

# Report

## on implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity by Russia

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The opinions expressed in document do not necessarily reflect official positions of ILGA-Europe, OSI or the Dutch Government.



Government of the Netherlands



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## **I. Executive summary**

Russia's authorities have done nothing for implementation of the Recommendation CM/Rec since 2010 (the moment of its adoption) till the present time (autumn of 2012): neither translation, nor dissemination of the Recommendation or even informing about its issue and publishing of its text on the official sites. As the results of the Monitoring show most of the responses are formal runarounds, thereby the officials of Russian ministries do not mean to lead a constructive discussion on the point of implementation of the Recommendation.

Moreover, the Ministry of Foreign Affairs regularly emphasizes in its statements that Russia "stands against creating a special legal regime" for LGBT through adoption of specific documents (including the CMCE Recommendation) asserting that the rights of LGBT persons are properly secured by the existing anti-discriminatory legislation. In reality, Russia's attitude can be described as a heteronormative and homophobic that creates a special discriminatory legal regime for LGBT.

This attitude is consistently implied on all political levels in Russia that can be most clearly seen from the adoption of legislations concerning so called "propaganda of homosexuality among minors." By September of 2012 this law was passed in 9 regions of Russian Federation (Ryazanskaya oblast, Arkhangelskaya oblast, Kostromskaya oblast, Magadanskaya oblast, Novosibirskaya oblast, Samarskaya oblast, Krasnodar Territory, Saint-Petersburg and the Republic of Bashkortostan). And also on the 28<sup>th</sup> of March of 2012 the General Court of Novosibirskaya oblast introduced a draft of a federal law "Of amending the Administrative Code of Russian Federation (suggesting imposing penalties under administrative law for homosexuality propaganda among minors)" (№ 44554-6). In spite of multifold protest actions of Russian human rights activists and international community the bill is likely to be adopted before the end of 2012. The bill is supported on the top level of Russian government.

The situation with homophobic and transphobic offences and "hate speech" is extremely alarming. The state does nothing to combat them. Moreover, the existing judicial and supervisory practices tend to justify "hate speech" towards LGBT referring to "religious traditions" and "traditional values". The Ministry of Foreign Affairs tends to apply the same strategy referring to freedom of opinion and information.

The state does nothing to overcome the discrimination on grounds of sexual orientation or gender identity in the areas of education, housing, sports and seeking asylum.

The only body authorized (though implicitly) to deal with the protection of human rights of LGBT is the Commissioner for Human Rights of Russian Federation. However the Commissioner contacts with LGBT organisations' representatives rather reluctantly. Unfortunately, no actions for implication of the CMCE Recommendation have been undertaken by the Commissioner's office. At present there are no documents on measures to combat discrimination on grounds of sexual orientation or gender identity, including the text of the Recommendation, published on the official site of Commissioner's office. Unfortunately, the Commissioner has not even ever clearly spoken against the adoption of laws prohibiting so called "propaganda of homosexuality". Though it can be considered a good sign that in his last annual report about protection of human rights in Russian Federation Commissioner for the first time mentioned violations of human rights of LGBT persons in context of situation with transsexuals. The law against "propaganda of homosexuality" is regarded as carrying a potential threat of violation of human rights.

## **II. Recommendations to the Russians government for priority actions towards implementation of the CMCE Recommendation adopted by the Russian LGBT Network.**

1. Abolish regional laws against so called “propaganda of homosexuality among minors”.
2. Not to adopt the law against so called “propaganda of homosexuality among minors” on the federal level.
3. Hatred on grounds of sexual orientation or gender identity specifically identified should be added as an aggravating circumstance to the list of motives in process of penalty determination.
4. Including instructions about respectful and non-discriminatory attitude on grounds of sexual orientation or gender identity to the training courses of policemen, judges, attorneys, penitentiary workers and lawyers.
5. Include issues of sexual orientation and gender identity into curriculums of primary, secondary and higher education and into training programmes of educational institution’s specialists.
6. Adopt a medium-term/ long-term plan for implementation of other aspects of the Recommendation. Engage representatives of LGBT organisations in the planning process.
7. Secure the actual enjoyment of freedom of association, expression and peaceful assembly for groups and organisations supporting the rights of LGBT. Particularly stop illegal practices of declining registration and approval of public activities and other restrictions on holding of peaceful and legitimate events of LGBT themes.
8. Ensure a proper protection for participants of public events in favour of rights of LGBT, particularly prevent and stop acts of violence against participants of such events, conduct thorough investigations of such acts and call guilty parties to full account.
9. Publicly denounce acts of violence motivated by hatred on grounds of sexual orientation or gender identity.
10. Prevent “hate speech” in relation to LGBT especially from politicians, mass media representatives, opinion leaders, religious figures, conduct proper investigations of such incidents and call guilty parties to full account if necessary.
11. Abolish the laws determining different responsibility for homo- and heterosexual relationships with persons under 16 years old.
12. Prevent collection, storage, processing and using of personal data about sexual orientation and gender identity of people by any authorities and law-enforcement agencies.
13. Secure a legal protection of relationships between the members of same-sex couples.
14. Provide a non-discriminatory access of LGBT persons to adoption and additional reproductive technologies.
15. Develop and introduce a procedure of making changes in official documents of transgender persons (including name and gender) according to progressive human rights standards. Particularly, not to allow any requirements for surgery or sterilization of such people as a condition for documents’ replacement.
16. Provide for transgender persons an actual access to necessary medical services related to their conditions (psychotherapy, hormone replacement therapy, surgical procedure of sex reassignment). Provide an access to such services from regional and financial perspectives.

### III. Introduction

#### Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General Thorbjørn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat”.<sup>1</sup>

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

#### The purpose of this report

The purpose of this report is to assess what progress has been made by the Russian’s authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. And secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

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<sup>1</sup> “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons”  
<https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

## Methodology

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which Russian LGBT Network has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix III to this report, entitled "the Compliance Documentation Report".

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries and departments to letters from the Council of LGBT Organisations of Russia, listing the relevant checklist questions and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Russia commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe".
- Research and documentation assembled by Russian LGBT Network and other non-governmental organisations.
- Information available through Russian mass media and Internet.

## IV. Findings

### The Recommendation

The operative text of the Recommendation includes four main steps: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

As the results of the Monitoring show the officials of Russian ministries and agencies are not inclined to lead a constructive discussion on the implementation of the Recommendation. The vast majority of the received official responses are formal runarounds. Russian government has done nothing for translation, dissemination or even mere informing about its existence (its text has not been published on any official site). The Russian LGBT Network has appealed several times to different authorities (the President of Russian Federation, the Prime minister, the Commissioner for Human Rights, Department of Justice and others), however, we have received nothing but mere verbiage in response to our letters with suggested translation of the Recommendation and proposals of measures for its implementation.

Moreover, the Ministry of Foreign Affairs regularly emphasizes in its statements that Russia “stands against creating a special legal regime” for LGBT through adoption of specific documents (including the CMCE Recommendation) asserting that the rights of LGBT persons are properly secured by the existing anti-discriminatory legislation<sup>2</sup>. In reality, Russia’s attitude can be described as a heteronormative and homophobic that creates a special discriminatory legal regime for LGBT.

This attitude is consistently implied on all political levels in Russia that can be most clearly seen from the adoption of legislations concerning so called “propaganda of homosexuality among minors.” By September of 2012 this law was passed in 9 regions of Russian Federation (Ryazanskaya oblast, Arkhangelskaya oblast, Kostromskaya oblast, Magadanskaya oblast, Novosibirskaya oblast, Samarskaya

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<sup>2</sup>Response of Dolgov K.K., the Commissioner for Human Rights, democracy and supremacy of law of the Ministry of Foreign Affairs of Russia to the question of “Interfax” agency // Site of the Ministry of Foreign Affairs: [http://www.mid.ru/brp\\_4.nsf/0/D20B144F1D4EA4E0442579570035BF4A;](http://www.mid.ru/brp_4.nsf/0/D20B144F1D4EA4E0442579570035BF4A;)

Speech of Dolgov K.K., the Commissioner for Human Rights, democracy and supremacy of law of the Ministry of Foreign Affairs of Russia on the 19<sup>th</sup> session of UN Human Rights Council during the discussion on the topic of discrimination on account of sexual orientation or gender identity (Geneva, March the 7<sup>th</sup> of 2012) // Site of the Ministry of Foreign Affairs:

[http://www.mid.ru/brp\\_4.nsf/0/01E5477DB8CB655B442579BB0037548F;](http://www.mid.ru/brp_4.nsf/0/01E5477DB8CB655B442579BB0037548F;)

Interview of S.V.Lavrov the foreign Minister of Russia for the “Kommersant FM” radio, Moscow, 20<sup>th</sup> of March of 2012 // Site of the Ministry of Foreign Affairs:

[http://www.mid.ru/brp\\_4.nsf/0/5DFA97AF48053E5E442579C700638AE3;](http://www.mid.ru/brp_4.nsf/0/5DFA97AF48053E5E442579C700638AE3;)

About participation of Dolgov K.K., the Commissioner for Human Rights, democracy and supremacy of law of the Ministry of Foreign Affairs of Russia in the conference on measures to combat discrimination of rights of sexual minorities held by the Council of Europe // Site of the Ministry of Foreign Affairs:

[http://www.mid.ru/brp\\_4.nsf/newslines/D6888FF80E992E86442579CF0024B365;](http://www.mid.ru/brp_4.nsf/newslines/D6888FF80E992E86442579CF0024B365;)

Russia stands against creating a special legal regime for persons of unconventional sexual orientation // UN News Centre: <http://www.un.org/russian/news/story.asp?newsID=17115#.UMtk43e3mk8;>

Demarche of Russia on the meeting of Ministers of G8 – it “dissociated” itself from protection of “so called” LGBT // Site Gay.ru: <http://www.gay.ru/news/rainbow/2012/04/13-23296.htm;>

«I’m not a proponent of media diplomacy» On-line interview of Konstantin Dolgov the Commissioner for Human Rights in the Ministry of Foreign Affairs of Russia // Site Gazeta.ru:

[http://www.gazeta.ru/interview/nm/s4686133.shtml?\\_id=4686133&page=4](http://www.gazeta.ru/interview/nm/s4686133.shtml?_id=4686133&page=4)

oblast, Krasnodar Territory, Saint-Petersburg and the Republic of Bashkortostan)<sup>3</sup>. And also on the 28<sup>th</sup> of March of 2012 the General Court of Novosibirskaya oblast introduced a draft of a federal law “Of amending the Administrative Code of Russian Federation (suggesting imposing penalties under administrative law for homosexualism propaganda among minors)” (№ 44554-6)<sup>4</sup>. In spite of multifold protest actions of Russian human rights activists and international community the bill is likely to be adopted before the end of 2012. The bill is supported by the State Duma Committee on Family Women and Children (headed by E.B.Mizulina). The overwhelming majority of comments given by deputies and other officials in the mass media are in favor of the bill. The President V.V.Putin and the Prime Minister D.A.Medvedev have not yet expressed their attitude towards the bill<sup>5</sup>.

## **Appendix to Recommendation CM/Rec(2010)5**

### **i. Right to life, security and protection from violence**

#### **a. “Hate crimes” and other hate-motivated incidents**

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat "hate crimes" and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

Not a single reasonable response to the questions about “hate crimes” was received from the Russian authorities. It seems that Russian officials do not regard “hate crimes” towards LGBT as an existing problem therefore do not consider it important for themselves to comply with the CMCE Recommendation. The Criminal Code of Russian Federation does not directly mention sexual orientation, gender identity, homophobia or transphobia as motives for hatred. The Ministry of Justice and the Ministry of Foreign Affairs refer to the belief that identification of these specific characteristics and motives would be a ““positive discrimination” that would protect rights and interests of one specific social group without proper concern for rights and interests of other social groups” and that the existing anti-discrimination legislation is enough for protection of LGBT from “hate crimes”.

The existing legislation allows to consider the motive of hatred towards LGBT as an aggravating circumstance only in theory. Thus the current Criminal Code contains an indication of “a hate

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<sup>3</sup> By December 2012 the law has been adopted in its first reading in one more region: Kaliningradskaya oblast, its adoption is also discussed in Irkutskaya oblast and Transbaikal Territory.

<sup>4</sup> The page of the bill on the State Duma official site:

<http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=44554-6>

<sup>5</sup> Medvedev has spoken on the topic for the first time on December the 7<sup>th</sup> of 2012. During his interview on one of the TV channels answering to a question about the draft of federal law prohibiting “propaganda of homosexuality” he said: “not every ethical issue, habit or communicational matters should be turned into legislation, because not all relationships between people could be subjects to law. This is my position and the position of “United Russia”. (D. Medvedev: not all ethical issues are subjects to law // Site RBC: <http://www.rbc.ru/rbcfreenews/20121207135449.shtml>). In reality it is impossible to give a definite interpretation to this response of the Prime Minister because he does not speak directly against this very law about “propaganda”. This commentary is more likely to underline his general liberal attitude towards homosexuals. On the 12<sup>th</sup> of December Vladimir Putin said among other things in his message to the Federal Assembly: “law can protect morality and should do this but morality cannot be imposed by law. Attempts of state to intrude into the area of people’s beliefs and opinions is a sign of totalitarianism” (Record of the annual message of Vladimir Putin to the Federal Assembly // Site of Rossiyskaya Gazeta: <http://www.rg.ru/2012/12/12/stenogramma-poln.html>). Some experts treated it as a hint that the federal law prohibiting “propaganda” will not be passed. However we would not rush to such a conclusion especially in view of the rest of Putin’s message and an article published on 30th of November in Rossiyskaya Gazeta (an official governmental agency) by Evgeniy Shestakov (the newspaper observer) “Traditional family values – “gentle force” of Russia” (Site of Rossiyskaya Gazeta:<http://www.rg.ru/2012/11/30/mnenie-site.html>), consistent in a homophobic and heteronormative rhetoric.

motivation towards a social group". However there has not been a single case when the corresponding measures have been applied to crimes against LGBT persons. In the same way, LGBT persons are not recognized as a social group or simply the hate motivation is denied in spite the fact that criminals and witnesses directly assert its presence. Another problem is that there is a list of crimes that if committed with a hate motivation become matters of public prosecution (that means that law enforcement officials ought to initiate proceedings on them regardless of sources from which information about such crimes had come). At the same time, similar cases without a hate motivation are treated as cases of private prosecution and can be initiated only as a respond to a registered statement of a claim from an injured party. As a result, if a person that has become a victim of a homophobic assault is afraid to apply to law enforcement officials in person, the claims from LGBT organisations are not considered a sufficient grounds for initiation of criminal case<sup>6</sup>.

In the meanwhile there is no training provided in Russian Federation for police officers, judiciary and prison staff so that they would correctly take into account the bias motive of homophobic and transphobic hatred in committed crimes. Besides no statistics are gathered about hate motivated incidents on grounds of sexual orientation or gender identity or any other corresponding research about causes and nature of homophobia and transphobia and means to resist them.

One of the most popular arguments asserting that discrimination of LGBT does not exist in Russia is based on the fact that there are no registered statements of claims on the matter. But on the one hand, as we noted earlier, this feature is simply left out of account in existing statistical surveys and on the other hand there is a very high level of distrust for law enforcement officials from victims of homophobia or transphobia hate motivated crimes. According to the research of "Violations of human rights and discrimination of LGBT in 2011" only 11% of victims addressed to law enforcement officials. 9% more planned to do so. But 80% didn't do it or planned to do it. Besides, 71% stated that they do not trust police, 19% found it difficult to reply and only 10% of respondents answered that they did trust police<sup>7</sup>.

One of the most demonstrative incidents – the case of assault on Elena Kostuchenko during the gay parade in Moscow on the 28th of May 2011 by a religiously motivated homophobe Roman Lisunov. Lisunov attacked Kostuchenko during the gay parade and inflicted bodily injuries as a result of which Kostuchenko had to spend a week in hospital. On the 25<sup>th</sup> of September Tatyana Lukashevich the senior examining magistrate of the police office "Kitai Gorod" informed Kostuchenko's spokesman about closure of the criminal case against Lisunov due to the absence of characteristics of a legally defined crime in Lisunov's actions. With all that, Lisunov's actions were not initially considered by police as hate motivated<sup>8</sup>.

### ***b. "Hate speech"***

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials,

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<sup>6</sup> Further details: Implication of Convention against tortures and other kinds of cruel treatment, inhuman or humiliating types of treatment and punishment on grounds of sexual orientation or gender identity in Russian Federation: alternative report: presented on the forty ninth session of UN Committee against Torture, Geneva, Switzerland, 29 October – 23 November 2012. Pages 126-154. URL: [http://www2.ohchr.org/english/bodies/cat/docs/ngos/LGBT\\_RussianFederation\\_CAT49.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/LGBT_RussianFederation_CAT49.pdf).

<sup>7</sup> Sozaev V. Violations of human rights and discrimination of LGBT in 2011: [quantitative survey data](#) // Conditions for lesbians, gays, bisexuals and transgender persons in Russian Federation: last three months of 2011 – first half of 2012. – Moscow: MHG, 2012. – page 66.

<sup>8</sup> Homophobe Lisunov, who attacked Elena Kostuchenko, was justified by Moscow police [27 September 2011 r.] // Socio-political Grani LGBT. URL: <http://lgbt-grani.livejournal.com/1133607.html>

guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

Unfortunately, there has been received no answers to the point of this class of questions either. So it can be concluded that nothing is being done to implement the Recommendation in the area of “hate speech” on grounds of sexual orientation or gender identity in Russian Federation. In spite of existing legislative prohibition of “hatred incitement” present in the Criminal Code, in the first place, it does not contain a reference to sexual orientation or gender identity, and secondly, it has never been implied to protect LGBT from “hate speech”.

Moreover, the existing judicial and supervisory practices tend to justify “hate speech” towards LGBT referring to “religious traditions” and “traditional values”. The Ministry of Foreign Affairs tends to apply the same strategy referring to freedom of opinion and information spread.

All attempts to bring to account anybody for “hate speech” regarding LGBT end in failure. For example, in the decision of the Court of Tambovskaya oblast in 2008 upon the claim of N.Alekseev and N.Baev about the speech of O.Betin, the governor of Tambovskaya oblast: “Tolerance?! It can go to Hell! Gays should be torn apart and their parts scattered! This garbage-can should be cleaned out!” it was said that LGBT were not a “social group”<sup>9</sup>.

## ii. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

In general, there are multiple violations of rights of LGBT to freedom of association, expression and peaceful assembly allowed in Russian Federation. In most cases such violations result not from a direct legislative discrimination but from law enforcement practices. Regarding freedom of association we should note a continuous practice of rejections in official registration on LGBT organisations and registration of changes into its official documents. Besides the violations appear not only in rejections according to formal reasons but also in supporting the resolutions with reasoning about morality, virtue, traditional family values etc. Furthermore, human rights LGBT organisations can be treated as extremist.

For example, LGBT organisation “Radujniy dom” in Tyumen has not yet obtained an official registration, the claim about the rejection of its registration is currently examined by European Court of Human Rights<sup>10</sup>.

Organisation “Rakurs” in Arkhangelsk applied with a request to make changes into its charter wishing to openly declare as their goal the protection of human rights of LGBT people has also encountered with opposition on authorities’ behalf<sup>11</sup>. Fortunately, the organisation succeeded in disproving the validity of the refusal in the Court of Cassation<sup>12</sup>.

In 2011 four LGBT organisations were denied in their request for official registration in Moscow<sup>13</sup>.

Russian LGBT organisations do not have access to public funding and are not involved on government’s initiative in framing and implementing public policies which affect LGBT persons. Moreover, the efforts

<sup>9</sup> Кочетков И., Кириченко К. Подробнее об этом деле и других подобных делах см. Положение лесбиянок, геев, бисексуалов и трансгендеров в Российской Федерации. – М.: Московская Хельсинкская Группа, 2009. – с. 61-65.

<sup>10</sup> For more details on such cases see: 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](http://www.coe.int/t/Commissioner/Source/LGBT/RussiaLegal_E.pdf). [hereinafter referred to as - “Legal Report”]. Paragraph 74, стр. 68–69.

<sup>11</sup> For more details on this case see.: Legal report. Paragraph 76.

<sup>12</sup> См.: Кассационное определение Судебной коллегии по гражданским делам Архангельского областного суда от 1 ноября 2010 г. Доступно по адресу: [http://rakurs.ucoz.com/news/kassacionnoe\\_opredelenie/2010-11-09-53](http://rakurs.ucoz.com/news/kassacionnoe_opredelenie/2010-11-09-53).

<sup>13</sup> См.: ILGA-Europe Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe, 2011. P. 139.

made by LGBT organisations in attempting to stop the adoption of discriminative legislation are not taken into consideration and expert's reports are being ignored.

Since the adoption of the Recommendation CM/Rec(2010)5 the government has not taken any measures of solving the problem, and the responses received in course of this project do not contain any information about actual or planned steps in that direction.

A newly started practice of providing a certain kind of protection for members of LGBT organisations during their activities when some law enforcement officers are supposed to ensure the participants' safety can be regarded as a certain positive tendency. But it does not equally relate to all the regions, and oftentimes police officers fail to stop the aggression and prevent acts of violence.

Also we highly evaluate the first mention of LGBT issues in the annual report of the Commissioner for Human Rights of Russian Federation (problems connected with the regional laws prohibiting so called "propaganda of homosexuality", and difficulties which transgender people encounter in applying for new official documents) and also the actions of the Commissioner on behalf of organizers of the prohibited in Tyumen public event in favour of rights of LGBT. These actions can indicate a beginning of cooperation between the Commissioner and LGBT organisations.

The tendencies connected with creation of positive or neutral discourse of LGBT in the mass media, and improvement of cooperation between LGBT organisations and other human rights organisation can be regarded as positive, however they are forming independently from government's actions and do not equally relate to all the regions of Russian Federation.

### **iii Freedom of expression and peaceful assembly**

Section IV of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

Where the **freedom of expression** is concerned the situation is also unfavourable for LGBT.

Actually, all the existing forms of opinion expression are organized without state's participation due to initiatives of private parties (e.g. private mass media – in relationship to reflecting the image and events of LGBT, private HIV-service organisations – in relationship to dissemination of information about safe sexual conduct for men of homo- and bisexual orientation).

At the same time the state resists free expression of opinions on LGBT themes rather aggressively.

Continued attempts to adopt some laws on so-called "the propaganda of homosexuality (in some cases "lesbianism, bisexuality and transgenderism") among minors" in different Russian regions (by 28<sup>th</sup> of August the law was adopted in nine regions of Russian Federation) give rise to a special concern. In 2010 the Constitutional Court of the Russian Federation rendered that it did not contradict the Constitution of the Russian Federation<sup>14</sup>. The regional legislations do not contain a clear definition of actions that can be treated as propaganda, and the Constitutional Court of the Russian Federation gave a such vague definition that it can be applied to any statement about equality irrespective of sexual orientation or gender identity and can cause a severe penalty charge.

