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Ban on a Chisinau demonstration by homosexuals

Written question No 524 to the Committee of Ministers

Reply from the Committee of Ministers
adopted at the 1010th meeting of the Ministers' Deputies (7 November 2007)

I. Written Question No. 524 by Mrs Acketoft (Doc. 11283)

In joining the Council of Europe in 1995 and ratifying the Convention on Human Rights, the Republic of Moldova undertook to protect and develop human rights and fundamental freedoms. Irrespectively of this, the local authorities in the Moldovan capital Chisinau have once again refused a friendly festival with a purpose to raise awareness and to promote tolerance and equal rights for homosexuals in the city, the "Pride Festival". This act is only one amongst many where the authorities in Moldova suppress the equal rights of homosexuals.

Banning the festival should contravene Article 11 of the Convention on Human Rights, which deals with freedom of assembly and association.

Mrs Acketoft,

To ask the Committee of Ministers

Does the Committee of Ministers agree that the decision made by the local authorities in Chisinau infringed Article 11 of the Convention on Human Rights?

How does the Committee of Ministers propose to act in order to certify that Article 11 of the Convention on Human Rights is followed by the members of the Council of Europe?

What were the reasons for Moldovan authorities to ban the demonstration?

What plans of action do the Moldovan authorities plan to undertake in order to combat homophobia and discrimination based on sexual orientation in the country?

II. Reply by the Committee of Ministers

1. Regarding the lawfulness of the decision by the local authorities in Chişinau, the Committee of Ministers would like to emphasise that it is not for the Committee, but for national judicial authorities and ultimately for the European Court of Human Rights to determine the compatibility of individual national measures with the European Convention on Human Rights. This notwithstanding, the Moldovan authorities have informed the Committee of Ministers that the Chişinau City Council, in consultation with the police authorities, for reasons of public safety and the prevention of disorder in the light of previous experiences, decided not to allow the demonstration referred to by the Honourable Parliamentarian to take place as planned. Instead closed premises were proposed to the groups concerned, but this offer was turned down. A national action plan on human rights (2004-2008)

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covering, *inter alia,* rights and freedoms of sexual minorities, refers both to legislative reform and to the promotion of tolerance and knowledge of international standards in this field among the police and prosecution services as well as the public in general.

2. Regarding the issues raised by the Honourable Parliamentarian more generally, the Committee of Ministers would like to recall that it is strongly attached to the principle of equal rights of all human beings. The Council of Europe's message of tolerance and non-discrimination is meant to materialise in all European societies, and discrimination on grounds of sexual orientation is not compatible with the value of tolerance and the principle of equality, to which all the member states are bound.

3. Like all member states, Moldova has ratified the European Convention on Human Rights and is committed to guarantee respect for all Convention rights, including the rights to freedom of expression and freedom of assembly to all individuals within its jurisdiction, without any discrimination. While the Convention allows for restrictions on the exercise of the rights to freedom of expression and freedom of assembly, such restrictions must be prescribed by law and be necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others. According to the established case law of the European Court of Human Rights (the Court) peaceful demonstrations, be they in favour of the rights of lesbian, gay, bisexual and transgender (LGBT) persons or others, cannot be banned simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate. On the contrary, the state has a duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully. In a series of judgments, the Court has emphasised that any discrimination based on sexual orientation is contrary to the Convention.[1] All member states must observe the Convention when they apply national law, notably in the light of the case law of the Court.

4. The Congress of Local and Regional Authorities of the Council of Europe recently adopted Recommendation 211 (2007) and Resolution 230 (2007) on freedom of assembly and expression for LGBT persons. The Committee of Ministers welcomes these texts, while noting that decisions to allow demonstrations are often taken at local or regional level. It has furthermore noted, from the Parliamentary Assembly's report on the State of Human Rights and Democracy in Europe, that the Assembly is elaborating a report on the same subject.

5. The Committee of Ministers believes that this reply in itself will already serve as a useful reminder to member states of the relevant human rights principles. In addition, it will consider how to enhance Council of Europe action in this area, in order to achieve more synergy, co-ordination and substantial results. In this context, attention should be drawn to concerns repeatedly expressed by the Council of Europe Commissioner for Human Rights, as well as to the ongoing work undertaken by the Steering Committee for Human Rights (CDDH). The Steering Committee recently adopted a report on "hate speech" and will continue to consider this issue in the context of its work on human rights in a multicultural society. The CDDH is also currently examining the topic of human rights defenders with a view to identifying ways and means to improve their protection. Freedom of association and peaceful assembly is, of course, at the heart of this activity and this includes defenders which are particularly vulnerable to victimisation such as LGBT groups.

[1] Among other authorities, Salgueiro da Silva Mouta v. Portugal, judgment 21 December 2001; L. and V. v. Austria, judgment of 9 January 2003; Karner v. Austria, judgment of 24 July 2003; B.B. v. United Kingdom, judgment of 10 February 2004.