



EQUAL RIGHTS TRUST

Equal Rights Trust

Statement for Organisation for Security and Cooperation in Europe Human Dimension Conference 2016

Working Session 5: Freedom of Assembly and Association

Statement of Interest

1. The Equal Rights Trust exists to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. We focus on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice. The Trust is the only international organisation which focuses exclusively on the right to equality and which approaches equality from a unified human rights framework.
2. Since our establishment in 2007, we have been engaged in combating discrimination and promoting equality in a large number of Organisation for Security and Cooperation in Europe (OSCE) participating states. Our work in the region ranges from documenting ethnic and religious discrimination in Kazakhstan and Kyrgyzstan to supporting civil society in Moldova and Ukraine to promote the adoption of comprehensive anti-discrimination law, to working with lawyers and non-governmental organisations in Bosnia and Herzegovina, Croatia and Serbia to improve implementation and enforcement of recently-enacted anti-discrimination laws.
3. We have undertaken a variety of activities aimed at combating discrimination in Russia, with a particular focus on sexual orientation and gender identity discrimination. As part of these activities, we will soon be publishing a study of jurisprudence on cases relating to LGBTI rights in Russia. Work on this study, together with our work in a number of other OSCE participating states, has led us to be increasingly concerned about the growing problem of discriminatory denial, restriction or limitation of the freedoms of assembly and association in the region.

Introduction

4. As a result of our work in a number of countries in the OSCE region, the Equal Rights Trust is concerned by the increasing range of measures employed by states which have the effect of preventing peaceful assemblies from taking place and limiting or restricting freedom of association. Given our focus on promoting equality and combating discrimination, we are particularly concerned by the discriminatory impact of these measures which, by their nature, have a disproportionate impact on those from groups exposed to discrimination, and can have the effect of silencing minority voices.
5. This submission focuses on the enjoyment of the rights to freedom of assembly and association. It takes as its starting point the commitments to protect and guarantee these rights which have been made by participating states, including in particular at the Copenhagen Meeting of the Conference on the Human Dimension, in June 1990, where states committed that:

(9.2) - everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards;

(10) (...) the participating States express their commitment to (...) (10.3) - ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups.¹

6. As participating states will be aware, Article 21 of the International Covenant on Civil and Political Rights (ICCPR) provides for the right of peaceful assembly, whilst Article 22(1) of the ICCPR provides for freedom of association with others. Limitations to both freedoms can be acceptable, in clearly defined circumstances. In order to comply with the ICCPR, limitations to the rights must be both prescribed by law and necessary in a democratic society to protect national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.²
7. Our research and consultation with civil society actors in various countries has identified four particularly problematic laws or provisions which limit either or both of the freedoms of assembly and association:
 - (1) Laws which purport to restrict or prohibit “propaganda”;
 - (2) Laws which require non-governmental organisations (NGOs) who receive foreign-funding to be labelled as “foreign agents”;
 - (3) Laws which are used to classify some NGOs as extremists;
 - (4) Laws which require NGOs to go through onerous registration procedures, and which are applied in such a way as to prevent certain organisations from pursuing legitimate activities
8. Moreover, our work in the region indicates that laws or policies which restrict the convening of public events and other peaceful assemblies are frequently discriminatory in their nature, or are applied discriminately.

Legislation banning “propaganda of homosexuality” or “propaganda of non-traditional sexual relations”

9. In recent years, the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people to freedom of assembly and association have been severely limited in a number of countries in the OSCE region. Of particular concern is the adoption of legislation in a number of countries in the region banning “propaganda of homosexuality” or “propaganda of non-traditional sexual relations”. These laws provide the basis upon which various events, activities and other assemblies focused on LGBTI rights and equality have been prevented from going ahead.

¹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990.