In 2012 the Supreme Court of Russian Federation examined the question of compliance with the Constitution and federal legislation of three regional laws prohibiting "propaganda" (laws of Kostromskaya oblast, Arkhangelskaya oblast and Saint-Petersburg). Although the laws haven't been recognized as contradicting to the federal legislation the Supreme Court stated that: "the prohibition of propaganda of homosexuality, lesbianism, bisexuality and transgenderism does not interfere with enjoyment of right to disseminate and receive information of general and

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<sup>14</sup> The Constitutional Court of the Russian Federation ruling dated 19 January 2010 №151-O-O. See for details on the Ryazan region law and its implementation: Legal report. Sections 98-101.

neutral contents about non-conventional sexual relationships, holding public events in a ways allowed by law, including public debates about social status of sexual minorities without attempts to impose their worldview on underage persons, that are not able to critically analyze the information due to their age”<sup>15</sup>.

The first reading of now become federal law prohibiting “propaganda of homosexuality” was held on 19th of December 2012. There already exists an approval with recommendation of the law’s adoption from the State Duma Committee on Family Women and Children. In its resolution is suggested the following definition of propaganda: “holding public events with participation of homosexuals in places accessible for children, public appeals and approval of homosexual relationships on TV and radio during times available for children”. Proving the urgency of the law the Committee notes: “Propaganda of homosexuality has become widely spread in Russia: gay-parades, demonstrations, programmes supporting homosexual relationships broadcasted over all the TV and radio channels during day time. Such a broad spreading of propaganda of homosexual relationships harms the forming children’s’ personalities, dissolves their conception of family as a relationship of a man and a woman, and practically creates a situation of limited freedom for their future sexual preferences before they come of age”<sup>16</sup>.

In addition, the authorities keep on putting difficulties in the way of arranging cultural and educational events dealing with LGBT lines. The “Side by Side” LGBT human rights festival is among them <sup>17</sup>.

In this way the organizers of events in Kemerovo and Novosibirsk in 2012 encountered with an aggressive opposition on behalf of religious and nationalist organisations – up to bodily injures, while the police did not interfere with the incident<sup>18</sup>.

Finally, where **freedom of peaceful assembly** is concerned the situation is also very alarming.

The authorities refuse to approve LGBT events on grounds of discriminatory reasons; police protection for public actions either is not provided or it is insufficient; those who are responsible for violent acts against participants of LGBT events get away with that.

As it was mentioned earlier, in some regions some police officers are provided for protection of participants of LGBT events but it does not equally relate to all the regions, and oftentimes police officers fail to stop the aggression and prevent acts of violence.

In May 2011 an action “Rainbow Flash Mob” was held in coordination with Saint-Petersburg’s government. Nevertheless the participants of the action also experienced some aggressive actions from the event’s opponents who chanted homophobic and extremist slogans. There were some attacks on the participants during the event and two people were injured. The police let the organizers know that they would not be able to handle the assaulters for a long time. The action was over ahead of time. All the participants got on

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<sup>15</sup>Judicial decision of the Supreme Court of Russian Federation on October 3d, 2012, case № 78-АПГ12-16 (appeal against the law of Saint-Petersburg). For similar reasoning, see also: Judicial decision of the Supreme Court of Russian Federation on August 15<sup>th</sup> 2012, case № 1-АПГ12-11 (appeal against the law of Arkhangelskaya oblast); Judicial decision of the Supreme Court of Russian Federation on November 7<sup>th</sup> 2012, case № 87-АПГ12-2 (appeal against the law of Kostromskaya oblast).

<sup>16</sup> Resolution on the draft of federal law № 44554-6 “Of amending the Administrative Code of Russian Federation (suggesting imposing penalties under administrative law for homosexuality propaganda among minors)” (№ 44554-6), introduced by the General Court of Novosibirskaya oblast URL: [http://asozd2.duma.gov.ru/main.nsf/\(ViewDoc\)?OpenAgent&work/dz.nsf/ByID&D6FAABF029D7703A43257AD30050B5B7](http://asozd2.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&D6FAABF029D7703A43257AD30050B5B7).

<sup>17</sup> The festival banning history see e.g. Legal report. Article 85; Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Sociological Report: Russian Federation / COWI; The Danish Institute for Human Rights. URL: [http://www.coe.int/t/Commissioner/Source/LGBT/RussiaSociological\\_E.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/RussiaSociological_E.pdf). Sections 88–97.

<sup>18</sup> See for e.g.: <http://www.frontlinedefenders.org/ru/node/18668>;  
<http://www.bok-o-bok.ru/news.asp?lan=2&tid=769>.

the buses provided by the police and the action organizers. Instead, aggressive opponents attacked a nearby bus carrying migrant workers<sup>19</sup>. At the same time the organizers of similar events in Novosibirsk and Tyumen faced with homophobic aggression of opponents including nationalists. The police officers supervising the event did not interfere<sup>20</sup>.

Apart from that, LGBT activists participating in public events often get detained themselves.

In this way the police detained 17 participants of the “rainbow column” who took part in a Democratic march held in Saint-Petersburg on May 1, 2012. One of the reasons for the police detention was a slogan “Homophobia is illegal”. The police detained the activists in brutal manner and in contravention of the law: the policemen did not introduce themselves and gave no warnings<sup>21</sup>.

In general, it can be stated that it is a common practice of authorities to ban public LGBT events according to formal reasons<sup>22</sup>, but also according to reasoning on community complaints, morality, virtue, traditional family values etc.

For example, in September 2010 the Moscow City Council once again found the authorities’ refusal to approve an assembly event for LGBT people’s rights lawful. The court ruling says: “the restriction on rights and in this case the right of protester A to gather peacefully with no weapons and to hold mass picketing was restricted by some interested people due to the fact that there was danger to life and health of the action participants as the scheduled picketing had aroused a negative public response. There is evidence such as written documents... Even if the police were engaged in protecting the participants’ safety during the carrying out of the event initiated by A., it could not be assured”<sup>23</sup>.

In October 2011 the Novosibirsk Mayor’s Office refused to approve a picket which was focused on the “transmission of some research findings on animals and human beings’ sexuality and promotion of the point of view that any type of sexuality is given to a person by nature itself”. The refusal was based on some moral and ethical standards and a likely negative response on the part of city residents<sup>24</sup>.

Although most of the times the appeals of LGBT activists have no effect, in some cases they succeed to prove in court the illegality of limitations on their rights of peaceful assembly.

For example, in May 2012 the Smolny District Court of Saint-Petersburg ruled some refuses to approve LGBT assembly events on the grounds of the “propaganda of homosexuality” law illegal<sup>25</sup>.

In addition, in March 2011 the RF ombudsperson addressed Tyumen Regional Court with a petition in which he asked to reverse the taken decisions of the first-instance and the following instances courts and to rule illegal the authorities’ refuse to approve an LGBT activists picket in the framework of their “A week against homophobia” awareness campaign illegal<sup>26</sup>.

Practically illegal interference with rights of people and groups of people to enjoy the freedom of expression and peaceful assembly of LGBT is not publicly disavowed by public authorities. Moreover, the violations are often justified especially in view of regionally adopted laws prohibiting “propaganda of homosexuality”.

For example, Alexander Zhivaikin, the Vice-Chairman of the Health care, demography and social policy Committee at Samara Regional Duma, in his press-interview said “I think that there must be capital punishment for such things as the propaganda of homosexuality as well as for any kind of activity in this regard”<sup>27</sup>.

<sup>19</sup>See Russian LGBT-net advocacy news: news-bulletin. 2012. №3 (14), p.5.

<sup>20</sup> See Russian LGBT-net Advocacy news: news-bulletin. 2012 №3 (14) p.11.

<sup>21</sup> See Russian LGBT-net Advocacy news: news-bulletin. 2012 №3 (14) p.9.

<sup>22</sup> See for e.g. the resolution of the Saint-Petersburg City Court on July 30th 2010 on case № 33-11907/2010.

<sup>23</sup> See the Moscow City Court ruling on case № 33-28474 dated 14 September 2010.

<sup>24</sup> See letter by A.I.Polischuk Novosibirsk deputy mayor’s dated 6 October 2011 №01-5784.

<sup>25</sup> See: [http://www.comingoutspb.ru/ru/news/viigrali\\_sud](http://www.comingoutspb.ru/ru/news/viigrali_sud).

<sup>26</sup> See Russian LGBT-net advocacy news: news-bulletin. 2011 № 2 (8) p.2

<sup>27</sup> Oparina I. Casting out gays // Samara review, 2012 № 16. March 15.

URL: <http://www.63media.ru/press/15.03.2012/168615/>.

Elena Babich, a former member of Saint-Petersburg Legislative Assembly, a representative of the LDPR party, stated: “A homosexual is a sick person. Why should these sick people demonstrate their illness to other people? But they do demonstrate it and, moreover, they even try to arrange Pride marches”. “Members of any community might have some deviations but one must not try to persuade people that it is natural. When the deviation percentage reaches beyond 7% the whole society is in danger. The promotion of homosexuality puts Russian people at threat of extinction”<sup>28</sup>.

Generally it can be stated that since the adoption of the Recommendation CM/Rec(2010)5 the government has not taken any specific measures of solving the problem, and the responses received in course of this project do not contain any information about actual or planned steps in that direction.

#### **iv. Respect for private and family life (excluding specific transgender issues) (Section IV, paras 18, 19, and 23 – 27 of the Appendix)**

These paragraphs of Section IV of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

The position of Russian state concerning **criminalisation of same-sex sexual acts between consenting adults** is absolutely in line with the Recommendation CM/Rec(2010)5. Criminal responsibility for free-will sexual contacts between adults of the same gender was abolished in Russia in 1993<sup>29</sup>. Some attempts to revalidate it in the RF failed<sup>30</sup>. The legal age, allowing people have free-will both hetero and homosexual contacts, is the same. It is 16<sup>31</sup>.

However, in the beginning of 2012 the Criminal Code was amended with some discriminative laws<sup>32</sup>. They relate to criminal liability for sexual relations with persons under 16.

Firstly, there is criminal responsibility for sexual relations with persons under 16, including imprisonment. However, a person might be sentenced to 4 years in prison in case he or she had a sexual contact with another person of different gender and to 6 years if the contact was between persons of the same gender<sup>33</sup>. Secondly, if the age difference between two persons who had a sexual contact is less than 4 years and on condition that was a hetero contact, imprisonment cannot be enforced. As for homosexual contacts liability restriction cannot be applied<sup>34</sup>. Thirdly, if persons after having a sexual contact got married a person of full age is released from penalty. As marriage of persons of the same sex is illegal in Russia the provision cannot be applied in that case<sup>35</sup>.

The reply of the Ministry of Justice of the Russian Federation does not contain any comments concerning the practice of implementation of above listed laws<sup>36</sup>.

The next issue deals with collection and storage of personal data about LGBT people.

The replies received from the authorities in the course of this project contain no information on the matter. However, at times in different Russian regions they adopt regulations and standards focused, as a rule, at struggle against sexual assault or at the prevention of HIV extension or other sexually transmitted diseases. The police are supposed to collect data on homosexual persons and/or share it with certain bodies (e.g.

<sup>28</sup> The cases are placed on record within the framework of the monitoring programme carried out by the “Vyhod” LGBT organisation along with the Russian LGBT Network.

<sup>29</sup> See: Legal report. Section 313.

<sup>30</sup> See: Legal report. Sections 314–318.

<sup>31</sup> See: Article 134 of the Criminal Code of the RF

<sup>32</sup> See: on putting some amendments to the Criminal Code of the RF and certain pieces of legislation of the RF in terms of penalty enhancement for sexual crime committed in regard to persons under age: Federal law of the RF № 14-ФЗ adopted by the State Duma on February 7, 2012 and approved by the Federation Council on February 22, 2012. URL: <http://www.rg.ru/2012/03/02/neswovershennoletnye-dok.html>.

<sup>33</sup> cf: Part 1 and Part 2 of article 134 of the Criminal Code of the RF current version.

<sup>34</sup> See Note 2 to article 134 of the Criminal Code of the RF current version.

<sup>35</sup> See Note 1 to article 134 of the Criminal Code of the RF current version.

<sup>36</sup> See letter by S.V.Shutkov, Director of the Constitutional legislation department of the Ministry of Justice of the Russian Federation, № 07-60/93 dated 30 July 2012.

doctors)<sup>37</sup>. Representatives of some regional departments of the Internal Affairs Directorate stated that there was no activity on collecting and storing of personal data about homosexuals<sup>38</sup>.

A whole set of problems is connected with the fact that **same-sex couples cannot have registered partnership in Russian Federation** – neither in form of marriage, nor in some other form of quasimartial relationships (for example, registered partnership or common-law marriage). Though quasimartial unions are not present in the Family Code of the Russian Federation and cannot be enjoyed also by people of different sexes there is a one exception from this rule. Adoption of a child is available for two people of different sexes and is impossible for two same-sex persons<sup>39</sup>.

The reply from the Ministry of Education and Science of the Russian Federation only contains some quotations of regulations from the Family Code of the Russian Federation. They establish general provisions for the child's up-bringing, adoption etc. and they deal with no matters related to sexual orientation or gender identity<sup>40</sup>. The responses received during the course of the project do not contain information about the fact that the authorities considered any possibility of implementing legal or other means to address the practical problems arising from the lack of recognition of same-sex couples. Moreover, according to Russian authorities "under the provisions of Part IV [Recommendation] "The right for respect for private and family life" is interpreted by the RF by virtue of Article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In line with it, the implementation of the right for marriage and establishing a family is regulated by national legislation. Besides, it is based on the bright attitude of the European Court of Human Rights to the right for contracting a marriage only between a male and a female, which cannot be treated as impairment of LGBT rights and consequently does not require their extending<sup>41</sup>.

Finally, LGBT people face certain problems in the area of **parenthood**. Particularly, the Russian law allows a child's adoption by an individual<sup>42</sup>, and also an access to assisted reproductive treatment for women<sup>43</sup>. However, the responses received during the course of this project do not clarify how these laws are applied to LGBT people. Nothing is said about actual decisions about parental rights custody of children.

#### **v. Respect for private and family life and access to health care – specific transgender issues (Section IV of the Appendix, paras 20, 21 and 22, and Section VII, paras 35 and 36))**

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<sup>37</sup> See e.g. "On measures for prevention and suppression of violent encroachments against the minors: Ministry of the Interior Order dated 25 April 2008. Available from data system "KonsultantPlus"; "On the approval of municipal special-purpose programme on the prevention of HIV, viral hepatitis B, C and other sexually transmitted diseases for 2006-2010". Chief of ME of Berdsk (Novosibirsk region) ordinance dated 3 April 2006 № 897. See also Legal report. Sections 319-323. Specific cases of implication of this kind of instructions are described in report on the position of LGBT people in Russia made by the Russian LGBT Network along with Moscow Helsinki group. See: Lesbians, gays, bisexuals and transgenders' status in the RF. M., 2009, p.61.

<sup>38</sup> Letter by Chief deputy of the Central Internal Affairs Directorate for Moscow S.Y.Skubak № 3/3976 dated 25 March 2011; Letter by Chief of the Central Internal Affairs Directorate for Saint-Petersburg and the Leningrad region V.Y.Piotrovsky №58/269 dated 11 March 2011.

<sup>39</sup> See the Family Code of the Russian Federation section, 3 article. 137 («As a result of adoption by one person, moral rights as well as proprietary right and obligations can be preserved at Mother's will, if the adopter is a male or at Father's will if the adopter is a female»). See also: Legal report, Sections 150–152.

<sup>40</sup> See the letter by S.V.Vitelis, Deputy Director of Department of the state policy in regard to the protection of children's rights of the Ministry of Education and Science of the Russian Federation № 07-ПФ-МОУ-13633 dated 25 July 2012.

<sup>41</sup> The letter by Ya.Nilov, Chairman of the Committee on non-governmental and religious organisations of the State Duma of the Federal Assembly of Russian Federation, № 3.21-22/277 dated 06 September, 2012 (Appendix).

<sup>42</sup> See for details The Family Code of the Russian Federation, section 1, article 125 (which says that adoption is carried out at request of a person or persons who want to adopt a child).

<sup>43</sup> See the Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-ФЗ dated June 25, 2012, Section 3, article 55 («A male and a female regardless of their marital status have a right for assisted reproductive treatment and medical intervention if there is their free-will consent based on grounds of awareness of them. A single woman also has a right for assisted reproductive treatment and medical intervention on grounds of her free-will consent and awareness of them»).

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

**Legal recognition of a person's gender reassignment.** Even though there exists only one special legal requirement for getting new official documents by transgender persons. It is the presentation of “a document given by a medical institution which proves a gender reassignment”<sup>44</sup>, the requirement contains no reference to medical intervention. And according to the response of the Ministry of Health of Russian Federation, «Civil Registry Office only makes changes into one’s passport if provided a document on gender reassignment given by a medical institution»<sup>45</sup>, in practice that means that in most cases law enforcement bodies require proofs of the performed surgery from transgender persons.

It is the position the Ministry of Justice of the Russian Federation adheres to and according to it “the Civil Registry Office only makes changes into one’s birth statement if gender reassignment is a consequence of performed surgery considered to be irreversible. The possibility of the issuance of new official documents to persons suffering from gender identity disorder prior to the surgery, can only be established by Federal legislation”<sup>46</sup>. Subsequent to the Ministry of Justice of the RF a lot of regional Civil Registry Offices maintain the same approach to the matter<sup>47</sup>.

Particular cases on the getting of new official documents by transgender persons provide evidence for that practice.

*E.g. in the following case, the applicant was diagnosed with gender identity disorder, got hormonal replacement therapy which led to irreversible changes and a mastectomy surgery. The applicant got recommendations to have changers on gender records made in official documents. All the facts were proved by a medical assessment report. The Civil Registry Office refused to issue a new official document containing the person’s new gender and name on grounds of “the absence of a document on the carrying out of all the necessary procedures including phalloplasty”(2012, Moscow region)<sup>48</sup>.*

*In another case the applicant had mastectomy surgery performed and it was proved by medical records. The person got a medical assessment report on gender reassignment surgery. The Civil Registry Office did not consider them sufficient enough for making changes on the person’s new gender in an official document. The Chief of the Civil Registry Office declared that the matter of issuing a new official document for the person would be discussed after the person had another two surgeries performed (hysterectomy and phalloplasty). The applicant had to be operated on at a local clinic (although, other kinds of surgeries were to be performed later, after the person had saved enough money for them. Besides, the surgeries were to be performed in a different region and by more experienced surgeons) (2012, Altai Territory)<sup>49</sup>.*

<sup>44</sup> See the Federal Law “Concerning Acts of Civil Status” № 143-Ф3 on November 15th 1997, article 70.

<sup>45</sup> See letter by O.I.Guseva, Deputy Chief of the Department on medical prevention, emergency primary health care and sanatorium-resort therapy at Ministry of Health of the Russian Federation №14-5/2108538 dated 30 November 2012.

<sup>46</sup> Letter by I.I.Alabyeva, Deputy Director of Department on aid and advice in legal matters and interaction between it and the judicial system of the Ministry of Justice of RF dated 18 May 2011, №16-31767.

<sup>47</sup> See for e.g.: Letter by I.N.Leonova, Chief of the Civil Registry Offices Department of Republic of Karelia dated 2 February 2011, № 85; Letter by D.K.Sychkar, Chief of the Civil Registry Offices Department of the Komi Republic dated 28 February 2011, № 03-25/167; Letter by O.N.Maznichenko, Chief of the Civil Registry Offices Department of Krasnodar Territory dated 4 February 2011, № 50-506/11-02.1-13; Letter by L.S.Smirnova, Chief of the Civil Registry Offices Department of the Tyumen Region dated 9 February 2011, № 116/01-16.

<sup>48</sup> The case papers are kept by one of the authors of the present text.

<sup>49</sup> For other cases see: Sex, gender, and gender-identity discrimination in regard to healthcare, education, employment and social services in the Russian Federation. Alternative report for the United Nations Committee on Economic, Social and Cultural Rights (2011). P.30.

The procedure of legal recognition of a person's gender reassignment is established but it has not been completely worked out and as a result it is not clear enough. According to article 70 of the Federal Law "Concerning Acts of Civil Status", making appropriate changes into a birth record of a transgender person is possible on the presenting of "a set form document on gender reassignment given by a medical institution". Yet in 1998, the working out and the approval procedure of the document were imposed on the Ministry of Health of the Russian Federation. The deal has not still got off the ground. As a result, in practice, Civil Registry Offices can negative applicants' requests despite the fact they presented medical board conclusions on grounds of their wrong form (which even does not exist!). Courts can call in question the presented documents with no grounds and get transgender persons into additional detailed medical testing.

There is no accord on appeal legal process against Civil Registry Offices which refuse to provide transgender persons with new official documents. There are only three procedures that are implemented. They are the admission of a gender reassignment fact, challenge against bodies of state power and making changes into the records<sup>50</sup>.

Representatives of the Ministry of Health of Russian Federation testify that in 2007 "the Protocol of treating people suffering from gender identity disorder" was worked out by the staff of one of the medical institutions, Appendix to which protocol allegedly provides an example of a medical report for passport gender reassignment, in 2010 – "Clinical and economical standards of medical assistance" to transsexual people were worked out, and in 2012 – "recommendations for interpretation and implication of the law "Of forms of statistical registration. Certificate for the Civil Registry Office for making changes in the act of a civil status» (Form № 001-3AFC/y)". As it is stated in the response, "the adoption of these documents by the Ministry of Health of Russian Federation would improve medical and legal assistance to such persons"<sup>51</sup>.

As these documents are not available to public community or human rights organisation it is impossible to say whether they will contribute to the observance of Russian transgender persons' rights or vice versa will injure them.

Changing certificates of employment presents a major challenge for transgender persons. The certificate of employment execution procedure is regulated by the Instruction on the filling in of certificates of employment approved by a decree of the RF Department of Labor dated 10 October 2003. Nevertheless, the instruction does not deal with transgender persons' situation after their gender reassignment. Consequently, according to current laws and regulations in operation, transgender persons only have two options: they can either get an employment certificate duplicate containing records on the previous name (which might be considered as invasion of the right of privacy making the person explain the situation each time applying for a job) or to get a new employment certificate with a new name but containing no records about the person's previous working experience.

*In 2007, in Ryazan the court dismissed the plaintiff's, who was a transgender woman, claims. She already had a new passport containing her feminine name but the court dismissed her claims on the issuance of an employment certificate duplicate with the restored records and on the compensation for moral injury.*

*The representatives of the civil defendant did not admit the claim and explained that according to the Instruction on the filling in of certificates of employment, changes in them are made with crossing the previous records and filling them in with new ones. An employment certificate duplicate is issued on grounds of records made in the original certificate. The plaintiff refused to get a standard certificate of employment filled in in accordance with the Instruction and a formal note of that was taken. The court dismissed the*

<sup>50</sup> See for details Kirichenko K.A. Transgender persons status in Russian regions: the change of official documents and the access to special medical care: analytical notes. Saint-Petersburg, 2011.

<sup>51</sup> See letter by O.I.Guseva, Deputy Chief of the Department on medical prevention, emergency primary health care and sanatorium-resort therapy at Ministry of Health of the Russian Federation №14-5/2108538 dated 30 November 2012 (see also the letter brief version in the body of the report).

*plaintiff's claims on grounds that "they did not correspond to a standard procedure for the filling in of a certificate of employment"*<sup>52</sup>.

There are no special laws or regulations to protect transgender persons (although there are some general provisions on the necessity for the protection of HR data within official secrecy, vital record secrecy etc.).

Only in regard to the **right of transgender persons to marry a person of the sex opposite to their reassigned sex** the situation in Russia is in line with the Recommendation CM/Rec(2010)5. After the issuance of new documents a person is considered to be of a gender written in the documents. In practice, transgender persons get married.

