



**Doc. 11560**

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## Ban on a Moscow demonstration by lesbian, gay, bisexual and transgender persons in 2007

**Reply to Written question<sup>1</sup>:** Written question No. 527 (Doc. 11316)  
Committee of Ministers

1. In reply to the honourable parliamentarian's question, the Committee of Ministers refers to its reply of 7 November 2007 to Written Question No. 524 by Mrs Acketoft: "Ban on a Chisinau demonstration by homosexuals".<sup>2</sup> It considers that its reply to that question, as well as the reply to the present question, serve as a useful reminder of the relevant human rights principles that have to be respected in this field. The Committee of Ministers recalls in particular that the rights to freedom of expression and freedom of assembly must be enjoyed by all without 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 interest 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, 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.<sup>3</sup> All member states must observe the Convention when they apply national law, notably in the light of the case law of the Court.

2. The Committee of Ministers furthermore recalls that its Recommendation No. R (97) 20 on "hate speech", referred to by the honourable parliamentarian, asserts that public authorities and institutions have a "special responsibility to refrain from statements ..., speech ... and other forms of discrimination or hatred based on intolerance" (Principle 1), especially when it is disseminated through the media. Any legitimate interference with freedom of expression should be "narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria [and] ... subject to independent judicial control" (Principle 3).<sup>4</sup> In this context, the Committee of Ministers invites all member states to implement its Recommendation No. R (97) 20 on "hate speech" as well as its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance in respect of lesbians, gays, bisexuals and transgender persons.

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1. Adopted by the Committee of Ministers at the 1017th meeting of the Ministers' Deputies on 6 February 2008.

2. See [Doc. 11450](#).

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

4. See Recommendation No. R (97) 20 on "hate speech", which provides an excellent basis on which to ask member states to take a public stand against discrimination against sexual minorities in line with the principles of Congress [Recommendation 211 \(2007\)](#) (Point 7.a), to investigate and, where necessary, prosecute criminal offences against or related to lesbians, gays, bisexuals and transgender persons (Point 7.c) and to ensure that any legal interference with freedom of expression is, *inter alia*, no more restrictive than necessary (Point 7.e).



3. Regarding the question as to what further action the Committee of Ministers is taking to ensure that all member states respect the right to freedom of assembly of lesbian, gay, bisexual and transgender persons and to address the use of homophobic hate speech by certain leading political and religious figures in a number of member states, it again refers to its reply to Written Question No. 524, in which it announced that it will consider how to enhance Council of Europe action in this area, in order to achieve more synergy, co-ordination and substantial results and has instructed the relevant services of the Secretariat to make proposals to this effect. In addition to the work undertaken by the Council of Europe Commissioner for Human Rights in this field, the Steering Committee for Human Rights (CDDH) has 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. It has also recently examined the topic of human rights defenders with a view to identifying ways and means to improve their protection. As a result of this activity, the Committee of Ministers adopted, on 6 February 2008, a declaration on the protection of human rights defenders and promotion of their activities, which is subject to reservations by the Russian Federation that were placed on the records. Freedom of association and peaceful assembly is, of course, at the heart of this declaration, and this includes those who defend the rights of individuals who are particularly vulnerable to victimisation, such as lesbian, gay, bisexual and transgender persons.