

**LGBT Organization “Coming Out”
Transgender Legal Defense Project (Rainbow Foundation)
Russian LGBT Network**

Alternative report

**Implementation of the International Covenant
on Civil and Political Rights in the Russian Federation:
Sexual Orientation and Gender Identity Issues**

*Submitted for the 111 session of the Human Rights Committee
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The present submission is prepared by three Russian Non-Governmental Organizations: LGBT Organization “Coming Out,” Russian LGBT Network, and Transgender Legal Defense Project (Rainbow Foundation) for the consideration of the UN Human Rights Committee as an additional source of information to the seventh periodic report of the Russian Federation (CCPR/C/RUS/7).

The submission covers six main problems affected LGBT communities and LGBT human rights defenders in Russia, namely: (1) violence against LGBT persons and LGBT human rights defenders; (2) hate speech and manifestations of intolerance and prejudice by public officials, religious leaders and in the media; (3) infringement of the right to freedom of assembly and association; (4) legislation prohibiting so-called “homosexual propaganda”, its implementation and effects; (5) problems in legal recognition of transgender persons’ gender identity; and (6) persecution of LGBT and anti-discrimination activists under the law on “foreign agents.”

Most of the data presented in the report were obtained by the reporting organizations in course of their legal and monitoring activities in Russia and its regions.

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A. Violence against LGBT persons and LGBT human rights defenders (arts. 2, 6, 7, 26)

1. Reporting organizations

The Russian LGBT Network
LGBT Organization “Coming Out”
Transgender Legal Defense Project (Rainbow Foundation)

2. Issue summary

The Criminal Code of the Russian Federation does not mention any hate motive or prejudiced opinion against LGBT individuals as an aggravating factor of criminal sentences.

In many cases, crimes against LGBT people based on their sexual orientation are not investigated at all, or are investigated as lesser crimes such as hooliganism or beating.

Today the violence caused by homo- or transphobic hate is an everyday reality for many members of the LGBT community and LGBT human rights defenders. According to a poll of the LGBT community conducted by the Russian LGBT Network in August 2013, 15.4 % of respondents indicated that they had experienced physical violence at least once in the past year, while 3.3 % of respondents said that they had experienced physical violence because of their sexual orientation or gender identity more than 2 times in the last year.¹

The Criminal Code of the Russian Federation does contain the concept social group, a protected characteristic that can result in aggravating circumstances, which could be interpreted in an open way to include LGBT persons.

However, even if a victim brings weighty arguments and solicits for a crime to be qualified as a hate crime, investigators and interrogators deny such qualifications, referring to the fact that LGBT people cannot be considered as a social group², or unless the perpetrators are identified and questioned, motive of committing crime cannot be qualified as a crime based on hatred towards LGBT social group. Even in the cases when the offender has openly declared that the crime was committed because the victim is a member of the LGBT community, as well as in the case of attacker’s “protection” of morality and a healthy lifestyle, and also the protection of society from homosexual propaganda, such statements are not taken into account by the investigating authorities and the courts. In Russia police officers are not trained techniques of investigation of hate crimes and not educated in relation to sexual orientation and gender identity. Therefore the policemen themselves often have common stereotypes and negative attitudes towards LGBT people or do not know what it means. It impedes proper investigation of hate crimes and does not guarantee respect for the victims of such crimes.

Law enforcement agencies do not recognize the existence of problems and do not intend to develop any programs of prevention of hate crimes against LGBT people. No special training programs for law enforcement officials dealing with crimes motivated by homophobic or transphobic hate exists. The state does not keep any statistics of hate crimes based on sexual orientation and gender identity.

For instance, in response to the request of LGBT organizations the Head of the Chief Administration of Internal Affairs in St. Petersburg and Leningrad region, said:

“In recent years, on the territory of St. Petersburg and Leningrad region there have been no cases of mass or systematic crimes against this category of persons, as well as violations of their rights by members of the Department

1. Russian LGBT Network (2013). Violation of rights and discrimination against LGBT people in Russia (September 2012-August 2013). URL: <http://lgbtnet.ru/ru/content/narusheniya-prav-i-diskriminaciya-lgbt-v-rossii-sentyabr-2012-avgust-2013-gg>.

2. Case recorded under the legal support program conducted by the Russian LGBT Network in 2012.

case A.11
cases A.3, A.4, A.5, A.6

case A.4

case A.8

cases A.1, A.10, A.12

case A.7

of Internal Affairs caused by hatred towards these people as a social group. Therefore development of special programs for the prevention of hate crimes against homosexuals, bisexuals and transgender people, as well as the inclusion of questions about such crimes prevention to the police officers training and retraining and collecting detailed statistical information on hate crimes against this category of persons seem to be inappropriate.”³

The deputy chairman of the Law, Order and Security Committee of the Government of St. Petersburg holds the same opinion:

“...Development of a separate program for the prevention of hate crimes against homosexual, bisexual and transgender people in St. Petersburg seems inappropriate.”⁴

Victims are often afraid to go to the police for protection and to report a crime for fear of discrimination and violence on the part of law enforcement officials. According to the results of the poll conducted by the Russian LGBT Network in August 2013, only 6 % of people submitted to violence, appealed to the police with the appropriate application. While 45 % said they did not trust the police in protecting their rights because of their sexual orientation and gender identity.⁵

Unfortunately, these fears are not unfounded. It is rather common when homophobic or transphobic violence occurs in front of the police, but without an adequate response and offense suppression.

It should be noted that since the law banning so-called “propaganda of homosexuality” or “propaganda of non-traditional sexual relations” has been adopted, the number of attacks against the members of the LGBT community has grown. In particular, virtually any peaceful LGBT rights public action is accompanied by acts of violence committed by opponents without any proper response of police to committed crimes. The attackers justify their crimes. They say that the victim was gay, or the attack was caused by the protection of morals, children and the struggle against the violation of law on “propaganda”.

LGBT attempts to defend their rights in the court are accompanied by a new wave of uncontrolled and unpunished aggression of LGBT opponents. Participants and witnesses of trials in defense of LGBT rights are exposed to harassment, attacked with those beating or throwing eggs, insulted, threatened with murder, and physically blocked the passage to courthouses. The Police often do not arrive at the crime scene. In the case of a crime incident report, law enforcement officials are inactive or refuse to initiate criminal proceedings even if there are videos and other evidence of aggression. They check such statements formally. The police protracts the realization of inspections of declaring about crimes or crimes investigation itself is delayed. As a result, the possible statutory time of prosecution of the attackers expires.

3. HRC concluding observations, general comments and jurisprudence

In 2013, the Committee expressed concern at acts of violence directed at lesbian, gay, bisexual and transgender (LGBT) persons in Ukraine. The HRC recommended that Ukraine should clearly and officially state that it does not tolerate any form of violence against persons because of their sexual orientation or gender identity. The Committee also recommended that Ukraine should provide effective protection to LGBT persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim’s sexual orientation

3. Letter of Piotrowski V. Y., the chief of the Main Department of Internal Affairs of St. Petersburg city and Leningrad region of March 11, 2011, No. 58/269.

4. Letter of Burlakov I. I., the deputy chairman of the Committee on Law, Order and Security of the Government of St. Petersburg of March 11, 2011, No. 35-1142/11-0-1.

5. Russian LGBT Network (2013). Violation of rights and discrimination against LGBT people in Russia.

cases A.2, A.9

case A.1, A.12

case A.9

or gender identity.⁶

In 2010, the Committee regretted the absence of the provision in the Penal Code of hate crimes based on sexual orientation or gender identity as punishable offences in Poland.⁷

The HRC recommended that Poland should: ensure that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated; amend the Penal Code to define hate crimes based on sexual orientation or gender identity among the categories of punishable offences; and intensify awareness-raising activities aimed at the police force and wider public.⁸

In 2009, the Committee also noted that the Russian Federation should provide effective protection against violence based on sexual orientation, and provide appropriate training to law enforcement officials.⁹

4. The Government report

In its official report to the Committee the Russian Federation touches upon the issues of investigation and generalization of the practice of crimes motivated by racial hatred and intolerance, as well as crimes of an extremist nature.¹⁰

However, the State party gives no information on the implementation of recommendations providing effective protection of LGBT people against violence, and also on the existence of the problem of hate crimes based on sexual orientation and gender identity as such.

5. Recommendations by other human rights bodies

In September 2013, during the second round of *the Universal Periodic Review*, the Russian Federation was recommended to take specific measures to ensure effective investigation of acts of violence against LGBT persons and hold the perpetrators to account (Iceland).¹¹ The State accepted the recommendation, noting that it had been implemented already and commenting that “[a]ny acts of violence, regardless of whether they are committed against members of the LGBT community, or members of other social groups, involve proper response from law bodies. According to item e) para. 1 of Art. 63 of the Criminal Code, offences motivated by hatred or animosity towards any social group are recognized to be an aggravating circumstance.”

In November 2012, *the UN Committee against Torture* concerned at reports that police have failed to promptly react to, or to carry out effective investigations and bring charges against all those responsible for violent attacks against lesbian, gay, bisexual and transgender (LGBT) persons, such as alleged regarding the attacks on the “7 Free Days Club” in Moscow and the “Parisian Life Club” in Tyumen.¹²

The CAT recommended Russia to take effective measures to ensure the protection of all persons at risk, including LGBT persons. It added all acts of violence and discrimination against members of such groups should be promptly, impartially and effectively investigated, the perpetrators brought to justice, and redress provided to the victims. The Committee recommended that statistics be compiled regarding all crimes against members of such groups made vulnerable, and on the outcomes of investigations, prosecutions and remedial measures taken in relation to such crimes. The CAT recommended also to publicly condemn attacks against LGBT persons, and organize awareness-raising campaigns, including among the police, promoting tolerance and respect for diversity.¹³

6. Ukraine, ¶ 10, CCPR/C/UKR/CO/7 (2013).

7. Poland, ¶ 8, CCPR/C/POL/CO/6 (2010).

8. Poland, ¶ 8, CCPR/C/POL/CO/6 (2010).

9. Russian Federation, ¶ 27, CCPR/C/RUS/CO/6 (2009).

10. Russian Federation, ¶ 77–78; ¶ 120–122, CCPR/C/RUS/7 (2013).

11. Russian Federation, ¶ 140.96, A/HRC/24/14 (2013).

12. Russian Federation, ¶ 15, CAT/C/RUS/CO/5 (2012).

13. Russian Federation, ¶ 15, CAT/C/RUS/CO/5 (2012).

6. Recommended questions

a) Are lesbian, gay, bisexual and transgender (LGBT) people regarded by the State as a social group, violence against which, according to the Criminal Code, shall be punished as a crime committed with aggravating circumstances?

b) What steps was made by the State party in order to implement the UN Committee against Torture's recommendation on the conduction of crime statistics for vulnerable social groups, including LGBT? What prevents the State from conducting such statistics?

c) How many cases of penalties for hate crimes against LGBT people have been registered by the State over the past few years?

d) How the State may comment on the fact that the investigating authorities and the courts do not take into account the motive of hatred against LGBT people in cases of violent crimes, when the attacker himself did not hide the causes of his attack and directly showed that it was entirely due to victim's belonging to the LGBT, in particular, in the **attack on 12 June 2012 against activist V. Ivanov committed by D. Deyneko**?

e) What punishment did the attackers on the "7 Free Days Club" in Moscow and the "Parisian Life Club" in Tyumen endure? What steps was made in order to implement the UN Committee against Torture's recommendation to effectively investigate these cases?

f) What measures does the government take to protect LGBT people from violence?

g) What specific measures does the State party take in relation to law enforcement officials and judges so that they had the possibility and could work with cases of homophobic and transphobic hate crimes?

7. Suggested recommendations

a) Ensure the effective investigation of cases of violence and hate crimes against LGBT people, given the hate motive for such crimes as an aggravating circumstance of hatred towards a social group, in particular, in the event of an **attack on the office of the LaSky Project in St. Petersburg on 3 November 2013** and **attack at gay parade in St. Petersburg on 29 June 2013**.

b) Maintain statistics of hate crimes against vulnerable groups, including LGBT people, which includes questions of qualification of the case, the timing of its consideration, the results of the investigation and punishment of the perpetrators.

c) Amend the provisions of the Criminal Code by inserting direct indication of the hate motive against LGBT as an aggravating circumstance.

case A.12

case A.8
case A.4

party should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or hate speech, discrimination or violence against persons because of their sexual orientation or gender identity.¹⁵

In 2010, the HRC Committee noted with concern a significant rise in manifestations of hate speech directed at LGBT people in Poland. The Committee also regretted the absence of the provision in the Penal Code of hate speech based on sexual orientation or gender identity as punishable offences.¹⁶ The HRC recommended that the State party should amend the Penal Code to define hate speech based on sexual orientation or gender identity among the categories of punishable offences; and intensify awareness-raising activities aimed at the police force and wider public.¹⁷

In 2009, the HRC Committee noted with concern the systematic discrimination against individuals on the basis of their sexual orientation in Russia, including hate speech and manifestations of intolerance and prejudice by public officials, religious leaders and in the media. The HRC recommended Russia to intensify its efforts to combat discrimination against LGBT persons, including by launching a sensitization campaign aimed at the general public as well as providing appropriate training to law enforcement officials.¹⁸

4. The Government report

In the report of the Russian Federation submitted to the HRC Committee, the State party indicates the measures taken to combat extremist crimes, but does not indicate whether these laws are applicable to crimes against LGBT people, defining exclusively a racial and religious hatred.¹⁹

The Russian Federation also points in its report to the case “*Group NGOs against NTV*,”²⁰ which was considered by the Public Board of the Press Complaints in 2011. However, we do not believe that this case could be approached as the positive state’s efforts to improve the situation of LGBT people, for the following reasons.

In this case, the applicants, LGBT organizations of Russia and Ukraine, asked to recognize the NTV’s journalists committed severe violations of applicable laws, rules of professional ethics and rules of conduct for journalists, manifested, in particular: in demonstration of the negative and untrue image of gay and bisexual women; in intentional misrepresentation of facts, in distribution of and commenting deliberately false, misleading information; and in dissemination of information on personal and family life (including special category of personal data) of particular persons without their consent.

It should be noted that the solution to the problem of hate speech and stigmatization of LGBT people indicated by the State party by this case was not the result of governmental activity in this area, but only a decision of the Public Board on a complaint initiated by civil society organizations. Public Board is not a public body and therefore its decision cannot be considered as the State’s efforts in this area. The Board really pointed to the “*negative preset*” against women with a homosexual or bisexual orientation, inherent in TV program discussed, and also emphasized that “*this program contributed to the formation and strengthening of negative stereotypes about homosexual and bisexual women and discredited their relationships and families.*” However, no action was taken against journalists because the Public Board does not have such powers. Public authorities, in their turn, did not react to the emergence and spread of the mentioned telecast. Finally, the judgment in the case “*Group NGOs against NTV*” is the only one of its kind. No such judgment was given subsequently, while transmissions contributing to the spread of negative stereotypes and stigmatization of LGBT people continue to appear.

For this reason, one needs to be critical of the Russian Federation’s reference in the official

15. Ukraine, ¶ 10, CCPR/C/UKR/CO/7 (2013).

16. Poland, ¶ 8, CCPR/C/POL/CO/6 (2010).

17. Poland, ¶ 8, CCPR/C/POL/CO/6 (2010).

18. Russian Federation, ¶ 27, CCPR/C/RUS/CO/6 (2009).

19. Russian Federation, ¶ 120–122, CCPR/C/RUS/7 (2013).

20 Russian Federation, ¶ 168–169, CCPR/C/RUS/7 (2013).

report to the telecast of “NTVshniki” shown on 27 November 2011 by the federal NTV channel and dedicated to St. Petersburg “gay propaganda law.” According to the Russian authorities, it “became the first transmission in the history of Russia that told on the federal channel about the problems of the LGBT community with adequate positions, rather than in terms of prejudice and homophobia.” A huge number of telecasts of different character and content (see description above and specific examples in the appendix) shows a more objective picture of what is happening in Russia today.

5. Recommendations by other human rights bodies

In 2009, the *Special Rapporteur on the situation of human rights defenders* was deeply concerned about the continuing denigration campaigns and the violent threats against defenders of lesbian, gay, bisexual and transgender rights.²¹

In 2010, the *Committee of Ministers of the Council of Europe* issued a special recommendation aimed at combating discrimination on grounds of sexual orientation and gender identity. It recommended, particularly, that the 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 European Convention and the case law of the European Court of Human Rights. 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.²²

6. Recommended questions

- a) Is the law indicated by the State party in paras.120–122 of the official report applicable to protect LGBT people from hate speech?
- b) What measures to protect LGBT people from hate speech and dissemination of prejudices has the State taken since the last consideration before the HRC Committee?
- c) How has the HRC Committee’s recommendation on the campaign for the general public on the issue of non-discrimination and accurate information about sexual orientation and gender identity been implemented by the State party?
- d) How the State party would comment on the facts of unpunished **spread of hate speech and defamatory information about LGBT people and LGBT human rights defenders on the state TV channel “Russia-1,” particularly by journalist Kiselev?**
- e) How the State party would comment on the facts of the failure to take and **investigate complaints related to hate speech distributed by the Deputy of the St. Petersburg Legislative Assembly Vitaly Milonov and actor and priest Ivan Okhlobystin?**

7. Suggested recommendations

- a) Develop and adopt legislation prohibiting distribution of hate speech against vulnerable social groups, including LGBT people.
- b) Do not allow distributing hate speech on state television and in the public media

21. Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, ¶ 49, A/HRC/13/22 (2009).

22. 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, ¶ 6–7.

cases B.2, B.3
case B.1

in general in relation to LGBT people and LGBT human rights defenders.

c) Investigate cases of **hate speech distribution against LGBT people by journalist Kiselyov, Deputy Vitaly Milonov, and actor Ivan Okhlobystin.**

cases B.2, B.3 case B.1

C. Infringement of the right to freedom of assembly and association (arts. 21, 22 and 26)

1. Reporting organizations

The Russian LGBT Network
LGBT Organization “Coming Out”

2. Issue summary

Violations of the LGBT people’s human rights to freedom of expression and freedom of assembly in the Russian Federation have been already recorded by several international human rights bodies. However, these cases and observations have not altered the present situation, and the violations continue to occur.

