



Prepared by the Inter-Regional Social Movement “Russian LGBT Network”
(Russian Federation)

SHADOW REPORT

DISCRIMINATION AND VIOLENCE AGAINST LESBIAN AND BISEXUAL WOMEN AND TRANSGENDER PEOPLE IN RUSSIA

*Submitted for the 46th CEDAW Session
New York, USA
12 – 30 July 2010*

The Russian LGBT Network is an inter-regional social movement, founded in 2006. It works for the protection of rights and the social integration of homosexual, bisexual and transgender people. The movement was created to unite public support for stopping all the forms of discrimination based on sexual orientation and gender identity, for conveying the idea of tolerance to Russian society, and also support the active participation of gay, lesbian, bisexual and transgender people in public life. Since 2007, the organization has been monitoring discrimination on grounds of sexual orientation and gender identity. Several reports on the situation of LGBT people in Russia were published, and professional legal and psychological assistance is provided on an on-going basis.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
KEY TERMS	3
INTRODUCTION	4
STATUS OF LBT PEOPLE IN RUSSIA UNDER SPECIFIC CEDAW ARTICLES	6
Violence against women	6
Recognition of a person's gender identity	7
Discrimination and violence against LBT human rights defenders.....	8
Right to education	9
Right to health	11
Discrimination in employment	11
Discrimination in family relations	12
RECOMMENDATIONS	15
General recommendations	15
Recommendations – Violence against women.....	15
Recommendations – Recognition of a person's gender identity	15
Recommendations – Discrimination and violence against LBT human rights defenders..	16
Recommendations – Right to education	16
Recommendations – Right to health	16
Recommendations – Discrimination in employment.....	16
Recommendations – Discrimination in family relations	17

EXECUTIVE SUMMARY

Despite participation of the Russian Federation in many international treaties, including CEDAW, which stipulate the principle of equal rights for all people, and establishing the principle of non-discrimination in the Constitution of the Russian Federation, homosexual and bisexual women, as well as transgender people are excluded from the social context and are subjected to discrimination and violence in many areas of life.

This report raises issues related to violence against lesbian, bisexual and transgender (LBT) people, including domestic violence; recognition of gender identity of the person; discrimination and violence against LBT human rights defenders; violation of the rights to education and health; discrimination in employment and in family relations.

Materials used in this report were obtained in the course of monitoring, when rendering legal assistance for LBT persons, and also acquired from secondary sources.¹

Specific recommendations for the Russian Government aimed at actual *de jure* and *de facto* gender equality of LBT people in all spheres of life are offered on the basis of the research results.

KEY TERMS

LBT is an abbreviation for lesbian and bisexual women and transgender people.

Lesbian women are women, who experience emotional, romantic and physical attraction to other women.

Bisexual women are women, who experience emotional, romantic and physical attraction both to men and women.

Transgender people are people who regard the sex that was ascribed to them at birth as not reflecting, or not fully reflecting their gender identity. For the purposes of this report terms “transgender people” refers to both transgender men and women.

Transgender women are people who were assigned male sex at birth but identify and live as women.

Transgender men are people who were assigned female sex at birth but identify and live as men.

Sexual orientation refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.²

Gender identity refers to person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.³

INTRODUCTION

Consensual sexual relations between women have not been prosecuted in Russia. In 1999 Russia has moved to the International Statistical Classification of Diseases and Related Health Problems of the 10th Revision, which rejects the consideration of homosexuality as pathology, while rendering transsexuality as a mental disease. Still, the legal and social status of homosexual and bisexual women, as well as transgender persons in Russia poses a very serious problem. LBT people are constantly exposed to violence and discrimination associated with their sexual orientation or gender identity at the individual, institutional and structural level – starting from family and ending with official bodies and political context.