**Access to health care.** According to Chairman of the State Duma Committee on health protection, "In Moscow alone about 70 medical institutions offer gender reassignment services on open access. It is hard to estimate the access to appropriate gender reassignment services in the subjects of the RF. Doctors' subspecialty does not suppose great demand for the services. The reason for that is a small number of potential transgender persons who need surgeries in comparison with other potential patients. Other specialists such as mental specialists, psychologists or endocrinologists do not belong to shortage specialty doctors<sup>53</sup>.

Nevertheless, in the eye of transgender persons themselves, there is a lack of up-to-date knowledge in the sphere of transgenerness and specialists dealing with it have poor qualifications. That especially is true for the Russian regions. Access to high quality medical services dealing with gender reassignment surgery is a problem. Gender reassignment surgery for transgender men is only available in few big cities of Russia. And even there not always the most up-to-date methods of surgical interference are available (e.g. laparoscopic metrectomy instead of cavernous metrectomy, metoideoplasty). As for other towns and cities, there are no surgeons dealing with transgender persons at all. Although if a non-transgender person has a disease and needs surgical interference such kinds of surgery are available. Transgender persons have no access to the services in a lot of Russian regions<sup>54</sup>.

There is a health insurance system in Russia. Nevertheless, the documents regulating it contain no direct reference to transgenerness. In the majority of cases transgender persons cover all the gender reassignment treatment themselves.

As the Chief of the State Duma Committee on health care puts it, "medical services dealing with gender reassignment are not included into the programme on state guarantee of delivery of free medical care to citizens of the Russian Federation. The programme is financed out of the funds of compulsory medical insurance and out of the regional and federal budgets. Some of the medical services within hi-tech medical care applied to the Russian citizens are covered out of the federal budget (...) Transgender persons' needs are not included into the programme not for the reason of discrimination but for the reason that surgical methods and hormone therapy within the gender reassignment procedure are not vitally important kinds of health care"<sup>55</sup>.

It stands to mention, that currently only costs on penis/urethroplasty might be covered out of the federal budget within the quotas for microsurgeries. However, the vast majority of medical centers dealing with transgender surgeries do not perform quota operations. A few institutions having specialists in that field of surgery and included into a special list cannot provide all the persons who need surgery with the needed services. Secondly, according to the information we get from transgender persons, surgery period staying at day and night clinic and primary recovery after it are not covered out of the budget. And thirdly, quotas cover nor the previous surgery stages (mastectomy, metrectomy) nor metoidioplasty, which is the

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<sup>52</sup> Sex, gender, and gender-identity discrimination in regard to healthcare, education, employment and social services in the Russian Federation. Alternative report for the United Nations Committee on Economic, Social and Cultural Rights (2011), p.11.

<sup>53</sup> Letter by S.V.Kalashnikov, Chairman of the State Duma Committee on Health Care № 3.4-22/426 dated 24 July 2012.

<sup>54</sup> See: Sex, gender, and gender-identity discrimination in regard to healthcare, education, employment and social services in the Russian Federation. Alternative report for the United Nations Committee on Economic, Social and Cultural Rights (2011), p.19-20.

<sup>55</sup> See for e.g: Letter by I.E.Kvyatkovsky, Minister of Healthcare of the Astrakhan Region № 01-23-4466 dated 19 May 2011; Letter by A.R.Belyavsky, Minister of Healthcare of the Sverdlovsk Region № 01-25/386 dated 20 May 2011.

alternative for penis/ urethroplasty and is less painful as this requires less skin and muscle material from the other parts of the patient's body. Metoidioplasty is considered as the optimum alternative by many transgender men<sup>56</sup>.

According to the information the authors got from transgender persons who have appealed for legal advice, there are only few cases when surgeries were covered out of the budget. In order to get a quota a patient has to appeal to numerous bodies but with no hope for a guaranteed positive result. The documents regulating hi-tech medical care do not contain any reference to transgenerness.

## vi. Employment

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

The Labor Code of the Russian Federation is guided by the principle of the **impermissibility of employment discrimination**. The list of protected characteristics does not include sexual orientation or gender identity. Nevertheless, the list contains such a phrase as "and other circumstances"<sup>57</sup>. The Vice-Chairman of the State Duma Committee on labor, social policy and matters relating to veterans in his answer to our address says that "apparently, these circumstances mean sexual orientation or gender identity of an employee". The letter says that at the moment there are no law drafts focused on employment non-discrimination on the ground of sexual orientation or gender identity which went before the State Duma<sup>58</sup>.

As was stated above, Russian laws do not legislate the impermissibility of employment discrimination. However, general non-discrimination rules can be applied to the access to employment, promotion, dismissals and pay. Harassment and other forms of victimization are not regulated by labor legislation.

The letters received within the project framework contain no information on measures taken or planned by the authorities to combat discrimination, harassment and victimisation, in both public and private sectors. The authors have no information on them either.

There is also no information about abolishing of **discriminative practices in the armed forces**. At the same time, the authors of the present text have information on the applying of discriminatory practices in the past. The report on LGBT people's status in Russia prepared by the Russian LGBT Network in association with Moscow Helsinki group says that "Those gays and lesbians who work or want to work at state-run institutions or educational institutions are the most vulnerable people. The respondents questioned in the monitoring course, time and again mentioned the practice of candidates' testing when they apply for jobs at state-run or educational institution. The test includes questions on the candidate's private life to check whether the candidate is "normal". In case the management finds out that an employee is a homosexual person they try to get rid of her or him"<sup>59</sup>. The report also contains some examples about people working at law enforcement agencies and having been persecuted or discriminated due to their sexual orientation.<sup>60</sup>

The letters and the information got within the framework of the project realization do not allow describing the specific character of the steps the authorities take to protect transgender persons in regard to employment relations, such as efforts to avoid irrelevant **disclosure of their gender history or their former name**. The authors have no information on such measures either.

At the same time, in practice the issue is urgent.

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<sup>56</sup> Sex, gender, and gender-identity discrimination in regard to healthcare, education, employment and social services in the Russian Federation. Alternative report for the United Nations Committee on Economic, Social and Cultural Rights (2011), p.14.

<sup>57</sup> See The Labor Code of the Russian Federation, articles 2, 3. See also Legal report. Items 232-236.

<sup>58</sup> Letter by G.N.Karelov, First Deputy Chairman of the State Duma Committee labor, social policy and matters relating to veterans, № 3.2-23/1119 dated 4 July 2012.

<sup>59</sup> The status of lesbians, gays, bisexuals and transgenders in the RF. M., 2009, p.73.

<sup>60</sup> ib. p. 73-75

*In 2011, the “Legal Assistance” programme initiated by the Russian LGBT Network got a request. The employer recruited a transgender man who changed all the documents. With neither legal foundation nor informing the employee, the employer found out the details of his private life. Later the employer started to call the employee his previous name that did not correspond to the employee’s gender identification and shared the information with the staff. The person had to retire.<sup>61</sup>*

## **vii. Education**

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

As the results of the Monitoring show no measures on behalf of Russian authorities are undertaken to apply the Recommendation in the area of Education. Moreover, adopted regional and discussed federal laws prohibiting so called “propaganda of homosexuality among minors” creates problems to teachers, psychologists and social workers to whom underage students may address with their questions about gender identity because their counsel, if becomes known, can be interpreted as “propaganda of homosexuality”. The same applies to all actions in resistance to homophobic and transphobic bullying in educational institutions.

Discrimination of LGBT in the area of Education has not yet been researched in Russia. However, during the Monitoring the Russian LGBT Network manages to register some cases of human right abuse on grounds of sexual orientation or gender identity in educational institutions.

*In 2011-2012 school year, in Arkhangelsk a teacher who learned that a schoolgirl of a secondary school was brought up in a lesbian family, shared the information with the staff and some schoolchildren. Later the girl was bullied by her classmates and experienced prejudice on the part of the teachers. The girl’s parents had to take the girl away from school and to move to another residential area<sup>62</sup>.*

## **viii. Health - other than transgender specific health issues<sup>63</sup> (Section VII of the Appendix paragraphs 33, 34,)**

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

Letters received in the course of project execution do not contain the information whether or not specific needs in relation to (a) sexual orientation and (b) gender identity are taken into account in design of national health plans; health surveys; suicide prevention programmes; medical training programmes; training courses and materials; the monitoring and quality assessment of health-care services.

In fact, the Chairman of the State Duma Health Committee remarks: “separation of gay, lesbian, bisexual and transgender persons in a special group of subjects of medical law as, for example, disabled persons, in our opinion most likely shall lead to their social disintegration with other members of society and shall

<sup>61</sup> That case is also described in the alternative report written by the Russian LGBT Network for the the United Nations Committee on Economic, Social and Cultural Rights and called “Sex, gender, and gender-identity discrimination in regard to health care, education, employment and social services in the Russian Federation” (2011, p.11).

<sup>62</sup> Monitoring data by the Russian LGBT Network. In press.

<sup>63</sup> See Section v above.

become an additional cause of discrimination manifestations of the citizens that do not share ideological grounds of the LGBT communities”<sup>64</sup>.

The specific information about whether or not training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity also has not been provided by the authorities.

The state practically does not fund the programmes aimed at the measures to prevent sexually transmitted diseases among the men practicing same sex relationships. Such programmes are supported only by some nongovernmental organisations funded at foreign grants cost. However, even those organisations are not engaged in preventing sexually transmitted diseases among the women practicing same sex relationships. Considering that healthcare staff (gynecologists in particular) do not undergo any special training regarding particular needs of lesbian or bisexual women; and also due to administrative limitations (for instance female condoms are not registered in Russian Federation) those women practically do not have access to the specialized information and means for their health protection<sup>65</sup>.

There are certain problems concerning decision-making about health issues of an LGBT person. In accordance with Russian legislation the patient has a right to choose persons who shall be informed of his health condition<sup>66</sup>. Without particular expression of will of the patient according to the general rule the information is provided to the spouse<sup>67</sup>; the spouse of the deceased is asked for permission to use organs or tissues for donation<sup>68</sup>; the spouse is able to forbid post-mortem examination on religious grounds<sup>69</sup>; the conclusion decision on the cause of death and the diagnosis of disease is given to the spouse<sup>70</sup> etc. As long as the same-sex marriage cannot be contracted in Russia these opportunities are not accessible for homosexual or bisexual persons.

As a Chairman of the State Duma Health Committee remarks “in the healthcare system of Russian Federation there is no national classification of diseases discrepant from International Classification of Diseases (ICD) of the World Health Organisation. The classification of ICD is used in Russian regulations and standards. In 1999 Russian Federation ratified ICD-10 from which diagnosis “homosexuality” has been removed<sup>71</sup>. From this perspective the position of Russian state is in line with the Recommendation CM/Rec(2010)5.

At the same time there is no reliable information that the old documents, textbooks and other materials which treated homosexuality as a disease have been corrected or removed from training process.

Besides, now and then there appear messages that some people or organisations offer to “treat” homosexuality. In 2012 the stir among the public was caused by the case of 16 year old Ivan Kharchenko who was put to the private clinic for “treatment” of his sexual orientation as soon as his father discovered it<sup>72</sup>.

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<sup>64</sup> Letter from S.V. Kalashnikov, Chairman of the State Duma Health Committee, № 3.4-22/426, July 24, 2012.

<sup>65</sup> See: Discrimination on the grounds of sexual orientation and gender identity in the area of health care, education, employment and social security in Russian Federation: alternative report for United Nations Committee on Economic, Social and Cultural Rights (2011). P. 19.

<sup>66</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-Ф3 dated June 25, 2012, p. 5 p. 5 art. 19.

<sup>67</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-Ф3 dated June 25, 2012, p. 3 art. 22.

<sup>68</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-Ф3 dated June 25, 2012, p. 7 art. 47.

<sup>69</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-Ф3 dated June 25, 2012, p. 3 art. 67.

<sup>70</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-Ф3 dated June 25, 2012, p. 5 art. 67.

<sup>71</sup> Letter from S.V. Kalashnikov, Chairman of the State Duma Health Committee, № 3.4-22/426, July 24, 2012

<sup>72</sup> See: Related publications, for example: <http://www.gazeta.ru/social/2012/04/25/4563373.shtml>; <http://www.novayagazeta.ru/news/56317.html>.

## ix. Housing

Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

No case of such measures taken in Russia has come to notice of the Russian LGBT Network. The authorities, that we applied to, have not provided any specific information on the matter. The Housing Code of Russian Federation does not contain any anti-discriminatory legislation.

## x. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

In its response the Ministry of Sport, Tourism and Youth Policy of Russian Federation refers to the general anti-discriminatory provisions in the branch law (the Code of Administrative Procedure, the Labor Code, and the Criminal Code) and also to the art. 14 of Convention for the Protection of Human Rights and Fundamental Freedoms, which do not point directly at the grounds of sexual orientation and gender identity. Whereas there are no reference to any act of legislation or standard regulation obligatory in Russian Federation, which would point directly at the prohibition against the discrimination on the grounds of sexual orientation and gender identity in sports. Also the response does not specify the standpoint of the Ministry regarding the anti-discriminatory provisions listed above: should they be interpreted in a sense of the prohibition against the discrimination on the grounds of sexual orientation and gender identity or not. Thus it can be stated that nothing has been done for implementation of the CMCE Recommendation in the area of sports on the behalf of Russian state.

A total nonfeasance of sport organisations in prevention of homophobia and transphobia among sports fan's organisations should be noted. According to the monitoring data collected by Russian LGBT Network at present time Russian sport fan sector is merged with the political right wing which is known for its excess homophobic and transphobic statements.

*Most illustrative is the event happened on May 17, 2012 in Saint-Petersburg, during the course of and just after the "Rainbow flash mob" dedicated to the International day of opposition to homophobia and transphobia. During the street action which took place in the park not far from the stadium (which traditionally hosts all the soccer events in Saint-Petersburg) the meeting held by the LGBT community was surrounded by a crowd of about 100-150 athletic people dressed in training outfits, wearing masks, shouting menacing chantings typical for the sport fans, such as: "We shall string you up, we shall bury you". The police stood between this group and the representatives of the LGBT community. After the ending of the LGBT event on the demand of the police the LGBT representatives left the place where the action was held and the wrathful crowd had smashed up the bus with foreign workers<sup>73</sup>. In such a way it was demonstrated ones again that homophobia and migrantphobia are the special case of xenophobia and racism. Regrettably no comments from the officials of any sport club have followed the event. Also*

<sup>73</sup> After the "Rainbow flashmob" in Saint-Petersburg homophobes had smashed up the bus with foreign workers // <http://lgbt-grani.livejournal.com/1456062.html>

*there was no police investigation.*

#### **xi. Right to seek asylum**

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

At this time Russian LGBT-network does not consider Russia an appropriate country for people to get an asylum on the grounds of sexual orientation and gender identity. That is why official requests to Federal Migration Service of Russia have not been sent.

Russian LGBT Network does not hold information about the training in the specific problems encountered by LGBT refugees or asylum seekers for the staff of the Federal Migration Service responsible for the work with refugees. However considering that no such training is provided for other staff of the Ministry of the Interior (which is Federal Migration Service jurisdictional to) we can make an assumption that no such training is provided for FMS staff either.

No case of someone trying to get an asylum or refugee status in Russian Federation on the ground of sexual orientation and gender identity has come to notice of Russian LGBT Network.

#### **xii. National human rights structures**

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

Russian LGBT Network is ready and willing to forge partnership with Commissioner for human rights in Russian Federation V.P. Lukin. However, there is little progress in this. Suffice to say that over the time of our work only one meeting with the Commissioner had happened (in 2009). After that the representative of the Commissioner's staff had attended only one of our activities (roundtable discussion with Andreas Gross in March 2011). The meaningful result of this cooperation was adding the problem of the situation of transgender persons in Russian Federation and the danger of passage of the law on the prohibition of so called "propaganda of homosexuality" to the Report on the situation of human rights in Russia in 2011<sup>74</sup> The representatives of executive office of the Commissioner gave cautious commentaries about "lack of legal clarity" of the law prohibiting "propaganda of homosexuality"<sup>75</sup>.

Unfortunately, no actions for implication of the CMCE Recommendation have been undertaken by the Commissioner's office. At present there are no documents on measures to combat discrimination on grounds of sexual orientation or gender identity, including the text of the Recommendation, published on the official site of Commissioner's office. The Commissioner does

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<sup>74</sup> Report of the Commissioner for human rights in Russian Federation, 2011 // Registered web-site of the Commissioner for human rights in Russian Federation. URL: <http://ombudsmanrf.org/2009-11-05-14-09-33/10537--2011-.html>.

<sup>75</sup> Human rights that annoy the government // Registered web-site of the Commissioner for human rights in Russian Federation URL: <http://ombudsmanrf.org/2012-01-12-07-31-03/10847-2012-04-03-11-48-47.html>.

not take full advantage of all his rights assigned to him by the Federal Constitutional Law "On Commissioner for human rights in Russian Federation". Particularly, as far as it is known to us despite of all our multiple petitions, including the proposition to direct suggestions on improvement of administrative procedures and the changes and additions to legislation by adding the provisions prohibiting the discrimination on the grounds of sexual orientation and gender identity, it has never been done. The only changeless response from the Commissioners executive office is: *we do not have enough appeals on the infringement of rights of LGBT.*

**Recommendation CM/Rec(2010)5  
of the Committee of Ministers to member states  
on measures to combat discrimination on grounds of sexual orientation or gender identity**

*(Adopted by the Committee of Ministers on 31 March 2010  
at the 1081st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on "Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons";

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

#### ***Appendix to Recommendation CM/Rec(2010)5***

#### **I. Right to life, security and protection from violence**

##### **A. “Hate crimes” and other hate-motivated incidents**

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

#### **B. “Hate speech”**

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

#### **II. Freedom of association**

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

#### **III. Freedom of expression and peaceful assembly**

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on

grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

#### **IV. Right to respect for private and family life**

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

## **V. Employment**

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

## **VI. Education**

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

## **VII. Health**

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual

orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

### **VIII. Housing**

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

### **IX. Sports**

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

### **X. Right to seek asylum**

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of

physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

#### **XI. National human rights structures**

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

#### **XII. Discrimination on multiple grounds**

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

## Glossary

**Gender identity** refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as "transgender" persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

**Gender reassignment treatment** refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

**Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

**Hate crime** towards LGBT persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

**Hate-motivated incident** are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

**Hate speech** against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

**Homophobia** is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

**Intersex people** are persons who are born with chromosomal, hormonal levels or genital characteristics which do not correspond to the given standard of "male" or "female" categories as for sexual or reproductive anatomy. This word has replaced the term "hermaphrodite", which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

**LGBT people** or **LGBT persons** is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

**Multiple discrimination** describes discrimination that takes place on the basis of several grounds operating separately.

**NGO** is the abbreviation for "non-governmental organisation".

**Sexual orientation** is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

**Transgender** persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels “male” or “female”, transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners. The word **transgenderism** refers to the fact of possessing a transgender identity or expression.

**Transphobia** refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.

**Monitoring Implementation of  
the Council of Europe Recommendation to member states  
on measures to combat discrimination on grounds of sexual orientation  
or gender identity (the “CMCE Recommendation”)**

**Compliance Documentation Report**

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As the part of process of Recommendation implementation monitoring Russian LGBT-Network sent letters to different state institutions both federal and regional. Each letter contained certain questions related to the Recommendation implementation process according to the institution specialization. In addition, separate brochure with unofficial translation of Recommendation, Memorandum, and Network proposals on the Recommendation implementation was attached to each letter. The letter itself was utilized as information of governmental bodies about this Recommendation, since creation of awareness to state bodies had not been performed beforehand.

45 bodies have received letters on federal level. In particular: President of Russian Federation, Chairman of Government of the Russian Federation, Ministry of Internal Affairs, Ministry of Sport, Tourism and Youth Policy, Ministry of Healthcare and Social Development, Ministry of Education and Science of the Russian Federation, Ministry of Defense of the Russian Federation, Federal Penitentiary Service of the Russian Federation, Federal Service on Surveillance in the Sphere of Consumer Rights Protection and Human Welfare (Rospotrebnadzor), Federal Agency for Press and Mass Media, Ministry of Justice of the Russian Federation (Minjust), Public collegiate organ for complaining of the media, Union of Journalists of Russia, Commissioner for human rights in Russian Federation, United Russia party State Duma Fraction, Communist Party of the Russian Federation State Duma Fraction, A Just Russia State Duma Fraction, Liberal Democratic Party of Russia State Duma Fraction, the State Duma Committee for physical culture, sport and youth affairs, the State Duma Committee for Public and Religious Organisations, the State Duma Committee for Family, Women and Children Affairs, the State Duma Committee for Family, Women and Children Affairs, the State Duma Committee for Civil, Criminal, Arbitral and Procedural Law, the State Duma Committee for Constitutional Law and State Building, the State Duma Committee for Health Services, the State Duma Committee for Labor and Social Policy and Veterans Affairs, Federal Labour and Employment Service (Rostrud), Russian Trilateral Commission for the Regulation of Social and Labour Relations, The Council of Federation of the federal Assembly of Russian Federation, The Council of the Federation Committee on Social Policy, Children's Rights Commissioner for the President of the Russian Federation, Commission on civil society development and interaction with civic chambers of subjects of the Russian Federation of Civic Chamber of the Russian Federation, Commission on support of mass media as a basis of civil society, freedom of speech and access to information of Civic Chamber of the Russian Federation, Supreme Court of Russia, Constitutional Court of the Russian Federation, Academy of the Right and Management FSES RF, Academy of justice of the Russian Federation, MVD Administration Academy, Institution of Advanced Training for executive staff of the Academy of the Office of the Prosecutor General of the Russian Federation, R&D establishment Academy of the Office of the Prosecutor General of the Russian Federation, Academy of the Office of the Prosecutor General of the Russian Federation, Federal State-Owned Enterprise “ All-Russian Research Institute Ministry of the

Interior of Russian Federation “ , Federal State Statistics Service, Office of the Prosecutor General of the Russian Federation, Department for International Humanitarian Cooperation and Human Rights MFA of Russia, Investigation department at the Ministry of Interior , Investigation Committee of Russian Federation, Interdepartmental Commission to combat extremism in Russian Federation. The answer is from: General directorate to combat extremism

Unfortunately, Russian LGBT-Network didn't receive replies from all institutions. 22 bodies didn't provide a reply (*see Appendix IV*). Part of power bodies (Presidential Administration, Government Administration, Federation Council Administration, General Prosecutor's Office) refused to answer our questions and only forwarded letter to different authority. These authorities either didn't reply or their answers didn't contain answers to our questions (Ministry of Justice, The Council of the Federation Committee on Social Policy forwarded the letter to the Department for International Humanitarian Cooperation and Human Rights MFA of Russia. Several bodies (Federal Service on Surveillance in the Sphere of Consumer Rights Protection and Human Welfare, Federal Agency for Press and Mass Communications, Supreme court) returned our letters and Recommendation text since implementation of documents approved by the Council of Europe issues were not related to the department work, despite the fact that letters contained particular questions to the department on its work. Additionally, we received replies from the following bodies: Interdepartmental Commission to combat extremism in Russian Federation, Federal Labour and Employment Service (Rostrud), Russian Trilateral Commission for the Regulation of Social and Labour Relations (in the Government Administration).