Authorities actively violate the rights of the LGBT community and LGBT rights defenders to freedom of peaceful assembly, refusing of agreeing actions in support of LGBT rights and arresting their participants, without providing the possibility of such actions.

i) *Refusals to agree public actions*

The majority of public actions in support of LGBT rights is simply not initially agreed by the authority. Thus, on 10 April 2013, LGBT Organization “Coming Out” sent to the Russian Ombudsman and St. Petersburg Regional Ombudsman a document on the violation of the rights to freedom of assembly and freedom of expression occurring in St. Petersburg. This document was based on the results of an analysis of about 30 applications proposing public events (meetings or pickets) in support of LGBT rights in Russia at different venues. These applications have been submitted to the administration of several districts of St. Petersburg and the City Council (Smolny) since 2008. Of these applications, only two were approved by the authorities. The authorities use formal and substantive grounds for refusing the agreement.

Formal ground include, for instance, repair work or snow removal at the venue; high traffic areas, pedestrian crossings or metro stations located nearby; or frequent presence of tourists, city residents and parents with children at the venue.

Substantive grounds include the fact that the authorities postulate the impossibility of safe holding of public LGBT events, as well as various kinds of references to laws protecting children from harmful information, and above all, the use of so-called “homosexual propaganda” law (the use of “propaganda” laws to prohibit public events see in more details in section D).

There are also common situations, when the authorities, despite the HRC Committee’s decision *Chebotareva v. Russia*, offer to relocate the public action to remote and isolated place, and the courts refuse to recognize such places as not appropriate to the essence and purpose of public events. Remote and uninhabited areas, or industrial areas are offered as an alternative, and it does not depend on whether there was a meeting planned for 300 people or picket of 20 participants.

In general, it must be noted that judicial appeal against refusals of running LGBT public events is extremely inefficient. Even if the court is agree with the organizers (which happens very rarely), the deadline set for the entry into force of the court decision extend far beyond the date of the scheduled event.

ii) *Failure to ensure the possibility of holding public events*

Even in those rare cases when authorities permit to held LGBT actions or when actions are hold in so-called “Hyde Park” areas (where public events could be conducted without special permission), the authorities do not ensure the possibility of holding public events and either decide to terminate the event shortly after it began, or do not provide safety of an event

cases C.2, C.3

cases C.4, C.5, C.6

case C.1

and its participants.

iii) *The detention of activists*

Despite the fact that the public events are organized and conducted in accordance with the law, and participants do not carry out any violent acts and support the peaceful nature of meetings, the majority of public actions in support of LGBT rights, held in St. Petersburg, were terminated by the detention of the activists. After the detention the activists are falsely accused and have to prove their innocence in courts.

3. HRC concluding observations, general comments and jurisprudence

In 2009, the HRC Committee expressed concern about the infringement of the right to freedom of assembly and association under Articles 26 and recommended that the Russian Federation take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community.²³

The same recommendations were issued by the HRC for other countries such as Lithuania²⁴ and Ukraine.²⁵

In 2009, considering the case *Chebotareva v. Russian Federation*, the Committee found violation of Article 21 of the ICCPR by the Russian Federation. In that case, the author requested a permission to hold a picket at the Gorky Square of Nizhny Novgorod. The city administration, however, suggested an alternative location of the event as the city authorities were holding another events on the same day at the same location. The author responded with a submission that the suggested location would not serve the purpose of the picket and resubmitted a request to hold the picket in a different location. The city administration once again suggested another location for the event on the grounds that it would jeopardize public safety given the traffic conditions at the location, hence rejected the request. As a result, the author was unable to conduct the picket as planned. Challenging the violations in the courts remained unsuccessful.

The Committee found unsatisfactory the State party's assertion that restriction was necessary for purposes set out in Article 21 of the ICCPR. Furthermore, the Committee stated that the State party did not refute the author's claim that no events took place at the Gorky Square on the questioned date, and the so claimed Teachers' Day may be a "mere pretext" to reject the author's request. The Russian Federation was obliged to take steps to prevent similar violations in the future.²⁶

In 2013, in the case *Nikolai Alekseev v. Russian Federation*, the Committee also found violation of Article 21 of the ICCPR. In that case, the author together with two other LGBT activists submitted a request to the Prefect of the Central Administrative District of Moscow, for a stationary meeting – a picket, in front of the Iranian Embassy in Moscow. The purpose of the gathering was to express concern over the execution of homosexuals and minors in Iran, and to call for a ban on such executions. On the same date, the Deputy Prefect of the Central Administrative District of Moscow refused to authorize the event, considering that the aim of the picket would trigger "a negative reaction in society" and it could lead to "group violations of public order which can be dangerous to its participants." Challenging the violations in the courts remained unsuccessful.

The Committee noted that permission for the author's proposed picket was denied on the sole ground that, due to the subject it addressed, namely advocacy of respect for the human rights of persons belonging to sexual minorities, the picket would provoke a negative reaction that could lead to violations of public order. The denial did not turn on the chosen location, date, time, duration, or manner of the proposed public assembly. Thus the decision of the

cases C.7, C. 8, C.9, C.10,
C.11 , C.12, C.13

cases C.8, C.9, C.11, C.12,
C.13

23. Russian Federation, ¶ 27, CCPR/C/RUS/CO/6 (2009).

24. Lithuania, ¶ 8, CCPR/C/LTU/CO/3 (2012).

25. Ukraine, ¶ 10, CCPR/C/UKR/CO/7 (2013).

26. *Chebotareva v. Russian Federation*, Communication No. 1866/2009, 26 March 2012 (adoption of views), U.N. Doc. CCPR/C/104/D/1866/2009.

Deputy Prefect of the Central Administrative District of Moscow amounted to a rejection of the author's right to organize a public assembly addressing the chosen subject, which is one of the most serious interferences with the freedom of peaceful assembly. The Committee noted that the freedom of assembly protects demonstrations promoting ideas that may be regarded as annoying or offensive by others and that in such cases States parties have a duty to protect those participating in a demonstration in the exercise of their rights against violence by others. It also noted that an unspecified and general risk of a violent counter-demonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration. The State party had not provided the Committee with any information supporting the claim that the "negative reaction" to the author's proposed picket by other members of the public would involve violence or that the police would be unable to prevent if they properly performed their duty. In such circumstances, the obligation of the State party was to protect the author in the exercise of his rights under the ICCPR, and not to assist in suppressing them. The Committee therefore concluded that the restriction on the author's rights was not necessary in a democratic society in the interest of public safety, and violated Article 21 of the ICCPR. The Russian Federation was obliged to take steps to prevent similar violations in the future.²⁷

4. The Government report

The only provision in the Russian report concerning freedom of assembly and Article 21 of the ICCPR contains information about existence of Article 149 of the Criminal Code. According to this article, preventing individuals from holding or participating in meetings, rallies, demonstrations, marches or protests is a criminal offence.²⁸ However, the Government provides no data on real implementation of this criminal provision.

At the same time, the Russian report is silent on the right to freedom of assembly and association in relation to sexual orientation and gender identity.

5. Recommendations by other human rights bodies

The UN High Commissioner for Human Rights in her report recommended that the Member states "ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity."²⁹

The Special Rapporteur on the situation of human rights defenders highlighted in her report that "the right to peaceful assembly is also often denied to defenders working on lesbian, gay, bisexual and transgender issues or, alternatively, the police does not provide adequate protection for such demonstrations."³⁰

In 2009, *the European Court of Human Rights* in its decision on the case *Alekseyev v. Russia* concerning systemic prohibition of gay pride marches in Moscow found violation of the right to freedom of assembly (article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) and non-discrimination principle (article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) by the Russian authorities.³¹ The same decisions were adopted by the ECtHR on cases against

27. Nikolai Alekseev v. Russian Federation, Communication No. 1873/2009, 5 November 2013 (adoption of views), U.N. Doc. CCPR/C/109/D/1873/2009.

28. Russian Federation, ¶ 123, CCPR/C/RUS/7 (2013).

29. UN High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, para. 84f, U.N. Doc. A/HRC/19/41 (17 November 2011).

30. Report of the Special Rapporteur on the situation of human rights defenders, para. 49, U.N. Doc. A/HRC/13/22 (30 December 2009) (by Margaret Sekaggya).

31. ECtHR, *Alekseyev v. Russia*, applications nos. 4916/07, 25924/08 and 14599/09 (21 November 2010).

Other institutions of the Council of Europe also expressed their deep concerns on limitations of freedom of assembly and freedom of association in relation to LGBT events and organizations.³³

6. Recommended questions

a) What measures have been taken by the State party since 2009 to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community, as recommended by the HRC Committee?

b) What measures have been taken by the State to implement the Committee's views on the case *Chebotareva v. Russian Federation* in the context of peaceful assembly in support of LGBT people?

c) What measures does the State intend to take to implement the Committee's views on the case of *Nikolai Alekseev v. Russian Federation*?

d) What explains the fact that law enforcement officials admit violence against peaceful participants of permitted public meetings in support of LGBT people?

e) What explains the fact that peaceful participants of permitted public meetings in support of LGBT people in St. Petersburg are exposed to mass detentions and abuse by law enforcement officials?

f) Provide specific information about security measures that have been taken to ensure the safety of participants of peaceful assemblies in support of LGBT rights (in particular, **the rallies Marsovo Pole in St. Petersburg on 29 June 2013 and 12 October 2013**). Provide information on measures that have been taken to identify and punish those who carried out violence against participants of such meetings, as well as actions aimed at disrupting these meetings.

7. Suggested recommendations

a) Take all possible measures to ensure effective implementation of the right to peaceful assembly, without discrimination on grounds of sexual orientation or gender identity, with regard to the freedom to receive and share information on issues related to sexual orientation and gender identity;

b) Ensure that law enforcement bodies take appropriate measures to protect participants of peaceful assemblies in favour of LGBT human rights from any attempts to unlawfully disrupt or impede the actual exercise of the right to peaceful assembly, especially from violence from counter-demonstrators, nationalist and radical religious groups;

c) Stop abusing the formal grounds for refusal to authorize public events in support of LGBT rights, and also stop offering to change the venue of such events to the remote and desolate places;

d) Publicly denounce all cases of unlawful interference with the right to peaceful assembly of individuals, organizations and initiative groups who support LGBT;

e) Ensure fair compensation and public apologies in accordance with the Federal Law on Police for **illegally detained participants of peaceful assembly in support of**

cases C.8, C.11
cases C.9, C.12

cases C.8, C.11
cases C.9, C.12

32. ECtHR, *Bączkowski and Others v. Poland*, application no. 1543/06 (3 May 2007); ECtHR, *Genderdoc-M v. Moldova*, application no. 9106/06 (12 June 2012).

33. See, e.g.: Committee of Ministers of the Council of Europe, On measures to combat discrimination on grounds of sexual orientation or gender identity: Recommendation to member states, paras. 9–17 Ann., CM/Rec(2010)5 (31 March 2010); The Congress of Local and Regional Authorities of the Council of Europe, Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons: Recommendation, No. 211 (2007).

LGBT rights, held in St. Petersburg on 29 June 2013 and 12 October 2013, as well as a proper investigation and the prosecution of officials responsible for mass detentions;

f) Identify the organizers and instigators groups **which created obstacles to peaceful assembly in support of LGBT rights, held in St. Petersburg on 29 June 2013 and 12 October 2013**, and conduct a proper investigation and bring those responsible to justice.

cases C.8, C.11
cases C.9, C.12

D. Legislation prohibiting so-called “homosexual propaganda”, its implementation and effects (arts. 2, 6, 7, 9, 17, 19, 21 and 26)

1. Reporting organizations

The Russian LGBT Network
LGBT Organization “Coming Out”

2. Issue summary

Legislation. Currently, the Russian federal and regional legislation prohibits the dissemination of information about homosexuality, bisexuality and transgenerness among minors.

At the federal level, there are:

- Federal Law on Protection of children from information harmful to their health and development dated 29 December 2010, that restricts and / or prohibits dissemination of information “*denying family values,*” as well as “*operating children’s interest to have sex,*” among minors. An amendment dated 30 June 2013 adds “propaganda of non-traditional sexual relationships” as a class of harmful content under the law.
- Since 30 June 2013, the Code of Administrative Offences of The Russian Federation has introduced responsibility for “*promotion of non-traditional sexual relations among minors,*” i.e. “*the dissemination of information aimed at developing unconventional sexual juvenile facilities, attractiveness of unconventional sexual relationships, distorted notions of social equivalence of traditional and non-traditional sexual relations, or the imposition of information on non-traditional sexual relationships, causing interest in such relations.*”

In addition, since 2006, regional laws banning “propaganda” have been adopted in different formulations in 11 regions of Russia: Ryazan, Kostroma, Arkhangelsk, Saint Petersburg, Novosibirsk, Samara, Krasnodar, Bashkortostan, Kaliningrad and Magadan.

For example, in Kaliningrad so-called “propaganda of homosexuality” has been banned not only among minors, but also among the entire population of the region.

The St. Petersburg Law on Administrative Offences in St. Petersburg, which came into force in the spring of 2012, provides punishment for “*any public activity, aimed at propaganda of sodomy, lesbianism, bisexualism, and transgenerness among minors,*” i.e. “*activity of purposeful and uncontrolled dissemination of the information that could harm the health, moral and spiritual development, as well as form misconceptions about the social equivalence of conventional and unconventional sexual relationships.*”

i. Formal enforcement

Of course, the prevalence and frequency of application of the laws banning “propaganda” does not correspond with the pronouncements of politicians about “rate of propaganda of homosexuality in Russia hitting alarming proportions.” For the time being, cases of application of laws still are possible to count. These cases could be divided into three groups: the appeal of laws based on their contradiction to other legislation (the abstract appeal); administrative penalties for the organization of and (or) participation in public actions; and ban of public actions in support of the LGBT rights.

- Abstract appeal against law

In 2012, the LGBT organization “Coming Out” made an attempt of abstract (beyond/without specific enforcement) appeal against the regional law, firstly in St. Petersburg City Court, and then in the Supreme Court of the Russian Federation. The courts did not consider the law contradicting the federal law and the Constitution of the Russian Federation. However, the Supreme Court has formulated important provisions theoretically able to limit the possi-

bility of government interference in the freedom of expression and freedom of assembly under the “propaganda” law.

The Supreme Court of the Russian Federation formulated that the statutory prohibition:

*“does not interfere with the right to receive and impart information of a general, neutral content about unconventional sexual relationships, as well as conduct open public debates about the social status of sexual minorities, without imposing their attitudes to minors as persons who are not able to critically evaluate such information because of their age.”*³⁴

- Direct application of the law: administrative fines

Practice of St. Petersburg shows that the law banning “propaganda” is almost never used in the form in which it was written (i.e., for the imposition of fines on individuals or entities). According to our sources, only one case happened to be in St. Petersburg. The St. Petersburg Ombudsman reported one case of the initiation of proceedings on “propaganda” in 2013, and 6 cases in 2012, while no court decisions on any of them.³⁵

In fact, a similar situation occurs in other regions. For example, in Ryazan there was one case of condemnation of activist Irina Fedotova according to the regional law. The HRC Committee had already carried the resolution on this case, recognizing the law discriminatory. In Arkhangelsk region, the regional law was applied twice against the picketing LGBT activists.

According to our sources, the Federal law banning “propaganda of non-traditional sexual relations” was applied three times: in Arkhangelsk against LGBT activist Nikolai Baev from Moscow, in Kazan against activist D. Isakov, and against the editor of the newspaper “Young Dalnevostochnik” A.A. Sutura.

- Indirect application of laws: bans and other restrictions on public actions

St. Petersburg authorities have repeatedly refused to agree public protests of the LGBT activists, referring to the existing ban of “propaganda”. Similar incidents have occurred in other regions. Moreover, in St. Petersburg, even if the district administrations had not agreed the actions exclusively according to formal reasons, in some cases, the City Court, no longer guided by formal reasons, but by possible “propaganda” during the failed public actions, affirmed the legitimacy of the refusals.

In March 2013, LGBT activist S. appealed to the Law, Order and Security Committee of the St. Petersburg City Council to get the approval of a small picketing dedicated to the International Transgender Day of Visibility. The Committee refused to agree S.’s place at the monument on a large square in the center of the city, citing the fact that this area is already chosen for sporting event.³⁶ S. was invited to organize and hold the picketing in the remote Novoselki village.

Disagreeing with the refusal, S. appealed to the district court. The court rejected to recognize the refusal illegal.³⁷ At its hearing, the court of appeal studied only formal grounds for refusal. However, the decision of the court of appeal did not include any words about these grounds, but contained detailed paragraphs which said that the ban of this picketing was legal, because children could walk near the area in front of the Theatre for Young Spectators where S. wanted to hold a picketing. The Court also pointed to the slogans that were planned to use (“*My gender is my choice*,” “*Transition to equality and respect*,” “*Anatomy is not equal to destiny*”) and noted that the Russian family law does not provide child-rearing in LGBT families; the federal legislation prohibits “*exploitation of children’s interest in sex*,” and “*dissemination of the information denying family values among children*.” The Court held that:

34. Decision of the Supreme Court of the Russian Federation of 3 October 2012, file No. 78-16-APG12.

35. Report on the activities of the Commissioner of Human Rights in St. Petersburg in 2013. St. Petersburg, 2014. P. 37. URL: http://ombudsmanspb.ru/files/images/doklad_2013/2013doc.pdf.

36. Letter of the Committee on Law, Order and Security of the St. Petersburg City Council of 27 March 2013 No. 19.7-557/13.

37. Decision of the Smolninskiy District Court of St. Petersburg of 30 April 2013, file No. 2-1876/13.

case D.1

case D.2

case D.5
case D. 15

case D.4

“an attempt of participants of the planned for 31 March 2013 picketing near the Theatre for Young Spectators to disseminate the booklets and other means of visual propaganda, including urging for tolerance towards transgender, transsexual people and other gender minorities, considering the fact that slogans made by the applicant in the notice were not exhaustive, should be recognized as impossible because of its potential danger to the moral and spiritual development of children;” “the Committee’s failure to agree on venue of picketing on the Pioneer Square does not violate the applicant’s rights, as in fact, given the vicinity of cultural institutions (the Theatre for Young Spectators) offering theatrical productions for children, it prevented the dissemination of information that can form the distorted notions of social equivalence of traditional and non-traditional marital relations among persons who are not able to critically evaluate such information because of their age.”³⁸

All this was done despite the absence of any discussion, and even without mention of “propaganda” while attempting to agree the action, appealing it in the first-instance court and during court hearings in the appeal court. S. thus was given no opportunity to express his position on the chargeability of his picket.