Notwithstanding that Russia has acceded to several international instruments on human rights (Covenant on Civil and Political Rights, Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, European Convention for the Protection of Human Rights and Fundamental Freedoms, European Social Charter), which recognize non-discrimination principle as one of the basic, there is no legislation in the Russian Federation which prohibits explicitly discrimination on the grounds of sexual orientation or gender identity. Existing Anti-Discrimination legislation has been continuously interpreted to not cover discrimination on the grounds of sexual orientation or gender identity. This violates the fact that Article 26 of the ICCPR is prohibiting discrimination on the ground of sexual orientation and gender identity. As established in *Tonnen v Australia* (No.488/1992) the reference to “sex” in Articles 2(1) and 26 include sexual orientation. The problem of discrimination on the grounds of sexual orientation or gender identity is not recognized and is withheld at the state level. Consequently, the combined sixth and seventh periodic reports on the implementation in the Russian Federation of the CEDAW do not contain any mention of homosexual and bisexual women or transgender people.

The Government does not conduct any programmes for the development of tolerance with respect to LBT people for either the public or professionals, including law enforcement officials.⁴ Statistics of hate crimes against LBT people, as well as other violations of the rights of this group of people and discrimination against them are not kept. However, monitoring researches conducted by mainstream and LGBT human rights organizations are providing up-to-date data.

References to “traditional values” to justify homophobic and transphobic actions, as well as support of patriarchal values and gender-stereotypical patterns of behavior are widely used in the media and reinforced at the political level.

For example, in the refusal of registration of the Tyumen LGBT organizations “Rainbow House” in 2007, the court stated that the activity of the organization bears the signs of extremism because it creates a “prerequisite for incitement of social and religious hatred and enmity, and violates the family and marriage foundations.”⁵ Another court in the same case stated that the aim of “protecting the rights and freedoms of individuals including those of non-traditional sexual orientation, promoting education of these individuals as equal citizens of society” declared in the organization’s charter means “propaganda of homosexuality”, which can lead to “undermining the security of the Russian state and society, undermining the moral values of society, undermining the sovereignty and territorial integrity of the Russian Federation by virtue of depopulation.”⁶

In May 2010, in Arkhangelsk, the Region Office of the Ministry of Justice refused registration of amendments to the charter of NGO “Rakurs.” This organization, registered in 2007 as a woman

rights organization, actually carried out projects and programs related to the protection of the rights of homosexual and bisexual women and to their social adaptation. In connection with this, the organization's leadership made a decision on amending the charter by specifying as its purposes "the protection of human dignity, rights and legitimate interests of the victims of homophobia and discrimination based on sexual orientation and gender identity – lesbian, gay, bisexual and transgender people (LGBT); as well as socio-psychological and cultural support and adaptation of LGBT people." The Region Office of the Ministry of Justice refused the state registration of the amendments because of their contradiction to the law. As was stated in the decision of the Office, it could be concluded on the basis of the above purposes that the organization "plans to carry out activities aimed at propaganda of non-traditional sexual orientation and at the negation of the role of a family in society ... It is impossible to create a family, as well as to conclude a marriage between persons of non-traditional sexual orientation. Family is a social institution, and at the same time is a social mechanism of human reproduction. Furthermore, in terms of reproductive biology, the natural sexual orientation is heterosexual one, which is inherent for the overwhelming majority of people. Consequently, the NGO's purposes aimed at inciting social hatred between heterosexual and homosexual people, which is contrary to the Law on Countering Extremist Activity."⁷

In 2010, in an interview about the refusal to register the LGBT organization "For Marriage Equality", politician Vasily Likhachev said that "the steps taken by the representatives of the non-traditional orientation are contrary to the nation-wide morality of the Russian society"; "it is not our culture and not our form of relationship."⁸

Thus, deeply rooted homophobia and transphobia in public and political discourse are used to justify the limitation of most attempts to introduce relevant issues in public space: meetings or demonstrations are forbidden, in many cases it is refused to register LGBT organizations, or there are obstacles to holding cultural events, and arguments on the inadmissibility of "propaganda of homosexuality" are widespread.

