repeat, respectfully, the recommendation made to the CM in our 2016 submission,⁹ that the CM repeat its request to the Russian authorities to adopt a comprehensive action plan to ensure execution of the Alekseyev judgment. This request should, as a minimum, specify:

(i) Revision of the Assemblies Act, with a view to ensuring that its provisions are consistent with the European Convention on Human Rights and its case law, and that current deficiencies facilitating arbitrary and discriminatory behaviour by officials are eliminated.

(ii) Preparation of a code of conduct for authorities responsible for handling notifications for public events, addressing *inter alia* their duty to conduct their office in accordance with the law, to behave fairly and impartially under all circumstances, and to reject arbitrary and discriminatory behaviour of any kind.

(iii) Training for three categories of public servants: authorities responsible for handling the notifications for holding public events, judges and other court staff, and the police.

The training for all three should include the relevant human rights principles, as elucidated by the Court, including freedom of assembly, expression and non-discrimination, and their application in the context of the rights of LGBTI persons.

The training for officials should further include guidance to the effect that it is unacceptable to reject notifications for public events on the basis of the arbitrary and/or discriminatory use of procedural rules, including in relation to the location and timing of events. It should also include guidance on the proper assessment of security risk in relation to public events.

The training for police should include the need to protect all persons involved in public demonstrations without discrimination, and to investigate all individuals and organisations engaged in threatened or actual violence against such events, with a view to prosecution.

⁹ DH-DD(2016)1319 - Communication from NGOs (Coming Out and ILGA-Europe) (18/11/2016) in the case of Alekseyev against Russian Federation (Application No. 4916/07).

Special public events guidelines for each of the above-mentioned three categories of state official should be developed, making use of the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly.

(iv) The materials for the above-mentioned code of conduct, training sessions and guidelines should be prepared with the assistance of Council of Europe experts, and the sessions conducted with their help.

(v) The execution of a wide-scale and long-term programme of awareness raising among the general public, with a view to ensuring that public events in support of the rights of LGBTI people can proceed without serious risk of violent opposition.

(vi) The repeal of the federal and regional legislation banning so-called “propaganda of homosexuality” or “propaganda of non-traditional sexual relations”, in line with the Court’s judgment in *Bayev and others v. Russia*.

31 October 2018