S.’s cassation appeal also remained unsatisfied.³⁹

The authorities try to prevent already begun public actions. Police officers either detain individual activists, referring to the “propaganda” (and in this case, in the following protocols and charges “propaganda” is not mentioned), or the authorities decide to terminate the event, citing statements about the “propaganda” received from some citizens (in this situation, if activists are detained and moved to the police stations, they would be charged exclusively with violation of the public action rules or insubordination to the police).

ii. Informal enforcement of laws

Laws prohibiting so-called “propaganda of homosexuality” are also used informally:

- In St. Petersburg, where one of the first regional law banning “propaganda of sodomy, lesbianism, bisexuality and transgenderism” was adopted, people attacking LGBT persons and participators of public rallies in support of LGBT rights find this law to justify their actions; in fact, this law let them loose, authorizes violence, and gives “green light” to attack people. According to a study conducted by the LGBT organization “Coming Out” in 2012–2013, 65 % of gays, lesbians, bisexuals and transgender people living in St. Petersburg or Leningrad region, feel that the law banning “homosexual propaganda” has given a free hand to homophobic organizations and movements, making attacks on the LGBT community.

- LGBT opponents use laws on “propaganda” to thwart permitted public actions in support of LGBT rights.

- Representatives of traditionalist groups and movements require prohibition of cultural events and concerts, and after they had held – compensation for moral damages occurred because of the ongoing “propaganda”.

- Programs of tolerance among adolescents are being impeded to organize. The adoption of laws on “propaganda,” together with public discourse postulating negative characteristics of homosexuality as such, have resulted in changing the attitude of the whole society to possible discussion with teenagers of any problems associated with homosexuality. Thus, in 2011 and 2013, LGBT organization “Coming Out” organized a public opinion poll, which showed the following results. If in 2011 54.8 % of the respondents answered positively the question “Do you think it is possible to tell children and teenagers about homosexuality?”, two years later, the figure was already 40.9 %. At the same time, the number of negative responses increased: from

cases D.6, D.7

cases D.8, D.9, D.14

case D.10

case D.11

case D.12

38. Appellate Decision of the Judicial Division for Civil Cases of the St. Petersburg City Court of 17 July 2013, file No. 33-10805/2013.

39. Ruling of the St. Petersburg City Court of 18 October 2013, file No. 4G-4019/2013. Legal support of the case is provided by the LGBT Organization “Coming Out”.

36.6 % in 2011 to 42.6 % in 2013.

- LGBT families with children are in particularly vulnerable situation and in constant fear that the child may be taken away because of the law on “propaganda”.

3. HRC concluding observations, general comments and jurisprudence

In 2012, the Committee expressed its view about legislative prohibition of the so-called “homosexual propaganda” in Lithuania. The Committee stated that “certain legal instruments such as the Law on the Protection of Minors against the Detrimental Effect of Public Information (art. 7) may be applied in a manner unduly restrictive of the freedom of expression guaranteed under the Covenant and may have the effect of justifying discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals.”⁴⁰

In 2013, the Committee expressed its concern at two draft laws “on propaganda of homosexuality” introduced in the Ukrainian Parliament that, if adopted, would run counter to the State party’s obligations under the Covenant (arts. 2, 6, 7, 9, 17, 19, 21 and 26). The Committee urged the State party not to permit the two draft bills “on propaganda of homosexuality” to become law.⁴¹

Moreover, in 2012 in the case *Fedotova v. Russian Federation*, the Committee found a violation of Art. 19 §2 read in conjunction with Art. 26 of the ICCPR by the Russian Federation. In that case, the author, a lesbian activist, displayed posters that declared “*Homosexuality is normal*” and “*I am proud of my homosexuality*” near a secondary school building in Ryazan, aiming to promote tolerance towards gay and lesbian individuals. Her action was interrupted by the police and she was convicted by a Justice of the Peace of an administrative offence under section 3.10 of the Ryazan Regional Law on Administrative Offences (prohibiting public actions aimed at propaganda of homosexuality (act between men or lesbianism) among minors) and fined 1,500 Rubles.

The Committee considered that the Russian Federation had not shown that a restriction on the right to freedom of expression in relation to propaganda on homosexuality specifically, as opposed to restrictions applying to sexuality generally, was based on reasonable and objective criteria. The Committee considered that the author’s actions had not aimed to involve minors in any particular sexual activity or to promote a particular sexual orientation. Instead, she was giving expression to her sexual identity and seeking understanding for it. Even if she intended to engage children in a discussion on homosexuality, the Committee did not consider that the State had demonstrated that the restriction of her freedom of expression was necessary for a legitimate purpose under Art. 19 §3 of the ICCPR. Accordingly, the Committee concluded that the author’s conviction of an administrative offence for “propaganda of homosexuality among minors” on the basis of the ambiguous and discriminatory section 3.10 of the Ryazan Region Law, amounted to a violation of her rights under article 19, paragraph 2, read in conjunction with article 26 of the ICCPR. The Russian Federation was obliged to prevent similar violations in the future and ensure that the relevant provisions of the domestic law are made compatible with Art. 19 and Art. 26 of the ICCPR.⁴²

4. The Government report

The Russian report is silent on the federal and regional legislation prohibiting so-called “homosexual propaganda,” stating in general that “*there are no discriminatory policies against lesbian, gay, bisexual or transgender persons in the Russian Federation.*”⁴³

40. Lithuania, ¶ 8, CCPR/C/LTU/CO/3 (2012).

41. Ukraine, ¶ 10, CCPR/C/UKR/CO/7 (2013).

42. Fedotova v. Russian Federation, Communication No. 1932/2010, 31 October 2012 (adoption of views), U.N. Doc. CCPR/C/106/D/1932/2010.

43. Russian Federation, ¶ 164, CCPR/C/RUS/7 (2013).

5. Recommendations by other human rights bodies

Legislation prohibiting so-called “homosexual propaganda among minors” was criticized by many human rights bodies.

In 2014, *the UN Committee on the Rights of the Child*, observing the Russian Federation periodic report, was concerned “at the recent legislation of the State party prohibiting ‘propaganda of unconventional sexual relationships’, generally intended protect children, but which encourages the stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, including children, and children from LGBTI families.” The Committee was particularly concerned “that the vague definitions of propaganda used lead to the targeting and ongoing persecution of the country’s LGBTI community, including through abuse and violence, in particular against underage LGBTI-rights activists.”⁴⁴ The Committee recommended that the Russian Federation repeal its laws prohibiting propaganda of homosexuality.⁴⁵

A group of the United Nations independent human rights experts called on the lower house of the Russian parliament to discard a draft bill to establish penalties for “propaganda of homosexuality among minors” on 1 February 2013. The experts on freedom of expression, human rights defenders, cultural rights and the right to health warned the bill may undermine the enjoyment and promotion of human rights in Russia, unjustifiably singling out lesbian, gay, bisexual, transgender and intersex people, who have increasingly become the target of sanctions and violence in the country.

“Any restriction on freedom of opinion and expression should be based on reasonable and objective criteria, which is not fulfilled by the draft bill approved during the first reading by the Duma,” said *the Special Rapporteur on freedom of opinion and expression*. “The law could potentially be interpreted very broadly and thereby violate not only the right to freedom of expression but also the prohibition of discrimination.”

The Special Rapporteur on the situation of human rights defenders warned that this legislation could be used to unduly restrict the activities of those advocating for the rights of LGBT individuals. “The draft legislation could further contribute to the already difficult environment in which these defenders operate, stigmatizing their work and making them the target of acts of intimidation and violence, as has recently happened in Moscow,” she stressed.

“We fear that such laws, in practice, will exacerbate an already difficult situation for LGBT individuals wishing to express their identity, and will hamper the organization of cultural events or dissemination of artistic creations addressing LGBT issues,” highlighted *the Special Rapporteur in the field of cultural rights*. She further underlined that LGBT youth would be particularly affected.

Stressing the bill’s ambiguous wording, *the Special Rapporteur on the right to health* warned that “banning ‘propaganda of homosexuality’ may not only penalize those who promote sexual and reproductive health among LGBT people, but will also undermine the right of children to access health-related information in order to safeguard their physical and mental health.” Far from protecting children, the proposed law would potentially harm them by re-enforcing stigma and contributing to a discriminatory environment, which would put them at increased risk.⁴⁶

In 2009, *the European Court of Human Rights* in its decision on the case *Alekseyev v. Russia*, finding the violation of art. 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Russian authorities, noted specifically that “there is no scientific evidence or sociological data at the Court’s disposal suggesting that the mere mention of homosexuality, or open public debate about sexual minorities’ social status, would adversely affect children or “vulnerable adults”. On the contrary, it is only through fair and pub-

44. Russian Federation, ¶ 24, CRC/C/RUS/CO/4-5 (2014).

45. Russian Federation, ¶ 25, CRC/C/RUS/CO/4-5 (2014).

46. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12964&LangID=E>.

lic debate that society may address such complex issues as the one raised in the present case. Such debate, backed up by academic research, would benefit social cohesion by ensuring that representatives of all views are heard, including the individuals concerned. It would also clarify some common points of confusion, such as whether a person may be educated or enticed into or out of homosexuality, or opt into or out of it voluntarily. This was exactly the kind of debate that the applicant in the present case attempted to launch, and it could not be replaced by the officials spontaneously expressing uninformed views which they considered popular.”⁴⁷

Finally, in 2013 *the European Commission for Democracy through Law (the Venice Commission)* issued its groundbreaking opinion on the issue of the prohibition of so-called “propaganda of homosexuality” in the light of recent legislation in some Member States of the Council of Europe. The Commission said that such laws should be repealed as “statutory provisions prohibiting ‘propaganda of homosexuality’ are incompatible with the ECHR and international human rights standards”. In a robust and outright rejection of these laws, it argued that their provisions did not seem to be limited to sexually explicit content, but rather applied to “legitimate expressions of sexual orientation”. It stressed that “homosexuality as a variation of sexual orientation, is protected under the ECHR and as such, cannot be deemed contrary to morals by public authorities”. And it added that prohibiting “propaganda of homosexuality”, as opposed to “propaganda of heterosexuality”, without any reasonable or objective criteria to justify the difference, amounted to discrimination on the basis of the content of speech about sexual orientation. The Commission suggested also that the real aim of these measures was not so much, as claimed, the promotion of traditional values and attitudes towards family and sexuality, but rather the curtailment of non-traditional ones by punishing their expression and promotion. As such, they were not just violations of the rights to freedom of expression, freedom of assembly, and non-discrimination, but were incompatible with the underlying values of the ECHR as a whole.⁴⁸

6. Recommended questions

a) Why, despite the clarification of the Supreme Court based on the judgment of the European Court of Human Rights, the executive authorities continue to ban, and the courts support bans of the human rights public meetings in support of LGBT people, including in St. Petersburg, with reference to laws banning “propaganda”?

b) How the State would comment on the statement contained in the explanatory memorandum to the bill on the deprivation of parental rights of homosexual parents: “Following the letter of the law [banning ‘propaganda of non-traditional relationships’], such propaganda is banned not only in the media but also in the family”?

c) How many cases of prosecution for so-called “propaganda of homosexuality” were registered in the Russian Federation and its regions? How does this statistics relate to the “*homosexual propaganda threat that has acquired an unprecedented scale*” declared by politicians when making these laws?

d) What are the real aims pursued through the restrictions imposed by the federal and regional legislation banning so-called “propaganda of homosexuality” (“propaganda of non-traditional sexual relations”)?

e) Are the limitations imposed by the federal and regional legislation prohibiting so-called “propaganda of homosexuality” (“propaganda of non-traditional sexual relations”) proportionate to the aims pursued?

f) How has the situation with the attacks, harassment and other violations of LGBT people’ and LGBT human rights defenders’ rights changed after the laws banning so-called “propaganda of homosexuality” (“propaganda of non-traditional

47. ECtHR, *Alekseyev v. Russia*, applications nos. 4916/07, 25924/08 and 14599/09, para. 86 (21 November 2010).

48. European Commission for Democracy through Law (Venice Commission), *Opinion on the issue of the prohibition of so-called “propaganda of homosexuality” in the light of recent legislation in some Member States of the Council of Europe*, CDL-AD(2013)022 (18 June 2013).

sexual relations”) had been adopted?

g) How does the 2009 HRC Committee’s recommendation to the Russian Federation to intensify efforts to combat discrimination against LGBT people, including through awareness-raising campaigns aimed at public, relates to statement about “*social inequality* between traditional and nontraditional marital relations” included in a number of regional laws banning “propaganda” and contained in the decisions of the Constitutional Court of the Russian Federation?

h) What specific actions are prohibited by the federal and regional legislation banning so-called “propaganda of homosexuality” (“propaganda of non-traditional sexual relations”)?

7. Suggested recommendations

a) Repeal the provisions of the federal and regional legislation banning so-called “propaganda of homosexuality” (“propaganda of non-traditional sexual relations”), as well as dissemination of “information denying family values” among children;

b) Before repealing these legislative provisions prevent their application for prohibition, restriction or involuntary termination of peaceful assembly in support of the LGBT human rights;

c) Publicly condemn all attacks on LGBT people and LGBT human rights defenders, when the attackers justified their actions through the existing legislation banning “propaganda of homosexuality,” and also publicly declare that these legislative provisions cannot justify any violence;

d) Before repealing these legislative provisions prevent their use for dismissal or harassment of teachers and other professionals working with children, as well as employees of NGOs implementing programs for children and adolescents;

e) Publicly declare that the provisions of the federal and regional legislation banning “propaganda of homosexuality” (“propaganda of non-traditional sexual relations”), as well as dissemination of “information denying family values” among children cannot be applied to same-sex families with children and cannot justify any interference with their family life.

E. Problems in legal recognition of transgender persons' gender identity (arts. 16 and 17)

1. Reporting organizations

Transgender Legal Defense Project (Rainbow Foundation)
LGBT Organization "Coming Out"
Russian LGBT Network

2. Issue summary

Despite the fact that in the Russian legislation there is a norm about the possibility of changing one's documentation in case of gender reassignment, in effect the majority of transgender people experience difficulties associated with the official recognition of their gender identity. In practice, changing documentation becomes a real challenge without certain guarantees and a positive result for the majority of transgender people.

According to a study conducted by the LGBT Organization "Coming Out" in 2011–2012, 43 % of respondents who identified themselves as transgender people experienced problems with the appearance/documents mismatch.⁴⁹ As one respondent noted, describing problems with the documentation, *"it is impossible to get a job, get medical care, rent an apartment, get a loan, it is difficult to buy tickets and enjoy long-distance transport, etc. [...] I cannot continue my education and work in my field of expertise."*⁵⁰

i. No fixed form of medical certificate

The main factor contributing to Russia's lack of a clear, predictable and humane procedure of documents change for transgender people, i.e. the legal recognition of their gender identity, is that there is no form of medical certificate on "gender change" required to change documentation.

A possibility to change documents for transgender people was established by art. 70 of the Federal Law on Acts of Civil Status in 1997.⁵¹ According to this article, to amend the birth record, one must submit a "fixed-form certificate on gender change, issued by medical institution." In 1998, the Ministry of Health was charged to develop and approve this form,⁵² but so far no such document is approved.

As a result, in many cases, transgender persons who apply to civil registry offices with medical reports issued by licensed practitioners, are refused only for the reason that the document shown does not meet the prescribed form (which, in turn, is not fixed). People have to spend significant time, money, psychological resources to prove in the courts their right to change documentation, not having any guaranteed result and protractedly staying with documents that do not match their identity.

At the end of 2012, the Russian Ministry of Health reported that a draft certificate on "gender change" was developed.⁵³ We estimate that this document complies with progressive

49. LGBT Organization "Coming Out" (2013). Gender identity in the midst of discrimination: trans* people living in Russia. P. 34. URL: http://issuu.com/coming_out_spb/docs/transgender.

50. S., 25 y.o., a transsexual man (ibid.).

51. Federal Law on Acts of Civil Status of 15 November 1997 No. 143-FZ.

52. Government Decree of 6 July 1998 No. 709 on measures for implementation of the Federal Law on Acts of Civil Status

53. Form of statistical accounting № 001/ZAGS-u, "A certificate for preparing decision by the civil registry office on the necessity to rectify or change the vital record" (draft). Provided in the annex to the letter of the Department of Organization of Medical Prevention, Care and Health Development No. 14-9/1450 of 17 April 2012.

human rights standards and it would allow ensuring realization of the right of transgender people to respect of their private life and physical integrity. However, since 2012 there has been no news on the progress of the draft.

ii. Forced invasive medical interventions

According to a study of LGBT Organization “Coming Out,” 78 % of respondents – transgender people in Russia – believe that the diagnosis (F64.0, “Transsexualism”) is already a sufficient reason to change the gender marker.⁵⁴ Many Russian and foreign medical researches prove that change of documentation of people diagnosed with “Transsexualism” should not be predetermined by any surgical interventions.⁵⁵ In many cases, such surgeries are not available for health or financial reasons (in Russia such operations are not covered by the state budget) or the person does not want it on other grounds (the surgeries themselves are quite complicated, actually crippling; in many regions there are no experienced and qualified surgeons; surgeries do not provide a guaranteed result; the current state of medicine in this area does not make it possible to fully create new genitals, etc.).

Despite this, while no law or subordinate legislation establishes that transgender persons’ documentation can only be changed after any medical interventions, in practice, the civil registry authorities and courts in most cases require that transgender people undergo gender reassignment surgeries.

Moreover, civil registry offices and courts sometimes do not recognize that already performed surgeries are sufficient to change the documentation, requiring thus further surgical interventions.

The basis for this practice is an established position of the Ministry of Justice of the Russian Federation, which supervises the execution of the activities of civil registry offices.

For example, Deputy Director of the Department of Legal Aid and Interaction with the Judicial System Mrs. Alyabjeva noted:

“A civil registry office can amend a birth record only if the change of sex as a result of surgery is already an accomplished and irreversible fact. Otherwise it (the possibility of issuing new documents to persons with gender identity disorders before surgeries mentioned) can only be set by federal law.”⁵⁶

Responding to an inquiry about what are the requirements for transsexual applicants wishing to amend birth records when there are no approved forms of medical certificate on “gender change,” the Head of the Civil Registry Office of the Tyumen region said:

“A form of this document has not yet been established. Registry authorities in this case rely upon oral explanations of the Justice Ministry, which are given on advanced training of employees of the registry office in Moscow. According to the explanations of the Justice Ministry, a citizen, who changed the gender, shall submit to the registry office a medical report, which shall contain the information that the citizen made a gender reassignment surgery, and the conclusions that the citizen changed his sex.”⁵⁷

It is important to note as well that the cost of medical interventions required by the civil

54. LGBT Organization “Coming Out” (2013). Gender identity in the midst of discrimination: trans* people living in Russia. P. 34.