The negative and intolerant attitude towards LBT people clearly presents itself in the Russian society. Thus, the results of the public opinion poll, conducted by the Fund "Public Opinion" in 44 Russian regions in March 2010, shows that 43 % of the respondents condemned gays and lesbians (and another 20 % found it difficult to answer).⁹ In April 2010, the International LGBT Film Festival "Side by Side" was conducted in Novosibirsk, but the reaction of the public expressed in the comments to the coverage of this event in the media was mostly very negative. In a survey of more than 11.000 inhabitants, conducted by a leading city portal in response to the intense discussion of the festival, it was found that 22 % of respondents took a grave view of people of "non-traditional sexual orientation" and regarded them as "sick", while another 35 % did not care one way or another as long as "they [LGBT people] do not make themselves known."¹⁰

Living in such conditions, being subjected constantly and at all levels to discrimination based on sexual orientation or gender identity, lesbian and bisexual women and especially transgender people could not feel themselves like full and equal members of society, which leads in the most serious cases to suicides. Thus, in 2006 in Novosibirsk, 29-year-old transsexual woman, who was subjected to constant discrimination in the workplace, to threats and physical violence, and had no opportunity to get money for gender reassignment surgery, committed suicide.

STATUS OF LBT PEOPLE IN RUSSIA UNDER SPECIFIC CEDAW ARTICLES

Violence against women

As was noted by the CEDAW Committee on violence against women, “gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men” (General Recommendation 19).

Violence against LBT people is one of the unacceptable, from the standpoint of a human rights conception, reaction on the sexual orientation or gender identity. Nevertheless, many lesbian and bisexual women and even more so transgender people are faced with it in every-day life. The pull, which was conducted under our research in Tyumen, demonstrates that 69.23 % of lesbian and 33 % of bisexual women was subject to physical violence after the age of 16.¹¹

In one of the Russian cities a young woman was raped by a group of men after they have learned that she was a lesbian. The case was heard by the court and the offender was convicted, but the homophobic motive of this crime was not taken into account.

A number of amendments aimed at enhancing sentences for hate crimes were introduced in the Russian Criminal Code. In particular, the motive of hatred against a social group was considered as aggravating circumstance (Article 63), a similar motive for a crime was introduced as a qualifying feature in a series of the crimes. However, firstly, crimes against sexual inviolability are not among such special crimes, and secondly, there have not been any cases of prosecutions for crimes committed on the grounds of homophobia or transphobia: thus, in the case on the governor of Tambov oblast Oleg Betin's statement “Tolerance?! To hell! Faggots must be torn apart and their pieces should be thrown to the wind!... This rotten nest must be wiped out!” the court did not recognize persons of homosexual orientation as a social group despite provided opinion of a famous Russian sociologists and sexologists, Prof. Igor Kon.¹² The General Prosecutor's Office replied to a special request that “the General Prosecutor's Office have no statistical or other data on crimes... related to hatred or enmity toward people of non-traditional sexual orientation.”¹³

Domestic violence against LBT people is also widespread. Similar to other cases, in 2008 in Voronezh a lesbian girl was subjected to a beating and degrading treatment by her brother. Her brother and his friends were aware of her sexual orientation, and treated this fact with intolerance. The girl did not report the incidence to the police, because her brother frightened her by saying that “his people are everywhere, and in authorities.”¹⁴ In 2009, in one of the Siberian cities, a young lesbian woman was periodically subjected to physical violence, deprivation of liberty and harassment by her former girlfriend. The girl also did not apply to the police, because she was afraid that she would be discriminated against or harassed because of her sexual orientation. In 2009, the case of the murder of a transsexual person was reported in the media. A transsexual woman was killed by her husband after he learned his wife's personal history.¹⁵

There is no specific legislation on domestic violence in Russia (there is neither a separate article in the Criminal Code nor a special law), therefore, specific sanctions against it are not introduced (for example, a protection order). The high level of prejudice and homophobia on the part of law enforcement bodies leads to the high level of under-reporting and latency for such crimes.

Recognition of a person's gender identity

As stressed in the Preamble to the CEDAW, “the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.”

As stated in the Yogyakarta Principles on Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, this principle includes gender identity issues as “gender identity is integral to every person’s dignity and humanity and must not be the basis for discrimination or abuse.” Legal regulation in the field of gender reassignment is underdeveloped and unsystematic in Russia. Changing name, gender marker and corresponding documents for transgender people should be made on the basis of “a standard document confirming gender reassignment.”¹⁶ However, the Russian state has failed for 12 years for provide a template for the cited standard form. Without it, the practical application of the law is very difficult and in many cases the law is rendered useless. Consequently, transgender people are left out in a medical and legal limbo.

