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# Seeking better judgment: LGBT discrimination cases in Russia and at the European Court of Human Rights

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## ABSTRACT

Drawing upon data from field interviews, court records, and media and NGO reports, this article examines Russian cases claiming LGBT discrimination in domestic courts and at the European Court of Human Rights (ECtHR). The ECtHR has provided a less homophobic venue than Russia's domestic courts for such claims, but its judgments have had little effect in Russia. We argue that the Russian case illustrates a paradox in the domestic politics of international human rights litigation. Activists from domestic contexts where discrimination is most prevalent are most likely to make successful claims in international human rights courts, while in those same contexts, informal discriminatory norms are likely to be strongest, resulting in those international court decisions having the least impact on the ground.

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Since the passage of a national law in Russia banning 'homosexual propaganda' in June 2013, the atmosphere for the lesbian, gay, bisexual and transgender (LGBT) community in that country has become increasingly hostile.<sup>1</sup> A rise in hate crimes has ensued – from street violence to people using personal ads to lure unsuspecting gay men into liaisons and attack them, film the attacks, and post the video on the internet. LGBT employees have also been targets of discriminatory dismissals, and pro-regime groups have tried to undermine political opposition figures by labelling them or their supporters as gay and hence undesirable.<sup>2</sup> Public opinion polls likewise suggest declining levels of tolerance and acceptance toward the LGBT community. Unfortunately, Russians are not alone in facing a hostile domestic context, with strikingly similar discriminatory laws and local policies being passed in countries such as Poland, Uganda, Nigeria, and Malawi, and frequent targeted violence carried out against LGBT individuals even in countries with a relatively gay-friendly reputation, such as Brazil.<sup>3</sup> As is the case in other states, Russian LGBT activists apply a variety of tools to try to address discrimination, from public protest and consciousness-raising, to engagement with the legal system.<sup>4</sup>

This article analyses the intersection between homophobia and the legal system in Russia, examining cases of LGBT discrimination in the Russian courts and also exploring the cases of LGBT discrimination that have proceeded from Russia to the Council of Europe's judicial body, the European Court of Human Rights (ECtHR).

While many Russian victims of LGBT discrimination do not bring domestic legal cases against their attackers and employers, or against the state for its homophobic and discriminatory legislation, some have done so – typically individuals who are already involved in activism – with largely unsatisfying results. The ECtHR, by contrast, has provided a relatively less homophobic venue for such cases, and Russian human rights groups have thus turned to the ECtHR in an effort to gain traction for LGBT rights at home.

We find that while LGBT activists are taking their cases avidly to the ECtHR, the positive judgments the Court has rendered have had little effect in Russia – illustrating the limitations of an international court’s influence. This suggests a paradox of sorts in the domestic politics of international human rights litigation. In jurisdictions where formal legal discrimination is the most prevalent, thus creating the greatest opportunities for activists to make successful claims in international human rights courts, informal discriminatory norms are simultaneously likely to be strongest, such that the resulting international court decisions may have the least impact on the ground in these contexts.

We also find that certain types of LGBT cases are more successful than others at the ECtHR. Legal victories have occurred in cases about gay pride events and the existing laws that obstruct them, likely because these cases focus on *law-based* discrimination, namely, the failure of the Russian Constitution to support freedom of sexual orientation, and the passage of recent, explicitly discriminatory legislation. Moreover, these positive ECtHR judgments regarding LGBT citizens have centred around freedom of expression and association, and thus involve the straightforward application of the European Convention’s Article 10 on freedom of expression and information and Article 11 on freedom of assembly and association, in concert with Article 14 on discrimination. This is in contrast to cases brought to the Court by LGBT individuals or members of other marginalised social groups (such as ethnic minorities) who attempt to claim discrimination in cases of hate crimes or violent treatment at the hands of state authorities, where it is more difficult for individual victims to prove discriminatory behaviour, or to meet the extremely onerous Russian legal definition of a hate crime. Finally, we find that while the ECtHR’s judgments may not improve the status of the LGBT community in Russia in the near term, they do enable LGBT rights organisations to accumulate legal precedents in favour of their rights and to refine their use of strategic litigation in what is likely to be a long-term struggle.

We begin with a brief literature review and methodological discussion, followed by a section documenting instances of anti-LGBT hate crimes and evidence of LGBT discrimination and discriminatory laws in Russia. We then inquire into the reasons why victims of such crimes choose to bring cases to the attention of law enforcement and the courts in Russia; the various social, interpersonal and material pressures on individuals that discourage them from doing so; and the obstacles they encounter when they do. We present concrete cases brought into the Russian courts by members of the LGBT community and the small handful of LGBT organisations and human rights lawyers who assist them, and then examine the outcomes of Russian LGBT-related cases at the ECtHR. We conclude by analysing the types of cases that have obtained positive judgments there, and discuss the utility of ECtHR rulings in the context of Russia’s explicitly discriminatory regime.

## What Russian LGBT discrimination cases tell us about legal mobilisation in international human rights courts

A number of scholars of ECtHR jurisprudence on LGBT rights have pointed out that the Court has dramatically increased the frequency and expansiveness of its decisions ruling in favour of protecting LGBT rights under the European Convention.<sup>5</sup> Yet classic legal mobilisation literature on the impact of court rulings on the actual advancement of people's rights has exposed the 'myth of rights' that formalistic legal approaches had earlier assumed to be true: that the mere winning of victories in court decisions would lead directly to citizen empowerment.<sup>6</sup> Instead, scholars in recent decades in the legal mobilisation field have found repeatedly in various contexts that court rulings – both domestic and international – rarely have much impact without strong pressure from actors on the ground who advocate for the implementation of court rulings that advance citizens' rights.<sup>7</sup> In fact, in some cases, court victories are not even necessary to lead to social change, but the struggles for them can have the reverberating, indirect effects of emboldening rights advocates and galvanising movements.<sup>8</sup>

Our analysis in this article contributes to a broader understanding of the results of international human rights litigation efforts by activists, precisely through a case study of the impacts of litigation efforts at an international human rights court (the European Court of Human Rights) by a marginalised social group (LGBT individuals) from an authoritarian political context (contemporary Russia). Our study reinforces the legal mobilisation literature's longstanding propositions that court rulings alone rarely succeed in securing the rights of citizens whose rights had previously been violated, and that rights have complex, reverberating impacts on future efforts of social movements. It also bolsters international relations literature on transnational activism, which finds that a major impact of international treaties is their encouragement and support of activist mobilisation, including litigation, rather than direct inducement of state compliance.<sup>9</sup>

We add a further facet to the literature on social movement mobilisation in pursuit of human rights, through our observation that there is a potential paradox of legal mobilisation as we look cross-nationally. Those domestic environments where the most obvious and serious human rights violations take place are the ripest contexts for sparking a high volume of international human rights litigation efforts, and in which citizens can expect to achieve legal victories in their international claims. However, since those contexts are also likely to have governments and powerful segments of society that are hostile to the groups experiencing violations, court rulings are also least likely to lead to real rights advancements on the ground. This latter point is acknowledged by Helfer and Voeten in their recent analysis of ECtHR jurisprudence, which otherwise finds that ECtHR judgments to expand LGBT rights can spill over to inspire compliant national laws even in states not directly subject to the judgments where public acceptance of LGBT rights is low. They find that this pattern does not hold in cases where nationalist or religious-based national governments hold power – and indeed, we agree that this can explain the Russian government's lack of compliance with ECtHR norms on LGBT rights.<sup>10</sup> Yet scholars have generally studied these two dynamics of legal mobilisation and domestic compliance separately. Here, in our case study of Russian LGBT rights mobilisation, we propose that these two dynamics are linked and pulling in opposite directions for human rights outcomes.