55. See, e.g.: Boukhanovsky A.O. (1994) Transsexualism: clinic, systematics, differential diagnosis, psychosocial rehabilitation and readaptation; Karpov A.S. (2002) Clinicodiagnostic and institutional aspects of medical care for individuals with transsexualism and other gender identity disorder; Matevossian S.N. (2008) On the medico-social and legal aspects of sex change. Andrology and genital surgery. No. 3. P. 63-67; On approval of clinical guidelines “Models of diagnosis and treatment of mental and behavioral disorders”, Order of the Ministry of Health of the Russian Federation No. 311 of 6 August 1999; Transsexualism: guidelines for sex change: approved by Ministry of Health of the USSR on 6 August 1991 No. 10-11/72.

56. Letter of 18 May 2011 No. 16-31767.

57. Letter of 9 February 2011 No. 116/01-16.

cases E.1, E.2, E.3, E.4,
E.5

cases E.6, E.7

registry offices is not covered by public health insurance. The costs for these procedures, especially surgeries, are high, and many regions lack experienced professionals sensitive to the special needs of transgender people.⁵⁸

In this regard, a case that occurred in 2010 in one of the cities in the Siberian regions is very illustrative. A transsexual man who had undergone a mastectomy, confirmed by medical records, and who possessed a medical certificate confirming his “change of gender,” had his request to change his documentation denied. The head of the civil registry office stated that decision to change the applicant’s documentation would only be considered after the performance of two more surgeries (namely, a hysterectomy and phalloplasty). For this reason, the applicant was forced to undergo additional surgical procedures in a local hospital (despite the fact that he initially planned to undergo a different type of surgery, after collecting the necessary money to pay for more experienced surgeons in a different region).⁵⁹

iii. Lack of uniformity of trial models

In the absence of fixed form of medical note on sex change transgender people in many regions can change documents only via the courts. However, as practice shows, not only different regions, but also different courts of one locality use various models of trials, in terms of which requirements are variously formulated, the burden of proof is distributed in different ways, and different standards of procedural law are applied.⁶⁰ Thus, transgender people find themselves in a situation when the outcome of case is unpredictable, both in substance and in form (procedure). Even using the form allegedly existing in the region, the applicants may face refusal of adopting their applications.

iv. Duration of procedure of changing documentation of persons born in the Soviet republics

Apart from the general difficulties associated with uncertainty, unpredictability and duration of procedure of changing documentation, transgender people born in other countries face with particular difficulties. This is especially true for many of those who were born during the Soviet Union in the former Soviet republics, and then moved to Russia with their families. In this situation, the applicants resort to the civil registry office at the domicile, and registry authorities make requests to those at birth registration. After receiving the birth record copy, the civil registry office at the domicile makes a decision, forwards it to the registration authority at the place of birth, which makes the necessary changes and draws up a new birth certificate. It is then forwarded to the civil registry office at the domicile, and that is only when it is handed to the applicant. However, in many cases, the requests made by the civil registry office at the domicile to the country of birth registration remain unanswered, or the response comes after a long time (a year or more). All this time the applicants have no way to change documents – even if they were given all the medical certificates or they got Russian court decisions on the necessity of changing documents.

v. Discrimination in the name change

The name change by transgender people is also problematic, despite the fact that the Russian legislation provides fairly simple general procedure for the name change and lacks any explicitly established requirements for the name choice.

vi. Failure to replace legally an employment record book (ERBs)

In terms of the Rules of maintaining and storing ERBs, production of forms of ERBs and

58. See in more detail, e.g.: Discrimination on grounds of sexual orientation and gender identity in health care, education, employment and social security in the Russian Federation: an alternative report for the UN CSECR Committee, 2–20 May 2011, p. 11–12, 17.

59. Rainbow Foundation, Coming Out, Russian LGBT Network, Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Russian Federation in relation to sexual orientation and gender identity: Alternative report for the UN Committee against Torture (2012). P. 76.

60. Courts may consider the case under the establishment of the legal fact of “gender change,” within the appeal of illegal actions of the civil registry office, denied changing documents, within amending the vital records and even action proceedings.

cases E.8, E.9

case E.10

cases E.11, E.12, E.13, E.14

providing employers with them,⁶¹ and Instructions on filling out ERBs,⁶² transgender people can use only two options: 1) either to keep the old ERB with the previous name crossed out on the first page, and a new one inscribed above (i.e. the reader would simultaneously see the old and the new name of the person – what in Russian conditions of gender conditionality of most names would disclose a person’s gender history to everyone who checks the ERB), or 2) get a duplicate of the ERB with no mention of the old name, but which, instead of job descriptions and work periods in different places will only contain information about the time of the general labour experience.

In addition, when processing ERBs of transgender people who changed the gender marker in the passport, HR officers admit making records with endings corresponding to the initially indicated gender of a person.

vii. *Searches of people in the process of “transition”*

In Russia, transgender people in the process of transition, that is, whose gender identity and in many cases appearance, voice, manners, etc., no longer correspond to the data in the passport, face serious problems associated with differences in treatment in connection with a male or a female gender. The most striking example is the personal searches to be carried out by a person of the same gender as the person searched.

We have already recorded the cases when transgender people who have not changed their documents yet (and by virtue of the difficulties described above, people live for years without proper documentation), were searched or intended to search by law enforcement officials whose gender complied with official gender marker of transgender person, but not with her/his gender identity.

At the end of March 2013, the LGBT Organization “Coming Out” appealed on this occasion to the prosecutor’s office, the police and the St. Petersburg Ombudsman. The appeal contained information about a specific case connected with inspection of a transgender woman, it also explained why such situations happen, offered recommendations for resolving problems and examples of corresponding foreign countries practice.⁶³

Head of the Center for Extremism Prevention in St. Petersburg and Leningrad region in response to the appeal pointed out that the problem is within the competence of the legislature. In practice, inspections are conducted by the person of the same gender and the searched person’s gender is determined according to a passport.⁶⁴

The St. Petersburg Ombudsman also noted that the problem can be solved through changes in legislation, and sent the appeal to the Russian Federation Ombudsman.⁶⁵ Deputy Head of the Office of the Ombudsman in the Russian Federation agreed that the problem exists, but indicated that inspections cannot be conducted in accordance with medical certificates content about gender reassignment (as a medical certificate is not an identity document). He also noted that the resolution of the problem “*is seen in the approval of an unified form of a medical certificate on gender change, which would greatly facilitate the process of obtaining new passports by transgender people.*”⁶⁶

61. Rules of maintaining and storing employment record books, production of forms of employment record books and providing employers with them, approved by the Resolution of the Government of the Russian Federation of 16 April 2003 No. 225 on employment record books (hereinafter – the Rules of keeping employment record books).

62. Instruction for filling out the employment record books, approved by the Decree of the Ministry of Labor and Social Development of the Russian Federation of 10 October 2003 No. 69.

63. Appeal on the interaction between law enforcement officers and transgender people of 31 March 2013 No. 2013 YU06.

64. Letter of the Head of the Center for Extremism Prevention DRMI of Russia in St. Petersburg and Leningrad region of 14 May 2013 No. 26/K-28.

65. Letter of the Head of the Legal Department of the Office of the St. Petersburg Ombudsman of 16 May 2013 No. 305/13-2.

66. Letter of the Deputy Head of the Office of the Russian Federation Ombudsman of 18 June 2013 No. GK 13145-53.

case E.15

case E.16

case E.17

3. HRC concluding observations, general comments and jurisprudence

In 2013, the HRC expressed its concerns at reports from Ukraine that “transgender persons are required to undergo compulsory confinement in a psychiatric institution for a period up to 45 days and mandatory corrective surgery as a prerequisite for legal recognition of their gender.” The HRC recommended that Ukraine amend relevant laws and regulations with a view to ensuring that: (1) the compulsory confinement of persons requiring a change (correction) of sex in a psychiatric institution for up to 45 days is replaced by a less invasive measure; (2) any medical treatment should be provided in the best interests of the individual with his/her consent, should be limited to those medical procedures that are strictly necessary, and should be adapted to his/her own wishes, specific medical needs and situation; (3) any abusive or disproportionate requirements for legal recognition of a gender reassignment are repealed.⁶⁷

4. The Government report

The Russian report does not contain any provisions on the situation of transgender persons in the country.

5. Recommendations by other human rights bodies

A variety of human rights bodies both in the UN and European systems emphasize the necessity for the State to establish procedures of recognition of gender identity of transgender people.

Thus, *the UN High Commissioner for Human Rights* in her report recommended that the Member States “facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.”⁶⁸

Back in 1989, *the Council of Europe Parliamentary Assembly* adopted a special recommendation on the situation of transsexuals, which states that “the reference to the sex of the person concerned is to be rectified in the register of births and in the identity papers.”⁶⁹

The Council of Europe Committee of Ministers asked states to Member “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.”⁷⁰

The Council of Europe Commissioner for Human Rights recommended that the Member states “grant legal recognition for the preferred gender of transgender persons and develop expeditious and transparent procedures for changing the name and sex of a transgender person on birth certificates, civil registers, identity cards, passports, educational certificates and other similar documents.”⁷¹

67. Ukraine, ¶ 10, CCPR/C/UKR/CO/7 (2013).

68. UN High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, ¶ 84h, U.N. Doc. A/HRC/19/41 (17 November 2011).

69. Parliamentary Assembly of the Council of Europe, On the condition of transsexuals: Recommendation 117 (1989), ¶ 11a.

70. CM/Rec(2010)5, ¶ 21 of the Appendix.

71. Office of the Commissioner for Human Rights of the Council of Europe, Discrimination on grounds of sexual orientation and gender identity in Europe (2011), p. 13. See also: Council of Europe Commissioner for Human Rights, Human Rights and Gender Identity: Issue Paper, CommDH/IssuePaper(2009)2 (29 July 2009) (“develop expeditious and transparent procedures for changing the name and sex of a transgender person on birth certificates, identity cards, passports, educational

Finally, in a number of *the European Court of Human Rights' cases* it was stated that the State party should allow transgender persons to be legally recognized as a persons of the relevant gender, and to obtain documentation that would reflect their gender identity.⁷²

Special attention was drawn by the international human rights bodies to such requirements as sterilization or other invasive procedures as prerequisites for official gender recognition.

The UN Committee against Torture has voiced its concern at the practice of gender reassignment surgeries without proper consent of an intersex patient or his/her representative, as well as at the lack of investigation into such incidents.⁷³ As a result, the Committee recommended that states ensure the application of proper standards concerning informed consent to surgical intervention (including informing parents about the consequences of voluntary surgical interventions), conduct investigations of cases where surgeries are performed without consent, and organize relevant educational programs for medical professionals.⁷⁴

The World Medical Association (WMA) and IFHHRO – International Federation of Health and Human Rights Organizations noted that “involuntary sterilization is a clear infringement of a persons’ reproductive autonomy and human rights. Among those affected are [...] transgender persons [...]. Consent to sterilization should be free from material or social incentives and should not be a condition of other medical care, social, insurance or institutional benefits.”⁷⁵

Several Council of Europe institutions highlighted the problem of coercive medical interventions among transgender patients. For example, the Council of Europe Committee of Ministers asked states to abolish these inhumane requirements, posing as prerequisites to changing one’s legal gender status.⁷⁶

The Council of Europe Commissioner for Human Rights also emphasized this problem of requiring transgender people to undergo irreversible surgical procedures, such as sterilization or hormonal treatment, before allowing them to change their legal gender status. “Such requirements clearly run counter to the respect for the physical integrity of the person. – Stated the Commissioner. – To require sterilization or other surgery as a prerequisite to enjoy legal recognition of one’s preferred gender ignores the fact that while such operations are often desired by transgender persons, this is not always the case. Moreover, surgery of this type is not always medically possible, available, or affordable without health insurance funding. The treatment may not be in accordance with the wishes and needs of the patient, nor prescribed by his/her medical specialist. Yet the legal recognition of the person’s preferred gender identity is rendered impossible without these treatments, putting the transgender person in a limbo without any apparent exit. It is of great concern that transgender people appear to be the only group in

certificates and other similar documents”).

72. See, e.g.: ECtHR, *B. v. France*, application no. 13343/87 (15 March 1992); *I. v. the United Kingdom*, application no. 25680/94 (11 July 2002); *Christine Goodwin v. the United Kingdom*, application no. 28975/95 (11 July 2002).

73. See: Germany, ¶ 20, CAT/C/DEU/CO/5 (2011): “The Committee remains concerned at cases where gonads have been removed and cosmetic surgeries on reproductive organs have been performed that entail lifelong hormonal medication, without effective, informed consent of the concerned individuals or their legal guardians, where neither investigation, nor measures of redress have been introduced. The Committee remains further concerned at the lack of legal provisions providing redress and compensation in such cases.”

74. See: Germany, ¶ 20, CAT/C/DEU/CO/5 (2011): “The Committee recommends that the State party: (a) Ensure the effective application of legal and medical standards following the best practices of granting informed consent to medical and surgical treatment of intersex people, including full information, orally and in writing, on the suggested treatment, its justification and alternatives; (b) Undertake investigation of incidents of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation; (c) Educate and train medical and psychological professionals on the range of sexual, and related biological and physical, diversity; and (d) Properly inform patients and their parents of the consequences of unnecessary surgical and other medical interventions for intersex people.”

75See: Global Bodies call for end to Forced Sterilisation. URL: http://www.wma.net/en/40news/20archives/2011/2011_17/index.html (date of access: 01.08.2012).

76. CM/Rec(2010)5, ¶ 20 of the Appendix.

Europe subject to legally prescribed, state-enforced sterilization.”⁷⁷ The Commissioner asked that member states “abolish sterilization and other compulsory medical treatment as a necessary legal requirement to recognize a person’s gender identity in laws regulating the process for name and sex change.”⁷⁸

6. Recommended questions

a) On what ground civil registry offices and courts in the Russian Federation refuse to change documentation (civil gender and name) of transgender applicants submitted medical evidences of diagnosis and need for change of documentation? In particular – what is the ground for requiring surgical procedures, such as sterilization or the reconstruction of genital organs?

b) What factors (legislative, administrative, institutional, financial, etc.) have prevented the Russian Federation from developing and adopting a document governing changes to one’s legal gender status, as required by the Federal Law on Acts of Civil Status for more than 15 years? When will the Russian Federation develop this form and who will be involved in this process?

7. Suggested recommendations

a) Approve the draft “References for drawing up a conclusion by the civil registry office on the necessity to rectify or change the vital register” [see above].

b) Provide the possibility of documents change for transgender people only on the basis of a medical certificate on “gender change,” preventing the applicants from requirements of nonstatutory conditions, especially such as conducting surgery or its particular kind.

c) Provide uniformity in judicial practice in cases of documents change of transgender people through generalization of existing practice and guiding instructions of the Supreme Court.

d) Provide the possibility of rapid re-issue and rectification of the documents of transgender people born in the Soviet republics.

e) Provide the possibility for transgender people to change the name upon a single application, in accordance with the general statutory procedure of name change.

f) Provide the possibility of changing the employment record book of transgender people in a way that the documents retain all the information about their work, but do not demonstrate their gender history – including through appropriate changes of Rules of employment record books and Instructions on filling out employment record books of the Ministry of Labour of Russia.

g) Ensure the development and implementation of mechanisms to assure respect for the privacy and protection of the dignity of transgender people whose documents do not comply with their gender identity during searches and other proceedings arising from gender.

77. Council of Europe Commissioner for Human Rights, Human Rights and Gender Identity: Issue Paper, CommDH/IssuePaper(2009)2 (29 July 2009).

78. Office of the Commissioner for Human Rights of the Council of Europe, Discrimination on grounds of sexual orientation and gender identity in Europe (2011), p. 13.

F. Persecution of LGBT and anti-discrimination activists under the law on “foreign agents” (arts. 19, 22 and 26)

1. Reporting organizations

LGBT Organization “Coming Out”

2. Issue summary

On 13 July 2012, the Law on Non-Commercial Organizations Russia was amended. In accordance with the amendments, Russian NGOs get the status of “foreign agent” in the following circumstances:

- Organization is engaged in “political activity” in Russia, i.e. organization is “involved in organizing political actions (including by funding) aimed at changing government policy with the purpose of influence on public authorities decision-making, as well as formation of public opinion for such purposes;” and
- Organization receives at the same time “funds and other assets from foreign governments, international and foreign organizations, foreign citizens and stateless persons.”⁷⁹

On the entry into force of these amendments, NGOs “performing the functions of a foreign agent” are required to enter the state registry of “foreign agents” and also submit additional reports on its activities and funding. If NGOs do not enter the registry, the organization and its leader may be subjected to various sanctions, including the suspension of the activities of NGO and the prosecution of its leaders.

After the law adoption, the Prosecution Service along with other agencies started massive checks of NGOs in many Russian regions. Checks were carried out with many violations and flimsy grounds. For example, during the check in the LGBT Organization “Coming Out” the inspectors willfully and unceremoniously reached out for folders and drafts and copied documents without any permission of people who worked there and ignoring their remarks.

Following the results of many checks of NGOs, there were made claims about the lack of registration as a “foreign agent.”

In St. Petersburg, three organizations found themselves in the most difficult situation. The cases of these organizations are taken to the court. All three organizations are engaged in protection of minority rights, two of them (“Coming out” and LGBT Film Festival “Side-by-Side”) are LGBT organizations, and the third one, “Memorial” is the anti-discrimination center, which also protects the rights of LGBT activists.

Two administrative proceedings were initiated against the LGBT Organization “Coming out” and its director. The accusations were based on the statement that the organization conducted political activities, namely:

- prepared and published a brochure “Discrimination against LGBT: what, how and why?”, which criticized the discriminatory law banning so-called “propaganda of homosexuality among minors;”
- disseminated information about the federal campaign against the draft federal law banning so-called “propaganda of homosexuality among minors” on the Internet; and
- organized a picket, which aimed to show that LGBT community also supported traditional values (in fact, the organization was not involved in organizing this picket and did not participate in it).