Unfortunately, not all replies were substantive. Majority of questions that we asked were ignored and replies were written according to their own logic. In general, we received 14 replies that contained, with some assumptions, answers to our questions, 50 requests were sent. All this gives evidence about very low maturity level of Russian government representatives on federal level to hold dialogue on federal level to overcome discrimination on grounds of sexual orientation or gender identity.

On the regional level letters were sent to all 83 regions of Russia, including Region's government, Legislative bodies, regional Ministries of Internal Affairs and Ministries of Justice, and Human Rights Commissioners and Children rights Commissioners. Data received from regions are still being processed and analysis upon it will be reported separately.

Copies of letter to government bodies and replies used for this report preparation are available at Russian LGBT-Network and are available upon request.

## **Recommendation**

- 1. To examine existing legislative and other measures, keep them under review, and collect and analyze relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**

*Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

This question has been addressed to the Chairman of State Duma, Human rights Commissioner in Russian Federation, Ministry of Justice, State Duma Committee on civil, criminal, arbitral and procedural legislation, State Duma Committee on constitutional legislation and state-building, the Federation Council, General Prosecutor's Office. Substantial reply has been received only from Ministry of Justice. Other bodies either didn't reply or sent unsubstantial replies.

In its reply Ministry of Justice of RF (dated July 30, 2012, signed by the Department of constitutional legislation head S.V. Shutkov) doesn't give the answer for the addressed question. In its reply Ministry of Justice refers to part 2 of the paragraph 19 of the Constitution of RF "State guaranties equality of rights and freedoms of humans and citizens regardless of their sex, race, nationality, language, origin, property or official status, place of residence, religious and other beliefs, affiliation to public associations and other circumstances. All forms of limitation of rights of citizens on grounds of social, racial, national, language or religious affiliation are prohibited". It is stated in the reply of Ministry of Justice that "this constitutional principle consequently implemented in the legislation of Russian Federation which regulates basic rights and freedoms of citizens". In the same way, the reply contains reference to general anti-discriminatory norms, which are included into Labor Code of RF, "About education" legislation, "About basics of RF citizens health protection" legislation.

Hereafter, the Ministry of Justice refers to the definition of Constitutional Court of RF (dated June 9, 2005, №248-0) which contains the definition of "private life", and in such a way relates discrimination on grounds of sexual orientation or gender identity issues to the "private life" space. However, it refers to the paragraph 136 of the Criminal Code that "establishes criminal liability for the violation of equality of rights and freedoms and human and citizen", and to the paragraph 282 of the Criminal Code that establishes criminal punishment for "actions, aimed for hatred or enmity stimulation, and for repression of human or group of people dignity on the grounds of sex, race, nationality, language, origin, religious beliefs and affiliation to any social group".

Therefore, Ministry of Justice didn't give a reply to the answer: "Has a review been conducted of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination? This doesn't give us any proof that such measures have been conducted.

Appendix to the reply of Committee of State Duma on Public Associations and Religious Organisations (dated September 6, 2012, №3.21-22/277, signed by Committee head Yaroslav Nilov), prepared by Ministry of Foreign Affairs on the request of the Committee, contains general negative valuation of the Committee of Council of Europe Recommendations. In particular, the following:

We speak out against the preparation of special document aimed to raise up the level of protection of lesbians, homosexualists, bisexuals and transsexuals (further on – LGBT). Their rights are protected on certain level by general anti-discriminatory procedures of European Convention on the protection of human rights and basic freedoms, and also by other documents of the Council of Europe. We were afraid of the possibility that the new document would be used for dispute formication and involuntary imposture of values ... Project of the recommendation was prepared by the small working group in a big rush... and was approved by the Human rights Committee using voting procedure, despite the absence of consensus... Selective citation and double standards were, unfortunately, used as main methods on the first stage of drafting recommendations and explanatory memorandum for it.

Reasoning from this fact, position of Ministry of Foreign Affairs has become obvious:

Russian Federation considers recommendations of the Committee of the Council of Europe to the member countries regarding "Measures to combat sexual orientation and gender identity discrimination" must be interpreted only in relation of international responsibilities of member countries within the discrimination prohibition and mustn't create conducive environment for LGBT individuals comparing with other social groups.

In other words, in this explanatory text (*see Appendix for full version*) Ministry of Foreign Affairs of RF refuses to take action on implementation of Recommendations.

- i. Has it been processes, if yes – have mechanisms and procedure been applied? Do they allow identification and fix discrimination?*

This question has been addressed to the State Duma Chairman, Human Rights Commissioner in RF, Commissioner attached to the President of RF on Children rights, Ministry of Justice. None of the recipients have replied to this question, several individuals haven't even replied to the letter. We have no proof that this work has been done. Several governmental institutions have ignored proposals of Russian LGBT-Network.

- ii. Is discrimination on grounds of a) sexual orientation or b) gender identity prohibited in accordance with current legislation?*

This question has been addressed to the State Duma Chairman, Committee of State Duma on civil, criminal, arbitrate and procedural legislation, State Duma Committee on constitution legislation and state-building, the Federal Council, General Prosecutor's Office. None of the stated above bodies replied to our letters.

- iii. Has the current legislation gotten norms allowing or prohibiting direct or indirect discrimination on grounds of a) sexual orientation or b) gender identity?*

This question was addressed to the Committee of State Duma on civil, criminal, arbitrate and procedural legislation, State Duma Committee on constitution legislation and state-building, General Prosecutor's Office. None of the stated above bodies replied to our letters.

- iv. Is there any official data about cases of discrimination on grounds of sexual orientation or gender identity in Russia?*

This question was addressed to the Human Rights Commissioner in RF, Commissioner attached to President of RF on Children Rights. No replies have been received.

- i. Do current systems of official statistical detection allow to follow dynamics and condition of discrimination on grounds of sexual orientation or gender identity in Russia?*

This question was addressed to the Human Rights Counselor in RF, Commissioner attached to the President of RF on Children Rights. No replies have been received.

**2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;**

- i. What measures controlling approval and effective realization of legislation and other ways of combat discrimination on grounds of sexual orientation or gender*

*identity, realization of respect of LGBT human rights and enforcement of tolerance to LGBT individuals have been realized in Russian Federation?*

This question was addressed to the President of RF, Government chairman, State Duma Chairman, Committee of State Duma on civil, criminal, arbitrate and procedural legislation, State Duma Committee on constitution legislation and state-building, the Federal Council, General Prosecutor's Office, United Russia party State Duma Fraction, A Just Russia State Duma Fraction, Liberal Democratic Party of Russia State Duma Fraction. No replies have been received.

*ii. Has the current legislation gotten norms allowing or prohibiting direct or indirect discrimination on grounds of a) sexual orientation or b) gender identity?*

This question was addressed to the Ministry of Justice, State Duma Committee on Public associations and religions organisations, State Duma Committee on the issued of family, women and children. Neither Ministry of Justice nor State Duma Committee on Public associations and religions organisations replied to this question. , State Duma Committee on the issued of family, women and children didn't reply to the letter.

*ii. Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behavior within the general public and correcting prejudices and stereotypes, been implemented?*

This question was addressed to the Human Rights Commissioner in RF, Commissioner attached to the President of RF on Children rights, Commission of Public Chamber on civil society development and interaction with public chambers of RF regions. 2 last bodies didn't reply to our letters. Reply of the Human rights Commissioner didn't have the answer to this question.

*iii. Has the discrimination on the grounds of (a) sexual orientation and (b) gender identity according to the current legislation and including the following areas been prohibited:*

- *Hate speech and hate crimes*
- *Social security and healthcare*
- *Education*
- *Access to and supply of goods and services, including housing*
- *Activity of social associations and religious organisations*
- *Including family and children issues*

This question was addressed to the State Duma Chairman, Human rights commissioner, Ministry of Justice, State Duma Committee on civil, criminal, arbitrate and procedural legislation, State Duma Committee on constitutional legislation and state-building, Federation Council, General Prosecutor's Office. Clarification questions regarding Public associations and religious organisations was sent to Committee of State Duma on Public Associations and Religious Organisations, question regarding family and children and women was sent to the State Duma Committee on the issues of family, women and children.

None of the governmental bodies replied to us.

**2. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;**

- i. Which measures are provided by the current legislation for cases of discrimination (a) sexual orientation or (b) gender identity? Is there any proof of practical realization of such measures?*

This question was addressed to the State Duma Chairman, State Duma Committee on civil, criminal, arbitrate and procedural legislation, State Duma Committee on constitutional legislation and state-building, State Council, General Prosecutor's Office, Ministry of Internal Affairs, Consecutive department attached to MIA of RF, High Court, Consecutive committee of RF.

In the received replies this question was not discussed.

Current legislation of RF doesn't contain any procedures for the cases of discrimination on grounds of sexual orientation or gender identity.

- ii. What is being done in order to inform potential victims of discrimination about their rights and protection mechanisms?*
- iii. Have the effective methods of legal protection of discrimination on grounds of sexual orientation or gender identity victims been developed?*

This question was sent to the Ministry of Internal Affairs, Ministry of Justice and the High Court. MIA didn't reply to us. MoJ and the High Court didn't reply to this particular question. Russian LGBT-Network doesn't have any information about any actions regarding this issue.

- iv. Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*
- v. Do the remedies include, where appropriate, adequate reparation for victims?*
- vi. Is there any evidence of the realization of such procedures in practice?*

This question was addressed to the Ministry of Justice. In the reply of the Ministry this question was left unanswered.

Russian LGBT-Network doesn't have any information about any actions regarding this issue.

**4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;**

*Has this Recommendation been used in the documents of corresponding bodies since 2010? If no, why? If yes, then in which legislations, target programmes, documents for legislation drafting etc?*

This questions was address to the President of RF, Government Chairman, State Duma Chairman, State Duma Committee on civil, criminal, arbitrate and procedural legislation, State Duma Committee on constitutional legislation and state-building, Federation Council, General Prosecutor's Office, parliamentary party "Edinaya Rossiya", "Spravedlivaya Rossiya", Liberal Democratic Party of Russia State Duma Fraction, Communist Party of the Russian Federation State Duma Fraction, High Court, Constitutional Court, inter-departmental commission on the extremism countermeasures in RF, Consecutive department attached to MIA of RF, Consecutive committee of RF, Federal Service on State Statistics, , State-Financed institution "All-Russian scientific-research institution of the Ministry of Internal Affairs", Academy of the General Prosecutor's Office of RF, SRI of the Academy of General Prosecutor's Office, Institution of advanced training of the management of the academy of General Prosecutor's Office, Academy of management of MIA of RF, Russian Academy of Justice, Academy of Law and management of Federal Service for Execution of Punishment of RF. In the letters of the department, which sent their replies, this question is either ignored or the following reply is given: "any procedure realization on the recommendations of the Council or Europe" is not the responsibility of the department.

At the same time, the reply of Constitutional Court (dated July 19, 2012, signed by Head of department of the work with citizens and letters G.A. Stepanova) tell the following:

stated international legislative and regulatory acts are being thoroughly researched and actively utilized by the judge of the Constitutional court of the RF.

Herewith, no reference on any Constitutional Court of RF documents which would contain direct citation of this recommendation was not provided.

Health protection Committee of RF in its reply (dated July 24, 2012, signed by Committee Chairman S.V. Kalashnikov) tells the following:

Stated Recommendations are related to the dispositive international norms and are not an international agreement, its ratification doesn't provide for mandatory implementation of Recommendations into Russian legislation. Use of the term "implementation" in this context we

Russian LGBT-Network is not familiar with the cases when this Recommendation was used by state authorities in any work, including reference in legislations, documents, target programmes, materials for legislations etc.

**5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible**

- i. *What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

Russian LGBT-Network is not familiar about any report from state authorities informing about this Recommendation. Text of the Recommendation or report about it was not published on any web site of any state body. The only source of information distribution about this Recommendation in Russia is Russian LGBT Network and other LGBT organisations. LGBT – Network distributed Russian translation of this Recommendation and its own suggestions to different state bodies. However, we didn't receive any reply that would prove our suggestions and Recommendation was truly submitted for work.

- ii. *Have the Recommendation and its appendix been translated?*

This question was sent to the President of RF, Government Chairman of RF, Human rights Commissioner in RF, Ministry of Justice.

In the replies we received this question was left unanswered.

Russian LGBT-Network is not familiar about any governmental body translating this Recommendation. Unofficial translation into Russian language was provided by Russian LGBT-Network and is available on organisation's website.

*iii. Have they been disseminated:*

- *within the lesbian, gay, bisexual and transgender communities?*
- *throughout public administration?*
- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

This question (or related ones) were sent to all governmental bodies.

The majority of governmental bodies didn't give answer.

However, in the reply of Federal Service for the Execution of Sentences (dated August 08, 2012 № 13/4-232, signed by the Legal department head Yu. Yu. Timofeev) tell the following:

By the directive of the Federal Service for the Execution of Sentences director, Recommendation CM/Rec(2010)5 of the Committee of Ministers Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, despite the fact that this Recommendation is not legally binding document, it was sent for information to the staff of Federal Service for the Execution of Sentences with the aim to utilize it in practice and take timely measures for conflict prevention, related to discrimination of suspects who are accused and convicted on the base of their sexual orientation or gender identity.

The reply of Federal State-financed institution "All-Russian scientific-research institution of the Ministry of Internal Affairs" (dated July 18, 2012, № 2056, signed by the deputy head, candidate of legal sciences, assistant professor A. L. Sitkovskiy) tells the following:

Issues stated in your letter and described in the Recommendations Committee of Ministers of Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity will be in our field of vision in the process of preventive measures realization for protection of citizens from penal incursion regardless of their sexual orientation.

#### *Appendix to Recommendation CM/Rec(2010)5*

### **I. Right to life, security and protection from violence**

#### **A. "Hate crimes" and other hate-motivated incidents**

**1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.**

- i. Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

This question was addressed to the Academy of Law and management of Federal Service for the Execution of Sentences, Russian Academy of Justice, Academy of management of MIA of RF, Institution of advanced training of the management of the academy of General Prosecutor's Office, Scientific-Research Institution of the Academy of General Prosecutor's Office of RF, Academy of the General Prosecutor's Office of RF, State-Financed institution "All-Russian scientific-research institution of the Ministry of Internal Affairs", and Ministry of Internal Affairs, Consecutive department of Ministry of Internal Affairs and consecutive committee of RF. The following bodies sent replies: State-Financed institution "All-Russian scientific-research institution of the Ministry of Internal Affairs", Academy of General Prosecutor's Office, Replies of two last bodies didn't have an answer to the stated question. The reply of SRI of the Ministry of Internal Affairs (dated 18.07.2012 № 2056, signed by the deputy head, candidate of law sciences A. L. Sitkovskiy) tells that development of educational programmes and education of the police

Is related to the competency of educational structural subdivision of Ministry of Internal Affairs of Russia.

The same questions were addressed regarding to the staff of Execution of Sentences service is related to the competence of Federal Service for the Execution of Sentences. No other explanations of this question the letter didn't have. Russian LGBT-Network doesn't have any proof about proper educational information that is being provided to the students at the educational police institutions or other law-enforcement bodies for the issues of hate crimes on sexual orientation or gender identity.

- i. Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

This question was ignored by all bodies to whom it had been addressed. Russian LGBT-Network doesn't have the information that any governmental bodies started the process of such mechanism development.

**2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.**

- i. *Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognize (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*

This question was addressed to the Ministry of Justice and left unanswered. Russian LGBT-Network doesn't have the information that any active steps for inclusion of legislative measures for combat sexual orientation or gender identity hate crimes into current law on the state level are being implemented.

- ii. *Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

This question was addressed to the Ministry and was left unanswered. At the same time, Russian LGBT-Network has the information when cases of hate crimes on discrimination on grounds of sexual orientation or gender identity were not qualified in such way and were not considered properly.

For instance, the case of attack on Elena Kostyuchenko on the gay pride in Moscow on May 28, 2011. She was attacked by the religiously motivated homophobe Roman Lisunov while she was participating at the gay pride and hurt her. As a result she spent a week in the hospital. On September 25, 2011 senior investigator of the “Kitay-Gorod” Moscow region police, police captain Tatiana Lukashovich informed Kostyuchenko representative about the termination of criminal case since the absence of the event of the crime. However, Lisunov's actions initially were not considered as hate crime<sup>76</sup>.

- iii. *Have the directions about the necessity to qualify crimes towards homosexual, bisexual, transgender people as crimes motivated by hate towards social group (relevant updates may be included to the High Court Decisions, such as one dated 27.01.1999 №1 “About policy of court regarding homicide crimes” (paragraph 105 of Criminal Code of RF), High Court Decision dated January 11, 2007 “About the criminal sentencing practices of courts”, High Court decision dated November 15, 2007 № 45 “About Courts practices regarding hooliganism and other hooligan motivated crimes”) been added to the Decisions of High Court of RF?*

This question was addressed to the High Court of RF. However, this question (and all others) was ignored, and the Recommendation's text plus our letter were sent back to us. In the reply dated June 25, 2012 (signed by head consultant M.D. Bezrukova) tells the following:

Legal proposition of the RF High Court on any case can be described in the corresponding procedural form in terms of legal proceedings in a particular case.

**3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.**

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<sup>76</sup> Moscow police discharged homophobe Lisunov who hurt Elena Kostyuchenko [ September 27, 2011] // Public Policy Grani of LGBT URL: <http://lgbt-grani.livejournal.com/1133607.html>

- i. *Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?<sup>1</sup>*

This question was addressed to the Ministry of Internal Affairs, General Prosecutor’s Office and the High Court. No replies were received. Russian legislation doesn't have the term «hate crime». Several Criminal Code paragraphs increase the charge if the crime is proved to be hate motivated. However, sexual orientation or gender identity attribute is not mentioned there.

- ii. *Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

This question was left unanswered by all bodies to whom it was sent. Russian LGBT-Network doesn't have a proof that any actions regarding these issues have been performed.

- iii. *By what means corresponding staff of law-enforcement bodies is provided with skills and knowledge that are necessary for the work with sexual orientation or gender identity hate crimes towards LGBT?*

This question was addressed to Ministry of Internal Affairs and High Court. Unfortunately, neither body replied. Russian LGBT-Network has no reason to suppose that Russia by any means provide corresponding staff of law-enforcement bodies with skills and knowledge necessary for the work with sexual orientation or gender identity hate crimes.

- iv. *Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

Among the letters sent to bodies with this question, (Ministry of Internal Affairs, Ministry of Justice, Consecutive Department of Ministry of Internal Affairs, High Court etc) substantive answer was received from the Consecutive Department only. In its reply Committee (dated July 27, 2012, №210-29937-12, signed by the Information-methodic department head A. P. Shavkero) tells the following:

Staff members of the Consecutive Committee using the order of the Consecutive Committee dated January 15, 2011 №7 “About courteous and diligence attitude of the staff of the Committee to citizens of Russian Federation” which oblige to respect human dignity regardless of origin, nationality, social status, political and religious views. One of the principles of staff activity is courteous and diligence attitude towards participant of criminal cases, especially women and children. Public disclosure of personal information and things of private life which became known during the consecutive actions is impermissible.

- v. *By what means educational programmes, police and courts regulations represent information and methods necessary for police and courts staff in order to qualify “hate*

*crimes” and other hate motivated cases, and are able to provide proper help and support to victims and witnesses?*

- vi. What measures are realized for victims and witnesses of LGBT hate crimes?*
- vii. Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

All stated above questions were ignored by Ministry of Internal Affairs. Russian LGBT-Network doesn't have any information about it.

- viii. Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

Ministry of Internal Affairs and High Court ignored this question. Russian LGBT-Network doesn't have any information whether such staff exist. During the long-time work of our organisation (since 2006) or other regional LGBT-organisations, police representative didn't contact us in order «to build trustworthy relations”.

- ix. Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

Ministry of Internal Affairs and High Court ignored this question. Russian LGBT-Network doesn't have information about the operational tools allowing gaining information from third-party individuals about the frequency and nature of “hate crimes” and hate motivated incidents.

**4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.**

- i. Do training programmes and codes of conduct for prison staff ensures that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

Unfortunately, Academy of Federal Service for Execution of Punishment of RF didn't send the reply to our letter. The letter from Federal Service for Execution of Punishment of RF didn't contain reply to this particular question. Russian LGBT-Network doesn't have any information about educational programmes and behavior codes for penitentiary institutions staff including information providing undiscriminatory attitude towards sexual orientation or gender identity feature.

- ii. Do educational programmes and behavior codes for penitentiary institutions staff provide such conditions that treatment of prisoners is handled without discrimination on grounds of sexual orientation or gender identity?*

This question was left unreplied. In its reply (dated August 08, 2012 №13/4-232, signed by legal department head Yu. Yu. Timofeev) Federal Service tells the following:

Presently, according to the Federal Law “About institutions and bodies, executing imprisonment criminal penalties” dated July 21, 1993 № 54-73-1, and international acts ratified by Russian Federation, including European Convention of human rights and basic freedoms protection, institutions of Federal Service provide necessary conditions for order, legitimacy and security enforcement of individuals under sentence, and unconditional interception of any race, skin color, political, religious and other beliefs, sex, ethnic and social origin, property condition, residence, language and other types of discrimination.

Unfortunately, Federal Service doesn't specify the ways of realization of such measures, sexual orientation or gender identity in particular.

- iii. Are there effective measures to minimize the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*
- iv. Is there independent and effective machinery for receiving and investigating reports of such crimes by prison staff?*

This question was left unanswered by Federal Service. Russian LGBT-Network doesn't have any information about special measures or mechanisms regarding sexual violence prevention or investigation in Russian penitentiary system. In private conversations with NGO representatives which work with prisons monitoring in Russia, they emphasized that receiving valid information about the situation with sexual violence or condition of so-called “smacked-down” individuals (those who were raped in prisons) is impossible due to high closedness of groups.

- v. In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?*
- vi. Is there any information about transsexual (transgender) prisoners? If yes – were they treated in accordance with their gender identity, including residence? In particular, how the question with frisk, accommodation, hormones intake?*

Questions regarding transgender prisoners Federal Service left unanswered. Russian LGBT-Network doesn't have any information about special actions for respect of gender identity protection, and, in particular cases, hormones intake, that Federal Service provides.

**5. Member states should ensure that relevant data are gathered and analyzed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.**

- i. Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

This question was left unreplied. Russian LGBT-Network doesn't have any information of such investigations initiated by governmental bodies. There are solitary independent researches of sources of homophobia in Russia, but these investigations are not used for effective opposition policy against homophobia development. Likewise, data provided by Russian LGBT-Network that we receive during our monitoring investigations, is not used by governmental bodies.

- ii. *Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

Unfortunately, none of official institutions that received a request didn't provide any reply. Russian LGBT-Network is aware that Russian Federation performs regular public opinion polls about the level of social acceptance/hatred towards LGBT. These investigations are performed by big sociological organisations: FOM, VTsIOM, Levada-center. However, independent experts and investigators criticise the methodology of these centers. Specifically, "public opinion polls likely promote negative attitude towards sexual minorities, rather than offer instruments for opinion research"<sup>77</sup>.

- iii. *Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

Unfortunately, Federal Service on Statistics didn't provide any information about it.

- iv. *Is there any statistical data about the number of hate crimes against LGBT people? If no – what is the obstacle for collecting of such information?*

In its reply Consecutive Committee of RF (July 27, 2012, №210-29937-12, signed by deputy head of information-methodology department A. P. Shavkero) tells the following:

On the request about providing of statistical data regarding hate crimes against homosexual, bisexual and transgender people we inform that approved form of statistical report doesn't allow record of hate crime victims.