There have been a number of works written about violations of the Russian LGBT community's rights in both the Soviet period and in more recent years since the end of Communism, and particularly under the political leadership of Vladimir Putin.<sup>11</sup> But little scholarly attention thus far has been devoted to the judicial strategies that Russian LGBT activists have employed to combat these violations and how successful those strategies are. Indeed, while there are some exceptions, the transnational legal mobilisation strategies of LGBT groups are under-examined in the international human rights law literature.<sup>12</sup> In this article, we assess the conditions that shape the relative success or failure of litigation as a strategy leading to successful court decisions in different types of Russian LGBT rights cases, and the degree to which legal mobilisation is effective in improving the human rights environment for LGBT citizens.

## Methodology

The interviews we cite in this article are a subset of a larger group of interviews we carried out in summer 2014 in Moscow and St. Petersburg for a broader project on gender discrimination cases from Russia at the ECtHR.<sup>13</sup> Specifically, we draw here on interviews with activists from two major LGBT rights groups that engage in a variety of LGBT rights promotion activities – Polina Andrianova with Vykhod ('Coming Out'), founded in 2008 in St. Petersburg, and Masha (Maria) Kozlovskaja at the St. Petersburg office of the Russian LGBT (RLGBT) Network, founded in 2006 – as well as Tatiana Lokshina, the director of the Moscow office of Human Rights Watch.<sup>14</sup> As material on LGBT discrimination is hard to come by in the mainstream Russian press, we also refer to data published in these groups' reports, which monitor violations of LGBT rights across the country. With regard to LGBT-related court cases, we bring in material from our interviews with two lawyers who work with Russian LGBT rights groups and human rights organisations, one in Moscow (Kirill Koroteev) and one in St. Petersburg (Dmitry Bartenev).

In addition to our field research, we searched news sources and court records to trace LGBT-discrimination cases at the ECtHR and in Russia's domestic courts. Regarding Russian domestic court cases, we used the *Rospravosudie* database to look up LGBT rights cases that our interviewees mentioned to us. For the ECtHR case records, we used the HUDOC database of all case materials, searching by keywords and articles of the European Convention to attempt to locate all cases against Russia deemed admissible by the Court regarding LGBT rights.

## Homophobic discrimination, violence and the law in Putin's Russia

Socio-political organisations aimed at promoting awareness of LGBT issues, solidarity within the LGBT community, and the protection of LGBT rights arose in the early 1990s and have continued to proliferate in Russia, though not without struggle, especially in recent years.<sup>15</sup> Vladimir Putin's rule has been characterised by a growing social conservatism promoted by the regime and an ever-stronger assertion of Russian sovereignty. A central aspect of this conservatism entails Russia distancing itself from so-called 'western' values and embracing 'traditional' values instead. The Russian Orthodox Church has become a close partner of the regime in this regard, encouraging policies that reinforce

traditional gender norms for men and women (emphasising the ‘traditional family’) and generally condemning reproductive rights and homosexuality.<sup>16</sup> This alliance has given Church activists a more prominent public platform, granting them a louder voice for the endorsement of sharply defined sex roles and the defamation of feminism and LGBT rights.<sup>17</sup>

As part of this conservative trend, in March 2012 a law banning promotion of homosexuality to minors was passed in St. Petersburg; this joined previous laws passed in multiple Russian cities, in effect outlawing LGBT rights rallies and the distribution of literature about homosexuality.<sup>18</sup> In June 2013, a nationwide ban on homosexual ‘propaganda’ was passed by the Russian parliament in a vote of 436 to zero, with one abstention, before Putin signed it into law. It forbade the distribution or expression of information that portrayed ‘nontraditional’ sexual relationships in a positive light or that equated them in value with heterosexual relationships and that did so in such a way that minors could be exposed to this information.<sup>19</sup>

Changes in law can both reflect and promote changes in public opinion. This appears to have taken place in Russia, where both the laws and public opinion towards homosexuality have varied over time. During the Soviet era, homosexual male sex was criminalised (this was overturned only in 1993 following the end of Communism).<sup>20</sup> In 1989, at the height of Gorbachev’s glasnost (openness) movement, in response to the newly public issue of homosexuality, the (then) state-run polling agency asked respondents about popular attitudes toward homosexuals. The public was unfriendly toward sexual minorities, with 35 percent of respondents thinking homosexuals should be ‘liquidated’, and 28 percent judging that homosexuals’ ‘isolation from society’ was the appropriate response. After gay male sexual activity was decriminalised, public attitudes gradually warmed. As of 1999, only 15 percent of those polled endorsed ‘liquidation’, while 23 percent still preferred ‘isolation’.<sup>21</sup> The proportion of Russians polled in 2005 who felt that homosexuals should be ‘isolated from society’ was 31 percent, but by that time, fully 49 percent thought gays were best ‘left to their own devices’.<sup>22</sup>

However, only a few years after the national ‘homosexual propaganda’ law’s passage in 2013, a near reversion to Soviet-era attitudes appeared to have taken hold. A September 2015 Levada Center poll found that 21 percent of Russian adults surveyed favoured the ‘liquidation’ of LGBT people, and 37 percent preferred their ‘separation from society’ – for a total of 58 percent (versus 63 percent in 1989).<sup>23</sup> In December 2017, the Levada Center surveyed Russians about their opinions on homosexual sex between adults, revealing that 83 percent of respondents deemed it ‘always’ or ‘almost always’ ‘reprehensible’ (*predosuditel’no*), up from 68 percent in 1998, and 78 percent in 2008. Moreover, while in 2008 those aged 18–30 were more likely than older Russians to express tolerance with regard to homosexual sex, the 2017 poll showed that the degree of homophobia among younger and older people was strikingly similar.<sup>24</sup> This is a significant reversal, given public opinion trends in much of the world documenting a progressive shift towards greater acceptance of homosexuality and equal rights for LGBT people, albeit depending on countries’ degree of secularism and regional location.<sup>25</sup>

Hate crimes against homosexuals became more common in Russia following the passage of the 2013 law, doubling by 2017 according to one study.<sup>26</sup> They were also more often recorded by their perpetrators and posted on the Internet. One anti-gay vigilante group calling themselves ‘Occupy Pedophilia’ began a campaign in 2013 to lure

gay men and teens via personal ads to an apartment or other location, and then physically abuse them, videotaping the proceedings.<sup>27</sup> One such video shows an attack on a 15-year old boy whom the group presumed to be gay. The Occupy Pedophilia adherents find him in a park, question him about his homosexual activity, taunt him, kick him, and finally pour urine from a bottle onto his head, saying that this was a 'cure' for his homosexuality.<sup>28</sup> The Russian LGBT Network reported that 15 cases of attacks by Occupy Pedophilia had come to their attention in 2014.<sup>29</sup> As of October 2015, nine members of Occupy Pedophilia had been convicted for at least 19 such attacks.<sup>30</sup>

It should come as no surprise that hate crimes against the LGBT community also occurred before the national law's passage. A case of particularly egregious anti-gay violence came to light in May 2013 when a 23-year old Russian man, Vladislav Tornovoi, was murdered by several men (one of whom was a former classmate) after he came out to them as gay. They then reportedly sodomised him with multiple beer bottles and beat him to death with a rock.<sup>31</sup> The level of brutality in this case was apparently such that the law enforcement officials in Volgograd, where the murder occurred, conceded that the motive for the killing was homophobia, although, as will be discussed below, the acknowledgment of hate crimes against LGBT people is a rarity.<sup>32</sup> By contrast, the February 2012 protest performance by feminist punk art collective Pussy Riot in Moscow's Cathedral of Christ the Saviour, in which they sang 40 seconds of a song criticising the Russian Orthodox Church for its embrace of Putin, was deemed a 'hate crime' by the Russian authorities, suggesting a selective and politically expedient application of the law.