79. The Federal Law of July 20, 2012 № 121-FZ “On Amendments to Certain Legislative Acts of the Russian Federation relating to the regulation of activity of NGOs fulfilling functions of a foreign agent.”

The organization and its director were found guilty by the magistrate judge. A total amount of fine was 800,000 Rubles (about 20,000 EUR).

The district court reversed the decision of the magistrate court. However, prosecutors disagreed on it and appealed to the St. Petersburg City Court, which confirmed the termination of proceedings against the organization and its director.

However, the termination of cases was based not on substantive but on formal grounds. (i.e. the courts did not state that the organization was not involved in any political activity and therefore cannot be considered as a “foreign agent”).

Furthermore, on 29 October 2013, the prosecutor of Centralny District of St. Petersburg filed a civil lawsuit in the Vasileostrovsky District Court on behalf of general public. In his court claim the prosecutor asks the court to compel the LGBT Organization “Coming Out” to register as a foreign agent in the register. Currently, the trial is in a process.

Since the spring of 2013, the LGBT Organization “Coming Out” was in a critical situation. The huge amount of resources was spent to cope with the consequences of inspections and prosecutions. Instead of the core activities (support of the LGBT community), the organization’s staff had to prepare and submit documents for verification (lists of the requirements were huge and included, for example, a list of all activities and events undertaken in three years, a list of all volunteers, and information on “international LGBT symbols”), meet the prosecutor’s requirements and demands, go to the courts, etc. Homophobic activists still continue to use the rhetoric of “imposed values” and argue that the LGBT Organization “Coming Out” is a recognized “foreign agent.”

3. HRC concluding observations, general comments and jurisprudence

The Committee has not yet expressed its view on the Russian law “on foreign agents.”

4. The Government report

The Russian report does not contain any provisions related to the Russian law “on foreign agents.”

5. Recommendations by other human rights bodies

In 2012, *the UN Committee against Torture* expressed its serious concerns rights bodies related to the State party toward the work of individuals and organizations that monitor and report on human rights conditions in the State party. This includes a 2012 requirement that organizations receiving financial support from sources outside the State party register and identify themselves publicly as ‘foreign agents,’ a term that seems negative and threatening to human rights defenders, including organizations that receive funding from the United Nations Voluntary Fund for Victims of Torture.” The Committee recommended that the Russian Federation recognize that human rights defenders are at risk and have been targeted due to the performance of their human rights activities, which play an important role in a democratic society; amend its legislation requiring human rights organizations that receive foreign funding to register as ‘foreign agents.’⁸⁰

In 2013, *the UN Committee on the Elimination of Racial Discrimination* expressed its concerns “about the adoption of the Federal Law regarding the “Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents”, which came into effect in November 2012, and the impact it may have on the ability of non-governmental organizations who work to promote and protect the rights of ethnic or religious minorities, indigenous peoples and other vulnerable groups to continue their legitimate activities.” The

80. Russian Federation, ¶ 12, CAT/C/RUS/CO/5 (2012).

Committee recommended that “the Federal Law on Non-commercial Organizations be reviewed to ensure that non-governmental organizations working with ethnic minorities, indigenous peoples, non-citizens and other vulnerable groups who are subjected to discrimination are able to carry out their work effectively to promote and protect the rights contained in the International Convention on the Elimination of All Forms of Racial Discrimination without any undue interference or onerous obligations.”⁸¹

On 12 July 2012, *the Special Rapporteurs on freedom of association, human rights defenders and freedom of expression* have urged the State Duma not to adopt law on “foreign agents”.

“These amendments constitute a direct affront to those wishing to freely exercise their right to freedom of association,” stressed *the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*. “I am dismayed at the Russian Government’s plans to unduly restrict access to foreign funding for civil society”, he underscored. “Civil society organizations should be entitled to foreign funding to the same extent as Governments are entitled to international assistance.”

For *the Special Rapporteur on the situation of human rights defenders*, “those advocating for the protection of fundamental freedoms should not be placed under special scrutiny, irrespective of whether support has been received from beyond Russian borders. I am gravely concerned that putting human rights defenders under such scrutiny will deter them from performing their important work,” she stressed. “Furthermore, the extensive requirements proposed for NCOs ‘engaging in political activities’ could apply to any advocacy activity performed by NCOs with foreign support, and therefore infringes on the right of human rights defenders to raise human rights issues in public.”

Labeling NCOs and their materials by law as ‘foreign agents’ is clearly intended to stigmatize any activity conducted by civil society receiving foreign support, including legitimate ones,” said *the Special Rapporteur on the rights to freedom of opinion and expression*. “Everyone should be entitled to promote their ideas freely without arbitrary restrictions.”⁸²

On 14 May 2013, *the UN Special Rapporteurs on freedom of association, human rights defenders and freedom of expression* expressed serious concern at the “obstructive, intimidating and stigmatizing effects” brought about by the “foreign agents” legislation. They urged the Russian authorities to revise the law due to its lack of compliance with international law and standards and its adverse consequences on the important work of hundreds of organizations and human rights defenders.

“Since the law was passed, we now witness an unprecedented wave of inspections some of which have led to administrative cases against NCOs, including severe penalties,” *the Special Rapporteur on the rights to peaceful assembly and of association* said. He also stressed that these inspections lack appropriate legal basis as the protection of sovereignty is not listed as a legitimate ground to restrict freedom of association, according to international human rights law. “States cannot refer to additional grounds, even those provided by domestic legislation, and cannot loosely interpret international obligations to restrict the right to freedom of association,” he noted.

“We already warned against the extensive requirements contained in this law for NCOs allegedly ‘engaging in political activities’, which could infringe on the right of human rights defenders to publically raise human rights issues and conduct advocacy work,” said *the UN expert on the situation of human rights defenders*. “Defenders should be able to participate in public affairs by raising issues of public interest in a critical way, irrespective of where their funding comes from,” she stressed. “This type of work should not be seen as a political activity but as an essential component of an open and democratic society.”⁸³

The Committee of Ministers of the Council of Europe in its recommendation to member states on the legal status of non-governmental organisations in Europe noted that “the contributions of NGOs are made through an extremely diverse body of activities which can range from acting as a vehicle for communication between different segments of society and public

81. Russian Federation, ¶ 13, CERD/C/RUS/CO/20-22 (2013).

82. <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12344&LangID=E>.

83. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13323&LangID=E>.

authorities, through the advocacy of changes in law and public policy, the provision of assistance to those in need, the elaboration of technical and professional standards, the monitoring of compliance with existing obligations under national and international law...”; “NGOs should be free to solicit and receive funding [...] not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies...”; “Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. Such participation should ensure the free expression of the diversity of people’s opinions as to the functioning of society. This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.”⁸⁴

The Parliamentary Assembly of the Council of Europe in its resolution “The honouring of obligations and commitments by the Russian Federation” highlighted that “Other measures and decisions taken this year raise serious concerns. In particular, four laws adopted by the State Duma in June and July 2012, namely the laws on the criminalisation of defamation and on the Internet, and amendments to the laws on assemblies (the so-called “protest law”) and on non-governmental organizations (NGOs) (the so-called “law on foreign agents”), are worrying. These texts illustrate how full of contradictions the political situation in the Russian Federation is and can only call the authorities’ real intentions into question.”⁸⁵ The Assembly called on the Russian authorities to “refrain from attempts to discredit some of the most respected domestic and international NGOs by publicly accusing them, without foundation, of acting on foreign instructions and representing foreign interests” and to “amend the new law on NGOs (the so-called “law on foreign agents”), so that it cannot be used as an instrument of repression and intimidation of NGOs and civil society.”⁸⁶

6. Recommended questions

- a) Is the LGBT human rights activity a political activity in the sense of the law on “foreign agents”?
- b) Is the publication and dissemination of analytical brochures, naming the law banning “propaganda of homosexuality among minors” discriminatory, a political activity?
- c) Is this a political activity – the preparation and presentation to international organizations, including the UN treaty bodies, of alternative reports on the situation of LGBT people in Russia?
- d) Is this a political activity – the organization of public meetings in support of LGBT rights? Providing information and legal support to the organizers and participants of these meetings?

7. Suggested recommendations

- a) Recognize that human rights activity is not a political activity in context of the law on “foreign agents” and include appropriate changes to the mentioned law;
- b) Prevent the application of the law on “foreign agents” to the organizations involved in the protection of human rights of LGBT people and LGBT human rights defenders.
- c) Prevent prosecutions under the law on “foreign agents” of LGBT organizations

84. Committee of Ministers of the Council of Europe, On the legal status of non-governmental organisations in Europe: Recommendation to member states, preamble and paras. 50 and 76, CM/Rec(2007)14 (10 October 2007).

85. PACE, The honouring of obligations and commitments by the Russian Federation, Resolution 1896 (2012), para. 6 (2 October 2012).

86. PACE, The honouring of obligations and commitments by the Russian Federation, Resolution 1896 (2012), paras. 25.7 and 25.8 (2 October 2012).

Cases

A. Violence against LGBT persons and LGBT human rights defenders

- Case A.1.** On 17 May 2012, an activist of a radical religious movement fired a gas pistol at the participant of the annual “Rainbow Flashmob” event in St. Petersburg. The victim was a young man holding a balloon with the words “*Christ loves both women and men.*” The attacker was arrested, but he was charged only with disorderly conduct. Hate motive was not classified. On 11 November 2013, the Petrogradsky District Court of St. Petersburg convicted the attacker and found him guilty of hooliganism committed with the application of objects used as weapons, but did not classify criminal conduct as motivated by hatred or hostility against LGBT social group.¹ Moreover, after sentencing, the verdict was appealed to the City Court, which dismissed the case due to the amnesty². Thus, the attacker did not actually suffer any punishment at all.
- Case A.2.** During the same event on 17 May 2012, radical young people, supposedly of ultra-right ideology, started gathering near the members of the LGBT event; most of them hid their faces behind medical masks and scarves. They chanted: “*We will hang and bury you,*” and raised their hands in a Nazi salute. After the event was finished, all the participants were put into police and organizers’ buses and brought to the subway. At the same time, these same young men, shouting homophobic obscenities, attacked two buses with foreign workers. They knocked out windows, beat people in buses and created a traffic jam on the road. Police stood nearby and took no actions.³
- Case A.3.** On 12 June 2013, in St. Petersburg, there was a kiss-in campaign outside the Legislative Assembly. Participants of the rally were kissing in protest against the law banning so-called “propaganda of homosexuality among minors.” K. was kissing S. and holding a poster in his hands. A woman with four children flew at them, nearly knocking off K.’s glasses. Then a man, the assistant of Deputy Vitaly Milonov (author of St. Petersburg’s law on “propaganda”), run up to them and snatched K.’s poster, said that if the guys kissed again, they would “*get a bash on the bonce.*”⁴
- Case A.4.** On 29 June 2013, in St. Petersburg, in the so-called “Hyde Park” area, the annual Gay Pride rally was held. Although some security measures were provided during the event by the police forces (metal fence around the venue, riot police presence), about 200 opponents of action gathered at the meeting’s place. These people came prepared in advance, which included encouraging the eager to bring their children with them and file reports of “propaganda.” Opponents of the rally threw eggs, stones, smoke bombs at the participants, shouting man-hateful and homophobic slogans. Once in a while, one of the opponents would break through the fence and hit protesters, and snap posters and flags out of their hands. Despite all this, virtually no police action was taken.
- Shortly after the event had started, riot police began to push the participants of the LGBT event aside to the edge of the platform, and then people were pushed into buses and taken to the police stations.
- Four participants of the meeting, two young women and two young men, did not get on the bus as the girl felt sick, and friends decided to bring her to the fresh air. When they moved a few meters away from the bus, they were surrounded by a crowd of opponents. A group of unidentified men started to beat them, kick and whip. Only a few minutes later the police intervened and pushed the four to the wall. Then the victims were taken to the police department, where they were long withheld from calling ambulance and then released, with drawn up protocols allegedly on administrative offences (violation of the rules of the meeting conduction) against them.
- Despite the fact that information about the inflicted injuries were sent to the police by the doctors who

1 The verdict of the Petrogradsky District Court of St. Petersburg of 11 November 2013, file No. 1-354. Legal support of the case carried by the LGBT Organization “Coming Out” together with ADC “Memorial.”

2 Decision of the St. Petersburg City Court of 12 February 2014, file No. 22-359/2014. Legal support of the case carried by the LGBT Organization “Coming Out” together with ADC “Memorial.”

3 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

4 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

examined the victims after the attack, along with the statements of the victims about the attacks committed against them and motivated by hatred against the LGBT social group, initially there was a refuse to initiate criminal proceedings. Without conducting an effective investigation and even interviewing the victims, the police came to the conclusion that there had been a simple action of battery, the case which can be classified as “private prosecution” (i.e., must be proven in court only by victims, without the participation of the public prosecutor and without investigation). It was refused to recognize the committed offence as a hate crime, with the words “*taking into account the steady hostile relationships between the persons of traditional sexual orientation and the participants of the St. Petersburg LGBT Pride and individuals supporting them.*”⁵

After that, the decision not to initiate criminal proceedings has been canceled, but victims and their lawyers still neither can obtain any information about the investigation, nor have an access to the case file; the adequate verification is not carried out even despite the repeated reference to the court for the appeal against the inactivity of the investigator.⁶

Case A.5. On 10 July 2013, the participants of “Straight Alliance for LGBT equality” decided to make a few pickets in St. Petersburg. One of the picket participants, N., spread a banner against a federal law banning promotion of homosexuality in the city center on the Nevsky Prospekt. Approximately 10 minutes later two young athletic men appeared alongside. They came to N. and wordlessly pulled the poster out of her hands. After the attackers left, N. took another poster and unfolded it. Young people came back and pulled out the poster for the second time, saying, “*Didn’t you get it the first time?*” They wanted also to tear off the “Alliance” pin, but N. dodged. The attackers said to monitoring activist who came up to them: “*Hey, c*cky, better keep out!*” and left.

Another picket participant, D., was also approached by two men, who tried to snatch the poster, hit him in the face, and then dashed away.

A little later, nearby the site of the event, activists saw a group of young people, one of them was wearing a T-shirt with the sign “*White Power Russia.*” Another person was filming everything on the camera. Later, he was often seen in the group of nationalists.

After the attack, O. and D. walked from the trauma center, where the violent assault was recorded. On their way, they met a group of young men in black T-shirts with white symbols. Men shouted something about the D.’s shirt (he was wearing a T-shirt with a pink triangle, the symbol of the persecution of gays in Nazi Germany), jumped on him and began to beat. O. tried to cover D., but nothing worked. Only after the intervention of a passerby the attackers retreated.⁷

Case A.6. On 2 August 2013, at the Palace Square in St. Petersburg, activist K. held a one-person picket. He came to the square with rainbow flag inscribed “*This is propaganda of tolerance.*” The activist was attacked by paratroopers, who began to poke him, pushed him to the ground and snapped the flag out of his hands. They told K.: “*Sit!*” and insulted him. Police stopped the scuffle. Activist was put into an official car, but trooper surrounded the car blocking it from moving. Shortly afterwards, the SWAT vehicle arrived, and the car was able to leave.⁸

Case A.7. On 19 September 2013, the opening ceremony of the Queer Culture Festival took place in St. Petersburg. Several athletic men, which have previously been seen among the active opponents of LGBT public events, approached the opening location. Then the Deputy Vitaly Milonov (author of the law banning “propaganda of homosexuality”) and his assistant arrived. The showed up behaved arrogantly, insulted visitors and festival volunteers. One of the athletic men punched the festival volunteer D. in the face and temple. A little later, the police arrived, after they were informed about the attack. The police were asked to catch the attacker, but they took no action. The next day D. documented the damages in an injury care center and filed a police report on hate crime. While receiving the report, a policeman said: “*Still and all, you’ll get a*

5 Order of the police officer of 78 district police office of the Central DMIA of St. Petersburg on the refusal to institute criminal proceedings of 9 July 2013. Legal support of the victims is provided by the LGBT Organization “Coming Out”.

6 Legal support of these cases are provided by the LGBT Organization “Coming Out”.

7 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

8 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

rejection! *This is a private prosecution case.*” When D. and the lawyer, who was beside him, began to insist that it was definitely a hate crime, which was a matter of public prosecution, the policeman replied: “*Don’t make me laugh!*” A few days later the criminal case was indeed rejected.⁹

Case A.8. On 3 November 2013, a meeting “Rainbow Tea Party” was held in the premises of the “LaSky Project” (HIV and STI prevention campaign among homosexual people), which brings together LGBT and their friends. These meetings were announced publicly on the Internet and held weekly. This time the participants (about 20 people) planned to discuss the results of the previous day’s “March against Hatred.” One of the meeting participants, A.P., was standing at the front door, talking on a cell phone. Just then, someone opened the door and entered. A.P. saw that two men, whose faces were covered with masks or scarves, both medium bodily constitution, medium height, wearing unremarkable clothes, came into the room. One of them had something similar to the bat in the hands, the second – to the gun. A.P. asked who they were. One of them said something like “*We’re looking for a friend,*” and then they began to push A.P. to the door. A.P. realized that these people intend to do something bad and ran into the room, shouting something to the people indoor (there was a meeting in the next room). Then A.P. felt pain in her back, as if she was shot in the back. Around the same time she heard some sounds like clicking or crackling. All this happened very quickly. When A.P. came back, those people had already run away. A young man D.C., who happened to be there, was attacked and shot in the eye. D.C. heard the attackers shouting to him: “*Fa***t, where do you think you’re going?!*”

Prior to the incident, the project managers repeatedly received homophobic threats. Threats were made on the Internet pages of homophobic and nationalist groups. Threats continued on the eve of the attack day as well. In the result of attack A.P. had some minor injuries. D.C. had several surgeries; the bullet remained in his eye, and was pulled out only ten days later. Unfortunately, the eye could not be saved, and D.C. no longer sees with one eye. ¹⁰

At the moment, the case is classified as the disorderly conduct and the infliction of bodily harm by hooligan motive. The investigation denied to classify this offense as motivated by hatred against LGBT people. This refusal was appealed in court, but the court stated that “*the investigator, who is conducting the preliminary investigation of the criminal case, independently directs the course of the investigation and takes procedural decisions on the case. Thus, the decision on the classification [...] is taken by investigator independently.*” The court also confirmed that in case of non-identifying of the individuals, who committed a crime, the investigator cannot classify the case as a hate crime against LGBT people: “*[t]he perpetrators of a crime [...] are not identified and questioned, that fairly makes it impossible to take a final decision on the classification of their crimes.*” ; ¹¹¹²

Case A.9. On 25 June 2013, in St. Petersburg, there was a court session on a case against the head of the LGBT organization “Coming Out” charged with violation of the “Foreign Agents” law. Before the trial, homophobic activists encouraged people to come to court and blockade LGBT activists on social networks pages (their statements included in particular, “*Orthodoxy or death! With God we win! Sodomites have no place in our world; they have no place in Russia! Hallelujah! Tomorrow we’ll see how many real Orthodox are there in St. Petersburg*”).

