

Respect, Protect, and Fulfill—or Reject, Neglect, and Regress? Children’s Rights in the Time of the Russian “Gay Propaganda Law”

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Abstract

The “gay propaganda law”—criminalizing public messaging supporting sexual and gender minority (SGM) communities in the presence of youth—implemented within Russia in 2013 has been widely criticized by those in the international field of human rights, yet remains in effect. Although the law is supposedly protecting the well-being of children, it is likely detrimental to youth who may be sexual or gender minorities. This paper uses the 2018 conviction of a minor for violating this law to frame a discussion concerning how Russia, rather than progressively respecting, protecting, and fulfilling the rights of its people, is rejecting, regressing, and neglecting its rights obligations. In particular, we consider the rights outlined in the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights to determine ways in which the Russian state could redirect its actions to support human rights for SGM people and their allies.

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Introduction

Sexual and gender minorities (SGM)—including lesbian, gay, bisexual, and transgender (LGBT) people—experience significant discrimination and stigmatization in many places around the world. While in some countries laws and policies have become progressively more inclusive of SGM individuals, others have become more hostile in recent years. Human rights abuses along the lines of sexual orientation and gender identity have been documented in Russia. One with the most widespread media attention in recent years has been what is known as the “gay propaganda law.”

Widely considered to be a direct attack on SGM populations, this law, passed in June 2013, banned the distribution to minors of materials that feature “nontraditional sexual relations.”¹ The European Court of Human Rights determined in 2017 that the law was discriminatory and “served no legitimate public interest.”² Despite this, the law remains intact and SGM individuals and their allies—including the minors whom the state seemed so eager to protect—remain in danger of prosecution.

In July 2018, 16-year-old Maxim Neverov, a political activist known for his organization of “Gays or Putin” performances, was determined to have violated this law by posting a photo of two shirtless men embracing each other to VKontakte, a social media website.³ Similar to Facebook, VKontakte allows individuals to post images and text publicly or privately and send messages to one another. The action taken by the Russian state against Neverov was the first instance of a child being convicted of violating the “gay propaganda law.” Upon his conviction, Neverov was fined 50,000 rubles, approximately double an average Russian’s monthly salary.⁴ In October 2018, Neverov won an appeal of his conviction, with the judge stating that there was not enough evidence for a guilty verdict. It is unclear how the Russian state will proceed in its prosecution of these supposed crimes, particularly against minors. However, Russian officials have set a dangerous precedent of putting children’s rights at risk due to ongoing state discrimination against the rights of people who are SGM.

The example of Neverov’s case demonstrates

ongoing human rights violations that Russia has committed since the European Court of Human Rights’ ruling. In particular, these actions go against the standards set by the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. These two legally binding instruments and the study of Neverov’s conviction create a framework for characterizing how Russia causes harm to children through the violation of their fundamental human rights. The state is criminalizing and endangering children not only in order to further its homo-transphobic agenda and erase sexual and gender diversity but also to silence dissent among its people. Rather than progressively respecting, protecting, and fulfilling the rights of its people, the Russian government is rejecting, regressing, and neglecting its human rights obligations. In this paper, we outline how the rights enshrined in multiple human rights instruments, including the rights to access to information, to freedom of expression, and to privacy, have been violated in the Neverov case, ultimately putting Russian children’s rights to health and to life in jeopardy.

REJECT: The Russian state is denying children of information that can benefit their well-being by criminalizing their possession of “propaganda.”

Stigma and discrimination negatively affect physical and mental health, including for SGM youth. Stigma exists at multiple levels—individual, interpersonal, and structural—and each level has its own associations with physical health outcomes that are found to be higher among SGM youth than among the general population.⁵ For example, internalized homophobia at the individual level has been associated with sexual risk behaviors, including those that put individuals at risk of contracting HIV.⁶ This is of particular concern given the “severe, widespread, and geographically dispersed HIV epidemic” currently affecting Russia.⁷ Substance use among SGM youth has also been found to be associated with stigma and discrimination at the structural and individual levels.⁸ Russia has one of

the highest levels of alcohol consumption per capita in the world, and needle sharing among those who inject drugs is the most common risk for contracting HIV in the country.⁹ Clearly, the stigmatization of certain behaviors, people, and identities may be contributing to these poor health outcomes. In this context, the “gay propaganda law” and its criminalization of efforts that demonstrate acceptance of sexual and gender minorities contributes to stigma and therefore to poor physical health for those who identify as or are perceived to be SGM.