After the 2013 law was passed, less violent forms of discrimination against LGBT Russians increased as well. Cases of employment discrimination have become more frequent, in which people lose their positions or are threatened with firing upon coming out. Anti-gay activists in Russia have campaigned against schoolteachers in particular, exposing the sexual orientation of individuals who were largely closeted as well as those who were publicly active for LGBT rights. A case in February 2014, in which a music teacher was fired from a school in St. Petersburg after the involuntary public exposure of her sexual orientation, was one of six cases over the previous year in which teachers had been similarly targeted. Three of them – when confronted – resigned, and only the music teacher chose to pursue a legal case for reinstatement. While anti-gay activists do target LGBT activists, in this case the teacher had been out to 'only a few close friends' and had reportedly 'never attended gay pride rallies'.<sup>33</sup>

Other forms of discrimination embraced and carried out by state authorities also preceded and followed the passage of the 2013 law. Efforts to hold LGBT rights rallies and gay pride events, for example, have been consistently obstructed by Russian authorities. Starting in 2006, activist Nikolai Alekseyev had organised a gay pride event each spring in Moscow, and for five years was denied a permit by city authorities. In 2012, a Moscow court banned gay pride events in the city for the next one hundred years.<sup>34</sup> That year, an LGBT 'kiss-in' held in Moscow was met by a hostile counter-protestor who hurled eggs at the handful of participating couples; police ended the event by arresting the LGBT protestors.<sup>35</sup> A gay pride event planned for May 2014 in Moscow was banned by the city, so activists held two smaller rallies there (involving a few dozen people) a few days later.<sup>36</sup> Although one of these gatherings was technically permitted, as it was held in Moscow's 'Hyde Park' corner (an area where free speech is permitted), both events resulted in the arrest of several protestors.<sup>37</sup> Despite this history, in July 2014 a small



LGBT rights rally took place within a ‘free-speech zone’ created in St. Petersburg by city authorities the previous year, and the two dozen activists who participated did not face interference, contrary to the typical experience at such events.<sup>38</sup>

As we describe in the following two sections, Russian LGBT rights activists have been very active and determined in reacting to these various forms of human rights violations by taking cases to domestic courts and eventually to the ECtHR. They typically face a lack of receptivity in the domestic legal system and are thus frequently prompted to send applications to the ECtHR in search of justice.

### **Obstacles to litigation: social and legal barriers**

There are many reasons why individual citizens – regardless of sexual orientation – prefer not to bring instances of violence or discrimination into the public eye.<sup>39</sup> Women victims of rape or domestic violence, for instance, may fear retaliation from the perpetrator, feel reluctant to ‘air dirty laundry’ in public, or be reliant on an abusive partner for material support. They may also reasonably anticipate that their revelation would result in their being blamed for the violence perpetrated against them, or that they might be unable to endure or afford a lengthy court process with unpredictable (and often unsatisfying) results.

There are further barriers preventing victims of discrimination or violence within the LGBT community from turning to the police or going to court with their complaints. One of these is fear of the likelihood of further violence and discrimination. Several cases that have come to the attention of the RLGBT Network reflect such constraints, including the case of a transwoman in St. Petersburg, who was attacked in the corridor of her home by relatives who tore out clumps of her hair and beat her ‘severely’. A lawyer with the RLGBT Network advised the victim on how to address the situation officially, but the victim ‘withdrew her report’ in favour of trying to resolve the situation ‘in an amicable way’.<sup>40</sup>

In interviews, activists raised another reason specific to LGBT people for avoiding the police and courts: the fear of being ‘outed’. As Tatiana Lokshina of Human Rights Watch explained, even in cases of extreme violence and humiliation, such as those carried out by the gay-bashing vigilante groups described above, there may be sufficient evidence to bring a court case ‘but the level of homophobia in this country is so over the top, the last thing that the victims want is to get even more exposure’.<sup>41</sup> Masha Kozlovskaya at the RLGBT Network likewise noted that many LGBT people believe that not only would they lose a court case if they managed to bring one, but that people are reluctant to come out publicly, ‘especially if it means having the media use your name in an LGBT case’.<sup>42</sup>

Internalised homophobia and self-blame for the harm they suffer may make LGBT people additionally reluctant to turn to law enforcement and the legal system. As Vykhod’s Polina Andrianova noted, Russian citizens in general tend to have little knowledge about their rights, and within the LGBT community the situation may be exacerbated by ‘internalized homophobia’ – a belief that ‘whatever happens to them is their own fault, they shouldn’t stick out, or advertise their orientation, and therefore, if something happens to them [they see it as] their fault’.<sup>43</sup>

As a result, LGBT rights activists explained that those who did choose to go to the police and pursue their cases within the Russian system often did so out of a political



commitment as activists, and almost exclusively did so with the help of an LGBT organisation rather than on their own.<sup>44</sup> Such a commitment serves as a motivation to endure what is often a long, frustrating process in which the applicant typically encounters further discrimination at the hands of police and within the courts. Andrianova of Vykhod noted that while perhaps ten people per month turned to their legal aid programme on a confidential basis (reporting incidents or making inquiries), it was much rarer for the organisation to take on a legal case – and just as rare that a client would be willing to pursue one: ‘We choose cases that could be valuable from a strategic point of view – and that requires people to consent to the use of their names. For the most part, it’s activists who are prepared to do that ... people who are already involved in defending their rights’.<sup>45</sup> Maria Kozlovskaja at the RLGBT Network agreed: ‘Those who turn to us do so because they are activists or are close to being activists and have a passion for wanting to punish the perpetrators’.<sup>46</sup> Because of the limited circle of people from whom cases could be drawn, explained Andrianova, one of Vykhod’s tasks was ‘to expand the circle of activists so that our strategic litigation can be effective’.<sup>47</sup>

Whether activists or not, those who attempt to report LGBT-related attacks to police typically find that their complaints are not taken seriously.<sup>48</sup> Human rights and LGBT rights organisations monitor and document such instances, which demonstrate an evident pattern when taken collectively. An illustrative example is a case that came to the attention of the RLGBT Network in 2011, in which a woman in Perm who was physically attacked and robbed by two men who approached her on the street asking for a lighter – and who also made an ‘offensive remark about her [sexual] orientation’ – successfully filed a police report. However, the police ‘made it clear they were not going to investigate the crime properly as there were too many similar incidents’.<sup>49</sup>

Likewise, Gleb Latnik, an LGBT activist from Pervouralsk interviewed for a 2014 Human Rights Watch documentary, explained that after being attacked at an LGBT rights demonstration (he was struck a hard blow to the forehead, resulting in facial swelling and bruises) he went to the police, but was told at the station, ‘That’s all right. You’re gay. It’s normal that you were attacked. Why would you want to submit a complaint?’<sup>50</sup> In a similar case in 2012 in Novosibirsk, an LGBT activist was accosted after attempting to raise a rainbow flag associated with a political demonstration. A regional chapter of the RLGBT Network reported this to the police, and asked them to open a criminal case on charges of battery ‘arguing that the person had been beaten up because he was gay’. The police, however, argued that individuals – not organisations – were empowered to file battery complaints and thus claimed they had ‘no authority to open a criminal case’, ignoring the activists’ argument that ‘criminal proceedings must be initiated whenever a hate crime is reported’.<sup>51</sup>