² International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Article 21

10. In the Russian Federation, a federal Law was passed in 2013 which made amendments to three pre-existing Laws, with the effect of making various types of expression, assembly and association related to the rights of lesbian, gay, bisexual or transgender persons unlawful.³ Firstly, the new Law amended the Law “On Basic Guarantees of the Rights of the Child in the Russian Federation” to include a provision according to which, in order to “protect children from information, propaganda and agitation harmful to their health, moral and spiritual development, measures must be taken to protect them from propaganda relating to non-traditional sexual relationships”.⁴ Secondly, it amended the Law “On Protection of Children from Information Harmful to their Health and Development” to include a prohibition on the dissemination of information to children that promotes “non-traditional sexual relationships”.⁵ Finally, the Code of Administrative Offences was amended to introduce Article 6.21, providing administrative liability for “propaganda of non-traditional sexual relationships among minors”.⁶ These provisions can therefore be seen to directly target persons on the grounds of sexual orientation and those allies who engage in advocacy on their behalf.
11. In October, we will launch a report which analyses more than two decades of jurisprudence on cases involving LGBT rights in Russia. The report explores how courts have responded to a wide range of issues, including in the application of the “propaganda of homosexuality” law. Our research in the Russian Federation revealed that in some cases, refusals to allow peaceful assemblies were directly related to the fact that the events in question had an LGBT theme or focus. Reasons which were offered for refusal by the authorities, and which were sometimes upheld by the courts, included: anticipated disapproval by others; potential for clashes between activists and opposing protesters; potential to cause offence to religious feelings or to violate public morals; or the belief that such assemblies would be harmful to children and violate the prohibition of “homosexual propaganda”.⁷ Such decisions are clearly discriminatory on the grounds of sexual orientation and gender identity, in that they deny freedom of assembly to LGBT individuals and their allies, and do so explicitly on the basis of sexual orientation and gender identity. The Human Rights Council has confirmed that states have

³ Federal Law, 29 June 2013, No. 135-FZ (Федеральный закон от 29 июня 2013 года № 135-ФЗ).

⁴ Federal Law, “On Basic Guarantees of the Rights of the Child in the Russian Federation”, 24 July 1998, No. 124-FZ, Article 14(1) (Федеральный закон от 24 июля 1998 года № 124-ФЗ).

⁵ Federal Law, “On protection of children from information harmful to their health and development”, 29 December 2010, No. 436-FZ, Article 5(2)(4) (Федеральный закон от 29 декабря 2010 года № 436-ФЗ).

⁶ Russian Federation Code of Administrative Offences (Кодекс Российской Федерации об административных правонарушениях), Article 6.21.

⁷ Judgment of the Oktyabrsky District Court of Arkhangelsk, 30 January 2014, No. 2-1496/2014 (Решение Октябрьского районного суда города Архангельска от 30 января 2014 года по делу № 2-1496/2014). See also: Judgment of the Sverdlovskiy District Court of Kostroma, 3 July 2014, No. 2-2904/2014 (Решение Свердловского районного суда Костромы от 3 июля 2014 года по делу № 2-2904/2014); Appellate Decision of the St. Petersburg City Court, 22 May 2013, No. 33-18289/13 (Апелляционное определение Санкт-Петербургского городского суда от 22 мая 2013 года по делу № 33-18289/13); Judgment of the Oktyabrsky District Court of Arkhangelsk, 27 January 2012, No. 2-938/2012 (Решение Октябрьского районного суда города Архангельска от 27 января 2012 года по делу № 2-938/2012).

obligations to protect the rights to association and peaceful assembly without discrimination on the grounds of sexual orientation or gender identity.⁸

12. The discriminatory nature of the law – and the discrimination in its application – is exacerbated by the failure of the courts to recognise that the actions of public authorities are discriminatory on the grounds of sexual orientation. Our research in Russia identified over 70 court cases challenging refusals to permit LGBT public assemblies. In most cases, the applicants raised discrimination arguments: however, even where the courts recognised that the denial to hold an assembly was unlawful, they did not recognise its discriminatory nature. In one example, an assembly that aimed to attract the attention of society to discrimination against LGBT persons and homophobia was banned based on “anti-propaganda” legislation, citing the fact that children would be in the city.⁹ The city authorities refused to provide an alternative location for the assembly, on the same basis. The organisers of the assembly argued that their aims could not be considered to violate “public morality” and that the decision of the authorities discriminated against LGBT persons.¹⁰ The court found that the decision of the authorities was unlawful as an alternative location was not proposed, but did not recognise the discriminatory nature of the decision.¹¹
13. Unfortunately, since the adoption of the federal legislation on “propaganda of homosexuality” or “propaganda of non-traditional sexual relations” in Russia, a number of other states in the OSCE region have adopted laws purporting to prohibit “homosexual propaganda”. To our knowledge, bills of this type have been proposed in Belarus, Kazakhstan, Kyrgyzstan, Lithuania, Moldova and Ukraine. Proposed legislation in Kyrgyzstan would be comprised of provisions even more severe than those contained in the Russian law – the draft bill seeks to ban all information about “non-traditional sexual relationships”, whether or not disseminated in the presence of minors.¹² Kazakhstan’s proposed legislation containing provisions on “anti-propaganda” was dropped in 2015.¹³ In Moldova, provisions that banned ‘the promotion of relationships other than those linked to marriage and the family’ were removed from the law in 2013.¹⁴ However, since April 2016 another draft bill containing similar provisions is before the parliament.¹⁵