As a result, civil registry offices in practice often deny transsexual persons to change the gender marker, citing the fact that the conclusion given by a medical organization does not correspond with the standard form (but as was pointed out, such a form simply does not exist). No legislation or regulation requires surgery for changing the vital records. However, it is common practice that civil registry offices override their competencies and make the successfulness of an application depended on the “completeness” of the applicant’s gender reassignment – accordingly, surgical intervention is required and one surgical procedure is regarded as not sufficient.

In 2009, the case of the refusal to change the name of a transsexual person, as well as to change the gender marker in the birth record was considered by Volgograd courts in several instances. All courts affirmed the denial to change the name. They referred to the fact that the gender inflexion of the name must conform to the sex of the applicant, as well as to the “Handbook of personal names of the peoples of the RSFSR” (1978). However, the law does not impose any requirements for the name of the citizen, and these reasons for refusal are not included in the exhaustive list of grounds for refusal established by the law. Confirming the refusal to change the vital record, the courts referred to the fact that the applicant has not provided a standard document, has not undergone surgery (although the fact of hormone therapy was established by the court), and a medical certificate indicating the diagnosis of transsexuality contained only a recommendation to change the gender marker. In 2010, a new medical conclusion stating that it is required to change the civil gender was obtained. The court denied a new trial based on newly discovered circumstances. It pointed out that this fact does not affect the assessment of the circumstances of the case, and the change of civil gender can only occur after the surgical procedure. The courts do not take into account the results of medical research and recommendations developed by health professionals on gender reassignment, which states that the change of civil gender before surgery is the best option.¹⁷

Transgender people, who are not able or willing to undergo medical treatment, are thus denied access to documents, recognizing their gender identity.

We also know of cases, where the recognition of gender reassignment was denied in the presence of a non-dissolved marriage or opposing opinion of immediate family members.

For the majority of transgender people, the process to receive documents reflecting their gender identity may endure one to two years; in areas with a lack of professionals it might even be longer. Despite the legal regulation it is necessary to firstly be under psychological supervision to obtain the permission to undergo surgery. The surgery is followed by another psychological survey, on which the recommendation is produced to change documents. Often this recommendation is challenged by the civil registry, forcing the applicant to go to court extending the procedure even more. In this time, many transgender people are facing impoverishment and unemployment as they find it difficult to find a job with documents not matching their appearance; or to keep a job while serving the often required stationary or ambulant psychological supervision for up to several weeks.

Part of the denials are appealed in courts, therefore, transsexual people can not benefit from a statutory administrative procedure, prescribed by the law, and are forced to go to the courts incurring emotional, time and financial losses. This is unacceptable in regard to the economic, social and cultural hardship transgender people are already experiencing due to the great social stigma they face.

There are also reported cases of denial of replacement of the documents by non-state actors (e.g., employers or university administration).

It cannot be too highly stressed that the practice of legal recognition of the preferred gender only after medical interventions, often leading to infertility can be described as state-prescribed medical treatment. As was noted by the Council of Europe Human Rights Commissioner Tomas Hammarberg, "it is of great concern that transgender people appear to be the only group in Europe subject to legally prescribed, state-enforced sterilization."¹⁸ Despite the lack of any laws or regulations which would establish surgery as a mandatory prerequisite for changing one's sex in acts of civil status or identity documents, civil registry offices and courts often refuse to change the documents of transgender persons without surgery or after only one such operation.

Discrimination and violence against LBT human rights defenders

Article 7 of the CEDAW requires the State Parties to "take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right ... to participate in non-governmental organizations and associations concerned with the public and political life of the country." According to Article 8 of the CEDAW, "States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations."

Discrimination and violence against LBT human rights defenders in Russia is widespread, and such actions are committed by both non-state actors and representatives of the public authorities.