Even attacks that appear to be hate crimes, which result in convictions of some kind, may not be labelled by prosecutors as hate crimes and as a result carry lighter sentences.<sup>52</sup> In a 2014 case from Viliuchinsk (Kamchatka region), a 36-year old man was beaten to death at a birthday party after reportedly coming on to one of the other guests. The perpetrator received a sentence of one year of ‘correctional tasks’ and was ordered to pay 1.5 million rubles in compensation, as the court found he had acted ‘under the influence of extreme emotional disturbance’ and thus failed to find any bias-related motive.<sup>53</sup> Recognising this problem, one of Vykhod’s strategies as of 2014 was to adopt cases that could be construed as hate crimes and hate speech in an effort to get courts to recognise hate crimes

against the LGBT community. If courts would acknowledge hate as an aggravating circumstance in attacks on members of the LGBT community, harsher sentences would be more likely. But to date, ‘judges don’t acknowledge [these] as hate crimes because they believe that LGBT people are not a social group’ and thus – by law – cannot be subjected to a hate crime.<sup>54</sup>

A study by Russian sociologist Alexander Kondakov confirmed this impression. By searching two Russian legal databases and systematically applying a set of criteria for LGBT hate crimes to the description of the cases he found there (since the Russian government does not keep statistics on the number of hate crimes committed annually against LGBT individuals), Kondakov found not only that the number of hate crimes against members of the LGBT community had risen since the passage of the anti-gay-propaganda law, but that of the 307 hate crimes he identified that were registered between 2010 and 2016, there were only four cases where the court labelled the incident a ‘hate crime’.<sup>55</sup>

One factor contributing to this could be a lack of awareness among law enforcement officials that LGBT people *could* be subjected to hate crimes. RLGBT Network activist Masha Kozlovskaja argued that investigators did not want to have to persuade their bosses that a hate crime of that nature had taken place, and judgment as to whether an attack constituted a hate crime was often left to the particular investigator working the case. Kozlovskaja herself encountered this obstacle when she tried to report a physical attack against her in 2013: ‘When I reported an attack on myself to the police, and wrote that it was ‘associated with enmity (*nenavist’iu*) toward LGBT’, they asked me what ‘LGBT’ meant. If they don’t have a clue what that is, how are they going to investigate it?’<sup>56</sup>

Activists also find that police investigators seek to avoid bringing more serious charges against the perpetrators of violent attacks on LGBT protestors. As lawyer Kirill Koroteev explained, in such cases investigators try to shunt the proceedings into the realm of ‘private prosecution’ – a judicial procedure in which the public investigator and prosecutor play no role, and that takes place in front of a justice of the peace (magistrate) and typically results in fines and little to no jail time. More serious charges result in ‘public prosecutions’, with concomitantly more significant punishment for perpetrators. In order to merit a public prosecution, attacks must be shown to have caused moderate or grievous bodily harm, or to have been accompanied by ‘aggravating circumstances’ such as an anti-social motive – either ‘hooliganism’ or ‘hatred’.<sup>57</sup>

One aim of the lawyers and activists involved in these cases is to obtain tougher sentences against the perpetrators of attacks on LGBT people, since a fundamental contributing factor to discrimination within the legal system is a systematic failure to take such attacks seriously. Convincing prosecutors that an attack was motivated by ‘aggravating circumstances’ such as hooliganism or hatred is key to this process. However, while prosecutors could conceivably agree to charge the perpetrator of an LGBT-related attack under the ‘hooliganism’ statute (Article 213 of the Russian Criminal Code), or under the light bodily harm or battery statutes (Articles 115 and 116), it is extremely rare for them to categorise attacks on members of the LGBT community as ‘hate crimes’.<sup>58</sup> For a prosecutor to agree to apply the hate crime statute, a prior necessary step would be the acknowledgment that the LGBT community indeed constituted a social group worthy of protection. The same would be true for any prosecutor agreeing to apply the hatred motive in the event of a case of light bodily injury or battery against members of the LGBT community.

Prosecutors, however, are typically reluctant to make that leap, and thus, attacks that might appear to be obvious instances of hate crimes against LGBT people were instead typically characterised by prosecutors as mere ‘hooliganism’. Kozlovskaja explained, ‘In our experience there’s not a single instance of a hate crime [against an LGBT target] being [prosecuted as] a hate crime against LGBT people as a social group; they are always [prosecuted] either as an ordinary crime or as a crime motivated by hooliganism’.<sup>59</sup> Activists at Vykход also noted that they had tried to get evident hate crime attacks registered as such within the legal system, but failed. In one instance, anti-gay agitator Gleb Likhотkin shot a gas pistol (*travmaticheskoe oruzhie*) at participants in a ‘Rainbow Flash Mob’ action in a St. Petersburg park in May 2012, striking two of them. Likhотkin was convicted by a Russian court, but the judge rejected the ‘hatred’ motive, ruling only on the hooliganism statute. After the attack, Likhотkin said that he planned to form an organisation called ‘City without Sinners’, aimed at protecting St. Petersburg from the ‘sodomites’ and ‘pederasts’ who had been propagandising homosexuality among minors.<sup>60</sup> Similarly, following an attack on a gay pride event in St. Petersburg in June 2013, a case was brought but ‘they only acknowledged ‘hooliganistic’ motives’, leaving the ‘hate crime’ charges off the table.<sup>61</sup>

### Going public: LGBT cases in Russian courts

While many of the cases described above concern physical violence directed at members of the LGBT community, Russian LGBT groups and the lawyers affiliated with them also address other types of cases, from workplace discrimination to violations of the right to free speech and assembly, to cases challenging Russia’s laws banning the ‘propaganda’ of homosexuality to minors, and laws challenging Russia’s failure to recognise same-sex marriages. They have also represented LGBT organisations targeted by Russia’s ‘foreign agent’ law, which punishes groups for engaging in vaguely defined ‘political’ activity while receiving foreign financial support.<sup>62</sup> LGBT groups and the lawyers who work with the community typically handle multiple types of cases. The RLGBT Network’s cases largely concerned hate crimes (attacks), and freedom of assembly issues, in which organisations and activists across Russia’s regions were prevented from carrying out public actions, or were arrested at those actions. In the latter cases, Kozlovskaja explained, ‘they aren’t turning to the courts, they’re being accused themselves of [homosexual] propaganda’. The Network thus also took up cases challenging Russia’s federal and regional laws forbidding the ‘propaganda’ of ‘non-traditional’ sexuality.<sup>63</sup> Vykход’s range of cases was similar, focusing on hate crimes, hate speech, and illegal detentions during street actions.<sup>64</sup>