⁸ Human Rights Council ‘Discrimination and violence against individuals based on their sexual orientation and gender identity’ A/HRC/29/23, 4 May 2015 [18]

⁹ Judgment of the Sverdlovskiy District Court of Kostroma, 3 July 2014, No. 2-2904/2014 (Решение Свердловского районного суда Костромы от 3 июля 2014 года по делу № 2-2904/2014).

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Human Rights First “Human Rights First Urges Rejection of Kyrgyz Propaganda Bill” 27 May 2016, available at: <http://www.humanrightsfirst.org/press-release/human-rights-first-urges-rejection-kyrgyz-propaganda-bill>

¹³ Human Rights Watch “The Olympics and ‘Gay Propaganda’ in Kazakhstan” 30 July 2015, available at: <https://www.hrw.org/news/2015/07/30/olympics-and-gay-propaganda-kazakhstan>

¹⁴ European Commission for Democracy Through Law (Venice Commission), Opinion on the Issue of the Prohibition of so-called “Propaganda of Homosexuality” in the Light of Recent Legislation in some Participating states of the Council of Europe, 2013, Para 17, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)022-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)022-e).

14. Laws which prevent the dissemination of information about certain types of sexual relationship can have the effect of limiting the enjoyment of freedom of assembly and association, as well as freedom of expression. Such laws directly violate Articles 19, 21 and 22 of the ICCPR. Fifty-six OSCE states have ratified the ICCPR; these laws put them in direct violation of their obligations. It is also clear from the example of Russia that the application of these laws by state authorities, and interpretation of them by national courts, exacerbates the discriminatory nature of the laws, with the effect of denying freedom of assembly and association. Moreover, these laws are directly discriminatory where they refer to sexual orientation, in violation of Article 26 of the ICCPR, and of Article 2(1) which requires the enjoyment of other Covenant rights without discrimination.

"On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent"¹⁶ and Similar Legislation

15. The Trust is also concerned by the introduction – in the Russian Federation and other countries in the region – of legislation which classifies non-governmental organisations which receive funding from intergovernmental organisations, international NGOs and other sources outside the state in question as “foreign agents”. Laws of this type have the effect of silencing human rights defenders and limiting the exercise of freedom of association of those involved in legitimate civil society activities.

16. Evidence provided to us indicates that the law “On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent” (hereafter Foreign Agents Law) in the Russian Federation is being enforced in such a way that freedom of association is severely restricted. The legislation requires any non-commercial organisations that receive foreign funding and are engaged in “political activities” to register as organisations “performing the functions of foreign agents”.¹⁷ “Political activities” are defined in a way that may encompass human rights work, and failure to register can result in severe penalties, including substantial fines. The law also enables the Justice Ministry to register groups as “foreign agents” without their consent.¹⁸ It is reported that the Foreign Agents Law has had the effect of causing at least twenty organisations to shut down rather than wear the “foreign agent” label, demonstrating the severe effects on freedom of association.¹⁹

17. Our consultations and engagement with organisations working in Kazakhstan also reveal discriminatory denial of freedom of association as the result of regulation of organisations which receive funding from non-Kazakh sources. NGOs that receive such

¹⁵ Human Rights Watch “Moldova: Reject ‘Gay Propaganda’ Law” 21 June 2016 available at <https://www.hrw.org/news/2016/06/21/moldova-reject-gay-propaganda-law>

¹⁶ Federal Law “On amendments of some legislative acts of the Russian Federation”; 23.05.2015, N 129-FZ (Федеральный закон от 23.05.2015 № 129-ФЗ “О внесении изменений в отдельные законодательные акты Российской Федерации”).

¹⁷ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 24 April 2013, UN Doc. A/HRC/23/39, Para 28

¹⁸ Human Rights Watch “Russia: Government vs. Rights Groups” 14 September 2016, available at <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>

¹⁹ *Ibid.*

funding are subject to onerous reporting requirements. It is reported that NGOs that receive funding from sources outside of Kazakhstan must now report to the Committee on State Revenue on all foreign funding received for human rights activities, legal aid and the dissemination of information in relation to human rights.