Until today all public events in support of human rights of LGBT people were prohibited by Russian authorities and sufficient protection from homophobic motivated violence has not been provided by law enforcement agencies.

Thus, in 2008 in Saint Petersburg, after the action Day of Silence, designed to draw attention to the problem of violence based on hate, unidentified persons attacked three LGBT activists who have suffered as a result multiple injuries and abrasions.¹⁹

In Yekaterinburg 3 masked men attacked participants at the public discussion “Dialogue about Homophobia” on April 7, 2010. During the discussion, which was heated but non-violent, the men stormed the event, threw smoke bombs and tear gas into the room and left the scene. About 30 people attending and the experts received a slight shock, but continued the discussion afterwards in different premises. The organizers will file a complaint against the attackers.

In Tyumen, representatives of NGO “Rainbow House” while trying to hold a peaceful rally “Tolerance Tree” in support of LGBT rights during the All-Russian event “Week Against Homophobia” were faced with the arbitrary behavior of the police. The police came to the place of the event and banned it referring to the prohibition by the city administration. The human rights defender, who participated in the action, tried to explain to the authorities the illegality of the ban and quoted the right of activists to assemble peacefully. However, all her efforts were unsuccessful.

On April 9, 2010, the same organization “Rainbow House” was prevented from holding a round table “Protecting the right of vulnerable groups from discrimination.” The meeting was targeted at representatives of NGO, regional ministries, law enforcement agencies, journalists and LGBT people. Representatives of the local Ministries of Education and Youth had agreed previously to attend. The Development Fund Tyumen, where the Round table was first planned to be held, received calls from their funding organization in Moscow with explicit orders to not hold the event at their premises. The alternative venue, a hotel was quickly found. However, the hotel management still confirmed by 2pm at the day of the event, but cancelled at 5pm. Thus, the event had to be canceled altogether.

The head of the local LGBT organization “Coming Out”, Igor Kochetkov, was physically attacked and verbally abused during a public awareness raising event in St. Petersburg on April 11, 2010. For two hours 5 activists from “Coming Out” wore a sign, a rainbow flag and handed out flyers on the street. The sign read “We are for a Russia for all! We are for a Russia without Homophobia!” One man verbally abused Kochetkov and violently ripped off the sign Kochetkov was wearing. Later, a young man out of a group of 4-5 youngsters involved Kochetkov in a conversation, hit him unexpectedly in the face and ran off. Kochetkov was bleeding from his lip, but was apart from a slight shock without further injuries.²⁰

Also in 2010 in Kemerovo, city authorities effectively banned the previously agreed International LGBT Film Festival “Side by Side”, organized by local lesbian women. The day before the festival, which had been scheduled at the Municipal House of Culture, as well as in a private movie theater, the regional coordinators of the festival were notified by the administration that the festival was prohibited because of received negative reviews from city inhabitants.²¹

Right to education

Article 10 of the CEDAW requires the State Parties to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.”

However, Russian law on education contains an exhaustive list of circumstances that could not be the grounds for discrimination. Neither sexual orientation nor gender identity is included in this list.

Bullying or violence in schools and other educational institutions is a frequent phenomenon in Russia. Moreover, the negative and hostile attitude towards LBT persons is evidenced not only from the pupils or students, but also from teachers and school administrators.

We recorded a case of bullying, which was ongoing for two years from 2002 to 2004, against a transgender MtF (male-to-female) student in Novosibirsk.

In 2008 in Saint Petersburg, a 20-year-old lesbian girl reported she had been discriminated in the teaching college where she had studied. Once the director of the college learned about her sexual orientation, she and her girlfriend were constantly called to the dean's office, and had to attend compulsory discussions with the psychologist who was trying to "correct" the girls. After that incident, most of the students stopped talking to them, and teachers began to present unreasonable demands, threatening not to provide grades until the girls "corrected" themselves. The girl was reprimanded about her appearance (e.g., short hair), she was told that she did not correspond to "the Russian teacher image." Finally, the girl was asked to choose between: loving men, leaving the college of her own free will, or being expelled.²²