On the hearing day, the organization attorney, a witness in the case, as well as several staff and volunteers of the LGBT organization “Coming Out” came to the courthouse. By this time, right at the court entrance a crowd has already gathered. There were about 30 young sporty people, together with two priests in robes and a woman in a headscarf. When representatives of the organization tried to enter the court, they blocked the entrance. Even when a lawyer tried to get into the courthouse, the opponents would not let him pass, and blocked the door with their hands. Court marshals were just peeping from behind the door, and then closed it, remaining inside. They did not take any actions. Only after making two calls in court, a bailiff and a judge rapporteur came out of the building and let the attorney inside. And also two men cloth-

9 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

10 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

11 The decision of Leninsky District Court of St. Petersburg of 5 March 2014. Legal support of this case is provided by the Russian LGBT Network.

12 Legal support of the victims is provided by the Russian LGBT Network and LGBT Organization “Coming Out”. 37

ing as Orthodox priests came in the courtroom, as well as young sporty people (some of them remained at the entrance). Then the hearing began. Neither the witness, nor the representatives of organization were allowed to go inside. Attorney announced that the principle of publicity was not ensured and petitioned webcasting of the hearing or postponing it to a more spacious room. However, the judge denied the motion saying that “*everyone who wanted arrived to the courtroom*” (though, among those presented, were only the opponents of LGBT and the priests, while the staff members and volunteers of the organization stood in the street and could not enter).

A police car and three police officers were close to the court entrance. One of the staff members of the LGBT organization “Coming Out”, M., came to them and explained the situation, telling that “*we are having the trial, but we are not allowed to enter, a witness of the case stays with us, and we worry about our safety.*” The staff member asked the policemen to come closer to the “Coming Out” representatives and the court entrance. However, he was refused. The policemen said they were there only to keep order, and they did not need to be told where they should stand, plus they could “*see everything from here.*” When M. asked the policeman to introduce himself, the latter refused, saying he did not have to do that.

After a while, the lawyer texted that it was necessary to get the witness in the courtroom. The witness and M. tried to get to the courthouse, but they again were blocked from the entrance, were not allowed to pass by opponents’ grappled hands. The witness was able to go inside only with the help of the deputy judge.

Not being able to go into the courtroom, the representatives of organization were forced to leave by taxi (for security reasons). While the last remaining employee, M., was getting in a taxi, two young men, dressed in T-shirts with the inscription “Orthodoxy or death” came and began to harass, shouting to the taxi driver: “*Don’t take this fa**t, he molests our children;*” and one of them shouted to M.: “*I’ll kill you!*”

The representatives of the organization sent statements to the prosecutor, to the police and to the St. Petersburg Ombudsperson. However, they were refused to initiate criminal or administrative cases, as law-enforcement agencies found no violations.¹³

Case A.10. In June 2011, in Moscow, a transsexual woman was brutally beaten to death by a group of men in 2011 in Moscow. According to the results of the forensic medical examination, the victim’s death was caused by open skull fractures, accompanied by multiple contusions on the head, cerebral contusion and other brain injuries. While the perpetrators were found guilty and convicted (for infliction of a grave injury involving the death of the victim by negligence), the real motive of the crime was not taken into account by the court. This happened notwithstanding the fact that perpetrators themselves, as well as witnesses of the crime, openly indicated the motive (the perpetrators started to beat the woman right after they realized that she was transsexual), and it was recorded in reports and court decisions.¹⁴

Case A.11. On 1 April 2014, in St. Petersburg, a lesbian couple, K. and E., were attacked by an unknown man in the subway. Girl were sitting on the passenger seat in a subway train and reading. They were approached by the man, who pushed K. on the shoulder, then began to demand that she gave her place to a woman, although the train had available seats. Girls wanted him to explain the reasons for his behavior and were indignant with him pushing women. The man replied: “*You must look like a woman to be treated as a woman, not the way you look now. Where are your skirts?*” Girls moved to the other end of the car, but after a while a man came up to them again, poured a bottle of water on K. and pushed her face into the wall of the train. E. ran after the man on the platform, in order to apprehend him, but he pushed her to the floor, she hit her nose and it started bleeding, but the attacker continued to force her against the platform. Then the man headed to the escalator to exit the subway, and E. tried to stop him and demanded to explain what was happening. And again the attacker stated that his behavior was due to the fact that the girls did not look like women and did not wear skirts. The man was arrested.

The attack resulted in E.’s broken nose recorded by physicians, with suspected concussion. K. was diagnosed with the damage of the temporomalar bone, shock and panic.

Two days later, the girls filed reports to the police. Provisionally it was refused to initiate criminal proceedings.¹⁵

13 Reply of the Vasilyevsky DMIA of St. Petersburg of 20 August 2013 No. 60/A-1465; Reply of Vasileostrovsky District Prosecutor’s Office of St. Petersburg of 28 August 2013 No. 2083zh 2013.

14 Cassation Decision of the Moscow City Court of 19 March 2012, file No. 22-3221.

15 Resolution of the Chief Inspector of the 1 Police Department on the subway (St. Petersburg) to dismiss the criminal case of 9 April 9 2014 (KUSP-509/1 of 01 April 2014). Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the

Case A.12. On 12 June 2012, in St. Petersburg, the activists of “Alliance of Straights for LGBT Equality” were attacked by a group of young men, presumably about 10 people, who in the course of the attack shouted: “*This is Sparta!*” They sapped rolled posters and banners, rainbow-colored umbrellas out of the hands of activists, beat them and then run away. Four activists documented physical damage and filed reports to the police. Police initially classified the case as a disorderly conduct, found one of the attackers. At the same time, the police refused to reclassify the case under the same article, but taking into account the hatred against the LGBT social group, citing that LGBT cannot be considered a social group. Police later separated the case of attack on one of the activists, V.A. Ivanov, by the nationalist D.A. Deyneko, in the form of “hooliganism battery,” again without accepting the hate motive. In court, the attacker himself directly stated, that he “*was opposed to homosexual propaganda that contradicts his religious principles. [...] He saw a group of people holding umbrellas and flags with rainbow colors in their hands, as well as [...] banner ‘Alliance for LGBT freedom.’ He did not like it, considered it to be an open form of homosexual propaganda; he decided to take this banner away from the young man.*”¹⁶ Nevertheless, the court did not take the motive of the crime into account.

B. Hate speech and manifestations of intolerance and prejudice by public officials, religious leaders and in the media

Case B.1. On 8 December 2013, in Novosibirsk, a famous actor and Russian Orthodox priest Ivan Ohlobystin during an event called “Spiritual Discussions” in response to the question “*How do you feel about homosexuals and their parades?*” stated the following:

“I would have them all stuffed alive inside an oven. This is Sodom and Gomorrah, and as a believer, I cannot remain indifferent to this, it is a living danger to my children! I do not want my children thinking that [obscene word for gay people] are normal. This is a gay fascism! If a man cannot choose his own kind of the opposite sex for reproduction, it is a clear sign of mental abnormality, then he needs to be deprived of that right to choose.”

The Russian LGBT Network petitioned the prosecutor to initiate a criminal case under Article 282 of the Criminal Code of the Russian Federation in connection with inciting hatred against the LGBT social group. Violating the law procedure, The Prosecutor’s Office of the Centralny District of the Novosibirsk region, refused to register the application in the Crimes Control Ledger, citing the fact that “*the content of the application do not consists the evidence of the crime.*”¹⁷ It should be noted that the establishment of the components of a crime in actions of individuals occurs during the verification phase of the registered application. During this phase the prosecutor initiates a criminal case or refuses to do it. Thus, even without any checking of the facts, the prosecutor refused to response to the application. The prosecutor called Ohlobystin’s speech about gays “*a negative statement against a group of persons with minority sexual orientation.*”¹⁸

An LGBT activist from Moscow filed a lawsuit on the same incident to defend his honor and dignity (defamation), but the claim was not satisfied. Moreover, the LGBT activist was obliged to compensate for Ohlobystin’s legal expenses.

Case B.2. On 19 September 2013, Vitaly Milonov, Deputy of the Legislative Assembly of St. Petersburg and the author of St. Petersburg’s law on “propaganda,” came to the opening ceremony of the annual Queer Culture Festival, where he publicly insulted the participants and volunteers of the festival, using homophobic obscenities, called people who came to event “*animals,*” “*AIDs carriers,*” and “*cocks,*” shouted that LGBT activists receive money from abroad, and pointed out that he is Russian, unlike the organizers and activists (though all who were subjected to abuse, were the Russian citizens). When lawyer of the LGBT organi-

Russian LGBT Network. Legal support of victims is provided by LGBT Organization “Coming Out”.

16 Decision of the J.P. of the judicial district No. 201 in St. Petersburg of 25 December 2013.

Legal support of this case is provided by the Russian LGBT Network.

17 of Prosecutor’s Office of the Central District of the Novosibirsk region No. 14-258v-14 of 26 February 2014.

18 of Prosecutor’s Office of the Central District of the Novosibirsk region No. 14-258v-14 of 26 February 2014.

zation “Coming Out” saw the possible beginning of a fight, she called the police for help, and the Deputy Vitaly Milonov called her “*stool pigeon*.” Then he twice used obscene words for lesbian women against her. All these actions were video recorded and many witnesses saw and heard what was happening. Two activists including lawyer of this LGBT organization, filed the complaint to the St. Petersburg Prosecutor’s Office and the district prosecutor’s office. Activists require to initiate administrative proceedings against the deputy based on abuse and discrimination. But only one response was received from the prosecution. In this response, the prosecution explained that the deputies can be subjected to administrative liability only under a specific procedure, which is set for criminal but not administrative cases.¹⁹ Attempt to appeal the prosecutor’s decision to the court failed.²⁰

Case B.3. In November 2013, after the office of the LaSky Project was attacked (see above case A.8), the Deputy Vitaly Milonov in an interview for “Fontanka” newspaper made a variety of homophobic statements, as well as statements justifying violence against and violation of the rights of the LGBT community. In particular, he said that the attack on the office was a planned provocation of LGBT activists, and called the shot in the victim’s eye “*a mere accident*.” The Deputy compared members of LGBT community with killers; and said that “*these are not human rights, but the rights of sick and perverts*.” The LGBT activist A.P., injured in the attack on the office of the LaSky Project, filled an application to the investigation committee and asked to check the Deputy Milonov’s statements, and initiate hate speech criminal proceedings against him for making hate speech. However, the investigative committee refused to initiate criminal proceedings.²¹

Case B.4. In the autumn of 2013, suspicious unknown citizens came to the office of the LGBT Organization “Coming Out” several times, and were interested in the organization’s actions and visitors. After one of these visits a homophobic inscription was left on the office door. Several members of the LGBT community reported to the organization’s staff that some people try to get information about them on social networks, find out the LGBT meetings places and speak openly about their homophobia and even express intentions to “kill” gays.²²

Case B.5. Members of homophobic groups on social networks achieved dismissal of a school teacher from Magnitogorsk on grounds of on her statements (written on her personal page) in support of LGBT. Then homophobic activists found her in St. Petersburg, where she had to move. Persecutors posted pictures of her on the Internet and called everyone who knows in which school she works now to demand her dismissal.²³

Case B.6. Finding on the Internet the list of participants of the academic conference on queer studies, members of homophobic groups on social networks posted names, places of work and photos of conference participants, accompanying it with insults and calls to write complaints to rectors of the universities where participants work.²⁴

Case B.7. In September 2013, in the houses near the venue for the annual Queer Culture Festival, booklets with damaging information were found. The booklets included the following:

“Sodom to every house! We, the representatives of the discriminated community of

19 Letter of Prosecutor’s Office of the Primorsky District of St. Petersburg of 17 October 2013 No. 2096zh/3.

20 20 Decision of the Primorsky District Court of St. Petersburg of 20 March 2014, file No. 2-6231/2014.

Legal support of the case is provided by the LGBT Organization “Coming Out”.

21 Resolution of Acting Investigator of the Central district investigative department of the Main Investigative Directorate of Investigation Committee of the Russian Federation, in the city of St. Petersburg on the refusal to initiate criminal proceedings of 13 January 2014; Resolution of Acting Investigator of the Central district investigative department of the Main Investigative Directorate of Investigation Committee of the Russian Federation, in the city of St. Petersburg on the refusal to initiate criminal proceedings of 13 February 2014. Legal support of the case is provided by the LGBT Organization “Coming Out”.

22 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

23 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

24 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

gays and lesbians of St. Petersburg, appeal to you. We rented a room on the top floor of your house, with the sole purpose of proving that we have the right to express our sexual identity. We hate you and this country in which we do not have the freedom and the voting right. But you will not shut our mouths! We will make your children the same as we are. Because we are the elite, and you are homophobic rednecks. But soon you will recognize our strength and power. When this regime will be overthrown, you will know how many we are and what do we mean in this life. Tremble, heterosexual pigs! We're here, near to you!"

The booklets also contained pictures with words "pedophilia is normal, gays all over the world are fighting for it." Soon an electronic version of the booklet began to distribute on behalf of the account of a man who constantly harassed and threatened LGBT activists.²⁵

Case B.8. On 29 June 2013, in St. Petersburg, four LGBT activists were beaten by a crowd of homophobic aggressors (see case A.4 above) in the place of the street public action and near the police. When representatives of Police and Special Police Forces (OMON) lead out LGBT activists from the crowd to the police bus, policemen in the bus loudly declared "*Expose them, we will not go with fa**ts!*"²⁶

C. Infringement of the right to freedom of assembly and association

Case C.1. On 19 December 2012, on the day of the first hearing of a draft federal law banning "propaganda" by the State Duma, LGBT activists planned to hold a rally in one of the districts of St. Petersburg. The district administration denied the rally, refereeing to the fact that earlier on the event of similar subjects public disorders taken place (events on 17 May 2012, see in more details cases A.1 and A.2). Later the court found this argument as not relevant to the law, but it was done after the date of the planned action, when its conduct had no sense.²⁷

Case C.2. On 31 March 2013, on the International Transgender Day of Remembrance, LGBT activists planned to hold a small rally in the center of St. Petersburg declaring about the problem of violation of transgender persons' rights during searches by police officers. The district administration refused this rally. Activists appealed to the court, and the refusal was partly declared illegal. However, the organizer of the rally, observers and a lawyer of the LGBT organization had to listen, within 20 minutes, the detailed description of the representative of the district administration about not relating to the subject of proceedings. This description was about physical and psychological violence against LGBT during LGBT public actions held few years ago. The judge did not react to the lawyer's questions "*Why have we listen to this information which is not related to the case?*"²⁸

Case C.3. On 19 December 2012, LGBT activists wanted to carry out the LGBT action against the bill on so-called "propaganda of homosexuality" at the Theater Square opposite the Bolshoi Theater in Moscow. On 12 December 2012, the Prefecture of the Central Administrative District of Moscow refused to allow this public event and declared:

"The purpose specified in the notification causes negative public reaction. According to citizens, carrying out of public actions related to the discussion of sexual relations, in public open areas, is a provocation that causes moral harm to children and adolescents

25 Case recorded within the monitoring program conducted by the LGBT Organization "Coming Out" with the support of the Russian LGBT Network.

26 Case recorded within the monitoring program conducted by the LGBT Organization "Coming Out" with the support of the Russian LGBT Network.

27 Reply of the Administration of the Petrogradsky District of St. Petersburg of 17 December 2012 No. 01-37-11095/12; Decision of the Petrogradsky District Court of St. Petersburg of 6 March 2013, file No. 2-1382/2013. Legal support of the case is provided by the LGBT Organization "Coming Out".

28 Replies of the Central District Administration of St. Petersburg No. 01-14-2874/13-0 of 27 March 2013 and No. 01-14-2874/13-0 29 of 29 March 2013; Decision of the Petrogradsky District Court of St. Petersburg of 30 April 2013, file No. 2-1864/13. Legal support of the case is provided by the LGBT Organization "Coming Out".

*who became unwitting witnesses of offending their religious and moral feelings, violating of human dignity. In this regard, public events with such goal can provoke illegal actions of people who do not share the views of members of LGBT actions.”*²⁹

Case C.4. In May 2012, December 2012 and March 2013, the Committee of the St. Petersburg City Council proposed that the LGBT activists organize their events in Novoselki village (in the suburbs) instead of on Pionerskaya Square (in the city center). From the city center to Novoselki there is a trip of approximately 2 hours by 3 buses.³⁰ In March 2013, the Petrogradsky District Administration proposed that LGBT activists hold their picket near the entrance to the yacht club on the Bezymyannyj half-island, another very remote and deserted place.³¹

Appealing these decisions, activists emphasized that the Constitutional Court has already noted that authorities changing the venue of the public action should offer to organizers “*that option of a venue for a public event, which would allow to realize its objectives;*” the proposed option has to make it “*possible to achieve the legitimate goals of the event at that place (or) at the time, which correspond to its sociopolitical significance*” (Decision of the Constitutional Court of 2 April 2009 No. 484-O-P). However, the courts of the first and appeal instance, as well as the court of cassation refused to recognize violations, noting, for example, that the proposal to change the venue of the rally “*does not violate the constitutional rights of [the applicants] and does not deprive of their right to hold public events and the right to freely express their opinion,*” and public attention may be attracted via the media and the Internet.³² During one of the hearings, the representative of the Committee of the St. Petersburg City Council, answering the question of the applicant’s lawyer if there were any other places available in the city center on the relevant date, instead of the proposed settlement Novoselki, said: “*Only the executive authority have a power to identify the place; it was the most appropriate place [for you]*”.³³

Case C.5. In February 2013, the activists of “The Straight Alliance for LGBT equality” applied for agreeing LGBT public events in St. Petersburg” three times, for a total amount of about 20 places (i.e. almost for all places suitable for the event in the city center). Last time the activists indicated that they agree with any 2 hours between 12-00 and 18-00 to hold the event. However, the authorities did not agree with any of the options and offered the activists to hold the event in a remote and desolate village Novoselki located near the landfill. After the refusals the activists, together with a group of journalists, visited all the places in which they were denied. Almost everywhere they found that the authorities’ claims about the impossibility of carrying out the events were untrue (for example, repairs and alternative events which were mentioned by the authorities were not carried out, etc.). All what was going on was video recorded, and activists made acts based on the results of this check.³⁴ Refusals in agreeing pickets were appealed first to the district courts and then the St. Petersburg City Court, but unsuccessfully.³⁵

Case C.6. On 19 December 2012 and on 22 January 2013, activists of the Russian LGBT Network planned to hold a protest against the draft federal law banning so-called “homosexual propaganda.” The activists planned to hold their event in Samara on the Heroes’ Square of the 21st Army near a fountain. In both cases, the Administration of the city district of Samara suggested another remote and lonely place with reference to the fact that “*the Administration received a notification of the other events in this place.*” In both cases, no

29 Case recorded within the discrimination monitoring program conducted by the Russian LGBT Network.

30 Replies of the Committee on Law, Order and Security of the St. Petersburg City Council of 5 May 2012 No. 19.7-863/12, of 14 December 2012 No. 19.7-2122/12, and of 27 March 2013 No. 19.7-557 / 13.