18. The example of the law in Russia enacted in 2015 illustrates how the identification of non-governmental organisations as foreign agents can severely restrict freedom of association for those involved in legitimate civil society activity. This is the case both as a result of government penalisation of those considered to be foreign agents, and as a result of the social pressure which identified as such face. Indeed, the UN Special Rapporteur on freedom of assembly and association has highlighted that terming human rights organisations “foreign agents” is likely to add to stigmatisation of human rights defenders, due to the fact that foreign agent is synonymous with “foreign spy”.²⁰

Laws which classify non-governmental organisations as “extremist”

19. Our analysis of case law in the Russian Federation demonstrates that, rather than carefully considering whether restrictions on the right to freedom of association are strictly necessary, the courts have applied discriminatory justifications to conclude that the formation of LGBT associations is contrary to national security and public morals. On some occasions, organisations have been labelled as extremist.²¹
20. One organisation, “Pride House in Sochi” was denied registration by the Krasnodar Regional Department of the Ministry of Justice. The District Court, upon reviewing the Department’s decision, held that the goals of Pride House in Sochi were contrary to public morals and state sovereignty.²² The goals of the organisation were to promote tolerance in sports, including the need to fight homophobia in sport and to launch campaigns aimed at developing positive attitudes towards LGBT sportspersons.²³ The District Court considered that the awareness raising activities of the organisation would have a “mass ideological influence” on citizens, which in turn would undermine the security of Russian society.²⁴ As a result, the activities of Pride House in Sochi were deemed to be of an extremist nature.²⁵
21. Our research and consultation in Kazakhstan has shown that similar restrictions have been applied to some political parties and civil society activists and resulted in a restriction on freedom of association. In 2012, a court in Almaty ordered a ban on the

²⁰ OHCHR, “Russia: increasingly hostile environment for NGOs and rights defenders is unacceptable”, 14 May 2013, accessible at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13323&LangID=E>.

²¹ *Aleksander Zhdanov and Rainbow House v Russia*, Application No. 12200/08, lodged 3 May 2008, Statement of Facts, available at [http:// http://hudoc.echr.coe.int](http://hudoc.echr.coe.int).

²² Judgment of the Pervomaiskiy District Court of Krasnodar, 20 February 2012, No. 2-1161/2012 (Решение Первомайского районного суда Краснодара от 20 февраля 2012 года по делу № 2-1161/2012).

²³ Charter of the Pride House Sochi, Article 3 (Устав Краснодарского краевого регионального спортивного общественного движения «Прайд хаус в Сочи»).

²⁴ Judgment of the Pervomaiskiy District Court of Krasnodar, 20 February 2012, No. 2-1161/2012 (Решение Первомайского районного суда Краснодара от 20 февраля 2012 года по делу № 2-1161/2012).

²⁵ *Ibid.*

organisation and activities of the unregistered political party, Alga!. The ban appeared to be based on the conviction of the leader, Vladimir Kozlov, for expressing support for striking oil workers in the city of Zhanaozen in December 2011.

22. Labelling civil society and political actors who promote the equal enjoyment of human rights as extremist and then using this as a basis to restrict or ban their activities is a direct violation of the right to freedom of association, which also impacts on the freedoms of expression and assembly. Moreover, in both of these cases, there is a clear discriminatory element to the treatment, targeting as it does only those seeking to promote the rights of particular groups exposed to discrimination. Further, given the apparent tendency for other states in the OSCE region to “follow the lead” of Russia, at least in respect of so-called “propaganda of homosexuality” legislation, there is a risk that other states will adopt a similar approach to that taken by the Russian authorities.