There are some difficulties associated with teaching and research of issues related to sexual orientation and gender identity, especially about transgender identities. They are often inadequately reflected in Russian curriculum and training materials. Thus, one of the textbooks most used in the learning process for psychologists considers homosexuality wrongly as "homosexuality" in the chapter "Violation of the sexual development of men and women."²³ In publications on legal topics, homosexuality could be classified as "sexual perversion"²⁴; severe restrictions regarding transsexuals are proposed, for example, affixing the stamp "sex changed" in passports, prohibition of access to assisted reproduction.²⁵ In addition, because of the invisibility of the problems LBT people face in social, state and scientific contexts, there are very few Russian research papers of a high quality on such issues, and most foreign publications are not available in libraries and not easily accessible for Russian researchers.

It is virtually impossible to consider issues related to tolerance against LBT people, in Russian schools. The Article 11§2 of the European Social Charter obliges signatory states to provide scientifically-based and non-discriminatory sex education to young people that does not involve censoring, withholding or intentionally misrepresenting information. This was established by the European Committee of Social Rights in the case *INTERRIGHTS v Croatia* (45/2007). Russia violates the right to education in many regards. Any attempts to introduce in school curriculum issues related to sexuality meet with sharp criticism from religious organizations and parent associations.

In Ryazan region operates the law providing for liability under administrative law for the "propaganda of homosexuality." According to the Law on Administrative Offences, "public actions aimed at propaganda of homosexuality (sodomy and lesbianism) among minors shall be punishable by a fine."²⁶ In 2010, the Constitutional Court of the Russian Federation, refusing to consider the complaint regarding this law, noted that "the family, motherhood and childhood in the traditional interpretation, received from our ancestors, are the values that provide a continuous change of generations, and are conditions for the preservation and development of the multinational people of the Russian Federation, and therefore require a special state protection."²⁷

Right to health

Article 12 of the CEDAW requires the State Parties to “take all appropriate measures to eliminate discrimination against women in the field of health care.” Article 14 stipulates the right to “access to adequate health care facilities” for women from rural areas.

The issue of the right to health is crucial for transgender people, since they have special medical needs, but public policy has shown almost complete indifference to those needs.

In many regions, it is practically impossible to have access to transgender related medical services, like cross-hormonal treatment, surgeries, psychological counseling etc. In Ukraine, with a similar lack of professionals on transgender-related health care, a study found that self-medication is the only way for transgender people to access hormone treatment.²⁸

The unavailability of suitable medical services in rural areas and cities other than St. Petersburg and Moscow, poses huge problems for the self-realization of transgender people. The financial burden imposed on transgender people forms an additional heavy obstacle (travel, living expenses, etc.).

Though the legal possibilities for gender reassignment are provided for in the law (see above), its medical aspects often are not included in public insurance catalogues. Average prices for those medical treatments considered by many transgender people as minimum necessary are far beyond average Russian income.²⁹ Thus, monthly costs of life-long adverse hormone treatment of a person might amount to 2.000–3.000RUR (64–97\$). In St. Petersburg a mastectomy costs between 60.000–90.000RUR (1.900\$–2.900\$) a vaginoplastic on average 200.000RUR (6.400\$).³⁰

International research also shows that transgender people are over proportionally avoiding to access health care services, which are not transgender-related, because of perceived or experienced transphobia by medical staff.³¹ Thus, transgender people are exposed to suffer from adverse effects on their health. There is no reason to believe that the situation is different in Russia. Transgender people report about the complete absence of a professional understanding of transgender issues by general practitioners and other medical staff, leading to degrading and partly false treatment.

It also should be noted that there are no programs in Russia aimed at preventing sexually transmitted diseases or HIV/AIDS for women who have sex with women (although such programs, supported solely by private or foreign grantors, are realizing for the men who have sex with men). As medical professionals, and in particular gynecologists, do not receive special training in the field of specific needs of lesbian and bisexual women, these women have little access to specialized information and tools to protect their health.

Discrimination in employment

Article 11 of the CEDAW requires the State Parties to “take all appropriate measures to eliminate discrimination against women in the field of employment.”