31 Reply of the Administration of the Petrogradsky District of St. Petersburg No. 19.7-298/13 of 26 March 2013.

32 Decision of the Smolninskiy District Court of St. Petersburg of 18 February 2013, file No. 2-1117/12; Decision of the Smolninskiy District Court of St. Petersburg of 30 April 2013, file No. 2-1876/13; Decision of the Petrogradsky District Court of St. Petersburg of 5 June 2013, file No. 2-2219/13. Legal support of the case is provided by the LGBT Organization “Coming Out”.

33 Protocol of the trial in the case No. 2-1117/12 of 18 February 2013 Legal support of the case is provided by the LGBT Organization “Coming Out”.

34 Case recorded within the monitoring program conducted by the LGBT Organization “Coming Out” with the support of the Russian LGBT Network.

35 Appellate Decision of the St. Petersburg City Court of 9 December 2013, file No. 342 18289/13.

event was held at a specified location and at a specified time, according to the observations conducted by activists.³⁶

Case C.7. On 17 May 2013, an annual event “Rainbow Flash mob” was held in St. Petersburg on Marsovo Pole. About 150 of the participants were behind metal railings around about 100 policemen and police special forces (OMON). The place of the event was surrounded by a crowd of aggressive opponents shouting obscenities and homophobic slogans, threw eggs, rocks and smoke bombs at the participants. 15-20 minutes after the start of the demonstration, an authorized officer of the Committee which agreeing public events, announced to the organizer about termination of the event in connection with the “*creation of a real danger to life, health and property of citizens.*” This reason was called despite the fact that aggressors were not detained. Stones, eggs and smoke bombs flew to peaceful participants of the demonstration in front of the police.

Case C.8. On 29 June 2013, an annual gay pride rally was held in St. Petersburg on Marsovo Pole. About 150 of the participants were behind metal railings around about 100 policemen and police special forces (OMON). The place of this action was surrounded by a crowd of aggressive opponents shouting obscenities and homophobic slogans, threw eggs, rocks, smoke bombs at the participants. Periodically some of aggressors broke through metal railings and hit several rally participants. Approximately 20 minutes after the beginning of the action, authorized officer of the Committee which agreeing public events, came to the event organizer and the police officer responsible for security of this action, and gave to the police officer some papers. The Committee Officer stated that he received complaints from citizens, and had to make a decision. The official reason for termination of the event was not said to the organizer, and the document on the termination of the action required by the law was not prepared. Very soon, the police officer said to the organizer, that he has a few minutes to stop the demonstration. The organizer announced to participants through a megaphone about the received request, the participants began to chant: “*We will not leave!*” Neither the police officer nor any other officials terminate the action as it required by law. Police Special Forces (OMON) surrounded the participants and actually pushed them into buses that brought all to the police departments.

Two LGBT activists, namely the organizer of the rally and one of the participants, who were attacked and later detained, taken to the police department and charged with violation of the rally and insubordination to police tried to appeal against the actions of the police (including inaction and failure of security).³⁷ However, the district court dismissed their claims. Appeal was also remained unsuccessful.³⁸

Case C.9. On 12 October 2013, LGBT activists planned to hold a rally dedicated to the International Day of Coming Out on Marsovo Pole in St. Petersburg. Although the organization of the meeting was carried out in full compliance with the requirements of the law, and the authorities have been notified in advance of the planned action, the rally could not be held. On the morning of the rally the police officer of the Department for Combating Extremism came to organizer’s house, and told that the authorities will not protect the rally and it is better not to hold this event. Despite this, the activists came to Marsovo Pole, where they met a large aggressive crowd, including religious activists, two Orthodox priests with a censer, the Mufti, the Cossacks, the nationalists, man who already attacked LGBT activists and who is under judicial prosecution, etc. Exceeding the number of LGBT activists 5-6 times, this crowd did not let the participants come to the meeting place. LGBT activists were surrounded by people screaming at them, insulted and pushed. The Cossacks stood and sang religious and patriotic songs at the place where the meeting was to be held. Police officers stood around and did nothing except requests go off the pitch. Police did not react to repeated requests from LGBT activists to give an opportunity to hold the action and to go to the place of the rally, to detain people who use physical or verbal abuse, and to detain participants of illegal counter-rally. The question on who from the police was responsible for security, has not been answered. Many police officers refused to introduce themselves. Then, LGBT activists, who were not able to get to the place that has been declared by them to rally, were detained, put into buses and transported to the police station.

Case C.10. On 20 January 2013, LGBT activists agreed on picket against the draft federal law banning so-called “ho-

36 Case recorded within the discrimination monitoring program conducted by the Russian LGBT Network.

37 Decision of the Smolninskiy District Court of St. Petersburg of 7 October 2013, file No. 2-3509/13.

38 Appellate Decision of the St. Petersburg City Court of 23 January 2014, file No. 33- 43 782/2014.

mosexual propaganda” on the Nikitinskaya square of Voronezh. About 10 people participated in this event. Picket was announced publicly, the information was available on the social network “VKontakte.” At the same place, homophobic citizens organized a counter-picket. The group of counter-protesters consisted of about 1,000 people. The organizer of counter-picket wrote on the social network threats, including death threats and physical violence, if the rally will take place. The organizer of the LGBT action applied to the Investigation Committee, the Department for Combating Extremism and the police department for protection. He also mentioned about the organization of the attack. Later he obtain the refusal in the investigation. On the day of the rally, about 500 counter-protesters came and shouted insults and threats, openly attacked LGBT activists, kicking different parts of body and head. During the action in the “Adidas” store located on the square, hands of mannequins in the windows were flung out a Nazi salute. Policemen and Police Special Forces (OMON) took no action to protect the activists and just stood there (according to observation of independent monitors the number of them was about 20 people). To questions “*Why do not you doing anything?*” they replied that it is a simply a picket and people just express their opinions on the actual problem. During the attacks policemen “pushed away” the attackers and no one was detained. Three activists documented physical injury. A criminal case under para. 2 of article 166 of the Criminal Code (“Beating committed for hooliganism”) was initiated only against one of the attackers. Subsequently, he was given a relatively lenient sentence of two months of corrective labor.

Case C.11. On 29 June 2013, about 20 minutes after the start of the Gay Pride rally (see above cases A.4 and C.9) the police and police special forces (OMON) began to roughly push of participant to the police buses stood nearby without any warning. One girl was stripped the birthmark off, other two were haled. Aged mom of a gay son, because of her physical condition, could not run to the bus, and she was heavily pushed by police with baton, and was pushed into the door of the bus even after she fell to her knees in front of the stages. People were pushed into the bus, without any announcements about their arrest. To some people, policemen said that they will go ride them to a safe place. In reality, the activists were taken to several police departments, where they were held until the night. False accusations of participating in an uncoordinated action (actually the rally was organized and conducted in full accordance with the law), and a non-compliance with the requirements of the police were brought against the participants. Many people were forced to be photographed or fingerprinted. Police officers from the Department for Combating Extremism, without introducing themselves, came to some police departments, behaved in a boorish way, copied the personal data of people and asked questions about sexual orientation and even nationality. After the detention, about 30 people were forced to visit the courts to prove their innocence. Almost all of them were justified because they had an official document on agreeing the action, and also people had no information about the need to stop the rally, about the detention. And while the detention the activists did not resist when they were pushed into a bus. Despite this, one of the detainees at Gatchina City Court was fined,³⁹ but later this fine was canceled at the Leningrad Regional Court.⁴⁰

Case C.12. On 12 October 2013, participants of the rally on the International Day of Coming Out (see above case C.10) that was not held, were detained and taken to the police stations. As in previous case, the arrest was not declared. Some detainees were released after about 3-4 hours. However, about 20 detainees were held in the police custody for nine hours, all of them were falsely charged with disorderly conduct, namely with “*indecent language and offensive harassment to citizens.*” Of course, nothing from the above was done by the detained activists. In one of the police departments, about 30 nationalists and three participants of the rally, two girls and an underage boy, were held in the same room. The request to provide a separate room for LGBT activists was refused. The policemen were not in the room for about an hour. As in previous cases, some of the detainees were forced to be fingerprinted and photographed, and in case of refusal threatened to leave at the police station till the morning. Police officers from the Department for Combating Extremism came to the department and copied the personal data of people. Subsequently, the cases for most of the detainees were terminated by Dzerzhinsky District Court judges. Three activists were convicted of what they did not commit and were fined. However, later the St. Petersburg City Court terminated proceedings on these cases.⁴¹

39 Decision of the Gatchina City Court of 28 August 2013, file No. 5-352/2013; Decision of the Gatchina City Court of 28 August 2013, file No. 5-350/2013.

40 Decision of the Leningrad Regional Court of 12 November 2013, file No. 7-840/2013; Decision of the Leningrad Regional Court of 12 November 2013, file No. 7-841/2013. Legal support of the case is provided by the LGBT Organization “Coming Out”.

41 Legal support of all cases is provided by the LGBT Organization “Coming Out”.

One of the activists, who were detained and charged with false accusation, and after all discharged by the Dzerzhinsky District Court, appealed to Primorsky District Court of St. Petersburg asking to recognize the police officers deeds (false accusation, detention, administrative prosecution, etc.) illegal. However, the court refused to do so.⁴²

Case C.13. On 25 January 2013, an inconsistent flash mob without slogans and banners was held in Moscow near the building of the State Duma. Flash mob participants were kissing each other in the same-sex couples. Counter-protesters threw addle eggs into picketers, poured blue paint on people, attacked the participants, and broke the nose of one young man. One person was hospitalized, and several were beaten. A few days ago, homophobic citizens posted calls “*to beat men and disfigure faces of women*” via the Internet. Despite the fact of attack of count protesters, the police also detained 25 LGBT activists.⁴³

D. Legislation prohibiting so-called “homosexual propaganda”, its implementation and effects

Case D.1. In June 2012, an LGBT activist Nikolai Alekseev was brought to responsibility for “homosexual propaganda” under the law of St. Petersburg. He unfolded a banner reading “*Homosexuality is not a perversion. Perversion is field hockey and ice show*” at the entrance to the Smolny Institute. Magistrate accounted activist guilty and inflicted a fine of 5,000 Rubles. The district court upheld the trial court’s decision.⁴⁴

Case D.2. On 30 June 2013 in Kazan, LGBT activist D. Isakov held one-person picket. Activist held a banner reading “*Being gay and love gay is okay, to beat and kill gays is criminal.*” On 26 August, D. Isakov received a protocol on administrative offense under para. 1 of Art. 6.21 of the Code of the Russian Federation on Administrative Offences, which bans “propaganda of non-traditional sexual relations.” Magistrate fined D. Isakov a total of 4,000 rubles. The court of appeal affirmed this fine.⁴⁵ Isakov filed a complaint to the European Court of Human Rights on the violation of his rights and freedoms.

Case D.3. In April 2012 In St. Petersburg, K., a male activist, held one-person picket with a banner “*A friend of our family is a lesbian. My wife and I love and respect her. Her lifestyle is normal as ours. Her family is equivalent to ours.*” Magistrate found him guilty of insubordination to police under Art. 19.3 of the Code of the Russian Federation on Administrative Offences, arguing that propaganda banned by the regional law took place (“*K’s actions for the implementation of one-person picket were aimed at propaganda of lesbianism among minors ... K. was next to the Oktyabrsky Concert Hall, i.e. in a public place where might be minor children*”), what justified the police demands to stop illegal actions.⁴⁶

Case D.4. In December 2012, the LGBT activist M. appealed to the Committee on Law, Order and Security of the St. Petersburg City Council to agree a picket against the draft of the federal law banning “homosexual propaganda.” The Committee refused to agree S’s place at the monument on a large square in the center of the city, citing the fact that this area is already chosen for charitable action.⁴⁷ (At the stated time volunteers were on the square, made some photos, which showed that the square was practically empty). M. was invited to organize and hold the picketing in the remote Novoselki village.

Disagreeing with the failure, M. appealed to the District Court. In the Court of the first instance the representatives of the City Council Committee did not present any proof of the impossibility of the action in the center of St. Petersburg in the declared place. However, the Court rejected to recognize the refusal illegal.⁴⁸

42 recorded within the discrimination monitoring program conducted by the Russian LGBT Network.

43 Decision of the Primorsky District Court of St. Petersburg of 24 April 2014, file No. 2-6827/2014.

44 See, e.g.: <http://www.bbc.co.uk/news/world-europe-17955794>.

45 Case recorded within the discrimination monitoring program conducted by the Russian LGBT Network.

46 Decision of the Justice of the Peace of judicial district № 210 in St. Petersburg of April 26, 2012 in the case № 5-300/12-210.

47 47 Letter of the Committee on Law, Order and Security of the Government of St. Petersburg of December 14, 2012 № 19.7-2122/12.

48 Decision of the Smolninskiy district court in St. Petersburg of February 18, 2013 in the case № 2-1117/13.

In the court of appeal only formal grounds for refusal were considered. However, the decision of the court of appeal did not include any words about these grounds, but contained detailed paragraphs which said that the ban of this action was legal, because children could walk near the area in front of the Theatre for Young Spectators where M. wanted to hold a picketing. The Court also pointed to the slogans that were planned to use (“No violation of the rights of gays and lesbians!”, “Homophobic laws – ‘Green light’ for violence against gays and lesbians!”, “What is important is not family structure, but love and respect inside it!”, “A child and 2 mothers is a family, not propaganda!”) and noted that the Russian family law does not provide for child-rearing in LGBT families. The court stressed that the federal law prohibits “the exploitation of children’s interest in sex.” The court also held that:

“an attempt of participants of the planned picket near the Theatre for Young Spectators (December 19, 2012) to extend the booklets and other means of visual propaganda, calling for tolerance towards gays, lesbians, and other gender minorities, and also containing propaganda of child-rearing in gay families (considering the fact that slogans made by the applicant in the notice were not exhaustive), should be recognized as impossible because of its potential danger to the moral and spiritual development of children;” “the Committee’s failure to agree on venue of picketing on the Pioneer Square does not violate the applicant’s rights, as in fact, given the vicinity of cultural institutions (the Theatre for Young Spectators) offering theatrical productions for children, it prevented the dissemination of information that can form the distorted notions of social equivalence of traditional and non-traditional conjugal relations among persons who are not able to critically evaluate such information because of their age.”⁴⁹

All this was done despite the absence of any discussion, and even without mention of “propaganda” while attempting to agree the action, appealing it in the first-instance court and during court hearings in the court of appeal. M. thus was given no opportunity to express her position on the chargeability of the picket. M.’s cassation appeal also remained unsatisfied.⁵⁰

At the end of 2013 M. appealed to the European Court of Human Rights.⁵¹

Case D.5.

In March 2013, an activist of the LGBT movement S. appealed to the administration of one of the St. Petersburg’s districts to agree a picket on the International Transgender Day of Visibility. However, S. was refused to agree the picket with reference to the formal grounds (the vicinity of metro station, as well as the necessity to obtain the consent of the organization responsible for the fountains work in the square – although at this time of year fountains were not working). In addition, the refusal referred to the prohibition of propaganda of “sodomy, lesbianism, bisexuality and transgenderism,” established in the law of St. Petersburg.⁵²

The district court found the refusal illegal, but only because the applicant was not offered an alternate location to hold the event at.⁵³

Intending to obtain recognition of reference to “propaganda” as illegal, S. appealed to the city court, where he was refused of satisfying his complaint.⁵⁴

In the courts of both instances S. was trying to prove that the law on “propaganda” cannot be used to prohibit public events in compliance with the practice of the UN Human Rights Committee, the European Court of human rights, and the Supreme Court of the Russian Federation. S. also applied to the courts to seek verification of constitutionality of the St. Petersburg law in the Constitutional Court. However, he was denied.

S.’s cassation appeal also remained unsatisfied.⁵⁵

49 Appellate decision of the Judicial Division for Civil Cases of the St. Petersburg City Court of May 22, 2013 in the case № 33-6867/2013.

50 The judge’s ruling of the St. Petersburg City Court of October 18, 2013 in the case № 4G-4021/2013.

51 Legal support for the applicant carried by the LGBT organization «Coming Out».

52 Letter of the Administration of the Moscow district of St. Petersburg of March 26, 2013 № 076-2399/13-0-1.

53 Decision of the Moscow district court of St. Petersburg of June 20, 2013 in the case № 2-3231/2013.

54 Appellate decision of the Judicial Division for Civil Cases of the St. Petersburg City Court of September 25, 2013 in the case № 33-14168/2013.