SGM youth also have higher rates of negative mental health outcomes, including suicidal ideation and depression, compared to heterosexual youth.¹⁰ These differences have been found to likely be the result of external factors such as stress, lack of social support and coping, and discrimination related to being a stigmatized minority rather than being inherent to sexual or gender minority status.¹¹ Lacking access to the gay community contributes to distress and depression among men who have sex with men.¹² Because sexual and gender minority identities are often hidden and SGM communities are not geographically bound, social isolation may be a particular challenge for SGM youth and contribute to a greater likelihood of suicidality.¹³ As many parts of Russia are sparsely populated, this makes the internet a place through which SGM youth can learn that there are others in the world who share their same-sex attraction or gender identity, potentially alleviating isolation.

Russia’s criminalization of Neverov’s image postings contradicts articles 13 and 17 of the Convention on the Rights of the Child, which was ratified by Russia in 1990. Article 13 states that children have the right to the freedom of expression, including the right “to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally in writing, or in print, in the form of art, or through any other media of the child’s choice.”¹⁴ Neverov’s choice to possess and post these photos falls well within this right to seek and receive information. Moreover, article 17 of the convention notes that states “shall ensure that the child has access to information and material from a diversity of national and international sources,

especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.”¹⁵ Whether or not Neverov himself is LGBT, sharing an image that promotes tolerance of non-heterosexual relationships is likely supportive of physical, mental, and social well-being for SGM individuals, as SGM-tailored social media usage has been found to support resilience and mental well-being, as well as connectedness to SGM communities.¹⁶

Preventing children such as Neverov from obtaining information or images pertaining to same-sex attraction is a rejection of SGM status as an acceptable identity for young people. In order to *fulfill* the rights of children to achieve the highest attainable standard of health, the state must ensure that information relating to a diversity of sexual and gender identities and behaviors is accessible to children in an age-appropriate manner.

REGRESS: The Neverov case demonstrates Russia’s willingness to unlawfully harass SGM children.

Some observers have described the human rights violations stemming from the arrest of adults who have violated the “gay propaganda law,” arguing that the state is not progressively meeting human rights obligations as is required by international human rights law.¹⁷ The European Court of Human Rights’ 2017 ruling presented an opportunity for Russia to redirect its actions concerning SGM activism and the SGM community in general. However, the Neverov case presents an example of the state’s continued regression, in light of Neverov’s status as a child and as a political activist.

Neverov had previously been known to Russian authorities for his civil rights activism.¹⁸ That he was the first minor to be found in violation of the “gay propaganda law” is likely not a coincidence, as it may have been the government’s attempt to silence his speaking out against state policies and actions. Additionally, this case is not the first time that Russia has punished children for opposing governmental actions or policies; for example, in 2018, children were among those arrested for peacefully

protesting against Putin's inauguration.¹⁹ Given that article 15 of the Convention on the Rights of the Child states that governments should recognize children's rights to freedoms of association and to peaceful assembly, Russia is engaging in unlawful harassment of children.²⁰

Despite these precedents, the Neverov case demonstrates a continued regression in the government's rights obligations. Neverov's status as a political activist is a likely reason for having been found in violation of the "gay propaganda law," which exhibits discrimination on the basis of law enforcement. Article 26 of the International Covenant on Civil and Political Rights states that all persons are entitled to equal and effective protection against discrimination, including on the grounds of political or other opinion.²¹ That this law was selectively enforced in order to silence political dissent is a failure of the state to respect the right to be free from such discrimination. In order to *respect* children's rights to peaceful assembly and protection from discrimination on the basis of political opinion, the Russian state should refrain from punishing peaceful protestors to begin with, as well as from using the "gay propaganda law" as a pretext for doing so.