While people also came to the RLGBT Network with workplace discrimination cases, Kozlovskaja thought that under the current circumstances there were ‘no instances where going to court on matters of labour law – or family law – would end well’. However, she added, her group had heard of many instances where LGBT employees (like the music teacher mentioned above) were fired on the basis of their sexual orientation, or, more typically, had been forced to resign: ‘The typical practice is to poison the workplace [for the person] and compel them to write a statement that they’ve resigned of their own accord so that the person can’t go to court afterward’.<sup>65</sup> Without protection from discrimination as a social group, LGBT employees would be unlikely to win such cases. Other civil

rights cases involving LGBT issues had also met with little success. Lawyer Dmitry Bartenev mentioned a case, for example, involving a transgender man who had earlier in life given birth to a son. Following his gender-affirmation surgery, he found that every time he sought to prove that he was the father of the child, he had to disclose the entire history of his surgery, since the birth certificate indicated that he was the ‘mother’ of the child. The authorities refused his request to change the birth certificate, and Bartenev brought the case to court and lost, and then lost the appeal, paving the way to bring the case to the European Court of Human Rights on the grounds of Article 8 (the right to respect for private and family life).<sup>66</sup>

LGBT free speech cases have provided many opportunities for strategic litigation in the Russian courts. As Bartenev explained, these cases would arise when an organisation would plan to hold a ‘peaceful assembly ... and be denied permission based on [Russia’s] anti-gay propaganda laws and other legislation’. He had brought two cases (from two different Russian regions) to the Constitutional Court with no success.<sup>67</sup> Kirill Koroteev likewise brought a case to court when an LGBT activist applied to organise a protest picket in Moscow, in support of a statement that President Putin had made in November 2013: ‘We should not create any xenophobia in society on any principle against anyone whatsoever, including against people of nontraditional sexual orientation’.<sup>68</sup> Despite the fact that the activist was technically *supporting* a statement by the Russian president, the Mayor’s office ‘prohibited the picketing on its substance, saying it’s considered homosexual propaganda’. Koroteev took the Mayor’s office to court and lost. ‘The appeal is now pending’, he reported, ‘and when we lose the appeal, it’ll be a very good, strong case for the ECHR’.<sup>69</sup> Masha Kozlovskaja similarly described a case where her organisation had sought to help activist Dmitrii Isaev achieve permission to hold a picket in ‘defense of LGBT [rights]’ in Kazan. Isaev was denied permission to protest, and a complaint was instead raised against him based on the federal laws forbidding homosexual propaganda. Kozlovskaja’s organisation assisted Isaev in submitting his application to the ECtHR regarding the violation of his right to free assembly as well as a discrimination charge under Article 14.<sup>70</sup>

LGBT-themed demonstrations also provided opportunities for court cases when protestors agitating for LGBT rights were beaten up by counter-protestors, ‘and the authorities failed to investigate – either completely, or failed to investigate the motive of hatred [behind these] crimes’.<sup>71</sup> However, as discussed above, in such cases the Russian law enforcement system generally refused to find a ‘hatred’ motive, thus creating an opening for an application to the European Court for Human Rights on the violation of the complainant’s right to an effective remedy (ECHR Article 13).

Cases challenging the homosexual propaganda laws produced mixed outcomes within the Russian judicial system. As Bartenev explained, the Constitutional Court had examined a case challenging the 2012 law in St. Petersburg against homosexual propaganda, and while it had let the law stand, the decision was, in Bartenev’s words, ‘very reserved – there’s not a hint that homosexual behaviour is kind of bad’. Condemnation of homosexuality could still be read ‘between the lines’, but was not, at least, overt. On the heart of the matter, however, the Constitutional Court judged that the law, as Bartenev put it, was ‘not discriminatory because it concerns everyone regardless of their sexual orientation – so you can’t promote homosexuality regardless of your sexual orientation – which is hilarious’.<sup>72</sup> In short, the Court found the law was not discriminatory because the ban

allowed neither gays nor straights to promote homosexuality to minors, and thus left the law in place.

Occasionally LGBT rights organisations met with success on this issue in Russia's national courts. In one such instance, the RLGBT Network had supported a woman from the city of Nizhnii Tagil, accused under the national homosexual propaganda law. The defendant, journalist Elena Klimova, had founded a support website for LGBT teenagers called 'Deti [Children]-404', echoing the error message received when a webpage is not found.<sup>73</sup> In taking the case, the organisation had assumed they would lose and that the case would become another opportunity for strategic litigation at the European Court for Human Rights. However, 'to our surprise', Kozlovskaja explained, 'we won in a Russian court'. The case against Klimova had been brought by St. Petersburg city council deputy Vitalii Milonov, who sought to show that the Deti-404 site was 'propagandizing homosexuality among minors'. In response, Kozlovskaja's group 'tried to prove that publishing [information] on the history of homosexual and bisexual teens, and transgendered [people] wasn't propaganda, [and] that it was aimed at providing psychological help'. Klimova's side won in February 2014 when the court dismissed the charges, ruling that the site provided assistance rather than propaganda.<sup>74</sup> The charges were repeated a year later, but were dismissed on appeal in the Nizhnii Tagil courts. Kozlovskaja found this 'interesting, because often those cases are politicized, especially in Petersburg and Moscow; they look to see what's going on around them, how the politicians are conducting themselves [on the issue], and so on. But there [in Nizhnii Tagil], apparently there wasn't any political pressure'.<sup>75</sup> Klimova's run of good luck within the local courts did not last. In July 2015 she was convicted in Nizhnii Tagil under the homosexual propaganda law, and fined 50,000 rubles.<sup>76</sup> In 2016, another Russian court found her guilty of 'spreading banned information' on the website; the state media-regulating body, Roskomnadzor, then shut down the Deti-404 site.<sup>77</sup>

While it is rewarding to win the occasional case within the Russian courts, the more frequent losses are important, as it is these cases that can then be taken to the international level and potentially addressed at the European Court of Human Rights. As we have demonstrated above, there are ample opportunities arising from violations of LGBT citizens' human rights, combined with a lack of proper investigation or adequate judicial decisions, for Russian LGBT rights activists to mobilise by sending applications to the ECtHR. The next section reviews the set of cases on LGBT-related violations at the ECtHR, their outcomes, and their negligible impact on Russian laws and on Russia's law enforcement and legal system.

## **LGBT cases at the ECtHR**

The European Convention on Human Rights (ECHR) and the Constitution of the Russian Federation are similar in their silence regarding 'sexual orientation' as a form of identity or social group protected from discrimination (Article 14 of the ECHR) or guaranteed equality of rights and freedoms under the law (Article 19 of the Russian Constitution). Both documents include an 'other' category in these articles that is intended to capture social groups outside of the specified list. However, while the European Court has established clear case law that counts discrimination based on sexual orientation as falling within the 'other' category, the Russian legal system has failed to recognise sexual orientation as a legitimate category for claiming discriminatory treatment.

As discussed above, the dominant types of discrimination cases that have emerged to date from the LGBT community into the Russian law enforcement and legal system concern violations of rights to free assembly, expression, and association; hate crimes; and discriminatory employment practices.<sup>78</sup> In addition, there have been rare unsuccessful cases brought in Russian district courts by same-sex couples claiming a Constitutional right to register their marriages.<sup>79</sup> Of these four types of cases, only cases of the first type have reached the judgment phase at the ECtHR from Russia; the others remain in the preliminary stages of the process.