The Russian Labor Code contains a broad list of circumstances that can not be grounds for limiting the rights. This list is open since it includes “other factors not relevant to professional qualities of the employee.” Sexual orientation and gender identity are not mentioned in it explicitly, which creates a basis for abuse on the part of employers.

Direct discrimination based on sexual orientation – the dismissal or refusal of employment – is apparently quite rare, but it is not the result of employers’ tolerance: the majority of LBT people

hide their sexual orientation or gender identity from their employers and colleagues. Thus, during a special survey, 33 % of lesbian women in Omsk and 29 % in Rostov on Don said that they had to provide incomplete information to get the job.³² The need to hide one's sexual orientation is a serious stress factor, which reduces the quality of life of LBT people. Disclosure of sexual orientation of a person most frequently leads to their dismissal in Russian towns, after which it is practically impossible for the affected person to find a new job in the same town.

Some cases when homosexual and bisexual women, as well as transgender people in Russia were subjected to discrimination in the workplace have been documented during our monitoring study.

In 2004, a lesbian woman was dismissed from her position as educator in a kindergarten officially "for health reasons." During the dismissal and at the court hearing the director of the kindergarten gave as reason for the dismissal that she was a lesbian. "I could not keep her at our kindergarten for reasons of morals and virtue", said the director.³³

We have also documented a case occurred in 2009, in which a transsexual woman was not hired for a job, and she was informed informally that her transsexuality was the reason for such decision.

Many victims of discrimination do not report these cases to competent authorities. They fear another discriminatory treatment or that it would be impossible to prove that the discrimination was based on their sexual orientation or gender identity since other circumstances are stated as the formal causes of the employers' actions.

A special problem of transgender people is the difficulty related to the discrepancy between their gender identity and their documents, including the work record book. One of the causes of such problems is the absence of special legal provisions on replacement of the transsexual persons' documents.

We have registered a case when a transsexual woman was refused a new work book with the new name. The employer offered her only one option: cross out the previous name and write the new name above (referring to the rules adopted by subordinate act). The court of the first instance dismissed the plaintiff's claims, stating that "since the plaintiff's demand for the issue of a duplicate of her work record book with the new name..., excluding the previous record of a name [old name], does not conform to the established order of execution of work record book, the respondent's refusal to grant a duplicate of the work record book is legitimate, and therefore the claim of providing a duplicate of the work record book with the restored records can not be satisfied."

Transgender people report that they are despite sufficient qualifications not even invited for an interview as soon as they present their (incongruous) documents. As a consequence, many of them have to take on lower paid jobs and are not able to work in positions, they are trained for.

Since it is normally not possible for transgender people to change documents prior to medical interventions, many are unable to find a job with old documents and earn the money necessary to pay for the medical services. This may lead to impoverishment, and for many leaving prostitution as the only alternative.

Discrimination in family relations

Article 16 of the CEDAW requires the State Parties to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."

In relation to marital property, the CEDAW Committee has already noted that “in many countries, property accumulated during a *de facto* relationship is not treated by law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged” (General Recommendation 21, para 33).

Despite the absence of an explicit prohibition on the conclusion of same-sex marriages, the possibility of concluding such a marriage is denied in the Russian law enforcement practice. For example, in 2009, an attempt of two lesbian women to marry in Moscow was unsuccessful. When refusing to register such a marriage, administrative and judicial authorities referred to the fact that, in accordance with Article 12 of the Family Code, “to enter into a marriage, the voluntary consent of the man and of the woman entering into it ... shall be necessary.”³⁴

However, *de facto* relationship (even if heterosexual) is still not recognized by Russian family law. Therefore, women who are in *de facto* marital relationships (including the partners of the same sex) do not have access to measures to protect their property interests. If the woman is not gainfully employed in the period of *de facto* union, she will not have the right to the part of the acquired property and the right to alimony from a former partner after termination of the relationship.

Parental rights are another problematic issue for LBT people. In spite of the absence of any mention of sexual orientation or transsexuality in the Family Code, in practice there are cases of attempts to limit the parental rights of LBT parents or to deprive them of their rights.