## **B. «Hate speech»**

**6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.**

- i. *Do legislative measures penalizing "hate speech" on certain grounds exist? Do these measures penalize (a) homophobic and (b) transphobic "hate speech"?*

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<sup>77</sup> V. Lapina Research on attitude towards homosexuality in public opinion polls: methodology problems // Is Russian «queer» possible? Interdisciplinary collection / Compiled and edited by V. Sozaev – SPb, 2010 – p. 83

- ii. *Do legislative norms of criminal law include responsibilities for «hate speech», express reference on the corresponding responsibility for a) homophobic and b) transphobic «hate speech»?*

This question was left unanswered by the Ministry of Justice, Academy of management of Ministry of Internal Affairs and High Court. Russian legislation doesn't have the term "hate speech". However, there is a paragraph in the criminal code (282) which carry sentence for "hatred or enmity inciting, degradation of human dignity" on the grounds of sex, race, nationality, language, origin, religious beliefs, and belonging to social group. There is no express reference on sexual orientation or gender identity. Russian authorities constantly emphasize that this paragraph covers sexual orientation or gender identity characteristics (through the belonging to the social group characteristic). In reality, all attempts to bring to responsibility individuals for "hate speech" towards LGBT were unsuccessful. Russian courts decide that LGBT is not a social group. For example, this was the decision of Tambov region Court in 2008 at the suit of N. Alexeev and N. Bayev regarding the speech of Tambov region governor O. Betin "Tolerance?! Screw tolerance. We should break them! Throw their pieces to the wind!... We should clean this filthy nest!"<sup>78</sup>.

In the Appendix to the reply of the State Duma Committee on public associations and religious organisations (reply dated September 6, 2012, №3.21-22/277), in the reference to the CMCE Recommendations tells the following:

Russian Federation understands paragraphs 6 and 13 of recommendations in the light of paragraphs 9 and 10 of the European Convention on Human rights protection and basic freedoms. Right for freedom of thought, conscience and religion includes the freedom to confess religion and beliefs education and practice;

Right to express thoughts freely includes freedom to hold by an opinion, receive and distribute information and ideas. This may include critical attitude towards certain actions and practices. National courts have the right to decide whether these statements are "hatred incitement" in according to national legislation.

- iii. *Has legislation for criminalizing "hate speech" on the Internet been implemented, and does this cover (a) homophobic and (b) transphobic "hate speech"?*
- iv. *Have the internal professional journalism ethics codes provide prohibition of a) homophobic, b) transphobic "hate speech" in order to avoid negative and stereotypic perceptions about LGBT? If such measures of the journalist ethics code exist – have it been realized?*

Nongovernmental Union of Journalists of Russia and Public collegiate organ for complaining of the media didn't reply to our requests. Federal Agency for Press and Mass Communications (Rospechat) in its reply (dated July 19, 2012, №62/5-8-9428/627347, signed by deputy head T. V. Naumova) refused to reply all our questions, since:

Questions regarding content and realization of journalist ethics codes, questions regarding activities of Internet-providers, questions of current legislation of RF monitoring for the presence and realization of measures, aimed to combat "hate speech" towards LGBT, questions of

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<sup>78</sup> I. Kochetkov, K. Kirichenko. More about this and other cases see Situation with lesbians, gays, bisexuals and transgenders in Russia. M. Moscow Helsinki Group, 2009. – p. 61-65.

monitoring of rights on freedom to receive and distribute information regarding sexual orientation and gender identity, regional legislations, plus monitoring of its realization, questions of monitoring of mass media on the subject of pluralism and nondiscrimination towards sexual orientation and gender identity, including monitoring of information campaigns on the development of tolerance towards LGBT people in the target programmes, are not within the purview of Rospechat.

- v. *Have Internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

This question was left unreplied (see previous paragraph)

- vi. *If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?*

Academy of Management of Ministry of Internal Affairs received this question but it didn't reply. Russian LGBT-Network is certain that public denial of hate speech is not supported.

**7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimizing such hatred or discrimination.**

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

This question was sent to the Government Head of RF. Unfortunately, this question was left unanswered. Russian LGBT-Network supposes that in reality no measures have been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements.

- ii. *Have measures been realized (e.g. «Guiding principles» or corresponding education) to raise awareness of public authorities/institutions of their responsibility to refrain from such statements that may reasonably be understood as legitimizing such hatred or discrimination?*

This question was ignored by all bodies whom it was addressed (Human rights Commissioner, Ministry of Internal Affairs, Consecutive department of Ministry of Internal Affairs, General Prosecutor's Office, Consecutive Committee of RF). Russian LGBT-Network doesn't have any information about departments working on such measures development.

- iii. *Is it allowed for authorities or other representatives of legislative, executive and judicial power, and state and municipal institutions to publicly justify hatred or discrimination towards LGBT?*

This question was addressed to the President, Government Chairman, Human Rights Commissioner, Ministry of Internal Affairs, Consecutive department of Ministry of Internal Affairs, Consecutive Committee, Interdepartmental commission on combat extremism,

Federation Council, Parliamentary party “Edinaya Rossiya”, “Spravedlivaya Rossiya”, Liberal Democratic Party of Russia State Duma Fraction, “Communist Party of RF” in the State Duma.

Unfortunately, nobody replied to this question.

- 8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.**

*By what means the tolerance and respect of human rights supported for LGBT in terms of dialogue between government and key representatives of civil society, including mass media and sport organisations, political organisations and religious communities?*

This question was sent to the Human rights Commissioner in RF, General Prosecutor’s Office, Consecutive department attached to the Ministry of Internal Affairs of RF, Consecutive Committee of RF, Interdepartmental commission to combat extremism in RF. Unfortunately, none of the stated above bodies replied to this question.

In reality, government representatives in Russia not only refuse to support the dialogue with civil society representatives, but they also ignore consequently initiatives of any kind to establish the dialogue of LGBT representatives with power representatives.

## **II. Freedom of association**

- 1. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.**

- i. Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?*

Yes. In particular, LGBT organisation of Tyumen «Rainbow house» (Raduzhniy Dom) has been prevented from gaining official registration. The case is presently in the European Court on Human Rights<sup>79</sup>.

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<sup>79</sup> More about this case see, for example: 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](http://www.coe.int/t/Commissioner/Source/LGBT/RussiaLegal_E.pdf). [Further - “Legal Report”]. Paragraph 74, p. 68–69.

In May 2010 Arkhangelsk organisation «Rakurs» was refused to make changes in its Charter in order to openly declare goals for human rights protection of LGBT people<sup>80</sup>. Fortunately, organisation succeeded to appeal the refusal in the Appeal Court<sup>81</sup>.

In 2011 4 LGBT organisations were refused in official registration in Moscow<sup>82</sup>.

- ii. *If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?*

Yes. For instance, in case of organisation registration refusal «Radushniy Dom» authorities explained that its goals “contradict with basics of morality accepted in civil society, since they are aimed to break spiritual and traditional family values of the society, sovereignty of Russia because of its population decline, give evidence of attempts to attack on government protected family and marriage institutions, don’t fit in the generally accepted by country people moral-ethical norms, plus it insults religious feelings of believers”<sup>83</sup>.

In the stated above refusal of the Charter change for «Rakurs» organisation government authorities pointed that these changes stand for the denial of the role of family in society, incitement of social hatred between heterosexual and homosexual people and contradiction to the extremism combat law<sup>84</sup>.

iii. *Are there examples of measures taken to:*

- *ensure that LGBT organisations can operate freely,*
- *defend their interests when necessary,*
- *facilitate and encourage their work?*

No. Authors of this text at the time of writing didn’t have any information about such measures. Answers that were received from the government bodies within present project don’t allow to reply positive on this question.

iv. *Are LGBT organisations involved on a partnership basis when framing and implementing public policies, which affect LGBT persons?*

No. Authors of this text at the time of writing didn't have any information about such measures. Answers that were received from the government bodies within present project don’t allow to reply positive on this question.

**10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.**

i. *Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?*

Answers that were received from the government bodies within present project don’t allow replying on this question.

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<sup>80</sup> More about this case see, for example: Legal report. Paragraph 76.

<sup>81</sup> See: Appeal explanation of the Board of Judges on Civil cases of Arkhangelsk regional court dated November 1, 2010. Available here [http://rakurs.ucoz.com/news/kassacionnoe\\_opredelenie/2010-11-09-53](http://rakurs.ucoz.com/news/kassacionnoe_opredelenie/2010-11-09-53).

<sup>82</sup> See: ILGA-Europe Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe, 2011. P. 139.

<sup>83</sup> Report of Ministry of Justice of Tyumen region about the registration refusal for nongovernmental organisations on the day of its establishment dated November 20, 2010 № 03-19/6220.

<sup>84</sup> More see here, for example: Legal report. Paragraph 76.

*ii. Has such funding been made available to LGBT organisations?*

No, as far as authors of this report know, such precedents didn't occur.

**11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.**

*i. Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?*

Apart from providing a certain kind of protection of the LGBT members during carrying out of their activities when some law enforcement officers are supposed to ensure the participants' safety (see below for details), the government and the authorities take no steps to provide the human rights organisations with effective protection from hostility and aggression during the actions they carry out.

*ii. Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

The authors have no information on such examples as of the time of writing the document. The replies given by the government authorities within the project framework do not afford giving a positive answer to the question as well.

*iii. Are LGBT human rights organisations able to work with*

- *national human rights institutions and ombudsmen,*
- *the media,*
- *other human rights organisations?*

At last, LGTB organisations have been able to establish a contact with the RF ombudsperson. Firstly, through the dialogue, information on the issues caused by the Law on the prohibition of "the propaganda of homosexuality" and the challenges transgender persons run into trying to get new official documents were referred to in the RF ombudsperson's annual report<sup>85</sup>. Secondly, he took specific steps to settle the matter concerning the refusal of the authorities to approve a Tyumen LGTB action (see below for details) and an appeal was lodged.

Mass-media have become more objective while covering LGBT community issues, in particular in major Russian regions. However, these media are independent and they show their own initiative and as for the government and authorities, they stay out of it and hold no functionary campaign.

Cooperation between LGBT organisations and other human rights organisation have improved and, in particular in metropolitan areas.

The majority of human rights defenders did not use to consider LGBT issues as part of human rights. Nowadays that might be considered an exception. The representatives of LGBT organisations take part in civil meetings and other events arranged by other human rights organisations.

*iv. Are they able to take part in training sessions, international conferences and other human rights activities?*

They can only do it either at their own expense or out of the funds of the events' hosts. Mainly they only take part in foreign events but there is an exception to it such as human rights courses arranged by Moscow Helsinki group.

**12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on**

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<sup>85</sup> See RF ombudsperson's annual report 2011 available at [http://www.consultant.ru/obj/file/doc/doklad\\_pravacheloveka\\_2011.rtf](http://www.consultant.ru/obj/file/doc/doklad_pravacheloveka_2011.rtf).

**the adoption and implementation of measures that may have an impact on the human rights of these persons.**

*i. Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

No, they are not. The LGBT representatives only rarely manage to take part in some events dealing with discussing of some important matters concerning their lives and observing LGBT persons rights. E.g LGBT activists made a lot of efforts and managed to take part in the public consultations dealing with some of 'the propaganda of homosexuality' laws supposed to be adopted in Saint-Petersburg and Novosibirsk<sup>86</sup> at which some authority representatives were present. Nevertheless, the participation of LGBT activists in such events is rather the exception than the rule. Moreover, in fact neither LGBT activists' point of view nor numerous statements made by scientists or experts are considered in the course of decision making process. Despite criticism of so-called "the propaganda of homosexuality" laws, they were none the less adopted in a number of Russian regions (see below for details).

*ii. Have there been such consultations regarding the implementation of this Recommendation?*

No. The authorities have not arranged such consultations.

**13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.**

*i. Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*

- activities that support the human rights of LGBT persons
- publication of material
- media coverage
- organisation of/participation in conferences
- dissemination/access to information on safe sexual practices?

Apart from providing a certain kind of protection of the LGBT members during carrying out of their activities when some law enforcement officers are supposed to ensure the participants' safety (see below for details), the government and the authorities take no steps to ensure the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity.

Mass-media have become more objective while covering LGBT community issues, in particular in major Russian regions. However, these media are independent and they show their own initiative and as for the government and authorities, they stay out of it and hold no functionary campaign.

As for the transmission of information on safe sex practices, only non-government HIV-service organisations deal with it (e.g. "Pulsar" and "LaSky" projects) receiving no public funding.

*ii. Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

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Continued attempts to adopt some laws on so-called "the propaganda of homosexuality" (in some cases "lesbianism, bisexuality and transgenderism") among the under-16s in different Russian

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<sup>86</sup> A press-conference was held in Novosibirsk on February 3, 2012. St.Petersburg – see: Sozaev V. "It would be better to revalidate the article...": deputy hearings on the implementation of Milonov's law at the Saint-Petersburg Assembly // Russian LGBT site: <http://lgbtnet.ru/ru/content/luchshe-vernut-ugolovnyu-statyu-deputatskie-slushaniya-po-praktike-primeneniya-milonovskogo>

regions give rise to a special concern. For the first time that law was adopted in the Ryazan region in 2006. In 2010 the Constitutional Court of the Russian Federation rendered that it did not contradict the Constitution of the RF<sup>87</sup>. The same kind of laws were adopted in the Arkhangelsk region in 2010 and in 2012 they were adopted in Saint-Petersburg, the Kostroma, Magadan, Novosibirsk and Samara regions as well as in the Krasnodar Krai and the Republic of Bashkortostan. Similar draft laws are under discussion in a lot of other Russian regions<sup>88</sup>.

Certain laws include the terms used by the Constitutional Court of the Russian Federation and the “the propaganda of homosexuality” is defined as “an activity focused on uncontrolled public transmission of the information which can do harm to young people’s health and their moral and intellectual development, including the development of distorted interpretations of social equivalence of traditional and non-traditional marital relations among the youth”.

Such a definition does not allow specifying what exactly can be considered as propaganda. In fact, any statement on equality irrespective of sexual orientation or gender identity can cause a severe penalty charge.

In addition, the authorities keep on putting difficulties in the way of arranging cultural and educational events dealing with LGBT lines. The “Side by Side” LGBT human rights festival is among them<sup>89</sup>.

Shortly before the opening of the Festival in Kemerovo on June 1, 2012 its organizers met with some threats on the part of an ultra-right group called “Russian Patriots club” based in nearby Novokuznetsk. The police were informed about the threats but they never took any action to protect the organizers. Upon that, they had a meeting with some of the representatives of the local law enforcement agencies and authorities who refused to provide security to the festival. On June 3, 2012 a local festival organizer was attacked. One of the “Russian Patriots club” members said in his video message circulated in social networks: “we had to go to Kemerovo ourselves. [...] we were about to set fire on the hotel [where the festival was to be held]”.

On June 6, 2012 in Novosibirsk a group of about thirty young homophobes trapped the building where they showed the festival movies. The policemen read the Riot Act to the young people. They left the place but came back a few minutes later. At 9 pm the festival organizers left the building under the police umbrella. When they were leaving the place in a taxi there was an attempt to break a side window of the car. The car was jostled by some other cars and motor bikes. The police did not interfere with the incident<sup>90</sup>.

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*iii. Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

The replies got from the authorities within the project framework do not allow answering the question.

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**14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.**

*i. Have the authorities ensured freedom of peaceful assembly for LGBT people?*

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Although, there are some positive drifts (e.g. the government and authorities have started to provide LGBT events with police protection) on the whole, LGBT persons are not ensured with freedom

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<sup>87</sup> The Constitutional Court of the Russian Federation ruling dated 19 January 2010 № 151-O-O. See for details on the Ryazan region law and its implementation: Legal report. Sections 98-101.

<sup>88</sup> Various materials concerning laws on “the propaganda of homosexuality” see at: <http://stopzakon.wordpress.com/>.

<sup>89</sup> The festival banning history see e.g. Legal report. Article 85; Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Sociological Report: Russian Federation / COWI; The Danish Institute for Human Rights. URL: [http://www.coe.int/t/Commissioner/Source/LGBT/RussiaSociological\\_E.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/RussiaSociological_E.pdf). Sections 88–97.

<sup>90</sup> See e.g.: <http://www.frontlinedefenders.org/ru/node/18668>; <http://www.bok-o-bok.ru/news.asp?lan=2&tid=769>.

of peaceful assembly. The authorities pursuing discriminatory practice refuse to approve LGBT events; police protection for public actions either is not provided or it is insufficient; those who are responsible for violent acts against participants of LGBT events get away with that.

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**15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.**

*i. If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

In May 2011 an action “Rainbow Flash Mob” was held. In the course of it 300 multicolor balloons were launched. They symbolized diversity in the world free from violence and discrimination. There were those who were against the action and they tried to spoil the event but the police prevented them from doing that.

The participants of the “Rainbow Flash Mob” action held in Saint-Petersburg in 2012 also experienced some aggressive actions from the event’s opponents. More than 500 rainbow balloons were launched at the meeting approved by the local authorities. Nevertheless, some nationalists, football fans and aggressive religious people turned up at the event chanting homophobic and extremist slogans. There were some attacks on the participants during the event and two people were injured. The police let the organizers know that they would not be able to handle the assaulters for a long time. The action was over ahead of time. All the participants got on the buses provided by the police and the action organizers. Instead, aggressive opponents attacked a nearby bus carrying migrant workers<sup>91</sup>.

A similar action was held in Novosibirsk in May 2010. The organizers met with aggression from some young sports-hooligans who came to the event place. They damaged the balloons or took them from the action participants and offended them on grounds of their sexual orientation. A nearby standing police woman just watched it took no action.

The same thing occurred in Tuymen. A “Rainbow Flash Mob” was to be held in the central city square. However, nationalists were holding their approved picketing at the same place. The nationalists either took the balloons from the action participants or just damaged them. The police did nothing to prevent the nationalists from doing that<sup>92</sup>.

*ii. In particular, have the police protected participants in peaceful LGBT demonstrations effectively?*

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A meeting for the civil rights and freedoms took place in Saint-Petersburg on June 12, 2012. LGBT activists, the “Equal Rights” organisation and the “Alliance of the straight for LGBT equal rights” took part in it. The meeting was peaceful despite the fact that a lot of rebellious young nationalists were present at it. When the participants of the meeting were leaving the place of the event, they saw a group of nationalists following them. The LGBT activists looked to the police for help. The police ignored the request and just suggested the activists hide the attributes they had and assured them that “everything would be all right”. A few minutes later about 10 or 15 people attacked the LGBT activists using aerosol sprayers. After the activists gave them battle they left the place at once. Four activists got injuries of varying severity<sup>93</sup>. During a Novosibirsk action for fair elections in December 2011, a LGBT activist who was in the column of demonstrators streamed a rainbow flag and was beaten just a few

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<sup>91</sup> See Russian LGBT Network advocacy news: news-bulletin. 2012. №3 (14), p.5

<sup>92</sup> See Russian LGBT Network advocacy news: news-bulletin. 2012. №3 (14), p.11.

<sup>93</sup> See Russian LGBT Network Advocacy news: news-bulletin. 2012 №3 (14) p.40.

minutes later. A police officer escorted the injured person to a safe place but the offenders were not detained and no report on the accident was drawn up.

*iii. Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?*

The police detained 17 participants of the “rainbow column” who took part in a Democratic march held in Saint-Petersburg on May 1, 2012. In Nevsky Prospect the police detained 10 activists as they were holding rainbow flags. Later another 7 activists were detained at the Church of Our Savior on Spilled Blood when they reached Konushennaya Square. One of the reasons for the police detention was a slogan “Homophobia is illegal”. The police detained the activists in brutal manner and in contravention of the law: the policemen did not introduced themselves and gave no warnings<sup>94</sup>.

**16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.**

*i. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*

Yes, such incidents occur frequently.

E.g. in September 2010 the Moscow City Council once again found the authorities’ refusal to approve an assembly event for LGBT people’s rights lawful.

The court ruling says: “the restriction on rights and in this case the right of protester A to gather peacefully with no weapons and to hold mass picketing was restricted by some interested people due to the fact that there was danger to life and health of the action participants as the scheduled picketing had aroused a negative public response. There is evidence such as written documents...

Even if the police were engaged in protecting the participants’ safety during the carrying out of the event initiated by A., it could not be assured”<sup>95</sup>.

In February 2011 Mayor of Moscow declared that he considered the carrying-out of a Pride march in the capital city inadmissible and added that he had some hesitations that such pride marches would ever be carried out in Moscow. Besides, he said “Moscow does not need them at all and I do not support them”<sup>96</sup>.

In October 2011 the Novosibirsk Mayor’s Office refused to approve a picket which was focused on the “transmission of some research findings on animals and human beings’ sexuality and promotion of the point of view that any type of sexuality is given to a person by nature itself”. The refusal was based on some moral and ethical standards and a likely negative response on the part of city residents<sup>97</sup>.

In 2011 and 2012 in Saint-Petersburg the local authorities refused to approve assembly “Coming Out” LGBT organisation events time and again referring to potential breaking of the law on the “propaganda of homosexuality”, human rights abuse of the people who did not share the action participants’ ideas and the abuse of parents-children rights.

In many cases the authorities also found some formal grounds for their refuse to approve the carrying out of the scheduled events at a definite place, chosen by the organizers (as a rule they were areas in downtown crowded with people) and offered some distant grounds as an alternative (including a terminal point of public transportation in a small town of the Leningrad region).

*ii. Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*

<sup>94</sup> See Russian LGBT-net Advocacy news: news-bulletin. 2012 №3 (14) p.9.

<sup>95</sup> See The Moscow City Court ruling on case № 33-28474 dated 14 September 2010.

<sup>96</sup> See “Sergey Sobyenin declared that Moscow did not need Pride marches”// Rossiyskaya Gazeta. 2011. February 16.

<sup>97</sup> See letter by A.I.Polischuk Novosibirsk deputy mayor’s dated 6 October 2011 №01-5784.

The authorities often find some formal conditions such as the route or the appointed time for an LGBT assembly event as grounds for their refuse to approve it<sup>98</sup>.

Although, the authorities use these policies to prohibit not only LGBT events but other assembly events as well if they find them inappropriate for this or that reason.

*iii. If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

Although more often court challenge against restricted events turns out to be unsuccessful, occasionally LGBT activists managed to prove that the restrictions were illegal and limited their rights for freedom of assembly events.

E.g. in May 2012 the Smolny District Court of Saint-Petersburg ruled some refuses to approve LGBT assembly events on the grounds of the “propaganda of homosexuality” law illegal<sup>99</sup>.

In addition, in March 2011 the RF ombudsperson addressed Tyumen Regional Court with a petition in which he asked to reverse the taken decisions of the first-instance and the following instances courts and to rule illegal the authorities’ refuse to approve an LGBT activists picket in the framework of their “A week against homophobia” awareness campaign illegal<sup>100</sup>.

**17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.**

*i. If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*

*a. Has there been encouragement to public authorities to condemn such interferences?*

*b. Have public authorities actually condemned such interferences?*

The authors of the present text have no information on the authorities’ respond to unlawful interferences with LGBT people’s right to freedom of expression and peaceful assembly.