The majority of cases at the ECtHR to date concern discrimination in freedom of assembly and association (Article 11). LGBT activist Nikolai Alekseyev has sent many case applications to the ECtHR to challenge Russian bans on or refusals to allow gay pride events or other LGBT-related demonstrations. The first case he sent to the ECtHR – actually a bundle of three case applications from events in 2006–2008 – concerned Moscow’s ban on gay pride parades. This case, *Alekseyev v. Russia*, ended with an ECtHR judgment in October 2010 finding violations of ECHR Articles 13 (right to an effective remedy) and 14 (discrimination) in conjunction with Article 11 (freedom of assembly).<sup>80</sup> Alekseyev continued to send additional case applications to the ECtHR on similar violations of freedom of assembly while awaiting that decision (and in the years subsequent to the decision) because various local governments in Russia, including Moscow’s, continued to shut down LGBT-related rallies following the original *Alekseyev v. Russia* judgment. The Court combined all of these case applications (51 in total, all including Alekseyev as an applicant) into a single case,<sup>81</sup> and communicated it to the Russian government in January 2016.

One case, *Bayev v. Russia*, successfully challenged Russia’s anti-gay propaganda laws and resulted in an ECtHR judgment in 2017. The applicants claimed violations of Article 10 (freedom of expression) in conjunction with Article 14 (discrimination). The case included a group of three applications lodged between 2009–2012, and was communicated to the Russian government by the ECtHR in 2013, with a judgment following four years later.<sup>82</sup> The applicants were represented by lawyer Dmitry Bartenev, who has represented a great number of the LGBT cases in Russian domestic courts and at the ECtHR. The *Bayev v. Russia* cases arose from events in the cities of St. Petersburg, Arkhangelsk, and Ryazan between 2009 and 2012, in which the applicants (Bayev, Kiselev, and Alekseyev) stood in public locations – sometimes near children’s schools or libraries, in an attempt to challenge the propaganda law explicitly – and held up signs supporting acceptance of homosexuality. For example, Bayev held up banners in front of a school in 2009 stating: ‘Homosexuality is normal’ and ‘I am proud of my homosexuality’. As a result, he was charged with an administrative offence and fined.<sup>83</sup> Kiselev held up a banner in front of an Arkhangelsk children’s library concerning suicide among homosexual teens, concluding with the phrase ‘Homosexuality is good!’ He was similarly charged and fined with an administrative offence.<sup>84</sup> In its judgment, the ECtHR found that the Russian state had not provided ‘convincing and weighty reasons justifying the difference in treatment’ in Russian legislation between same-sex and opposite-sex relationships, and thus that both Articles 10 and 14 had been violated.<sup>85</sup>

A freedom of association case still in progress at the ECtHR is *Zhdanov and Rainbow House v. Russia*, which was sent to the Court in 2008 and communicated in 2011.<sup>86</sup> The case concerns the LGBT organisation ‘Rainbow House’ (*Raduzhnyi dom*) in the city of



Tyumen, which was twice refused official registration as an NGO. According to the ‘expert opinion’ and logic of the local registration authorities, the organisation qualified as engaging in ‘extremist activities’ because its aims involved ‘not only protection of rights and legitimate interests of citizens with non-traditional sexual orientation, but also attempts to increase the number of such citizens by converting those who, without such propaganda, would have retained a traditional sexual orientation’. Moreover, the authorities argued that the organisation’s propaganda threatened ‘destroying moral values of the society and undermining the sovereignty and territorial integrity of the Russian Federation by decreasing its population’, suggesting that the traditionalist nationalism Helfer and Voeten identify as a block on state acceptance of LGBT rights is operating in contemporary Russia. The Rainbow House case claimed a violation of Article 11 (freedom of assembly and association) in tandem with Article 14, as NGO registration was refused based on the applicant’s sexual orientation. A somewhat similar case, once again lodged by Alekseyev and represented by Bartenev, concerns Moscow registration authorities’ refusal to register an organisation Alekseyev created in 2009, the ‘Movement for Marriage Equality’, which advocates for same-sex marriage legalisation (Alekseyev and Movement for Marriage Equality v. Russia). That case also claims violations of ECHR Articles 11 and 14, and was communicated by the ECtHR to the Russian government in March 2016.<sup>87</sup>

LGBT hate crime cases from Russia, which plausibly would claim discrimination (Article 14) in the state’s failure to investigate and provide an effective remedy to victims (Article 13), have not yet reached the stage of communication at the ECtHR, but Koroteev of Memorial and Bartenev both described hate crime cases (attacks on activists protesting against the law on homosexual propaganda) that they were either preparing or had already sent to the Court.<sup>88</sup> In general, the ECtHR has a very high standard for finding violations of Article 14 on discrimination. Applicants bringing an Article 14 claim must show that people are being subjected to adverse treatment based on their membership in an identifiable social group, and that this group is suffering as a result of discrimination relative to other groups in society. In order to persuade the Court, systematic data must be provided to demonstrate a pattern of bias, or there must be clear evidence that the violation occurred because of someone’s bias against that group.

One example from ECtHR case law beyond Russian applications concerns police brutality against three Romani men in the case *Sashov v. Bulgaria*. In that case, police officers – while arresting the men – had fired their guns at the men, beaten them, and stuffed two of the three into a car trunk. The police had also voiced anti-Roma slurs such as ‘damn Gypsies’. Even in this case, the Court did not find a violation of Article 14. The judges claimed there was insufficient data to prove that excessive violence on the part of the police (which the Court did affirm) had been motivated by racism.<sup>89</sup> If it is difficult to establish a pattern of racist bias within the Bulgarian police (despite six previous cases won by Roma applicants against Bulgaria, such as *Nachova and Others v. Bulgaria*, nos. 43577/98, 43579/98 ECtHR 2005), a pattern of bias may well be much harder to demonstrate with discrimination against LGBT people, given the paucity of cases that have come to the ECtHR concerning putative hate crimes against them thus far.

Finally, there is one case in the ECtHR communication stage that claims violations of discrimination (Article 14) regarding respect for private and family life (Article 8) because of the Russian state’s refusal to allow same-sex couples to marry. The case of *Fedotova and Shipitko v. Russia* involves three couples’ attempts to marry in the Moscow and Lipetsk



regions. The couples (two female and one male) complain of discrimination based on sexual orientation, since there exists no legal basis in Russia for them to gain recognition of their relationships.<sup>90</sup> Dmitry Bartenev represents the first couple, Fedotova and Shipitko.

Until recently, the ECtHR shied away from overturning bans on same-sex marriage in Council of Europe member states. Until a few years ago, the Court largely left decisions on the extension of legal marriage rights to same-sex couples up to the discretion of national governments.<sup>91</sup> However, since 2013 there has been a rapid shift in ECtHR case law as a cascade of member states have legalised same-sex marriage, making the Court more willing to rule that marriage bans constitute violations of the European Convention, and starkly raising the bar of evidence necessary for governments to argue that they are justifiably exempt from allowing it.<sup>92</sup>

From the Russian cases discussed above, it is clear that experienced activists and lawyers are key to the emergence and success of LGBT discrimination cases in domestic courts and the ECtHR.<sup>93</sup> Nowhere is this more obvious than in the LGBT cases at the ECtHR, where two names feature in nearly all of the cases that have led to judgments against Russia: the activist Nikolai Alekseyev, and the LGBT rights lawyer Dmitry Bartenev. In fact, Alekseyev's 'entrepreneurship' in launching repetitive cases has led to his alienation from many in the LGBT community. Several of the LGBT activists we interviewed explained that they regarded his actions as being provocative in a way that seemed more designed for self-promotion than to further the protection of LGBT rights. That said, however, these activists' objection to Alekseyev's strategy did not reflect disagreement over the desirability of using the courts. While it is possible that smaller LGBT rights groups around the country outside these major national-level organisations were skeptical of the utility of litigation as a rights advocacy strategy, the groups we interviewed were all engaged in bringing cases to domestic court and to the ECtHR, and all acknowledged that the judicial path was important as a means of eventually holding the Russian government accountable to its obligation under international law to defend citizens' human rights regardless of sexual orientation.

