

Case Summary: Irina Fedotova v Russian Federation

Application Number: Communication No. 1932/2010

1. Reference Details

Jurisdiction: Human Rights Committee

Date of Decision: Views adopted on 31 October 2012 by the Committee at its 106th session (15 October – 2 November 2012)

Case Status: Final Communication

Link to full case: <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.106.D.1932.2010.doc>

2. Facts of the Case

Irina Fedotova (the applicant) is an openly lesbian woman and activist in the lesbian, gay, bisexual and transgender (LGBT) field in the Russian Federation. On 30 March 2009, under an alleged initiative to promote tolerance towards gay and lesbian individuals in the Russian Federation, she displayed posters that stated “Homosexuality is normal” and “I am proud of my homosexuality” near a school in Ryazan. Following the interruption of her action by the police, she was, on 6 April 2009, convicted by the justice of the peace of an administrative offence under section 3.10 of the Ryazan Region Law concerning “public actions aimed at the propaganda of homosexuality” and fined 1,500 Russian Roubles.

She appealed to the Oktyabrsky District Court of Ryazan (Oktyabrsky Court) where – in addition to challenging the ruling as void – she requested an assessment of the compatibility of section 3.10 of the Ryazan Region Law with Articles 19, 29, and 55 of the Constitution. Articles 19 and 29 respectively prohibit discrimination on the ground of social status and guarantee the right to freedom of thought and expression, while article 55 allows for the restriction of rights enshrined in the Constitution by a federal law.

On 14 May 2009, the ruling of the justice of peace was upheld by the federal judge of the Oktyabrsky Court who considered the Code of Administrative Offence (the Code) as being federal law. Consequently, it was deemed lawful to restrict constitutional guarantees on grounds of protecting the foundations of the constitutional order, public morals, health or the rights and lawful interests of other persons. The applicant appealed with two other individuals to the Constitutional Court which dismissed her appeal on grounds that a prohibition on propaganda of homosexuality is necessary to prevent:

[I]ntentional and uncontrolled dissemination of information capable of harming health, morals and spiritual development, as well as forming perverted conceptions about equal social values of traditional and non traditional family relations ...

Following that ruling, the applicant lodged an individual complaint to the Human Rights Committee (the Committee) against the Russian Federation (the respondent) arguing that both Articles 19 (freedom of expression) and 26 (equality before law) of the ICCPR had been violated.

3. Law

National law:

- Section 3.10 of the Ryazan Region Law on Administrative Offences of 4 December 2008 (Ryazan Region Law).
- Articles 19, 29 and 55, part. 3 of the Constitution of the Russian Federation of 12 December 1993 (the Constitution).

International law:

- Articles 19 (freedom of expression) and 26 (equality before law) of the International Covenant on Civil and Political Rights (ICCPR).
- Articles 3 and 5(2) of the Optional Protocol to the ICCPR.

4. Legal Arguments

Applicant's Arguments

The applicant claimed the ruling of 6 April 2009 violated Articles 19 and 26 ICCPR. Accordingly, she argued that Article 19 was violated by Section 3.10 of the Ryazan Region Law which prohibited her from disseminating ideas of tolerance towards sexual minorities. According to her, such restrictions could have been justified only if “provided by law” and “necessary” in respect of article 19(3) ICCPR. Under the Russian Constitution, freedom of expression can be only restricted by a federal law, which, the applicant argued, the Ryazan Region Law is not. Furthermore, she argued that a restriction which is not deemed necessary under Article 19(3) ICCPR would not be legitimate, and as her objective was the promotion of tolerance vis-à-vis homosexuality, her free expression in this regard could not be legally curtailed.

Finally, according to the applicant, Article 26 was also violated because the Ryazan Region Law *de facto* prohibits dissemination of any kind of information regarding homosexuality in general, but does not likewise prohibit dissemination of information regarding heterosexuality or heterosexual behaviour.

Respondent's Arguments

The main argument of the Respondent was the fact that the applicant did not exhaust all available domestic remedies and that an appeal to the Supreme Court of the Ryazan Region and eventually to the Supreme Court of the Russian Federation could have been lodged.

5. Decision

After declaring admissible the applicant's complaint, the Committee had to examine whether or not section 3.10 of the Ryazan Region Law constituted a lawful restriction in accordance with Article 19 (3) ICCPR.

In the interpretation of article 19 ICCPR, it is firstly necessary to determine whether there has been any restriction according to Article 19(2). In the present case, the Committee found the wording in the Ryazan Law related to "homosexuality" ambiguous, as it is unclear whether it "refers to one's sexual identity or sexual activity or both". In any case, there was "no doubt" for the Committee that there was an infringement in the exercise of freedom of expression of the applicant. This was not even disputed between the parties.

The second step is then to consider whether or not this restriction is justified. In other words is it (a) provided by law and (b) necessary – i.e. for the respect of the rights or reputations of others; and for the protection of national security or of public order (*ordre public*), or of public health or morals.

The Committee concluded it was not useful to examine whether or not the Ryazan Region Law was to be considered as a federal law – thus allowing restriction – or not, because:

[L]aws restricting the rights enumerated in article 19(2), must not only comply with the strict requirement of article 19(3) of the Covenant, but must also themselves be compatible with the provisions, aims and objectives of the Covenant, including the non-discrimination provisions of the Covenant.

In this respect,

[A]ny such limitation must be understood in the light of universality of human rights and the principle of non discrimination. In the present case (...) section 3.10 of the Ryazan Region Law establishes administrative liability for "public actions aimed at propaganda of homosexuality" (...) as opposed to propaganda of heterosexuality or sexuality generally – among minors. (...) The Committee recalls that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation.

The Committee also concluded that differential treatment would amount to discrimination in accordance with Article 26 of the Covenant unless it is based on "reasonable" and "objective" criteria, "in the pursuit of an aim that is legitimate under the Covenant". In the present case, the respondent failed to demonstrate valid reasons based on "reasonable" and "objective" criteria for the restriction of propaganda on homosexuality while allowing propaganda on heterosexuality or sexuality in general.

Consequently, the Committee was of the view that the respondent had acted in violation of Article 19(2) read in conjunction with Article 26 ICCPR.