There is the only one exception to the rule and it is a reference to the “propaganda of homosexuality” law adopted in Saint-Petersburg made in the RF ombudsperson’s annual report 2011. It says “On the one hand the term “propaganda” itself is not exactly defined. That is the reason why it either cannot be used at all or vice versa it can be used in no particular order, which might cause acts of outrage in regard to persons of full age”<sup>101</sup>.

Anyway, the RF ombudsperson’s annual report contained no specific recommendations for the authorities on the matter.

*ii. Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?*

The authors of the present text have no information on the authorities’ respond to unlawful interferences with the right to freedom of expression and LGBT peaceful assembly.

*iii. Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?*

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<sup>98</sup> See e.g. the Saint-Petersburg City Court ruling dated 30 June 2010 on case № 33-11907/2010.

<sup>99</sup> See: [http://www.comingoutspb.ru/ru/news/viigrali\\_sud](http://www.comingoutspb.ru/ru/news/viigrali_sud).

<sup>100</sup> See Russian LGBT Network advocacy news: news-bulletin. 2011 № 2 (8) p.2.

<sup>101</sup> See RF ombudsperson’s annual report 2011 available at [http://www.consultant.ru/obj/file/doc/doklad\\_pravacheloveka\\_2011.rtf](http://www.consultant.ru/obj/file/doc/doklad_pravacheloveka_2011.rtf)

Yes, that often happens. Attempts to adopt laws on the so called “propaganda of homosexuality” in different Russian regions add to the problem.

E.g. Vice-Chairman of the Health care, demography and social policy Committee at Samara Regional Duma Alexander Zhivaikin in his press-interview said “I think that there must be capital punishment for such things as the propaganda of homosexuality as well as for any kind of activity in this regard”<sup>102</sup>.

A former member of Saint-Petersburg Legislative Assembly Elena Babich, a representative of the LDPR party, offended and smeared LGBT community, saying: “A homosexual is a sick person. Why should these sick people demonstrate their illness to other people? But they do demonstrate it and, moreover, they even try to arrange Pride marches”. “The rainbow is the gay movement flag. On our Town Day there were posters on the lamp-posts and each of them had a monochrome portrait of Peter the Great and a rainbow below the portrait. I wonder, why?”. “Members of any community might have some deviations but one must not try to persuade people that it is natural. When the deviation percentage reaches beyond 7% the whole society is in danger. The promotion of homosexuality puts Russian people at threat of extinction”<sup>103</sup>.

#### IV. Right to respect for private and family life

**18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.**

*i. Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

Criminal responsibility for free-will sexual contacts between adults of the same gender was abolished in Russia in 1993<sup>104</sup>. Some attempts to revalidate it in the RF failed<sup>105</sup>.

The legal age, allowing people have free-will both hetero and homosexual contacts, is the same (It is 16)<sup>106</sup>.

*ii. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding (a) sexual orientation or (b) gender identity?*

Early in 2012 The State Duma of the RF accepted some amendments to the Criminal Code of the RF<sup>107</sup>. They were focused on the struggle against pedophilia. As a result, since 1993 it is the first time the Criminal Code of the RF has included some provisions concerning sexual orientation.

Firstly, there is criminal responsibility for sexual relations with persons under 16, including imprisonment. However, a person might be sentenced to 4 years in prison in case he or she had a sexual contact with another person of different gender and to 6 years if the contact was between persons of the same gender<sup>108</sup>.

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<sup>102</sup> Oparina I. Casting out gays// Samara review, 2012 № 16. March 15. URL:

<http://www.63media.ru/press/15.03.2012/168615/>

<sup>103</sup> The cases are placed on record within the framework of the monitoring programme carried out by the “Coming Out” LGBT organisation along with the Russian LGBT Network.

<sup>104</sup> See Legal report. Section 313.

<sup>105</sup> ib sections 314-318.

<sup>106</sup> Article 134 of the Criminal Code of the RF

<sup>107</sup> See: on putting some amendments to the Criminal Code of the RF and certain pieces of legislation of the RF in terms of penalty enhancement for sexual crime committed in regard to persons under age: Federal law of the RF № 14-Φ3 adopted by the State Duma on February 7, 2012 and approved by the Federation Council on February 22, 2012. URL: <http://www.rg.ru/2012/03/02/neswovershennoletnye-dok.html>.

<sup>108</sup> cf: Part 1 and Part 2 of article 134 of the Criminal Code of the RF current version

Secondly, if the age difference between two persons who had a sexual contact is less than 4 years and on condition that was a hetero contact, imprisonment cannot be enforced. As for homosexual contacts liability restriction cannot be applied<sup>109</sup>.

Thirdly, if persons after having a sexual contact got married a person of full age is released from penalty. As marriage of persons of the same sex is illegal in Russia the provision cannot be applied in that case<sup>110</sup>.

The authors of the present text have no information on the application of these provisions.

*iii. If so, what steps are the authorities taking to remedy this situation?*

For the moment of writing the text the authors have no information on taking such steps by the authorities.

The reply of the Ministry of Justice of the Russian Federation contains no comments concerning criminal responsibility in respect of homosexual acts<sup>111</sup>.

**19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.**

- i. What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*

The replies received from the authorities contain no information on the matter.

However, at times in different Russian regions they adopt regulations and standards focused, as a rule, at struggle against sexual assault or at the prevention of HIV extension or other sexually transmitted diseases. The police are supposed to collect data on homosexual persons and/or share it with certain bodies (e.g. doctors)<sup>112</sup>.

Specific cases of the implementation of that kind of instructions in practice are described in the report on the position of LGBT people in Russia made by the Russian LGBT Network along with Moscow Helsinki group<sup>113</sup>.

In connection with that, within the framework of the 'Russian LGBT Network' ICM advocate letters were written. Due to the adaption of appropriate recommendations of the UN Committee for the eradication of women's discrimination, the letters dealt with the issue and some suggestions were made to address the prevention of information dissemination about LGBT people.

The representatives of law enforcement agencies giving their replies to the letters set aside the matter of collecting and saving information about LGBT people. Anyway, sometimes the replies contained some information which said there was no activity on collecting and saving of such kind of data.

E.g. Chief deputy of the Central Internal Affairs Directorate for Moscow said "there are no data processing systems, data banks or card-files containing personal data on persons' sexual orientation or gender identity as well as there is no information concerning people's private lives including LGBT persons ones"<sup>114</sup>.

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<sup>109</sup> See Note 2 to article 134 of the Criminal Code of the RF current version

<sup>110</sup> See Note 1 to article 134 of the Criminal Code of the RF current version

<sup>111</sup> See letter by S.V.Shutkova, Director of the Constitutional legislation department of the Ministry of Justice of the Russian Federation, № 07-60/93 dated 30 July 2012.

<sup>112</sup> See e.g. "On measures for prevention and suppression of violent encroachments against the minors: Ministry of the Interior Order dated 25 April 2008. Available from data system "KonsultantPlus"; "On the approval of municipal special-purpose programme on the prevention of HIV, viral hepatitis B, C and other sexually transmitted diseases for 2006-2010". Chief of ME of Berdsk (Novosibirsk region) ordinance dated 3 April 2006 № 897. See also Legal report. Articles 319-323.

<sup>113</sup> See Lesbians, gays, bisexuals and transgenders' status in the RF. M., 2009, p.61.

<sup>114</sup> Letter by Chief deputy of the Central Internal Affairs Directorate for Moscow S.Y.Skubak № 3/3976 dated 25 March 2011.

Chief of the Central Internal Affairs Directorate for Saint-Petersburg and the Leningrad region says in his reply that “The Central Internal Affairs Directorate for Saint-Petersburg and the Leningrad region does not keep count of homosexual, bisexual or transgender persons. The police only interfere with the citizens’ private lives legally and follow all the federal legal procedures, at that.

In case the CIAD gets some information concerning the violation of the citizens’ private life by police officers, an enquiry will be made in accordance with the established procedure and all the guilty persons will be brought to account in accordance with the law”<sup>115</sup>.

*ii. What steps have the authorities taken to ensure that existing records are destroyed?*

The replies received from the authorities contain no information on the matter.

*iii. Have these steps been effective?*

The replies received from the authorities contain no information on the matter.

Some of the regional legal acts (vide supra) are still in operation (although, the authors have no information on their practical application).

**23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor’s pension benefits and tenancy rights.**

*i. Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

As a general rule, legislation confers no rights and obligations on unmarried couples. The Family Code of the Russian Federation only applies the principle of recognition of marriage as existing when it is contracted at a Civil Registry Office<sup>116</sup>.

Nevertheless, by way of departure different-sex couples can adopt a child while same-sex couples cannot do that (as the general consequence of any kind of adoption is the termination of legal relations between the child and his/her parents and the availability for the such relations maintenance is only enshrined in the law for the cases when the adopter is a male for the mother, and when the adopter is a female for the father)<sup>117</sup>.

The replies given by the authorities to the letters written within the framework of the project did not deal with the matter.

To the knowledge of the authors of the present report the matter has been dealt with neither by courts nor by other legislative bodies.

The reply from the Ministry of Education and Science of the Russian Federation only contains some quotations of regulations from the Family Code of the Russian Federation. They establish general provisions for the child’s up-bringing, adoption etc. and they deal with no matters related to sexual orientation or gender identity<sup>118</sup>.

**24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.**

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<sup>115</sup> Letter by Chief of the Central Internal Affairs Directorate for Saint-Petersburg and the Leningrad region V.Y.Piotrovsky № 58/269 dated 11 March 2011.

<sup>116</sup> The Family Code of the Russian Federation, section 2, article 1.

<sup>117</sup> The Family Code of the Russian Federation, section 3, article 137 (“As a result of adoption by one person, moral rights as well as proprietary right and obligations can be preserved at Mother’s will, if the adopter is a male or at Father’s will if the adopter is a female”). See also Legal report, articles 150-152.

<sup>118</sup> See the letter by S.V.Vitelis, Deputy Director of Department of the state policy in regard to the protection of children’s rights of the Ministry of Education and Science of the Russian Federation № 07-ПГ-МОУ-13633 dated 25 July 2012.

*i. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

No, the Russian legislation does not set forth any quasi-marital institutions including registered partnerships, neither heterosexual nor same-sex ones.

**25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.**

*i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

The replies received from the authorities within the project framework contain no information on the matter.

Moreover, according to the Russian Authorities “under the provisions of Part IV [Recommendation] “The right for respect for private and family life” is interpreted by the RF by virtue of Article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In line with it, the implementation of the right for marriage and establishing a family is regulated by national legislation. Besides, it is based on the bright attitude of the European Court of Human Rights to the right for contracting a marriage only between a male and a female, which cannot be treated as impairment of LGBT rights and *consequently does not require their extending* [emphasis added-X.K.]”<sup>119</sup>.

**26. Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity**

*i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*

The reply from the Ministry of Education and Science of the Russian Federation only contains some quotations of regulations from the Family Code of the Russian Federation. They establish general provisions for the child’s up-bringing, adoption etc. and they deal with no matters related to sexual orientation or gender identity<sup>120</sup>.

*ii. In practice, are such decisions taken on a non-discriminatory basis?*

At the moment the authors of the present text have no information on that kind of practice.

**27. Taking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits**

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<sup>119</sup> The letter by Ya.Nilov, Chairman of the Committee on non-governmental and religious organisations of the State Duma of the Federal Assembly of Russian Federation, № 3.21-22/277 dated 06 September, 2012 (Appendix).

<sup>120</sup> See the letter by S.V.Vitelis, Deputy Director of Department of the state policy in regard to the protection of children’s rights of the Ministry of Education and Science of the Russian Federation № 07-ПГ-МОУ-13633 dated 25 July 2012.

**single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.**

*i. What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*

The Russian law allows a child's adoption by an individual<sup>121</sup>. However, the reply from the Ministry of Education and Science of the Russian Federation only contains some quotations of regulations from the Family Code of the Russian Federation. They establish general provisions for the child's up-bringing, adoption etc. and they deal with no matters related to sexual orientation or gender identity<sup>122</sup>.

*ii. In practice, are such decisions taken on a non-discriminatory basis?*

The authors of the present text at the moment have no information on that kind of practice.

**28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation**

*i. What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*

Under the Russian legislation both couples and individuals have access to reproductive technologies<sup>123</sup>. However, the Russian legislation establish no provisions on the impermissibility discrimination of sexual orientation or gender identity in this respect. The replies which were got within the project framework from the authorities contain no explanations on specific enforcement matters concerning this medical service.

*ii. In practice, are such decisions taken on a non-discriminatory basis?*

The authors of the present text at the moment have no information on that kind of practice.

**IV. Right to respect for private and family life and the access to necessary treatment for transgender persons**

**20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.**

*i. Has a review of such prior requirements been conducted?*

There is no information on the matter. The replies got from the authorities within the project framework do not allow to answer the question.

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<sup>121</sup> See for details The Family Code of the Russian Federation, section 1, article 125 (which says that adoption is carried out at request of a person or persons who want to adopt a child).

<sup>122</sup> See the letter by S.V.Vitelis, Deputy Director of Department of the state policy in regard to the protection of children's rights of the Ministry of Education and Science of the Russian Federation № 07-ПГ-МОИ-13633 dated 25 July 2012.

<sup>123</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-ФЗ dated June 25, 2012, p. 3 art. 55 («A male and a female regardless of their marital status have a right for assisted reproductive treatment and medical intervention if there is their free-will consent based on grounds of awareness of them. A single woman also has a right for assisted reproductive treatment and medical intervention on grounds of her free-will consent and awareness of them»).

ii. Are there still requirements which might be considered disproportionate or even abusive, such as:

- irreversible sterilisation,
- hormonal treatment,
- preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?

Yes, there exists the only one special legal requirement for getting new official documents by transgender persons. It is the presentation of "a document given by a medical institution which proves a gender reassignment". The requirement contains no reference to medical intervention but despite that in most cases law enforcement bodies require some proofs of the performed surgery from transgender persons.

It is the position the Ministry of Justice of the Russian Federation adheres to and according to it "the Civil Registry Office only makes changes into one's birth statement if gender reassignment is a consequence of performed surgery considered to be irreversible.

The possibility of the issuance of new official documents to persons suffering from gender identity disorder prior to the surgery, can only be established by Federal legislation."<sup>124</sup>

Subsequent to the Ministry of Justice of the RF a lot of regional Civil Registry Offices maintain the same approach to the matter, e.g.

- "As the form of the document has not been approved yet up to now, we request it should contain information on gender reassignment surgery and findings on its successful results"<sup>125</sup>.
- "To satisfy the request about making changes into one's birth statement including the first name, middle name and surname the applicant should present a medical record proving the fact of gender reassignment surgery, containing information on sex affirmation surgery with the reference to the process irreversibility"<sup>126</sup>.
- "To make appropriate changes into one's birth statement in connection with gender reassignment, the applicant is to present...[...] documents proving the carrying-out of hormonal replacement therapy and surgical interference..."<sup>127</sup>.
- "In this case Civil Registry Offices follow the oral interpretations of the Ministry of Justice of the RF which they get at qualification courses for Civil Registry Offices staff held in Moscow. According to these oral interpretations, a citizen who had gender reassignment is to present to the Civil Registry Office a medical record proving the fact of gender reassignment surgery and the findings that the person changed his or her gender"<sup>128</sup>.

Particular cases on the getting of new official documents by transgender persons provide evidence for that practice. E.g. in the following case, the applicant was diagnosed with gender identity disorder, got hormonal replacement therapy which led to irreversible changes and a mastectomy surgery. The applicant got recommendations to have changers on gender records made in official documents. All the facts were proved by a medical assessment report. The Civil Registry Office refused to issue a new official document containing the person's new gender and name on grounds of "the absence of a document on the carrying out of all the necessary procedures including phalloplasty"(2012, Moscow region)<sup>129</sup>.

In another case the applicant had mastectomy surgery performed and it was proved by medical records. The person got a medical assessment report on gender reassignment surgery. The Civil Registry

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<sup>124</sup> Letter by I.I.Alabyeva, Deputy Director of Department on aid and advice in legal matters and interaction between it and the judicial system of the Ministry of Justice of RF dated 18 May 2011, №16-31767.

<sup>125</sup> Letter by I.N.Leonova, Chief of the Civil Registry Offices Department of Republic of Karelia dated 2 February 2011, № 85.

<sup>126</sup> Letter by D.K.Sychkar, Chief of the Civil Registry Offices Department of the Komi Republic dated 28 February 2011, № 03-25/167.

<sup>127</sup> Letter by O.N.Maznichenko, Chief of the Civil Registry Offices Department of Krasnodar Territory dated 4 February 2011, № 50-506/11-02.1-13.

<sup>128</sup> Letter by L.S.Smirnova, Chief of the Civil Registry Offices Department of the Tyumen Region dated 9 February 2011, № 116/01-16.

<sup>129</sup> The case papers are kept by one of the authors of the present text.

Office did not consider them sufficient enough for making changes on the person's new gender in an official document. The Chief of the Civil Registry Office declared that the matter of issuing a new official document for the person would be discussed after the person had another two surgeries performed (hysterectomy and phalloplasty). The applicant had to be operated on at a local clinic (although, other kinds of surgeries were to be performed later, after the person had saved enough money for them. Besides, the surgeries were to be performed in a different region and by more experienced surgeons) (2012, Altai Territory)<sup>130</sup>.

**21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates**

*i. Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

The procedure is established but it has not been completely worked out and as a result it is not clear enough.

According to article 70 of the Federal Law "Concerning Acts of Civil Status", making appropriate changes into a birth record of a transgender person is possible on the presenting of "a set form document on gender reassignment given by a medical institution".

Yet in 1998, the working out and the approval procedure of the document were imposed on the Ministry of Health of the Russian Federation. The deal has not still got off the ground. As a result, in practice, Civil Registry Offices can negative applicants' requests despite the fact they presented medical board conclusions on grounds of their wrong form (which even does not exist). Courts can call in question the presented documents with no grounds and get transgender persons into additional detailed medical testing.

According to the Ministry of Health of the Russian Federation, definite forms of the documents have been worked out<sup>131</sup>. Nevertheless, they are not available and no one knows what information they contain. That is the reason why it is impossible to say whether these documents will contribute to the observance of Russian transgender persons' rights or vice versa will injure them.

There is no accord on appeal legal process against Civil Registry Offices which refuse to provide transgender persons with new official documents. There are only three procedures that are implemented. They are the admission of a gender reassignment fact, challenge against bodies of state power and making changes into the records<sup>132</sup>.

*ii. Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

See comments to the previous item. On the whole, it may be noted that it is challenging to make changes in a birth record and to get a birth certificate for one's new name. As for the other documents, they are issued on grounds of the made changes and, as a rule, the process is simpler and faster.

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<sup>130</sup> For other cases see: Sex, gender, and gender-identity discrimination in regard to healthcare, education, employment and social services in the Russian Federation. Alternative report for the United Nations Committee on Economic, Social and Cultural Rights (2011). P.30.

<sup>131</sup> See letter by O.I.Guseva, Deputy Chief of the Department on medical prevention, emergency primary health care and sanatorium-resort therapy at Ministry of Health of the Russian Federation № 14-5/2108538 dated 30 November 2012 (see also the letter brief version in the body of the report).

<sup>132</sup> See for details Kirichenko K.A. Transgender persons status in Russian regions: the change of official documents and the access to special medical care: analytical notes. St.P, 2011.

*iii. Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*

- *diplomas,*
- *certificates of employment, and*
- *insurance or banking documents?*

Changing certificates of employment presents a major challenge for transgender persons. The certificate of employment execution procedure is regulated by the Instruction on the filling in of certificates of employment approved by a decree of the RF Department of Labor dated 10 October 2003. Nevertheless, the instruction does not deal with transgender persons' situation after their gender reassignment.

In 2007, in Ryazan the court dismissed the plaintiff's, who was a transgender woman, claims. She already had a new passport containing her feminine name but the court dismissed her claims on the issuance of an employment certificate duplicate with the restored records and on the compensation for moral injury.

The representatives of the civil defendant did not admit the claim and explained that according to the Instruction on the filling in of certificates of employment, changes in them are made with crossing the previous records and filling them in with new ones. An employment certificate duplicate is issued on grounds of records made in the original certificate. The plaintiff refused to get a standard certificate of employment filled in in accordance with the Instruction and a formal note of that was taken. The court dismissed the plaintiff's claims on grounds that "they did not correspond to a standard procedure for the filling in of a certificate of employment"<sup>133</sup>.

Consequently, according to current laws and regulations in operation, transgender persons only have two options: they can either get an employment certificate duplicate containing records on the previous name (which might be considered as invasion of the right of privacy making the person explain the situation each time applying for a job) or to get a new employment certificate with a new name but containing no records about the person's previous working experience.

*iv. If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

There are no special laws or regulations to protect transgender persons (although there are some general provisions on the necessity for the protection of HR data within official secrecy, vital record secrecy etc.).

In practice transgender persons' rights are offended. E.g. in November 2012, in Saint-Petersburg the police stopped a transgender young girl P. and her girl-friend in the street. P. was having glandular therapy at that moment which was proved by a medical record and the girl showed it to the police officers. P. wore women's clothes and make up and she had long hair. She did not get new documents yet. The police started to check the girl's documents and one of the police officers having seen that they contained a masculine name began to address the girl calling loudly her masculine name in front of other people who were passing by. He asked her such questions as "Why do you (the masculine name) look so weird?" etc.

**22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.**

*i. Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

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<sup>133</sup> Sex, gender, and gender-identity discrimination in regard to healthcare, education, employment and social services in the Russian Federation. Alternative report for the United Nations Committee on Economic, Social and Cultural Rights (2011). p.11.

Yes, after the issuance of new documents a person is considered to be of a gender written in the documents. In practice, transgender persons get married.

**35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.**

*i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

According to Chairman of the State Duma Committee on health protection, “In Moscow alone about 70 medical institutions offer gender reassignment services on open access.

It is hard to estimate the access to appropriate gender reassignment services in the subjects of the RF. Doctors’ subspecialty does not suppose great demand for the services. The reason for that is a small number of potential transgender persons who need surgeries in comparison with other potential patients. Other specialists such as mental specialists, psychologists or endocrinologists do not belong to shortage specialty doctors<sup>134</sup>.

According to some representatives of the Ministry of Healthcare, “mental and endocrinologic examination is available in every subject of the RF. As for sexologists, they are only available in big cities”<sup>135</sup>.

Nevertheless, in the eye of transgender persons themselves, there is a lack of up-to-date knowledge in the sphere of transgenerness and specialists dealing with it have poor qualifications. That especially is true for the Russian regions.

As one of the respondents puts it, endocrinologists hardly ever prescribe their patients appropriate medical drugs as “no one knows for sure what kind of endocrine profile should be maintained for a MtF...

Taking into account the fact that the vast majority of local endocrinologists have never dealt with MtF therapy, its results might be very sad”.

According to the information we get, the status quo leads to self-treatment. That means hormones are got with no preliminary consultations with specialists and are not prescribed by them.

As one of the respondents puts it, “the majority [of transgender persons] prefer not to deal with doctors (as there are too few tolerant and understanding ones among them) choosing and getting medical drugs themselves”.

Access to high quality medical services dealing with gender reassignment surgery is a problem.

Gender reassignment surgery for transgender men is only available in such big cities as Moscow, Saint-Petersburg, Ekaterinburg, Novosibirsk, Tomsk, Ufa, Khabarovsk and Chelyabinsk. However, not in all of them the most up-to-date methods of surgical interference are available (e.g. laparoscopic metrectomy instead of cavernous metrectomy, metoideoplasty).