## Conclusion

It is our view that the handful of Russian LGBT cases successful at the European Court of Human Rights – on gay pride events and the existing laws that obstruct them – have enjoyed a relative level of success because they entail a straightforward application of the European Convention. Some groups are entitled to hold public protests or gatherings, and others (LGBT-based) are not, suggesting that discrimination is the 'active ingredient' in the state's decision to ban gay pride and other LGBT-related events, thus making Article 14 (on discrimination) clearly relevant. The Russian LGBT cases are examples of *legalized* discrimination, namely, the failure of the Russian Constitution to support freedom of sexual orientation in combination with laws that single out a particular kind of speech. For this reason, these LGBT cases fit squarely under the European Convention's Article 10 on freedom of expression and information and Article 11 on freedom of assembly and association – in concert with Article 14 on discrimination.

By contrast, it is far more challenging to prove discrimination in the event of any individual hate crime. This helps to explain why such cases have been, to date, more rarely

brought to the ECtHR.<sup>94</sup> Even when there is seemingly clear evidence, the ECtHR can fail to find a basis for Article 14 (discrimination) in conjunction with Article 3 (prohibition of torture, or inhuman and degrading treatment) or other parts of the Convention. It is difficult to gather sufficient evidence of a *pattern* of discrimination against a particular social or ethnic group that would justify the application of Article 14 in the event of a hate crime.<sup>95</sup> Human rights groups and LGBT groups in Russia are thus making the most effective use of their time by bringing free assembly and expression cases to the Court, rather than hate crime cases. However, in turning to hate crime cases recently and documenting such attacks (the RLGBT Network, for instance, had started to focus on gathering such cases and submitting them to the ECtHR as of mid-2014),<sup>96</sup> LGBT rights organisations were hoping to break through the Court's reluctance to consistently regard the LGBT community as a social group on the receiving end of this type of discrimination.

By the same token, mainstream human rights groups try to adopt cases that are likely to be found admissible at the ECtHR and likely to be seen there as clear-cut. Violations of the right to protest for LGBT rights or celebrate gay pride occur in the public sphere and are thus clearly associated with the *state taking action to violate citizens' rights*. Public sphere violations are more easily defined as *political* discrimination and thus as violations of 'fundamental' rights. In LGBT free speech cases, the violated rights in question are a combination of two kinds of rights typically regarded as 'fundamental' by human rights groups: freedom of speech and assembly and the protection of minorities (e.g. such as ethnic, religious, or sexual minorities). Such cases fit easily under the rubric of the European Convention. This may be contrasted to hate crime cases; such violations entail a failure on the part of state authorities (e.g. police) to act to *protect* citizens' rights – rather than the more clear-cut type of case in which *the state itself violates citizens' rights* (such as the right to free speech) directly.

As is evident from the above, even the positive judgments from the Court on LGBT-related cases have done little as of yet to improve the state of LGBT rights in contemporary Russia. This can be attributed in large part to the strongly conservative nationalist and Russian Orthodoxy-oriented agenda of the ruling political regime in Russia today, examined already by many scholars, which both aggressively promotes traditional heterosexual gender roles and rejects any international 'interference' in Russian society.<sup>97</sup>

Although the situation with homophobic laws and actions in Russia is exceedingly ripe for generating credible claims of LGBT rights violations at the ECtHR, and has done so through the mechanism of individual activist lawyers and LGBT rights organisations, the same environment prevents ECtHR judgments from making a meaningful improvement in the observance of LGBT rights. In other words, paradoxically, the places that may generate the most compelling legal claims of discrimination against marginalised social groups such as LGBT people are likely simultaneously to be the very places where international court decisions have the least effective results on the ground. While this is in keeping with some existing work in international law on general treaty compliance expectations – which anticipates little 'value added' of international treaties to state compliance where violations are greatest – those arguments do not consider the specific connection to the mobilizational influence that international human rights conventions have in the long term. Meanwhile, scholars who laud this mobilizational influence may not consider the potential inverse relationship between the volume of claims activists

generate in international human rights tribunals and their likelihood of achieving compliance in repressive contexts.<sup>98</sup> With regard to the Russian case specifically, even though the context is repressive, and compliance with the state's obligations to protect LGBT citizens' rights has been low thus far, the Russian state's recent reconfirmation of its engagement in the Council of Europe has shown that it is more than superficially concerned with its membership in that body, and that it is willing in an ongoing way to at least rhetorically subject itself to the rulings of the ECtHR.

Despite the Russian state's resistance to their implementation, these judgments are welcomed by the applicants and by the human rights and LGBT rights groups that strive to change the climate for the LGBT community in Russia. In the long term, many activists are optimistic that the ECtHR judgments finding that the Russian state has violated Article 14 will enable LGBT rights organisations to use those rulings in discrimination cases going to Russian courts in the future, and will enhance the effectiveness of activists' and lawyers' use of strategic litigation in their ongoing efforts to promote LGBT rights in Russia.

## Notes

1. Throughout this paper we employ the acronym LGBT to refer to the broader community of diverse sexual and gender orientations, fully realizing that in Western countries, the scope of the community and acronym have been expanded to LGBTQI, LGBTQ2+, etc. In Russia, LGBT is the primary acronym used by activists to describe their community.
2. Valerie Sperling, *Sex, Politics, and Putin: Political Legitimacy in Russia* (New York: Oxford University Press, 2015), 107–108.
3. M.L. Weiss and M.J. Bosia, *Global Homophobia: States, Movements, and the Politics of Oppression* (University of Illinois Press, 2013), <https://books.google.ca/books?id=SrFiAgAAQBAJ>; Conor O'Dwyer, 'Does the EU Help or Hinder Gay-Rights Movements in Post-Communist Europe? The Case of Poland', *East European Politics* 28, no. 4 (December 2012): 1–21; Conor O'Dwyer, 'Gay Rights and Political Homophobia in Postcommunist Europe', in *Global Homophobia*, ed. Meredith L. Weiss and Michael J. Bosia (Champaign, IL: University of Illinois Press, 2017), 103–26; Tara McKay and Nicole Angotti, 'Ready Rhetorics: Political Homophobia and Activist Discourses in Malawi, Nigeria, and Uganda', *Qualitative Sociology* 39, no. 4 (2013): 397–420; Meka Beresford, 'One LGBT Person Is Killed Every 25 h in Brazil', *PinkNews*, January 28, 2017, <https://www.pinknews.co.uk/2017/01/28/one-lgbt-person-is-killed-every-25-hours-in-brazil/>; Monica Tabengwa and Matthew Waites, 'Africa and the Contestation of Sexual and Gender Diversity: Imperial and Contemporary Regulation', in *The Oxford Handbook of Global LGBT and Sexual Diversity Politics*, ed. Michael Bosia, Sandra M. McEvoy, and Momin Rahman, 1st ed. (Oxford: Oxford University Press, 2019), 10; N. Nicol et al., eds., *Envisioning Global LGBT Human Rights: (Neo)Colonialism, Neoliberalism, Resistance and Hope* (London: Human Rights Consortium, School of Advanced Study, University of London, 2018).
4. Corinne Lennox and Matthew Waites, *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change* (London: Human Rights Consortium, Institute of Commonwealth Studies, School of Advanced Study, University of London, 2013).
5. Laurence R. Helfer and Erik Voeten, 'International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe', *International Organization* 68, no. 1 (2014): 77–110; Paul Johnson, *Homosexuality and the European Court of Human Rights* (Taylor & Francis, 2013).
6. Stuart A. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (Ann Arbor: University of Michigan Press, 2010).
7. Marc Galanter, 'The Radiating Effects of Courts', *Empirical Theories of Courts* (1983): 117–42; Michael W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal*

