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Failure of the rule of law in Moldova, with mob allowed to prevent a lawful demonstration by lesbian, gay, bisexual and transgender persons (LGBT)

Reply to Written question[1]: Written question No. 548 (Doc. 11643)
Committee of Ministers

Written Question No. 548 by Mr Hancock (Doc. 11643)

On 11 May 2008 an attempt to hold a Gay Pride demonstration in Chisinau was frustrated when a hostile and potentially violent crowd of between 200 – 400 persons trapped 60 demonstrators in their bus, chanting hate slogans such as "beat them to death" and "don't let them escape". After 45 minutes the demonstrators were forced to hand over their banners and flags and abandon the demonstration. The police took no action, despite the presence of six police vehicles 100 meters from the event. Nine telephone calls to the police for help went unanswered.

The event's organisers, LGBT human rights organisation GenderDoc M., had, in accordance with Moldova's new Law on Assembly, pre-notified the local authorities of their intention to hold a demonstration. They had also requested police protection. Despite the fact that the new law does not empower local authorities to ban demonstrations, the Mayor of Chisinau, Dorin Chirtoaca, issued a notice on 8 May prohibiting the demonstration "in order to avoid any tensions in society" and citing "disagreement of religious organisations as well as letters from school students, dwellers of the city of Chisinau, opinions of public associations and of citizens... which accuse sexual minorities of aggressiveness and violation of spiritual and moral values."

The 2008 Pride event was the 8th demonstration (including all four annual pride events) involving the LGBT community to be banned or otherwise prevented since 2005. None has been permitted.

The Rapporteurs for the Monitoring Committee of the Parliamentary Assembly, commenting on the banning of the 2007 pride event, noted that the Supreme Court of Moldova had declared the ban on the 2006 Pride march to be illegal, being unjustified and disproportional under Article 11 of the European Court of Human Rights. They continued: “Nevertheless, the Chisinau authorities banned once again the organisation of some events planned within the framework of the 2007 LGBT Pride festival… We deplore the fact that after a final ruling by the Supreme Court of Moldova the Chisinau authorities continue to violate the law and deprive the representatives of the LGBT community of their right to freedom of assembly…… We expect the Moldovan authorities to take all necessary measures to put an end to this practice.”

The information provided by the Moldovan authorities to the Committee of Ministers for its reply to Written Question No. 524 on the banning of the 2007 Chisinau Pride event ignored both the afore-mentioned ruling of the Supreme Court and the comments of the Assembly Rapporteurs, stating only that the Chisinau City Council had "decided not to allow" the march "for reasons of public safety and the prevention of disorder". It also ignored the banning of a further demonstration in December 2007.

1. adopted at the 1075th meeting of the Ministers’ Deputies (20 January 2010)

It is clear that there have been serious failures of the rule of law in Moldova. The authorities have ignored the ruling of the Supreme Court, and have acted as though the new Law on Assembly did not exist. Moreover there is circumstantial evidence that the police and authorities have colluded with illegal actions amounting to "mob rule".

The events described above and the inadequate information provided by the Moldovan authorities to the Committee of Ministers in response to Written Question No. 524 also suggest a continued unwillingness at all levels of government within Moldova to respect the fundamental rights of lesbian, gay, bisexual and transgender persons.

Mr Hancock,

To ask the Committee of Ministers

Will the Committee of Ministers request the Moldovan authorities to:

– take, as a matter of urgency, all actions necessary to ensure that such failures in the rule of law do not re-occur;

– investigate the failure of the police to provide protection for the demonstrators, prosecuting or otherwise disciplining those responsible as appropriate;

– confirm unequivocally that they recognise the right of the LGBT community to exercise freedom of assembly;

– set out the measures that they will take to put an end to the practice of denying freedom of assembly to LGBT persons, as proposed by the Rapporteurs of the Parliamentary Assembly;

– commit to a specific timetable for the introduction of legislation providing protection from discrimination on the grounds of sexual orientation and gender identity and for the implementation of training and awareness raising programmes throughout government, but particularly among local authorities and the police?

Furthermore, will the Committee of Ministers provide a progress report on its review (announced initially in response to Written Question 524) of how to enhance Council of Europe action in support of the human rights of lesbian, gay, bisexual and transgender persons?

Reply by the Committee of Ministers

1. The Committee of Ministers recalls that in its reply to Written Question No. 524 on a “Ban on a Chisinau demonstration by homosexuals”, adopted on 7 November 2007 at its 1010th meeting, it took the view that “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.” The Court has moreover emphasised on several occasions that any discrimination founded on sexual orientation – including situations linked with freedom of assembly – is contrary to the Convention.[2]

2. The Committee of Ministers also draws attention to the decisions which it took at its 1031st meeting (2 July 2008) to strengthen Council of Europe action to safeguard the rights of LGBT persons. All committees taking part in intergovernmental co-operation were invited, within their terms of reference, to propose specific activities to strengthen in law and in practice the equal rights and dignity of LGBT persons and combat discrimination against them. The Steering Committee for Human Rights (CDDH) was also instructed to draft a

2. See for example Karner v. Austria, judgment of 24 July 2003; B.B. v. United Kingdom, judgment of 10 February 2004 or Baczkowski and others v. Poland, judgment of 3 May 2007.

recommendation on measures to combat discrimination based on sexual orientation or gender identity, to ensure respect for the human rights of LGBT persons and to promote tolerance towards them. The CDDH recently finalised a draft recommendation which covers the issue of freedom of expression and assembly.

3. The Committee of Ministers has been informed that a “draft law on preventing and combating discrimination” is currently under preparation in Moldova and that the government has proposed amendments to the Criminal Code with a view to combating and preventing further discrimination on grounds of sexual orientation and gender identity. It believes that the adoption and effective implementation of such legislation would constitute an important step in addressing the problems raised by the Honourable Parliamentarian.

4. The Moldovan authorities have assured the Committee of Ministers of the importance they attach to the principle of rule of law, including compliance by all public authorities with the decisions of the national courts and with Moldovan legislation.