As for other towns and cities, there are no surgeons dealing with transgender persons at all. Although if a non-transgender person has a disease and needs surgical interference such kinds of surgery are available. Transgender persons have no access to the services in a lot of Russian regions.

According to another respondent, “mastectomy and metrectomy are available at any hospital having a department of surgery. I applied to one of them. They told me “The surgery is not complicated but we do not have a license”. At another hospital I ran into a religious doctor. He did not even allow me to have preliminary examination had. He said something like “I won’t go against God”. At the same time, the head doctor of the surgery department did not mind the surgery but he did not like my medical

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<sup>134</sup> Letter by S.V.Kalashnikov, Chairman of the State Duma Committee on Health Care № 3.4-22/426 dated 24 July 2012.

<sup>135</sup> Letter by O.I.Guseva, Deputy Chief of the Department on medical prevention, emergency primary health care and sanatorium-resort therapy at Ministry of Health of the Russian Federation № 14-5/2108538 dated 30 November 2012.

assessment wording". Transgender persons from other towns and cities share the same kind of information with us<sup>136</sup>.

*ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

The replies got from the authorities within the project framework do not allow to answer the question.

*iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?*

The replies got from the authorities within the project framework do not allow to answer the question. According to the reply got from the Ministry of Healthcare of the RF, "no surgical interference of irreversible character are performed to patients under 18"<sup>137</sup>.

**36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.**

*i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

There is a health insurance system in Russia. Nevertheless, the documents regulating it contain no direct reference to transgenerness. In the majority of cases transgender persons cover all the gender reassignment treatment themselves.

According to the data given by The Ministry of Healthcare of the RF, "gender reassignment treatment at the expense of compulsory medical insurance or hi-tech medical programmes is not stated"<sup>138</sup>.

As the Chief of the State Duma Committee on health care puts it, "medical services dealing with gender reassignment are not included into the programme on state guarantee of delivery of free medical care to citizens of the Russian Federation. The programme is financed out of the funds of compulsory medical insurance and out of the regional and federal budgets. Some of the medical services within hi-tech medical care applied to the Russian citizens are covered out of the federal budget (...)

Transgender persons' needs are not included into the programme not for the reason of discrimination but for the reason that surgical methods and hormone therapy within the gender reassignment procedure are not vitally important kinds of health care"<sup>139</sup>.

A lack of possibilities or their limited capacity to cover medical services transgender persons need, are proved by the replies to the letters written within the "Russian LGBT Network" ISM in connection with the acceptance of recommendations of the UN Committee in 2010 on the elimination of all forms of discrimination against women.

According to the reply got from the Astrakhan Region, emphasis is made on the fact that transgender persons have their right for special medical services within the programme on state guarantee of delivery of free medical care to citizens of the Russian Federation but that only concerns psychotherapeutic services.

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<sup>136</sup> Sex, gender, and gender-identity discrimination in regard to healthcare, education, employment and social services in the Russian Federation. Alternative report for the United Nations Committee on Economic, Social and Cultural Rights (2011), p.19-20.

<sup>137</sup> Letter by O.I.Guseva, Deputy Chief of the Department on medical prevention, emergency primary health care and sanatorium-resort therapy at Ministry of Health of the Russian Federation № 14-5/2108538 dated 30 November 2012.

<sup>138</sup> Letter by O.I.Guseva, Deputy Chief of the Department on medical prevention, emergency primary health care and sanatorium-resort therapy at Ministry of Health of the Russian Federation № 14-5/2108538 dated 30 November 2012.

<sup>139</sup> Letter by S.V.Kalashnikov, Chairman of the State Duma Committee on Health Care № 3.4-22/426 dated 24 July 2012

At the same time surgical service and hormone therapy are included neither in that programme nor in the hi-tech medical services covered out of federal budget<sup>140</sup>.

As for the Sverdlovsk region, “such medical services as transgender surgery” are financed neither within the federal nor the regional programmes on state guarantee of delivery of free medical care to citizens of the Russian Federation“. That is why such surgeries are not financed out of the budget funds or out of the budget of compulsory medical insurance”<sup>141</sup>.

It stands to mention, that currently only costs on penis/ urethroplasty might be covered out of the federal budget within the quotas for microsurgeries.

However, the vast majority of medical centers dealing with transgender surgeries do not perform quota operations. A few institutions having specialists in that field of surgery and included into a special list cannot provide all the persons who need surgery with the needed services. The reasons for that are both quota limitation and travel expenses which are not covered out of the budget.

According to the information we get from transgender persons, surgery period staying at day and night clinic and primary recovery after it are not covered out of the budget. (E.g. at a Moscow clinic where such kind of surgery is performed they charge 3000 (75 euro) for a day of staying while at least, the patient needs a fortnight to get primary recovery).

Quotas cover nor the previous surgery stages (mastectomy, metrectomy) nor metoidioplasty, which is the alternative for penis/ urethroplasty and is less painful as requires less skin and muscle material from the other parts of the patient’s body. Metoidioplasty is considered as the optimum alternative by many transgender men<sup>142</sup>.

*ii. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

According to the information the authors got from transgender persons who have appealed for legal advice, there are only few cases when surgeries were covered out of the budget. In order to get a quota a patient has to appeal to numerous bodies but with no hope for a guaranteed positive result. The documents regulating hi-tech medical care do not contain any reference to transgenerness.

## V. Employment

**29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.**

*i. Does legislation exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*

The Labor Code of the Russian Federation is guided by the principle of the impermissibility of employment discrimination.

The list of protected characteristics does not include sexual orientation or gender identity. Nevertheless, the list contains such a phrase as “and other circumstances”<sup>143</sup>.

The Vice-Chairman of the State Duma Committee on labor, social policy and matters relating to veterans in his answer to our address says that “apparently, these circumstances mean sexual orientation or gender identity of an employee”. The letter says that at the moment there

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<sup>140</sup> Letter by I.E. Kvyatkovsky, Minister of Healthcare of the Astrakhan Region № 01-23-4466 dated 19 May 2011.

<sup>141</sup> Letter by A.R. Belyavsky, Minister of Healthcare of the Sverdlovsk Region № O1-25/386 dated 20 May 2011.

<sup>142</sup> Sex, gender, and gender-identity discrimination in regard to healthcare, education, employment and social services in the Russian Federation. Alternative report for the United Nations Committee on Economic, Social and Cultural Rights (2011), p.14.

<sup>143</sup> See The Labor Code of the Russian Federation, articles 2, 3. See also Legal report. Items 232-236.

are no law drafts focused on employment non-discrimination on the ground of sexual orientation or gender identity which went before the State Duma<sup>144</sup>.

*ii. Does it cover:*

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

As was stated above, Russian laws do not legislate the impermissibility of employment discrimination. However, general non-discrimination rules can be applied to the access to employment, promotion, dismissals and pay. Harassment and other forms of victimization are not regulated by labor legislation.

*iii. Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:*

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*
- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBT persons;*
- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBT persons?*

The letters received within the project framework contain no information on such measures. The authors have no information on them either.

*iv. Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?*

The letters received within the project framework contain no information on such measures. The authors have no information on them either.

At the same time, the authors of the present text have information on the applying of discriminatory practices in the past.

The report on LGBT people's status in Russia prepared by the Russian LGBT Network in association with Moscow Helsinki group says that "Those gays and lesbians who work or want to work at state-run institutions or educational institutions are the most vulnerable people.

The respondents questioned in the monitoring course, time and again mentioned the practice of candidates' testing when they apply for jobs at state-run or educational institution. The test includes questions on the candidate's private life to check whether the candidate is "normal".

In case the management finds out that an employee is a homosexual person they try to get rid of her or him"<sup>145</sup>.

The report also contains some examples about people working at law enforcement agencies and having been persecuted or discriminated due to their sexual orientation<sup>146</sup>.

*v. Specifically in relation to the armed forces:*

- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*

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<sup>144</sup> Letter by G.N.Karelov, First Deputy Chairman of the State Duma Committee labor, social policy and matters relating to veterans, № 3.2-23/1119 dated 4 July 2012.

<sup>145</sup> The status of lesbians, gays, bisexuals and transgenders in the RF. M., 2009, p.73.

<sup>146</sup> ib. p. 73-75.

- *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

The letters received within the project framework contain no information on such measures. The authors have no information on them either.

*vi. Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

The letters and the information got within the framework of the project realization do not allow describing the specific character of the steps the authorities take to protect transgender persons in regard to employment relations.

*vii. Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

The letters got within the framework of the project realization contain no information on such programmes. The authors of the present text know nothing about them either.

**30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.**

*i. Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?*

The letters got within the framework of the project realization contain no information on such measures. The authors of the present text know nothing about them either.

The Vice-Chairman of the State Duma Committee on labor, social policy and matters concerning veterans in his answer to our address only gives the names of the regulations protecting employees' private information (with no special focus on transgender persons) and describes their main bodies<sup>147</sup>.

At the same time, in practice the issue is urgent.

In 2011, the "Legal Assistance" programme initiated by the Russian LGBT Network got a request. The employer recruited a transgender man who changed all the documents. With neither legal foundation nor informing the employee, the employer found out the details of his private life.

Later the employer started to call the employee his previous name that did not correspond to the employee's gender identification and shared the information with the staff. The person had to retire<sup>148</sup>.

## VI. Education

**31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.**

<sup>147</sup> Letter by G.N.Karelov, First Deputy Chairman of the State Duma Committee labor, social policy and veterans, № 3.2-23/1119 dated 4 July 2012. Mr.Karelov refers to Chapter 14 of the Labor Code of the RF, the Federal law "On personal information" № 152-ФЗ dated July 27 2006, the List of the pieces of personal information approved by Edict of the President of the Russian Federation № 188 dated March 6 1997.

<sup>148</sup> That case is also described in the alternative report written by the Russian LGBT Network for the the United Nations Committee on Economic, Social and Cultural Rights and called "Sex, gender, and gender-identity discrimination in regard to health care, education, employment and social services in the Russian Federation" (2011, p.11).

*i. Have*

- *equality and safety policies,*
- *codes of conduct and*
- *handbooks*

*for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?*

*ii. Do initial and in-service training programmes for teachers and other educational staff address the need for them to*

- a. treat their LGBT pupils and students with respect*
- b. be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

*iii. Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

*iv. What can a pupil or a student do to protect his or her rights if he or she is subjected to persecution or bullying at their educational institutions on grounds of a) their sexual orientation or b) gender identity or a) their parents' sexual orientation or b) their parents' gender identity?*

*v. What are you going to do to protect the rights and interests of LGBT children and teenagers?*

All these questions got no answers.

The questions concerning education were addressed to the Ministry of Education and Science of the RF, to the State Duma Committee on matters relating to family, women and children, to Commissioner for the President of RF on the rights of the child.

Sorry to say that the only answer we got to our addresses was given by the Ministry of Education and Science (dated 25 July 2012, № 07-ПГ-МОИ-13633 and signed by S.V.Vitelis, Deputy Director of Department of state policy in regard to the protection of children's rights).

In its reply the Ministry put emphasis on the exposition of the Law of the RF "On Education" (particularly, the principles which the state policy in regard to education follows) and on the Federal state educational standards (in particular, the results of the learning of the basic educational programme). The letter contained no information concerning the questions we asked and did not have any information on measures to provide non-discrimination of pupils, students and their parents on grounds of sexual orientation or gender identity.

The Russian LGBT Network has no information on any steps taken at federal or regional levels for the prevention of homophobia and trans-phobia at educational institutions and for the developing of the comfortable learning environment for school children and students belonging to LGBT community.

At the same time, the Russian LGBT Network have information on some cases of human right abuse on grounds of sexual orientation or gender identity.

In 2011-2012 school year, in Arkhangelsk a teacher who learned that a schoolgirl of a secondary school was brought up in a lesbian family, shared the information with the staff and some schoolchildren. Later the girl was bullied by her classmates and experienced prejudice on the part of the teachers. The girl's parents had to take the girl away from school and to move to another residential area<sup>149</sup>.

**32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable**

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<sup>149</sup> Monitoring data by the Russian LGBT Network. In press.

**them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.**

*i. Is information on*

- a. sexual orientation*
- b. gender identity*

*provided in school curricula and sex and health education classes?*

*ii. Do schoolchildren get any information on sexual orientation or gender identity? If they do, in what way is it done?*

*iii. Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

*iv. Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

All these questions got no answers.

Both Sex and gender education is a dangerous topic to discuss at Russian schools. It not only concerns sexual orientation or gender identification matters but sex matters on the whole (including heterosexuality), birth control and the prevention of STD/HIV.

At the moment, one can state that there is not any appropriate sex and/or gender educational programmes. A lot of schools instead follow pseudo gender approach based on the principle of single-sex education. The goal of that approach is encouragement of “traditional” gender roles development.

Sexual orientation and gender identification matters are not included into educational standards at any learning stage (apart from majoring in medical professions).

Moreover, in case sexual orientation and/or gender identification is discussed (even in specialized educational institutions) students get some outdated information which does not correspond to contemporary scientific knowledge.

The Russian LGBT Network has fixed some cases when students ran into difficulties while making their term or diploma papers on sexual orientation or gender identity. E.g. at a

Saint-Petersburg higher educational institution the Department of Social work considers homosexuality and transgenerness within a context of the *Deviantology* course. To get an approval of a term paper dealing with non- pathologized approach to the matter was impossible. The lecturer insisted on the “Transgenerness as deviant behavior” as the paper subject.

On the other hand, vice versa, students refuse to be present at lectures dealing with sexual orientation or gender identity for the reason that they might get “sinful knowledge”.

We should take note of the fact, that the case deals with a specialized subject such as “Gender matters of social work” which is compulsory for those students who are at the department of social work.

The lectures have no drivers to make them do the subject, at that.

The issue is not only about clericalisation of Russian education at all the levels but it also is about bureaucratic character of the Russian educational system. A higher educational institution is interested in providing each student with a diploma despite their professional suitability. In case a lecturer does not consider a student ready to take an exam, the student will get another lecturer appointed by dean and pass it. There is no way the student will fail it.

## **VII. Health**

**33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of**

**lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.**

*i. Do*

*a. the design of national health plans,*

*b. health surveys,*

*c. suicide prevention programmes,*

*d. medical training programmes,*

*e. training courses and materials*

*f. the monitoring and quality assessment of health-care services*

*take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

Letters received in the course of project execution do not contain the information about that.

In fact the Chairman of the State Duma Health Committee remarks: “separation of gay, lesbian, bisexual and transgender persons in a special group of subjects of medical law as, for example, disabled persons, in our opinion most likely shall lead to their social disintegration with other members of society and shall become an additional cause of discrimination manifestations of the citizens that do not share ideological grounds of the LGBT communities”<sup>150</sup>.

The only exception in this regard is the information provided by the Ministry of Health of the Russian Federation. According to this data “the training courses and the qualification upgrading courses for psychiatrists and sexologists include the topics on sexual orientation and gender identity”; “there is a section on diagnostics and medical rehabilitation help for transgender persons in the basic training courses, medical curricula and issue-related advance training courses on sexology and psychiatry”<sup>151</sup>.

*ii. Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

Letters received in the course of project execution do not contain the information about that.

*iii. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*

Letters received in the course of project execution do not contain the information about that.

The state practically does not fund the programmes aimed at the measures to prevent sexually transmitted diseases among the men practicing same sex relationships. Such programmes are supported only by some nongovernmental organisations funded at foreign grants cost. However, even those organisations are not engaged in preventing sexually transmitted diseases among the women practicing same sex relationships. Considering that healthcare staff (gynecologists in particular) do not undergo any special training regarding particular needs of lesbian or bisexual women; and also due to administrative limitations (for instance female condoms are not registered in Russian Federation) those women practically do not have access to the specialized information and means for health protection<sup>152</sup>.

*iv. Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*

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<sup>150</sup> Letter from S.V. Kalashnikov, Chairman of the State Duma Health Committee, № 3.4-22/426, July 24, 2012

<sup>151</sup> See: Letter from O.I. Guseva, Deputy Director of preventive medical care, emergency and primary health care, and health resort business Department in the Ministry of Health of the Russian Federation, № 14-5/2108538, November 30, 2012

<sup>152</sup> See: Discrimination on the grounds of sexual orientation and gender identity in the area of health care, education, employment and social security in Russian Federation: alternative report for United Nations Committee on Economic, Social and Cultural Rights (2011). P. 19.

Letters received in the course of project execution do not contain the information about such measures. No case of such measures has come to notice of the authors of this text.

*v. Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

In accordance with Russian legislation the patient has a right to choose persons who shall be informed of his health condition<sup>153</sup>. Without particular expression of will of the patient according to the general rule the information is provided to the spouse<sup>154</sup>; the spouse of the deceased is asked for permission to use organs or tissues for donation<sup>155</sup>; the spouse is able to forbid post-mortem examination on religious grounds<sup>156</sup>; the conclusion decision on the cause of death and the diagnosis of disease is given to the spouse<sup>157</sup> etc. As long as the same-sex marriage cannot be contracted in Russia these opportunities are not accessible for homosexual or bisexual persons.

#### **34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.**

*i. Has homosexuality been removed from the national classification of diseases?*

As a Chairman of the State Duma Health Committee remarks "in the healthcare system of Russian Federation there is no national classification of diseases discrepant from International Classification of Diseases (ICD) of the World Health Organisation. The classification of ICD is used in Russian regulations and standards. In 1999 Russian Federation ratified ICD-10 from which diagnosis "homosexuality" has been removed"<sup>158</sup>.

Deputy Director of preventive medical care, emergency and primary health care, and health resort business Department in the Ministry of Health of the Russian Federation O.I. Guseva, remarks: "The International Classification of Diseases, 10th Edition, which does not include homosexuality in the panel of the mental and behavior disorders with the exception of its ego dystonic form, is in the use in Russian Federation"; "No legislations or standards containing the interpretation of homosexuality as a pathosis exists in the area of medical care"<sup>159</sup>.

*ii. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?*

Responses received from the government authorities in the course of project execution do not allow to answer this question. According to the information of the Ministry of Health of the Russian Federation

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<sup>153</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-ФЗ dated June 25, 2012, p. 5 p. 5 art. 19.

<sup>154</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-ФЗ dated June 25, 2012, p. 3 art. 22.

<sup>155</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-ФЗ dated June 25, 2012, p. 7 art. 47.

<sup>156</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-ФЗ dated June 25, 2012, p. 3 art. 67.

<sup>157</sup> See: The Federal Law "On the Fundamentals of Health Protection in the Russian Federation" № 323-ФЗ dated June 25, 2012, p. 5 art. 67.

<sup>158</sup> Letter from S.V. Kalashnikov, Chairman of the State Duma Health Committee, № 3.4-22/426, July 24, 2012

<sup>159</sup> See: Letter from O.I. Guseva, Deputy Director of preventive medical care, emergency and primary health care, and health resort business Department in the Ministry of Health of the Russian Federation, № 14-5/2108538, November 30, 2012

the documents, textbooks and other materials which treated homosexuality as a disease “are used [in training process] in historical perspective only”<sup>160</sup>.

*iii. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?*

Letters received in the course of project execution do not contain the information about such measures. No case of such measures has come to notice of the authors of this text.

The Ministry of Health of the Russian Federation specifies: “the information in the training programmes for psychiatrists, sexologists and psychologists is provided to eliminate the incidents of someone being forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity. **The voluntarism in seeking medical advice is observed**”<sup>161</sup>.

At the same time in 2012 the stir among the public was caused by the case of 16 year old Ivan Kharchenko who was put to the private clinic for “treatment” of his sexual orientation as soon as his father discovered it<sup>162</sup>.

## VIII. Housing

**37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.**

*i. Does legislation prohibit discrimination in housing areas on the grounds of (a) sexual orientation and (b) gender identity?*

This question was directed to the Chairman of the State Duma of Russian Federation S.E. Naryshkin and also to the civil, criminal, adjudicatory and procedural legislation Committee of the State Duma of Russian Federation and the constitutional legislation and state construction Committee of the State Duma of Russian Federation; Federal Service on Surveillance in the Sphere of Consumer Rights Protection and Human Welfare (Rospotrebnadzor); Committee of the Federation Council on social policy. There was only one response - from Rospotrebnadzor (04.07.2012 № 01/7499-12-31, signed by deputy director A.Y. Popova). The answer was beside the question: it was the return of our letter

In so far as the question risen in it and its contains is irrelevant to the functions of Rospotrebnadzor (its local agencies) and to the subject of the federal inspectorate in the specified field of action.

*ii. Does legislation prohibit discrimination in such areas as:*

- *the sale or rent of housing,*
- *the provision of loans for purchase of housing,*

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<sup>160</sup> See: Letter from O.I. Guseva, Deputy Director of preventive medical care, emergency and primary health care, and health resort business Department in the Ministry of Health of the Russian Federation, № 14-5/2108538, November 30, 2012

<sup>161</sup> See: Letter from O.I. Guseva, Deputy Director of preventive medical care, emergency and primary health care, and health resort business Department in the Ministry of Health of the Russian Federation, № 14-5/2108538, November 30, 2012

<sup>162</sup> See: Related publications, for example: <http://www.gazeta.ru/social/2012/04/25/4563373.shtml>; <http://www.novayagazeta.ru/news/56317.html>.

- *the recognition of the rights of a tenant's partner,*
  - *evictions*
- on the grounds of (a) sexual orientation and (b) gender identity?*
- iii. *Is information available to landlords and tenants aimed at preventing such discrimination?*
  - iv. *Are adequate and effective legal or other remedies available to victims of such discrimination?*
  - v. *Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

These questions were directed to the Federal Service on Surveillance in the Sphere of Consumer Rights Protection and Human Welfare (Rospotrebnadzor) and the Committee of the Federation Council on social policy. For reasons given above questions remained unanswered.

No case of such measures taken in Russia has come to notice of the Russian LGBT Network.

**38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.**

- i. *Have any measures addressed to overcome the negative impacts connected with the discrimination and stigmatization of LGBT persons been included to federal, regional or local programmes of social support of citizens?*
- ii. *Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighborhood support and security?*
- iii. *Have any programmes, including social support programmes, and programmes directed to support and the promote the safety in particular areas, to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people?*
- iv. *Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

One of the difficulties we faced in monitoring implementation of the Recommendation was the fact of the presidential elections in Russia in March 2012. After the elections happened the reshuffle of the Cabinet and other key persons took place and, which is more, the structure of some ministries have been changed as well. In particular previously existing Ministry of Healthcare and Social Development was disembodied and on the ground of it the Ministry of Healthcare and the Ministry of Labour and Social Security were created.

As the result, the questions we have sent to the Ministry of Healthcare and Social Development regarding the social development were ignored (namely i, ii, iii, iv). Also the question iii from the list, addressed to the Ministry of Sport, Tourism and Youth Policy, was ignored, because for the time of the response the ministry was already named “the Ministry of Sport” and was not responsible for “youth policy”.

In this respect Russian LGBT Network is compelled to note: at this moment we do not have the information about the measures taken in this area.

