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Introduction

The Russian Federation is member to multiple international treaties that establish the principle of equal rights of all humans. The Constitution of Russia also contains a general anti-discriminatory norm. The Constitutional Court of the Russian Federation have repeatedly emphasized in their resolutions that the list of protected grounds for discrimination is neither classified nor exhaustive. The Constitutional norm forbidding discrimination provides for expanded interpretation in the sense of inadmissibility of discrimination '*on any physical or social grounds*'. This stand of the Constitutional Court is in full conformity with the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms. Criminal liability for voluntary sexual relations among men was abrogated in 1993.

Despite this, homosexual, bisexual, and transgender persons permanently face manifestations of discrimination and violence in many spheres in Russia.

Nevertheless, the Russian authorities deny the existence of the problem with discrimination on grounds of sexual orientation and gender identity, take no measures to combat homophobia in the society and to prevent hate crimes on grounds of sexual orientation and gender identity in spite of widespread homophobia and transphobia in the Russian society.

As public opinion polls indicate, 32% of adults in Russia consider homosexuality as a disease or some result of psychic trauma, 43% of adults think of it as a bad habit (in this regard, the given rate has a 5% increase if compared with the information accumulated in a similar 2010 poll)¹. 81% of the Russians responded that homosexuality is morally inadmissible when asked the question '*Do you think homosexuality is morally admissible or morally inadmissible?*'².

Law Banning 'Propaganda of Homosexuality'

To date, the laws for banning the so called 'propaganda of homosexuality' have been adopted in nine regions of Russia. Several other regions are now also considering the adoption of such laws. Similar draft has been tabled to the State Duma of the Russian Federation for consideration. This body will consider the issue of the adoption of such law at the federal level.

¹ See *The Public Opinion Poll dd July 20-23, 2012*, by the Yuri Levada Analytical Center <http://www.levada.ru/22-08-2012/bole-poloviny-rossiyan-protiv-idei-provedeniya-gei-paradov>

² See *The Public Opinion Poll dd August 10-13, 2012*, by the Yuri Levada Analytical Center <http://www.levada.ru/14-09-2012/otkaz-ot-svoikh-detei-samoubiistvo-i-gomoseksualizm-moralno-nepriemimo-dlya-bolshei-chas>

The laws banning ‘propaganda of homosexuality’ are now being used as means for random detention of LGBT activists and restraint of freedom of expression and assembly.

We believe that the adoption of such laws contradicts the stipulations of the Report of the U.N. High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals on grounds of their sexual orientation and gender identity. It also contradicts The Constitution of Russia, namely the principle of non-discrimination that is stipulated in it, and the Convention for the Protection of Human Rights and Fundamental Freedoms.

Seventeen persons were detained during the Democratic March held on May 1, 2012 in St. Petersburg by an organizing committee formed by representatives of 15 democratic groups – political parties and civil society organizations. Law enforcement officers carried out the detention in an offensive way, violating the law and failing to comply with the regulations of the procedure (e.g. not introducing themselves). Four of the activists were said to have been detained for violation of the law on ‘propaganda of homosexuality’. The others were detained with no ground announced, which is also an infraction of the law. All the detained had rainbow flags (the symbol of LGBT community) or banners with slogans about the rights of LGBT and inadmissibility of discrimination of LGBT in Russia (e.g. '*Homophobia is illegal!*')³.

In the end, police records on violations of different articles of the Code of Administrative Offenses were written for seventeen activists. The reference to the laws on rallies, picketing, and processions was made as '*use of unapproved symbols, namely rainbow flags and rainbow suspenders*'. In accordance with the Russian laws, approval of symbols is not obligatory. We consider the above acts of police as an attempt to intimidate LGBT activists⁴.

The law banning the so-called 'propaganda of homosexuality' is also used by the administrative bodies of St. Petersburg as justification for refusal to endorse peaceful pickets and rallies.

Practically, the law banning the so-called 'propaganda of homosexuality' has been used in St. Petersburg only once. The complaint about this case has been passed to the European Court of Human Rights.

Recommendations:

1. To abolish the effective laws banning the 'propaganda of homosexuality', and allow no adoption of such laws in other regions and on the federal level
2. To renounce discriminatory practices against the LGBT community and activists;
3. To adopt all-embracing anti-discriminatory legislation, including inadmissibility of discrimination on grounds of actual or apparent sexual orientation and gender identity.