55 The judge’s ruling of the St. Petersburg City Court of 18 April 2014, file

In March 2014, S. filed a complaint to the European Court of Human Rights.⁵⁶

- Case D.6.** On 17 May 2013, an annual Rainbow Flash mob was held by LGBT activists on Marsovo Pole in St. Petersburg. Some time after the beginning of the event it was discontinued by the representative of the City Council Committee in connection with the creation of a “threat to life and health.” An official document on the termination of the event was issued. A few days after that the organizer was invited to the police to talk about sent application on “propaganda,” but he did not go, and there was no other news.⁵⁷
- Case D.7.** On 29 June 2013, an annual Gay Pride rally was held by LGBT activists on Marsovo Pole in St. Petersburg. Although some protection was provided (crowd barriers, the presence of Special Police Force (OMON)), about 200 opponents of action gathered around. These citizens considered going there beforehand, and called for people to take their children with them and write the applications on “propaganda.” Some time after the event had begun, the representative of the City Council Committee (as it turned out, acting in an unofficial capacity) came to the rally organizer and the police officer in charge of security, handed the police officer a sheaf of papers with the words: “*The applications of citizens on propaganda are received, I give it to you.*” After that OMON started pressing the rally participants, people were pushed into a bus, taken to the police stations, where for the majority of them were drawn up the protocols under Art. 19.3 and 20.2 of the Code of the Russian Federation on Administrative Offences. Later, in the course of appealing the police inaction, it became clear that the case on “propaganda” against the organizer is being conducted, but nothing is known about its fate anymore.⁵⁸
- Case D.8.** On 12 October 2013, LGBT activists tried to hold a rally in the “Hyde Park” area. Aggressive nationalists and religious activists came there, and did not let the event happen, while claiming that the event was illegal because of the existing state and federal “propaganda” laws.
- Case D.9.** The man who shot with a gas pistol the “Rainbow flash mob” participant on 17 May 2012 (see case A.1 above) said in court that his actions were induced by “*illegal and immoral behavior of the victim.*” On the question of how he appeared at the venue of that LGBT action, the defendant replied that he had heard about the planned “gay parade,” but could not believe it, because in St. Petersburg there is a law against the propaganda of “sexual perversions” and “sodomy.” He decided to test whether this is so, and if so, to declare of an offense to the police and to speak as a witness in the case. On the question of whether the propaganda took place at the event, the attacker replied affirmatively, meaning the demonstration of rainbow symbols (“*their damn defective rainbow*”), pink triangle, a woman kissing a woman, etc.⁵⁹
- Case D.10.** On the eve of Gay Pride rally in June 2013 (see details about the action in cases A.4, C.9, C.11) representatives of homophobic groups urged their supporters to come to the place of the rally with children, and write the applications on propaganda. The rally was actually broken up by the police after the colonel responsible for the safety of rally, had been given a pack of applications from certain “citizens.” After the event, a video appeared on the Internet, showing that people who signed the applications had come specifically to disrupt the rally, and they were not ordinary citizens walking around with children in the city center. The applications were prepared in advance, printed on the computer by one person, and after that spread among people who expressed homophobic opinions. After the rally it became clear that the organizer was really inspected in connection with a possible violation of the law on “propaganda,” but the results of that inspection are unknown.⁶⁰

1486/2014.

56 Legal support for the applicant carried by the LGBT organization «Coming Out».

57 Information gathered by the LGBT organization «Coming Out» within legal support for the organizer of the rally.

58 Information gathered by the LGBT organization «Coming Out» within legal support for the detainees of the rally, and for the complainants of violent acts.

59 Script of the audio recording of the court session of the Petrograd District Court in the case № 1-354/2013 of October 18, 2013 (the LGBT organization «Coming Out»).

60 Information gathered by the LGBT organization «Coming Out» within legal support for the detainees of the rally, and for the complainants of violent acts.

- Case D.11.** A group of citizens filed a lawsuit for compensation for moral damages to Madonna for “homosexual propaganda” at the St. Petersburg concert. The court dismissed the plaintiffs including on the grounds that none of the children of the plaintiffs was at the concert, and the claim in behalf of general public is not provided by the Court of Civil Procedure. The Court also noted that the fact of an administrative offense (“propaganda of sodomy”) cannot be established in a civil process.⁶¹
- Case D.12.** One of the Petersburg NGOs implementing programs of development of tolerance among adolescents, was filed a complaint to the prosecutor. Programs include acquaintance with the communities in vulnerable situations, including the LGBT community. Teens chose themselves which group they want to learn more about, and in accordance with their wishes they could have excursion to LGBT human rights organization. As it turned out, the complaint was filed by parents of teens who had chosen not LGBT theme. The prosecutors repeatedly appealed to NGO, communicated with its employees, and regarding the results issued a warning about the inadmissibility of violations of the law on protection of children from harmful information.⁶²
- Case D.13.** “Since the time when we learned about the law [prohibiting “homosexual propaganda among minors”] we have no good sleep. There were situations at the playground when [our daughter] cried ‘mom’ to me and [my female same-sex partner] while other parents took [their] child and walked away [from the playground]. It was after the adoption of the law on gay propaganda. I would say to my [daughter] to avoid calling both of us ‘mom’ in public. But she could not understand me! She would say that mom [name of the partner] is her natural mom, why couldn’t she call her that way?! So I realized that I am breaking the mind of my child because of my fears. She has two mothers, natural mothers, she didn’t understand those terrible laws, our fear for her safety, and it was difficult to explain it to her after all. We couldn’t find the right words. And we don’t want to look for them, we don’t want to be afraid.” (2013, a lesbian family with two children)⁶³
- Case D.14.** The attacker of the activists of the “Straight Alliance for LGBT Equality” on 12 June 2012 in St. Petersburg (see above description of case A.11) did not deny in the court that through his actions he fought with “homosexual propaganda.” D.Deyneko stated that he “is opposed to homosexual propaganda, which contradicts his religious principles”. [...] He saw a group of people who held umbrellas, rainbow flags, and [...] banner “Alliance for LGBT freedom.” He did not like it, and considering that it is an open form of propaganda of homosexuality, he decided to take this banner away from the young man.”
- Case D.15.** On 10 September 2012 in Archangelsk, LGBT activists wanted to hold a rally in the park in the street Pomeranian of Arkhangelsk to draw attention to violations of the rights of LGBT people. On 30 August 2012, the Mayor’s Office of Arkhangelsk denied them in holding a picket, offering a desolate location on the wording: “*We refuse to hold the picket because its stated goals (informing of public and drawing their attention to social problems of homosexual children and adolescents) violate Article 10 of Regional Law of 15.12.2009 № 113-09-OZ ‘On special measures of protection of morals and health of children of Arkhangelsk region’, given that public actions aimed at the propaganda of homosexuality among children are not allowed.*”⁶⁴

61 Appellate decisions of the Judicial Division for Civil Cases of the St. Petersburg City Court of February 6, 2013 in the case № 33-1820/2013.

62 Warning about the inadmissibility of violation of legislation to protect children from the spread of information harmful to the health of the child, moral and spiritual development, including that forming misconceptions about social equivalence of traditional and non-traditional conjugal relations № 6-2013 of March 11, 2013.

63 quote provided by the coordinator of LGBT parents program implemented by LGBT Organization “Coming Out.”

64 Case recorded within the discrimination monitoring program conducted by t

E. Problems in legal recognition of transgender persons' gender identity

- Case E.1.** Refusing to change the documents of a transsexual men, who was diagnosed with “Transsexualism,” underwent a hormonal therapy and was granted a medical report on the necessity for a change of gender marker, a district court and then the regional court pointed out: “*in respect of [N.] were held sessions of psychotherapy adaptation, while physiologically the applicant remains female; despite undergoing hormone-replacement therapy, the information about sex reassignment surgery is not available;*” “*change of sex of a citizen is made as a result of surgeries*” (a city of the Southern Federal District, 2010).⁶⁵
- Case E.2.** Refusing to change the documents of a transsexual applicant, who has not undergone surgery, the Moscow City Court said: “*Refusing to meet the stated requirements, [district] court proceeded on the basis that ... the civil registry office can only make changes in the birth statement if only the sex change occurred as a result of surgery and is already an accomplished and irreversible fact , while from the medical documents submitted by the applicant it can be stated that the applicant had a psychological change of gender.*” (Moscow, 2012).⁶⁶
- Case E.3.** Another court, while refusing changing gender marker in the passport of a transsexual person, marked: “*The limitation of change of gender marker in the birth certificate without gender reassignment surgery is necessary for the protection of morals and the protection of the rights and freedoms of others. Otherwise change of gender marker in the documents which certifies the identity of a citizen, but without actual surgical correction of anatomic sexual characteristics, may in some situations lead to a breach of morality and violation of legitimate interests of others (e.g. inspection at the airport, public baths, toilets and other public places, were separate use by men and women is required, in treatment at the hospital, sentence serving in prison, etc.)*” (Nizhny Novgorod, 2011).⁶⁷
- Case E.4.** In 2013, in Novosibirsk, a civil registry office refused to change documents of a transsexual man, referring to the lack of a set form of a medical document on gender reassignment. It should be noted that the applicant handed to the registry office a report of the competent medical committee, where there were stated: diagnosis – “Transsexualism”, social gender – male, recommended changing the gender marker with a possibly ensuing morphological correction. The District Court affirmed the refusal, adding that “*from the presented findings it cannot be implied that sex change was a result of a surgery and is an accomplished and irreversible fact,*” “*gender reassignment surgery, which would have an irreversible character, has not been carried out.*”⁶⁸
- Case E.5.** In 2013 in Moscow, firstly the registry office, and then the district court refused to change documents of a transsexual man who has gone through two surgeries (mastectomy and hysterectomy), whose diagnosis was confirmed by qualified and experienced medical board, that proved hormonal and surgical sex reassignment from female into male, and also recommended a change of gender marker.⁶⁹
- Case E.6** In one of the cases, where the applicant, a transsexual man who has gone through a mastectomy, was refused to change documents, the court stated: “*Change of a citizen's sex is made as a result of surgery. A surgery such as the bilateral subcutaneous mastectomy is the first step aimed at changing sex. This surgery is not a proof of the applicant's sex change.*” (Moscow, 2010).⁷⁰
- Case E.7.** The Moscow City Court, refusing to change documents of a transsexual person, noted: “*The prerequisite to the application approval is the availability of a document issued by medical organization, evidencing the change of sex; in 2005 K. had only a primary surgery for change of civil sex, which does not indicate a complete and irreversible sex change of the applicant; that, in turn, makes it impossible for the public authority – in this case the local registry office – to amend the vital record of the applicant; from the materials submitted to the court it is seen that in the period from 2005 to the present time, any operations, aimed at the final change of*

65 documentation is taken from the database, prepared by Rainbow Foundation.

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67 documentation is taken from the database, prepared by Rainbow Foundation.

68 documentation is taken from the database, prepared by Rainbow Foundation.

69 documentation is taken from the database, prepared by Rainbow Foundation.

70 documentation is taken from the database, prepared by Rainbow Foundation.

civil sex of K., were not made due to the declared lack of funds.” (Moscow, 2012).⁷¹

Case E.8. In 2013, one of the district courts in Moscow refused to accept for proceedings an application for the establishment of a fact of “gender change” by a transsexual woman (although in Moscow such a practice has been implemented for several years). The Court pointed out that it cannot consider the application for the proposed procedure, as the applicant had submitted all the necessary documents confirming the fact of gender reassignment, hence the establishment of this fact through legal proceedings was not required.⁷²

Case E.9. Also in 2013, another district court in Moscow refused to accept the application for the establishment of a legal fact of “gender change” made by a transsexual man. The line of reasoning of the court was similar to the previous case (*“the fact of sex change is confirmed by the content of the statement and the documents submitted to it”*).⁷³

Case E.10. In 2011–2014 in the Moscow region, a transsexual man, who underwent a surgery, had to go through three different trials for about three years in order to change the birth certificate, due to the fact that his birth was registered not in Russia, but in one of the former Soviet republics. Initially, the registry office refused to change his documents, referring to the lack of the set form of medical certificate on “gender change.” The applicant appealed to the court for the establishment of a legal fact of “gender change.” The Court admitted the gender change and ordered the civil registry office to amend the birth record. The registry office at place of residence sent a request of a record to a country where the birth was registered. Query returned several times due to improper execution, but then no response came from the state for a long time. In the end, the answer came: the record was not preserved. The applicant was forced to go to the court again, for the restoration of the birth record. The court acknowledged the birth record and ordered the residential registry office to restore it. The residential civil registry office restored birth record, but when the applicant came with a new birth certificate and the first court decision on a gender change, he was refused to change documentation, referring to the fact that the decision of the court pointed the need to amend the original birth record details and not restored ones. The applicant had to go back to the court, demanding either to explain the order of execution of the first decision (which he later was refused), or to make changes to the restored record. Only the latter tactic proved effective and allowed him to obtain new documents.⁷⁴

Case E.11. In 2009, the applicant, a transsexual man who was advised to change civil gender by medical experts, was refused to change the name per standard procedure by civil registry office. The refusal was based on the fact that the registered record of birth contained female gender marker, and therefore the male name cannot be chosen. The civil registry office referred neither to the norm of law, and nor even to the bylaw, but to the Handbook of personal names of the soviet nations, published in 1987.

Later, when the applicant applied to the same civil registry office asking for changing both the name and gender marker in the birth record, the registry authorities again refused, pleading that the name should be changed through the general procedure (not by applying a medical record).⁷⁵

Case E.12. In the summer of 2013, a transgender woman S. made an application to the registry office of the Moscow city about the name change, requesting to change her name from traditionally male to traditionally female. But she was refused to register the name change. The civil registry office stated: *“selected surname, name and patronymic are feminine, contrary to Article 19 of the Civil Code, according to which any rights and obligations shall not be acquired under the name of another person, because it may mislead third parties regarding the identity of citizens.”*⁷⁶ Considering that this refusal violated her right to respect for private life, S., who was publicly known under a female name, appealed to the court. In her statement, she also indicated that any change of name of any person could, in varying degrees, cause some confusion. On 14 November 2013, the district court dismissed her claim for recognition the registry office’s refusal to be illegal.⁷⁷

71 documentation is taken from the database, prepared by Rainbow Foundation.

72 documentation is taken from the database, prepared by Rainbow Foundation.

73 documentation is taken from the database, prepared by Rainbow Foundation.

74 Notice of the Perovsky Civil Registry Office of 19 July 2013.

75 Judicial documentation is taken from the database, prepared by Rainbow Foundation.

76 Notice of the Perovsky Civil Registry Office of 19 July 2013.

77 Judicial documentation is taken from the database, prepared by Rainbow Foundation.

- Case E.13.** In another Moscow case, the civil registry office refused another applicant to change name to gender neutral, stating reasons for rejection as following: *“satisfaction of the applicant’s requirements will lead to inconsistencies between the name and the gender.”*⁷⁸
- Case E.14.** A similar case occurred in one of the cities in the Urals. A transsexual man was refused to change the name and patronymic (the applicant chose a gender- neutral name and patronymic without ending), but the civil registry office refused to register the name change, referring to the fact that *“the chosen name and patronymic are masculine, contrary to Article 19 of the Civil Code, according to which any rights and obligations shall not be acquired under the name of another person, because it may mislead third parties regarding the identity of citizens.”*⁷⁹
- Case E.15.** In 2007 in Ryazan, a court rejected the claims of a transgender woman who earlier had obtained a new passport with a new female name. She claimed against the employer for the issue of a duplicate of her work record book with restored records and for the compensation for moral damages. The representatives of the respondent did not acknowledge the claims and said that all amendments, according to the Instruction on completion of employment record books, could be made in the only by striking through the previous personal data, and making the new entries nearby. The duplicate of the employment record book is issued on the base of the data indicated in the previous lost employment record book. The plaintiff declined issue of the original work record book according to the Instruction, and this fact was recorded. The court dismissed the claims of the woman noted that they *“are not in conformity with the established rules of execution of employment record book.”*⁸⁰
- Case E.16.** In 2013, the Transgender Legal Defense Project was addressed by a transgender man who had replaced his passport. He sent an application to the employer’s personnel department about the loss of his employment record book, on the basis of which a new employment record book for a new masculine name was issued. However, the personnel officer rewrote all the previous service records with female endings (*“Appointed to the position...,”* etc.) The request of rewriting female ending data was refused: *“According to the law it cannot be done, as you came to us as a woman. If I write the data initially with masculine ending, I will be fined during the next document inspection.”*
- Case E.17.** In Autumn 2012, an incident happened in the Central District of St. Petersburg, in connection with the police attitude towards a transgender woman P. She was diagnosed with *“Transsexualism”* and underwent hormonal therapy, which was confirmed by medical certificates. As a result of hormone therapy, the appearance and the voice of P. have changed significantly; she started wearing female clothing, long hair, and makeup. Everyone around call her by a female name P., as she introduces herself. However, the documents still contain an indication of the male gender, and a male name.
- On 25 November 2012 P. with her girlfriend were coming out of the subway near the Moscow Railway Station. There were a lot of passers-by. The girls were approached by two policemen. They asked P. to show her documents. The girls asked the policemen on what grounds the claim was brought, and one of the policemen said: *“Just a check.”* He suggested that P. may be carrying illegal drugs. In order not to make the situation complicated, P. took out her passport and demonstrated it to the police, who took the document in hands. After seeing passport data, one of the police officers began to address to P. by the male name stated in the passport loudly, in the presence of bystanders. He said: *“As you understand – with such an unorthodox appearance, it is likely that you may commit an offense.”* P. showed the police the medical reports on her diagnosis and hormonal therapy. Police officers continued to address P. by the male name and asked P. along with her friend to go to the premises for inspection.
- In the room there were two more police officers, a man and a woman. One of the police officers said that they should start the inspection. P. decided that they were talking about the bodily search, and said in that case she should be examined by the woman. One of the police officers said: *“Why should you, [male name], be examined by a woman?”* P. claimed that there were no reasons for the inspection, there was no search

78 Documentation is taken from the database, prepared by Rainbow Foundation.

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80 Russian LGBT Network, Discrimination on ground of sexual orientation and gender identity in health care, education, employment and social security in the Russian Federation: report, submitted for the 46th U.N. CESCR session, 2–20 May 2011, p. 10.

warrant, but finally agreed under the pressure of the police. The police officer asked P. to open the bag, pulled all the things out, examined them and gave everything back. P. packed her bag, took her passport and went along with her friend. The police officer that repeatedly laid stress on the passport name of P. and conducted the inspection, did not even apologize.

Afterwards P. told the LGBT Organization “Coming Out,” while staying in the official premises and communicating with the police officers, she was mentally very stressed, she was terrified, she was afraid that they would conduct a bodily search, inspect her body, and she was already preparing for that. She felt extremely uncomfortable. Her friend, after leaving the police premises, fell into hysterics. Her friend also said that the police took no action against her, although she was the one with a huge bag, and if tested for drugs – she was likely to get under suspicion with such a huge bag, and not P.⁸¹