NEGLECT: Arresting individuals for "propaganda" reveals potential SGM status in a hostile environment.

If Russian officials continue to reveal potential SGM individuals in the country's currently homophobic climate, there are likely to be serious public health implications, such as increased anxiety and interpersonal violence. Stigma against people who are SGM has been high in Russia in recent years. As revealed by a 2017 poll that surveyed 1,600 people in 48 Russian regions, 80% of respondents rated homosexual sex as "reprehensible," a sizeable increase since both 1998 and 2008.²² Similarly, physical hate crimes in Russia have dramatically increased since the "gay propaganda law" took effect, with some resulting in murder.²³ Violence against those who are or are perceived to be SGM is not only associated with death and injury but also likely to cause a

heightened sense of fear among those who feel they could be targets. Given that fear of victimization has been found to be associated with depression and other poor physical and social health outcomes, this may result in furthering the public health burden for SGM populations and contributing to health disparities.²⁴

Although Neverov had already been in the public eye, the international attention drawn by this case has potentially made him a target of homophobic violence, regardless of whether he himself identifies as SGM. In this way, the Russian state has put him at additional risk. This is particularly concerning as, since the case broke, a "gay hunting" website has published SGM rights activists' personal information, with the encouragement to "hunt" them down. Although the site has now been removed, at least one activist appears to have been murdered in the wake of such a hate-based posting.²⁵ Neverov's safety may already have been at risk, as during his appeal process, he was reported to have said that his phone number and address had been posted online by authorities in light of some of his previous activism.²⁶ The increased attention specific to "gay propaganda" may decrease his real or perceived safety. This violates both the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, which state that "every human being [child] has the inherent right to life."²⁷ Additionally, in a document specifically addressing issues of sexual orientation and gender identity, the Office of the United Nations High Commissioner for Human Rights notes that states must attempt to "prevent, punish, and redress deprivations of life, and investigate and prosecute all acts of targeted violence."²⁸ While this document is in itself not legally binding, it provides clarification regarding how SGM identities are protected as an "other status" in the documents that are legally enforceable.

In order to *protect* children's rights to life and health, the Russian state should not punish individuals for their possession of any materials considered to be "gay propaganda," as this can have the effect of encouraging further negative attention and violence directed at these particular individuals.

Conclusion

The human rights framework outlines how states must progressively respect, protect, and fulfill its human rights obligations, including for SGM populations or those who may be perceived to be SGM. The “gay propaganda law” and its recent enactment may have been the canary in the coal mine, signaling Russia’s movement away from supporting the human rights of SGM communities.

The case of Maxim Neverov demonstrates the state’s complete disregard of the European Court of Human Rights’ ruling on the discriminatory nature of this policy and is a violation of international human rights. The enforcement of this law against an even more vulnerable population—SGM youth—in the face of the court’s ruling suggests that Russia may stop at nothing in its quest to eliminate any identity or expression that challenges cisgender and heterosexual norms. Prior to the eventual overturning of Neverov’s conviction, this case exhibited a clear *regression* in Russia’s meeting of its human rights obligations in addition to a *rejection* of SGM status as an acceptable option for children and *neglect* of its SGM people by fanning the flames of violence.

That Neverov won his appeal due to inadequate evidence of guilt is a sign that some Russian officials acknowledge that the state had gone too far in its attempts to stifle SGM expression. The setting of a precedent for appeal is a step toward supporting the rights of SGM people and their allies in Russia, but repealing the law is necessary to reduce the detrimental impacts on health and human rights. A 2019 ranking by ILGA-Europe scored Russia as the fourth least LGBT-friendly European nation, with repeal of the “gay propaganda law” being one of three recommendations for improving the plight of SGM people in the nation.²⁹ While the Russian legal system successfully defended human rights in the case of Neverov, a public health approach may facilitate further rights protection in years to come. This could occur through research on the effects of the law, nationwide policy change in its repeal, and tailored health education supporting the mental and physical health of SGM Russian children and adults. This may help ensure that SGM children feel

free to express themselves and flourish in private and public in Russia and around the globe.

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