Hate Crimes on Grounds of Sexual Orientation and Gender Identity

The Criminal Code of the Russian Federation does not mention any hate motive or prejudiced opinion against LGBT individuals as an aggravating factor of criminal sentences. The Criminal Code of the Russian Federation does contain the concept *social group*, a protected characteristic that can result in aggravating circumstances, which could be interpreted in an open way to include LGBT persons. However, the police and the courts do not define LGBT individuals as a *social group*. For now, not a single hate crime against LGBT people has been investigated as a hate crime and, of

³ See *News of Advocacy by Russian LGBT Network: Newsletter*. 2012. No. 3 (14). P. 9.

⁴ The cases have been registered as part of the monitoring program conducted by the *Coming Out* LGBT-Organization in cooperation with Russian LGBT Network.

course, no individual has been convicted of a crime on grounds of hatred or prejudiced opinion against LGBT individuals.

As an example, two criminal assaults that happened on May 17, 2012, and June 12, 2012, are currently being investigated in St. Petersburg. These crimes are qualified by the police as *hooliganism* without aggravation. As regards the assault on May 17, 2012, the police have defeated the motion of the victim's lawyer for re-qualification of the case as a crime committed on grounds of hatred towards a social group (LGBT)⁵.

Unfortunately, victims of such crimes are afraid of reporting to the police in most cases as, thereby, they would have to publicly announce their sexual orientation. However, hate crimes are committed rather often. Based on the results of the public opinion poll organized by Russian LGBT Network in August 2012 with 897 participants being permanent residents of various regions of Russia, 15.3% (137) of persons of bisexual and homosexual orientation were exposed to physical violence in the time between November 2011 and August 2012. 2.9% indicated that they had experienced physical violence multiple times, and the remaining 12.4% had been exposed to physical violence once or twice within the given time.

Recommendations:

1. To include the grounds of homophobic and transphobic hatred into the Criminal Code of the Russian Federation as an aggravating factor for sentencing on committed crimes;
2. To include information about sexual orientation and gender identity within the framework of human rights into the training of law enforcement and public prosecution officers as well as judges in order to raise awareness and to enable proper investigation of crimes committed on grounds of hatred or prejudice against LGBT individuals.

Freedom of Assembly

Administrative bodies refuse to warrant official permits for LGBT-related events justifying their decisions by discriminatory judgments. Public activities by LGBT are either held with insufficient security protection or with no protection at all. Incidents of violence against participants of public activities by LGBT remain unpunished.

For instance, the 2012 *Rainbow Flash Mob* on May 27, 2012 in Saint-Petersburg was officially permitted by the city authorities and the law provides for duly protection of the participants and organizaers by the police. However, at the action opponents were chanting homophobic slogans and assaulting participants (two persons were injured). The police informed the organizers of the event that they could not hold back the abusers for long. For this reason the event was concluded before the appointed time. Upon conclusion, all the participants took their places in the buses provided by the police and the organizers. The remaining aggressive opponents attacked a bus transporting migrants with migrants that happened to be around and battered those who were in the bus in a severe way⁶. At the same time, organizers of a similar event in Novosibirsk and Tyumen faced homophobic aggression of opponents (including nationalists), but in these cases the law enforcement officers who observed the incidents did not even intervene⁷.

⁵ The cases have been registered as part of the monitoring program conducted by the *Coming Out LGBT-Organization* in cooperation with Russian LGBT Network.

⁶ See *News of Advocacy by Russian LGBT Network: Newsletter*. 2012. No. 3 (14). P. 5.

⁷ See *News of Advocacy by Russian LGBT Network: Newsletter*. 2012. No. 3 (14). P. 11.

In general, it also has to be noted that public events by LGBT are continued to be refused official permits by administrative authorities both for formal reasons⁸ and on such grounds as public anger, moral considerations, etc.

For example, the Moscow city court upheld the refusal to endorse a public action in defense of LGBT rights in September 2010, yet again. In its decision the court indicated that '*... the right of the applicant (...) to perform picketing was lawfully restrained by individuals in interest in view of a threat to life and health of the participants of the action themselves as the planned pickets induce a sharply negative reaction of a wide range of public. (...) Even the proper participation of the internal affairs bodies in provision for enforcement of law during the applied-for event could not assure security for its participants in full.*'⁹.

In October 2011 the Novosibirsk Mayor's Office refused to issue a permit for the picket announced as an event held for '*distribution of results of studies into sexuality of animals and humans, expression of opinion that any type of sexuality is formed by nature.*' The refusal was based on a range of grounds, including considerations dealing with moral, ethics, and an apparent negative reaction of the city community¹⁰.