- Mobilization*, Chicago Series in Law and Society (Chicago: University of Chicago Press, 1994); Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?*, 2nd ed., American Politics and Political Economy Series (Chicago: University of Chicago Press, 2008); Rachel A. Cichowski, 'Legal Mobilization, Transnational Activism, and Gender Equality in the EU', *Canadian Journal of Law and Society* 28, no. 2 (2013): 209–27; Rachel A. Cichowski, *The European Court and Civil Society: Litigation, Mobilization and Governance* (New York: Cambridge University Press, 2007); Rachel A. Cichowski, 'The European Court of Human Rights, Amicus Curiae, and Violence against Women', *Law & Society Review* 50, no. 4 (2016): 890–919; L. Conant, 'Individuals, Courts, and the Development of European Social Rights', *Comparative Political Studies* 39, no. 1 (February 1, 2006): 76–100; Loveday Hodson, *NGOs and the Struggle for Human Rights in Europe*, Human Rights Law in Perspective (Oxford: Hart, 2011); Heidi Nichols Haddad, *The Hidden Hands of Justice: NGOs, Human Rights, and International Courts* (New York: Cambridge University Press, 2018).
8. Scheingold, *The Politics of Rights*; McCann, *Rights at Work*.
  9. Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge [U.K.]; New York, N.Y.: Cambridge University Press, 2009), Ch. 3; Emilie M. Hafner-Burton, Brad L. LeVeck, and David G. Victor, 'How Activists Perceive the Utility of International Law', *The Journal of Politics* 78, no. 1 (January 2016): 167–80, 71.
  10. Helfer and Voeten, 'International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe', 100.
  11. Laurie Essig, *Queer in Russia: A Story of Sex, Self, and the Other* (Duke University Press, 1999); Francesca Stella, 'Queer Space, Pride, and Shame in Moscow', *Slavic Review* 72, no. 3 (Fall 2013): 458–80; Francesca Stella, *Lesbian Lives in Soviet and Post-Soviet Russia: Post/Socialism and Gendered Sexualities*, Genders and Sexualities in the Social Sciences (Palgrave Macmillan UK, 2016); D. Healey, *Russian Homophobia from Stalin to Sochi* (Bloomsbury Publishing, 2017); Masha Gessen, *The Rights of Lesbians and Gay Men in the Russian Federation* (San Francisco, CA: International Gay and Lesbian Human Rights Commission, 1994).
  12. There is some analysis of ECtHR jurisprudence on LGBT rights violations, including Helfer and Voeten, 'International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe'; Johnson, *Homosexuality and the European Court of Human Rights*; Hodson, 'A Marriage by Any Other Name? Schalk and Kopf v Austria', *Human Rights Law Review* 11, no. 1 (2011): 170–79; Loveday Hodson, 'Family Values: The Recognition of Same-Sex Relationships in International Law', *Netherlands Quarterly of Human Rights* 22, no. 1 (2004): 33–57. On the lack of queer analysis in international relations, see Markus Thiel, 'Queering Scholarship?: LGBT Politics as an Analytical Challenge for Political Science and International Relations', *The Oxford Handbook of Global LGBT and Sexual Diversity Politics*, 1st ed. (Oxford: Oxford University Press, 2019).
  13. Lisa McIntosh Sundstrom, Valerie Sperling, and Melike Sayoglu, *Courting Gender Justice: Russia, Turkey, and the European Court of Human Rights* (New York: Oxford University Press, 2019).
  14. Russian LGBT Network, 'Russian LGBT Network/Rossiiskaia LGBT-Set', <http://www.lgbtnet.org/en/content/who-are-we> (accessed May 24, 2016); 'Coming Out' LGBT group, 'LGBT-Gruppa "Vykhod"', <http://comingoutspb.com/> (accessed May 24, 2016); Vikipediia, 'Vykhod (organizatsiia)', Vikipediia, September 13, 2015, <http://bit.ly/1TXHS5C>. All interviewees cited in this article consented to have their names and organizations cited in connection with their comments, through a consent protocol approved by the Behavioural Research Ethics Board of the University of British Columbia, Canada (BREB certificate # H13-01489).
  15. Among the earliest manifestations of organized LGBT activism was the foundation of the newspaper Tema ('Topic') along with the Moscow Union of Sexual Minorities and the Moscow Organization of Lesbians in Literature and Art (MOLLI) in 1990. See Masha Gessen, *The Rights of Lesbians and Gay Men in the Russian Federation* (San Francisco: International Gay and Lesbian Human Rights Commission, 1994), 56; Sperling, *Sex, Politics, and Putin*, 275; Laurie Essig, *Queer in Russia: A Story of Sex, Self, and the Other* (Durham: Duke

- University Press, 1999); On gay life in 1990s Russia see David Tuller, *Cracks in the Iron Closet* (Chicago: University of Chicago Press, 1996).
16. In June 2019, for instance, the Russian Orthodox Church pronounced that human life begins at conception. RIA Novosti, 'V RPTs prizvali zashchishchat' prava chelovecheskogo embriona [The ROC calls for protection of the rights of the human embryo]', RIA Novosti, June 26, 2019, <https://news.mail.ru/society/37770528/>. This trend (and activists' response to it) can be understood in the context of Carl Stychin's claim that the relationship between national identity and sexual identity is a dynamic one, and that 'rights discourse' is central to determining who is included in the 'nation' over time. The 'othering' of LGBT people in Russia, and the LGBT community's efforts to gain their rights, is part of this dynamic process. See Carl F. Stychin, *A Nation by Rights: National Cultures, Sexual Identity Politics, and the Discourse of Rights* (Temple University Press, 1998).
  17. On the Putin regime's alliance with the Russian Orthodox Church with regard to homophobia, see Sperling, *Sex, Politics, and Putin*, 70–71, 75, 273–274.
  18. The first of these was Riazan in 2006. See Leonid Bershidsky, 'Curing' Homosexuality in Russia and Ukraine', *Bloomberg*, October 10, 2012, <http://www.bloomberg.com/view/articles/2012-10-10/-curing-homosexuality-in-russia-and-ukraine>.
  19. Alec Luhn, 'Gay Pride Versus "Gay Propaganda"', *The Nation*, June 28, 2013, <http://www.thenation.com/article/gay-pride-versus-gay-propaganda/>.
  20. On changes to the law over time, see Gessen, *The Rights of Lesbians and Gay Men in the Russian Federation*.
  21. Peter Hobson, 'Most Russians Want Homosexuals "Liquidated" or Ostracized', *The Moscow Times*, <http://www.themoscowtimes.com/article/538389.html> (accessed October 13, 2015).
  22. VTsIOM: Vserossiiskii Tsentr Izucheniia Obshchestvennogo Mneniia, 'Odnopolaia Liubov' - Normal'no, Braki - Rano', *Wciom.ru*, February 15, 2005, <http://wciom.ru/index.php?id=459&uid=1084>.
  23. Hobson, 'Most Russians Want Homosexuals "Liquidated" or Ostracized'.
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