## IX. Sports

**39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.**

**40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.**

- i. *Does legislation prohibit discrimination in sports on the grounds of (a) sexual orientation and (b) gender identity?*

The questions regarding sports were sent to the Ministry of Sport, Tourism and Youth Policy of Russian Federation; the State Duma Committee for physical culture, sport and youth affairs; the Committee of the Federation Council for social policy. Regrettably there was just one response - a letter from the Ministry (dated 25.07.2012 № 04-15/1188, signed by deputy director of the Department of science and education K.V. Vyrupaev)

In the response the Ministry refers to the general anti-discriminatory provisions in the branch law (the Code of Administrative Procedure, the Labor Code, and the Criminal Code) and also to the art. 14 of Convention for the Protection of Human Rights and Fundamental Freedoms, which do not point directly at the grounds of sexual orientation and gender identity. Whereas there are no reference to any act of legislation or standard regulation obligatory in Russian Federation, which would point directly at the prohibition against the discrimination on the grounds of sexual orientation and gender identity in sports. Also the response does not specify the standpoint of the Ministry regarding the anti-discriminatory provisions listed above: should they be interpreted in a sense of the prohibition against the discrimination on the grounds of sexual orientation and gender identity or not.

Also in the response Ministry refers to Enlarged Partial Agreement on Sport (EPAS) of the Council of Europe member states. The letter reads as follows:

It is the standpoint of the most member states of EPAS that the state should have a **loyal** attitude towards the sexual minorities. There should be no hindrance for them to participate in sport competition, at the same time most of the countries do not support the idea of the organizing separate competitions for them. The sexual minorities can hold such competitions on their own account, using their own funds and without receiving the official status from the international sport organisations.

Regrettably in the letter from the Ministry nothing is said about Russian standpoint on this topic and also about the measures taken for the implementation of the official standpoint of EPAS. As it will be clear from the subsequent nothing is being done in this field in Russia in reality.

- ii. *What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*

In the responding letter the Ministry does not point out to any measures taken to prevent the risk of exclusion from participation in sports on grounds of sexual orientation and gender identity.

iii. *By encouraging, for example:*

- *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
- *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
- *anti-discrimination campaigns in the sports world,*
- *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

The Ministry has made an attempt to answer this question. Particularly the letter reads:

The events held by the Ministry of Sport of Russian Federation do not contain discriminatory aspect based on the grounds of sexual orientation and gender identity. The events are designed to promote the formation of healthy lifestyle of the citizens of Russian Federation.

It is followed by the list of three events: all-Russian competition “Go in for sports!” for amateur photographers; all-Russian competition of the projects on propaganda of physical training and sports among public associations for children and youth “Go in for sports!”; all-Russian competition for the best work in the field of propaganda of healthy lifestyle in Russian Federation (anyone can participate in the competition, including executive authorities, sport and physical training federations, workers' associations, non-profit organisations, citizen's action groups, etc. ).

As is obvious from the names, these events are not of the anti-discriminatory character per se, so it is hard to understand how they are related to our request. Apparently, the Ministry staff considers the absence of the direct prohibition for participation of LGBT in the events being their great achievement.

Regrettably the questions addressing the drawing up and dissemination of codes of conduct, partnerships, and support for sports clubs set up by LGBT remained unanswered.

iv. *Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

This question also remained unanswered.

v. *In particular:*

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*
- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehavior at Sports Events<sup>163</sup>, the European Sports Charter<sup>164</sup>, and ECRI's*

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<sup>163</sup> <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=RUS&NT=120> – see in particular art. 2 (“Domestic co-ordination”), 3 (“Measures”), 5 (“Identification and treatment of offenders”).

<sup>164</sup> <http://lib.sportedu.ru/GetText.idc?TxtID=1542> – see in particular art. 1.1 (to enable every individual to participate in sport), art.3 (close co-operation with non-governmental sports organisations), art. 4.1 (No discrimination), art. 4.2 and 4.4 (ensure that all citizens have opportunities to take part in sport including disadvantaged or disabled individuals)

*General Policy Recommendation No.12<sup>165</sup> been implemented in respect of (a) sexual orientation and (b) gender identity?*

This question also remained unanswered. According to the monitoring data collected by Russian LGBT Network at present time Russian sport fan sector is merged with the political right wing which is known for its excess homophobic and transphobic statements. Most illustrative is the event happened on May 17, 2012 in Saint-Petersburg, during the course of and just after the “Rainbow flash mob” dedicated to the International day of opposition to homophobia and transphobia. During the street action which took place in the park not far from the stadium (which traditionally hosts all the soccer events in Saint-Petersburg) the meeting held by the LGBT community was surrounded by a crowd of about 100-150 athletic people dressed in training outfits, wearing masks, shouting menacing chanting typical for the sport fans, such as: “We shall string you up, we shall bury you”. The police stood between this group and the representatives of the LGBT community. After the ending of the LGBT event on the demand of the police the LGBT representatives left the place where the action was held and the wrathful crowd had smashed up the bus with foreign workers<sup>166</sup>. In such a way it was demonstrated once again that homophobia and migrantphobia are the special case of xenophobia and racism. Regrettably no comments from the officials of any sport club have followed the event. Also there was no police investigation.

- vi. *Have specific appropriate measures been taken to:*
  - *put an end to the exclusion of transgender persons from sports activity or competitions,*
  - *remove the obstacles encountered by them in participating in sport (dressing room access),*
  - *recognize their preferred gender?*
- vii. *Have the recommendations for the sport clubs and organisations to elaborate and implement the codes of contact related to sports and (a) sexual orientation and (b) gender identity?*

These questions also remained unanswered. As far as it known to the Russian LGBT Network no such measures were taken and no such recommendations were given.

**41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.**

*Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*

- *developing awareness-raising activities*
- *condemning homophobic and transphobic behavior during and in connection with sports events?*

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[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorIntern et=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorIntern et=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

<sup>165</sup> [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N12/REC12-2009-05-RUS.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/REC12-2009-05-RUS.pdf)

<sup>166</sup> After the “ Rainbow flashmob” in Saint-Petersburg homophobes had smashed up the bus with foreign workers// <http://lgbt-grani.livejournal.com/1456062.html>

This question remained unanswered as well. As far as it known to Russian LGBT network no such measures were taken. In particular there was no reaction whatsoever from either officials of state structures or sport clubs to the declaration of the Russian national sport fans association in support of the prohibition of the “propaganda of homosexuality”, which reads as follows:

“Russian national sport fans association completely supports the initiative of the number of public officials for prohibition of the propaganda of homosexuality among minors. We consider the advertisement of such a lifestyle in public places, schools, on television, and the wide expansion of this phenomenon is a real shame for the entire country... The debauchery of this phenomenon throughout the centuries has led to the degeneration of the ethnoses, defilement and demoralization of the mainstay of society, deprivation of entire systems. The cult of the tolerance in Europe of 21 century has reached such a dimension that western society little by little has began to construct barriers, risking to crash down under the pressure of mass immigration, deterioration in morals and financial cataclysms with is true for every society the decay of which passionarity is in contemplation”<sup>167</sup>.

## **X. Right to seek asylum**

**42. In cases where member states have international obligations in this respect, they should recognize that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.**

*Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?  
Is staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?  
Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?*

At this time Russian LGBT-network does not consider Russia an appropriate country for people to get an asylum on the grounds of sexual orientation and gender identity. That is why official requests to Federal Migration Service of Russia have not been sent.

With that, under the existing Russian laws, we can come to following conclusions. Russian Federation provides an asylum to foreign citizens and stateless individuals seeking asylum within national boundaries by way of granting them political asylum; recognizing as a refugee; granting provisional asylum. All three of this fields are subjects to three different documents: Statute “On Procedure for granting a political asylum in Russian Federation” (validated by the Edict of the President of the Russian Federation dated July 21, 1997 № 746)<sup>168</sup>; Federal law dated February 19, 1993 № 4528–1 “Concerning Refugees”<sup>169</sup>; Decree of the Government of

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<sup>167</sup> Russian national sport fans association supports the initiative for prohibition of the propaganda of homosexuality! Dated 30.03.2012 // Registered web-site of the Russian national sport fans association URL: <http://www.vob.su/site/press-center/news/1137-2012-03-30-08-16-33>

<sup>168</sup> Statute “On Procedure for granting a political asylum in Russian Federation” (validated by the Edict of the President of the Russian Federation dated July 21, 1997 № 746) // Registered web-site of Federal Migration Service of Russia URL: [http://www.fms.gov.ru/upload/iblock/ukazN\\_746.pdf](http://www.fms.gov.ru/upload/iblock/ukazN_746.pdf)

<sup>169</sup> Federal law dated February 19, 1993 № 4528–1 “Concerning Refugees”// Registered web-site of Federal Migration Service of Russia URL: [http://www.fms.gov.ru/upload/iblock/fed\\_zakon\\_N\\_4528-1.pdf](http://www.fms.gov.ru/upload/iblock/fed_zakon_N_4528-1.pdf)

the Russian Federation dated 09.04.2001 № 274. “On granting a provisional asylum within boundaries of Russian Federation”<sup>170</sup>. None of these documents makes reference to sexual orientation and gender identity.

Russian LGBT Network does not hold information about the training in the specific problems encountered by LGBT refugees or asylum seekers for the staff of the Federal Migration Service responsible for the work with refugees. However considering that no such training is provided for other staff of the Ministry of the Interior (which is Federal Migration Service jurisdictional to) we can make an assumption that no such training is provided for FMS staff either.

No case of someone trying to get an asylum or refugee status in Russian Federation on the ground of sexual orientation and gender identity has come to notice of Russian LGBT Network.

**43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.**

*What procedures are in place to ensure compliance with this obligation?  
Are there documented cases where asylum seekers have been returned to such a country?*

**44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.**

*What measures have been taken to comply with this requirement?  
In particular, has the staff of administrative detention centers, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

## **XI. National human rights structures**

**45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.**

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<sup>170</sup> Decree of the Government of the Russian Federation dated 09.04.2001 № 274. “On granting a provisional asylum within boundaries of Russian Federation”// Registered web-site of Federal Migration Service of Russia. URL: [http://www.fms.gov.ru/upload/iblock/postN\\_274.pdf](http://www.fms.gov.ru/upload/iblock/postN_274.pdf)

*Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?*

*In practice do they*

- *make recommendations on legislation and policies,*
- *conduct awareness-raising among the general public*
- *examine individual complaints*
- *participate in court proceedings*
- *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed,*

*in relation to (a) sexual orientation or (b) gender identity?*

Russian LGBT Network is ready and willing to forge partnership with Commissioner for human rights in Russian Federation V.P. Lukin. However, there is little progress in this. Suffice to say that over the time of our work only one meeting with the Commissioner had happened (in 2009). After that the representative of the Commissioners staff had attended only one of our activities (roundtable discussion with Andreas Gross in March 2011). The meaningful result of this cooperation was adding the problem of the situation of transgender persons in Russian Federation and the danger of passage of the law on the prohibition of so called “propaganda of homosexuality” to the Report on the situation of human rights in Russia in 2011<sup>171</sup>. It is worth mentioning, it was the first time when the Commissioner has referred to the rights of LGBT in his Report. Regrettably over the year of 2011 there was no reaction or public statement to the multiple appeals from the citizens concerned with his position on the issue of passage of the law on the prohibition of so called “propaganda of homosexuality” in some regions, except of the caddish response from the press service of Commissioners executive office, which reads as follows:

Commissioner is not familiar with the draft law being appealed or with the proposition of introduction of an administrative responsibility in a form of financial penalty for public actions, aimed at propaganda of any form of non-conventional sexual orientation among the minors. In view of the above Commissioner does not find it possible to give a legal evaluation of a proposed standard regulation.

The protest petitions received by Commissioner cannot be qualified as appeals considering that they do not contain information about specific facts of infringement of rights and freedoms of citizens, and appear to be just a presumption on a presumable infringement of those rights and freedoms in the future.

What is more, it should not be left unnoticed that the mentioned petitions have absolutely identical content, that is to say as a matter of fact those are just one multi authored petition, replicated by the score of copies, apparently, with the purpose to paralyze the activity of Commissioners executive office.<sup>172</sup>

However, later Commissioner had changed his standpoint. In 2012 representatives of his executive office were giving cautious commentaries about “lack of legal clarity” of this law.<sup>173</sup>

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<sup>171</sup> Report of the Commissioner for human rights in Russian Federation, 2011 // Registered web-site of the Commissioner for human rights in Russian Federation. URL: <http://ombudsmanrf.org/2009-11-05-14-09-33/10537-2011-.html>

<sup>172</sup> Comment of the press service 28.11.2011 // Registered web-site of the Commissioner for human rights in Russian Federation URL: <http://ombudsmanrf.ru/2009-11-05-14-00-18/2009-11-05-14-03-05/9486-2011-11-28-11-34-41.html>

<sup>173</sup> Human rights that annoy the government // Registered web-site of the Commissioner for human rights in Russian Federation URL: <http://ombudsmanrf.org/2012-01-12-07-31-03/10847-2012-04-03-11-48-47.html>

To our inquiry about the measures taken by the Commissioners executive office for the implementation of the Recommendation we received an answer dated August 23, 2012 (№22325-41) signed by deputy director of the Analysis Department A.I. Lebedev, which is saying that they cannot provide us with substantial answer because

This range of problems (discrimination of LGBT), in accordance with the Federal Constitutional Law "On Commissioner for human rights in Russian Federation" is not included in his terms of reference and is considered only as one of the aspects of activity in the field of protection the rights of all citizens of Russian Federation regardless of their gender. That is why there is no special staff member or division in the Commissioners executive office for this range of problems. The appeals from the LGBT community are very rare (not more then 1-2 times a year) and usually are associated with the prohibition by the authorities of such public events as parades.

At present moment there are no documents on addressing discrimination on grounds of sexual orientation or gender identity, including the text of Recommendation, shown on the official website of the Commissioner.

In accordance with the Article 31 of the Federal Constitutional Law "On Commissioner for human rights in Russian Federation":

Having a result of studying and analyzing of the information about infringement of rights and freedoms of citizens, and generalizing a conclusion of complaint investigation Commissioner has a right to:

1) direct his general remarks and suggestions regarding ensuring of rights and freedoms of citizens, and improvement of administrative procedures to the local public authorities and civil servants;

2) direct to the holders of the right of legislative initiative suggestions on the changes or additions to federal legislation and legislation of the constituent entities of the Russian Federation; or on filling of the gaps of federal legislation and legislation of the constituent entities of the Russian Federation if Commissioner presumes that judgments and actions (lack of action) of the federal authorities, local public authorities and civil servants, which infringed of rights and freedoms of citizens, are performed on the grounds of and for the purpose of federal legislation and legislation of the constituent entities of the Russian Federation, whether because of existing gaps of federal legislation and legislation of the constituent entities of the Russian Federation or in the case when legislation is in contradiction to the generally accepted principles and norms of international law and international agreements to which the Russian Federation is a party<sup>174</sup>.

However, as far as it is known to us despite of all our multiple petitions, including the proposition to direct suggestions on improvement of administrative procedures and the changes and additions to legislation by adding the provisions prohibiting the discrimination on the grounds of sexual orientation and gender identity, it has never been done. The only changeless response from the Commissioners executive office is: *we do not have enough appeals on the infringement of rights of LGBT.*

## **XII. Discrimination on multiple grounds**

**46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.**

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<sup>174</sup> Federal Constitutional Law "On Commissioner for human rights in Russian Federation"// Moscow School of human right URL: <http://www.mshr-ngo.ru/docs/upzak.htm>

- i. Is the possibility of enactment of a consolidated antidiscrimination legislation considered by the authorities?*
- ii. Have provision been made to include the grounds of (a) sexual orientation, (b) gender identity to this legislation?*

These questions were directed to the Chairman of the State Duma of Russian Federation S.E. Naryshkin and also to the civil, criminal, adjudicatory and procedural legislation Committee of the State Duma of Russian Federation and the constitutional legislation and state construction Committee of the State Duma of Russian Federation; and the Committee of the Federation Council on social policy. We did not receive the answers to our letters. At present time no case of initiatives to enactment of a consolidated anti-discrimination legislation has come to notice of the Russian LGBT Network.

## Addressees and responses at the federal level

institution name	Letter №	Response	Response date	Response №	Designated person	Response content
President of the Russian Federation	PKMCE-Φ-01	yes	25.06.2012	A26-01-337417	Counselor of the department for the written requests of the citizens and organisations of Presidential Administration N. Maslova	As good as no answer: notification that our letter was forwarded to Ministry of Justice of the Russian Federation. There was no response from Ministry of Justice
Government of the Russian Federation, addressed to the Chairman of the Government	PKMCE-Φ-02	yes	25.06.2012	И-100738	Counselor of the department for the requests of the citizens Yelkina L.P.	As good as no answer: notification that our letter was forwarded to Ministry of Justice of the Russian Federation. The answer was off the point: Ministry of Justice simply listed out the general anti-discriminatory regulations. No answers to our questions.
State Duma, addressed to the Chairman of the State Duma	PKMCE-Φ-03	no				
Ministry of Interior of Russian Federation addressed to the Minister	PKMCE-Φ-04	no				

the Ministry of Sport, Tourism and Youth Policy	PKMCE -Φ-05	yes	25.07.2012	04-15/1188	Deputy director of the Department of science and education K.V. Vyrupeev	There are no answers to our questions.
Ministry of Public Health and Social Development	PKMCE -Φ-06	yes	02.08.2012	17-4/10/2-1123	Deputy minister I.N. Kagramanyan	No answers to our questions.
Ministry of Education and Science of the Russian Federation	PKMCE -Φ-07	yes	25.07.2012	07-ΠΓ-ΜΟΗ-13633	Deputy director of the Department of the national policy in the area of protection of the rights of children Vitelis S.V.	No answers to our questions.
Ministry of Defense of the Russian Federation	PKMCE -Φ-08	no				
Federal Penitentiary Service of the Russian Federation	PKMCE -Φ-09	yes	08.08.2012	13/4-232	Chief officer of the Legal Department Y.Y. Timofeev	No answers to our questions.
Federal Service on Surveillance in the Sphere of Consumer Rights Protection and Human Welfare (Rospotrebnadzor)	PKMCE -Φ-10	yes	04.07.2012	01/7499-12-31	Deputy director A.Y. Popova	No answers to our questions.
Federal Agency for Press and Mass Media	PKMCE -Φ-11	yes	19.07.2012	62/5-8-9428/62-7347	Deputy director T.V. Naumova	No answers to our questions.
Ministry of Justice of the Russian Federation (Minjust)	PKMCE -Φ-12 + response PKMCE -Φ-02	yes	30.07.2012	07-60193	Director of the department of constitutional legislation S.V. Shutkov	No answers to our questions.
Public collegiate organ for complaining of the media	PKMCE -Φ-13	no				
Union of Journalists of	PKMCE -Φ-14	no				

Russia						
Commissioner for human rights in Russian Federation	PKMCE -Φ-15	yes	23.08.2012	22325-41	Deputy director of the Analysis Department A.I. Lebedev	No answers to our questions.
United Russia party State Duma Fraction	PKMCE -Φ-16	no				
Communist Party of the Russian Federation State Duma Fraction	PKMCE -Φ-17	no				
A Just Russia State Duma Fraction	PKMCE -Φ-18	no				
Liberal Democratic Party of Russia State Duma Fraction	PKMCE -Φ-19	no				
the State Duma Committee for physical culture, sport and youth affairs	PKMCE -Φ-20	no				
the State Duma Committee for Public and Religious Organisations	PKMCE -Φ-21	yes	06.09.2012	3.21-22/277	Committee chairman Y. Nilov	No answers to our questions.
the State Duma Committee for Family, Women and Children Affairs	PKMCE -Φ-22	no				

the State Duma Committee for Civil, Criminal, Arbitral and Procedural Law	PKMCE -Ф-23	no				
the State Duma Committee for Constitutional Law and State Building	PKMCE -Ф-24	no				
the State Duma Committee for Health Services	PKMCE -Ф-25	yes	24.07.201 2	3.4.- 22/426	Committee chairman S.V. Kalashnikov	No answers to our questions.
the State Duma Committee for Labor and Social Policy and Veterans Affairs	PKMCE -Ф-26	yes	04.07.201 2	3.2- 23/1119	First Deputy Chairman G.N. Karelova	No answers to our questions.
Federal Labour and Employment Service (Rostrud)	PKMCE -Ф-26	yes	26.07.201 2	440-ПП	Deputy director A.V. Selivanov	No answers to our questions.
Russian Trilateral Commission for the Regulation of Social and Labour Relations	PKMCE -Ф-26	yes	18.07.201 2	П27- 30991- PTK	Secretary-General V.T. Ponizov	No answers to our questions.
The Council of Federation of the federal Assembly of Russian Federation	PKMCE -Ф-27					No answers to our questions.
The Council of the Federation Committee on Social Policy	PKMCE -Ф-28	yes	28.06.201 2	5.8.4/118 51п-1	First Deputy Director of the executive office CF FA RF Viktorov V.N.	
Children's Rights Commissioner for the President of the Russian	PKMCE -Ф-29	no				

Federation						
Commission on civil society development and interaction with civic chambers of subjects of the Russian Federation of Civic Chamber of the Russian Federation	PKMCE -Φ-30	no				
Commission on support of mass media as a basis of civil society, freedom of speech and access to information of Civic Chamber of the Russian Federation	PKMCE -Φ-31	no				
Supreme Court of Russia	PKMCE -Φ-32	yes	25.06.2012	no №	Chief adviser M.D. Bezrukova	No answers to our questions.
Constitutional Court of the Russian Federation	PKMCE -Φ-33	yes	19.07.2012	10500/15-01/12	Director of the department for reception of citizens and mail G.A. Stepanova	No answers to our questions.
Academy of the Right and Management FSES RF	PKMCE -Φ-34	no				
Academy of justice of the Russian Federation	PKMCE -Φ-35	no				
MVD Administration Academy	PKMCE -Φ-36	no				
Institution of Advanced Training for executive staff of the Academy	PKMCE -Φ-37	no				

of the Office of the Prosecutor General of the Russian Federation						
R&D establishment Academy of the Office of the Prosecutor General of the Russian Federation	PKMCE -Ф-38	no				
Academy of the Office of the Prosecutor General of the Russian Federation	PKMCE -Ф-39	yes	28.06.2012	1-13/1238-12	Pro-rector A.V. Brilliantov	No answers to our questions.
Federal State-Owned Enterprise " All-Russian Research Institute Ministry of the Interior of Russian Federation "	PKMCE -Ф-40	yes	18.07.2012	2056	Deputy director, candidate of legal sciences, docent A.L. Sitkovsky	No answers to our questions.
Federal State Statistics Service	PKMCE -Ф-41	no				
Office of the Prosecutor General of the Russian Federation	PKMCE -Ф-42	yes	28.06.2012	Отв-83-42347-12/13403	Procurator of the General directorate of international judicial co-operation A.D. Klechenova	No answers to our questions.
Department for International Humanitarian Cooperation and Human Rights MFA of Russia	PKMCE -Ф-42	yes	16.07.2012	7316/дгпч	Director of the Department for International Humanitarian Cooperation and Human Rights V. Nebenzya	No answers to our questions.
Investigation department at the Ministry of Interior	PKMCE -Ф-43	no				
Investigation Committee of	PKMCE -Ф-44	yes	27.07.2012	210-29937-12	Deputy director of the information	No answers to our questions.

Russian Federation					procedural bureau A.P. Shavkero	
Interdepartmental Commission to combat extremism in Russian Federation. The answer is from: General directorate to combat extremism	PKMCE -Φ-45	yes	30.07.201 2	30/3081	Deputy director of the General directorate to combat extremism V.A.Makarov	No answers to our questions.