Recommendations:

1. To take appropriate measures at national, regional, and local levels to ensure actual enjoyment of freedom of peaceful assembly without discrimination on grounds of sexual orientation or gender identity;
2. To provide for appropriate measures by law enforcement bodies to protect participants of peaceful demonstrations in defense of human rights of homosexual, bisexual, and transgender individuals against any attempts to unlawfully obstruct assemblies or to impede the actual enjoyment of the right to freedom of expression and peaceful assembly;
3. To take appropriate measures to prevent constraints to the actual enjoyment of the freedoms of expression and peaceful assembly, resulting from abuse of legal or administrative regulations dealing with e.g. public health, morality, and policy.

Freedom of Association

As regards freedom of association, the ongoing practice of refusals to register LGBT organizations and refusals to officially approve amendments to their incorporation documents need to be noted. Violations are manifested not only not only in refusals justified by allegedly formal reasons, but also in referring in these decisions to considerations of morality, traditional family values, etc.

Particularly, the *Raduzhny Dom* (Rainbow House) LGBT organization in Tyumen is still seeking their official registration. The case of the refusal to register this organization is now being considered by the European Court of Human Rights¹¹. In 2011, four LGBT organizations were refused official registration in Moscow¹².

⁸ See e.g. the Decision of the Saint-Petersburg city court dd July 30, 2010, ad rem No. 33-11907/2010.

⁹ See the Decision of the of the Moscow city court dd September 14, 2010, ad rem N 33-28474.

¹⁰ See the Letter of Mr A.I. Polishchouk, Deputy Mayor of the city of Novosibirsk, dd October 6, 2011, No. 01-5784.

¹¹ For further details, see e.g. Kirichenko K.A., *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Legal Report: Russian Federation / COWI*; The Danish Institute for Human Rights.

URL: http://www.coe.int/t/Commissioner/Source/LGBT/RussiaLegal_E.pdf. [hereinafter referred to as LegalReport]. Paragraph 74, pp. 68–69.

¹² See *ILGA-Europe Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe*, 2011. P. 139.

Recommendations:

1. To take appropriate measures to ensure the enjoyment of freedom of association without discrimination on grounds of sexual orientation or gender identity; particularly, changing the discriminatory administrative procedures, including abolition of excessive formalities related to registration of associations and to their actual activities;
2. To take measures to prevent abuse of legal and administrative regulations dealing with e.g. public health, morality or policy.

Right to Work

Although the Labor Code of the Russian Federation contains the ban on any kind of discrimination in the labor sphere, LGBT individuals experience difficulties searching for job, career development, and they become victims of harassment (bullying) by their colleagues.

So, as per the results of the public opinion poll carried out by Russian LGBT Network in August 2012 for the time between November 2011 and August 2012, 39.7% (356 persons) experienced difficulties at their work in connection with their sexual orientation; more specifically, 27.7% of persons with bisexual and homosexual orientation replied '*I had to give incomplete information about myself to obtain employment*', 2.1% replied '*I was discharged from office*', 4% replied '*I was refused to be employed*', and 3.1% replied '*I was forced to resign the position.*'

Recommendations:

1. To adopt and implement measures that provide for actual protection against discrimination on grounds of sexual orientation or gender identity in labor force and employment both in public and in private sectors.

Change of Documents and Access to Medical Care for Transgender Persons

Questions of grounds for and procedure of *de jure* recognition of sex change as well as the legal status of individuals who underwent sex change are still not defined in the Russian laws. This leads to the fact that registry offices impose on transgender applicants demands that are not provided by the law (particularly, the obligation to undergo surgical operations for sex reassignment).

The problem with provision of access to specialized medical care for transgender people does not receive proper attention of public health administration authorities. A range of medical care services essential to transsexual patients (including psychotherapy, hormone-replacement therapy and surgical operations for sex reassignment in the case the trans person wants it to be performed) are not provided as part of the state guarantees to deliver free medical care or as part of quotas for high technology medical care financed from the federal or regional budgets.

Recommendations:

1. To introduce into legislative and other statutory acts relevant changes that would define a clear, predictable and accessible mechanism of *de jure* recognition of sex change without making excessive and inhumane demands to transgender persons;
2. To consider various options to defray expenses for specialized medical care for transgender patients within the framework of compulsory health insurance programs or programs for delivery of high technology medical care at public expense, with due regard of international practices;
3. To elaborate and implement a clear, simple and predictable mechanism of access to specialized medical care for transgender patients.