Registration requirements

23. The final issue of concern arising from our work in Russia and other states in the region relates to the imposition of onerous regulatory and procedural requirements for those seeking to operate a non-governmental organisation. Our experience dealing with NGOs in a number of OSCE participating states is that onerous, complex and in some cases opaque registration requirements, may have the effect of preventing NGOs and human rights defenders from effectively exercising their right to freedom of association. Even where such requirements are applied indiscriminately, they may have a chilling effect on freedom of association for those working on issues of discrimination affecting socially or politically stigmatised group.
24. By way of example, in Kazakhstan, the 1996 Law on Public Associations requires that associations register with government. Failure to register can result in serious consequences; management and participation in an unregistered association is criminalised.²⁶ It has been noted by the Special Rapporteur on freedom of association and assembly that some associations have been denied registration due to “discrepancies in the submitted documents”, which may suggest that there is some politically motivated weight of bureaucracy attached to registering public associations.²⁷
25. Further examples arise in Azerbaijan, where the regulatory framework has become increasingly restrictive since 2009. Following a series of amendments passed in 2013 which placed onerous requirements on international NGOs and domestic NGOs in receipt of funding from foreign sources, in late 2015 the Ministry of Justice again increased the compliance obligations for foreign and domestic NGOs in Azerbaijan. The Rules on Studying the Activities of Non-Governmental Organizations, Branches or Representative Offices of Foreign Non-Governmental Organizations (“the 2015 Rules”)²⁸ established a procedure through which the Ministry of Justice can inspect and monitor the activities of domestic and foreign NGOs with registered offices in Azerbaijan.²⁹ One

²⁶ Code of Administrative Offences (Law No 235-V) of 5 July 2014, Article 489

²⁷ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai: Addendum: Mission to Kazakhstan*, UN Doc A/HRC/29/25/Add.2, 16 June 2015, Para. 40.

²⁸ Decision of the Cabinet of Ministers of Azerbaijan (Decision No. 337 of 21 October 2015).

²⁹ Article 1.7. There have been long standing problems with NGOs registration in Azerbaijan, even before the 2013 reform. In 2009 case *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, Application no 37083/03, 8 October 2009, the Court found that an environmental association had been unjustly and arbitrarily dissolved, as the alleged illegal conduct of the association had not been sufficiently proved. In

of the organisations with which we are in contact has testified to the effect of this legislation, stating that it has made the organisation of even information events an extraordinarily difficult, and at times high risk task.

26. As with the other types of legislative and regulatory conditions applicable to the operation of NGOs which are highlighted in this report, the impact of onerous registration requirements has the effect of limiting freedom of association, freedom of assembly and freedom of expression. This impact is discriminatory in nature, affecting disproportionately those whose views are – or are perceived to be – in conflict with the aims of the government.

Recommendations

The Equal Rights Trust calls on participating states to –

1. Reiterate their commitments, made in Copenhagen and in Paris in 1990, to ensure the equal enjoyment of the freedoms of association and peaceful assembly, without discrimination;
2. Condemn the adoption of legislation or the implementation of measures which restrict or limit the enjoyment of the freedoms of association and assembly, including in particular where such measures are in conflict with the protection of the right to non-discrimination;
3. Refrain from adopting so-called “anti-homosexual propaganda” laws, or, where such legislation is in force, take immediate steps to repeal it;
4. Refrain from adopting legislation which has either the purpose or effect of limiting or restricting the enjoyment of the freedom of association, or, where such legislation is in force, take immediate steps to repeal or amend it in order to ensure equal enjoyment of freedom of association and assembly;
5. Ensure that where measures are taken to regulate the establishment or operation of non-governmental organisations, these measures are implemented in line with the requirement that restrictions on freedoms of assembly and association are both prescribed by law and necessary in a democratic society to protect national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others;
6. Ensure that where legislation is enacted, or where other measures are taken, which relate to the establishment or operation of non-governmental organisations, these measures do not conflict with the obligation of non-discrimination in the enjoyment of

2007 case *Ramazanova and Others v. Azerbaijan*, Application no. 44363/02, 1 February 2007 judgment of 1 February 2007 the applicants founded a public association named “Assistance to the Human Rights Protection of the Homeless and Vulnerable Residents of Baku”, a non-profit-making organisation aimed at providing aid to the homeless and protecting their interests. Authorities never granted the status of legal person to the association for four years. The Court considered that the repeated failure by the Ministry to issue a definitive decision amounted to a refusal and therefore a violation of freedom of assembly. The other cases in which the the ECtHR found a violation of Article 11 ECHR are *Aliyev and others v. Azerbaijan*, Application no. 28736/05, judgment of 18 December 2008; *Nasibova v. Azerbaijan*, Application no. 4307/04, judgment of 18 October 2007; *Ismayilov v. Azerbaijan*, Application no. no. 4439/04 judgment of 17 January 2008.

these rights, and that these not impact disproportionately on any group protected by the right to non-discrimination.