Two such cases have been recorded by us in 2009. The fathers of children of homosexual women who had lived previously in heterosexual marriages, tried to deprive the women of their parental rights. In one case, the father did not let the mother see the child, turned the child against the mother, and used violence against the mother and grandmother of the child several times when they tried to meet with the girl. In 2010, a similar case of a transsexual parent, the biological mother, was documented. After the divorce, the child remained with the biological father, and the latter refused to accept any financial assistance from the transsexual parent. Nevertheless, the transsexual parent provided material assistance to his child and sent gifts for the child as far as it was possible. After a time, the biological father of the child brought a claim to deprive the transsexual parent of parental rights, because of the gender identity of his former partner.

Despite the gender neutrality of Russian family law as a whole, it contains a number of gender-asymmetric norms, the application of which in practice is discriminatory for homosexual and bisexual women and could cause harm to their rights and interests.

One of such norms relates to second-parent adoption in same-sex families. The Russian Family Code allows the adoption of a child by one person, and according to the Article 137 of the Family Code, “personal non-property and property rights and duties of the child may be retained at the wish of the mother, if the adopter is a man, or at the wish of the father, if the adopter is a woman.” A marriage between the biological parent and adoptive parent is not established here as a prerequisite. Thus, unmarried homosexual couples are discriminated against in comparison with heterosexual couples in a similar situation, and within homosexual (but not heterosexual) *de facto* relationships a woman cannot adopt children of her partner.

Article 16 (e) of the CEDAW requires the State Parties to “ensure, on a basis of equality of men and women ... the same rights to decide freely and responsibly on the number and spacing of

their children and to have access to the information, education and means to enable them to exercise these rights.” Nevertheless, the possibility of LBT women to use assisted reproductive technologies is problematic. Russian legislation in this field remains rather chaotic and unsystematic. The main document, operating in this area, is the special Order of the Ministry of Health (2003).³⁵ However, this order allows non-anonymous donorship only of eggs, while sperm donorship should be always anonymous. Therefore, lesbian or bisexual women wishing to have a child, find themselves in a situation different from the situation of homosexual or single men: it is impossible for the first to find a known donor, and to protect themselves from his subsequent claims concerning a child, while the very structure of donation presupposes just this, and just this opportunity is given for non-anonymous egg donorship.

Lesbian and bisexual women also excluded from the programs of assisted reproduction treatment for account of the budget resources because of the requirements to persons entitled to receive budgetary subsidies. Thus, a marriage, or at least medical infertility, i.e. diseases of reproductive system, is considered as a prerequisite for the participation in such programs. Social infertility (inability to have children due to the lack of sexual partner of the opposite sex) is not included. Therefore, lesbian families in Russia have access to donor artificial insemination only at their own expense.

Unlike a number of CIS countries (for example, Kazakhstan, Kyrgyzstan and Moldova), Russia has still not passed a separate law on reproductive rights of citizens. Nevertheless, attempts to develop a legislative framework for the regulation of assisted reproduction are taken. While the Model Law on General Principles of the Protection of the Reproductive Health in EurAsEC Member States passed by the Inter-Parliamentary Assembly of EurAsEC states that "Every citizen of the Community, regardless of ... sexual orientation, have equal right to full reproductive and sexual life",³⁶ proposals to deprive lesbian women access to artificial reproduction are formulated in the discussions of possible models of the Russian law on reproductive rights. This option, in particular, was suggested in October 2009 by the head of the State Duma Committee for Family, Women and Children, Elena Mirzulina, at the parliamentary hearings "The Well-Being of Russian Families: Legal Problems and Their Solutions."³⁷

RECOMMENDATIONS

General recommendations

- make a clear political statement, that LBT people are protected against discrimination under existing anti-discrimination legislation;
- consider and implement the Council of Europe's Committee of Ministers recommendation CM/Rec(2010)5 of March 31, 2010 on measures to combat discrimination on grounds of sexual orientation or gender identity;³⁸
- develop and implement measures directed towards recognition at all levels of inadmissibility of homophobia and transphobia, as well as discrimination on the grounds of sexual orientation or gender identity;
- ensure measures aimed at elimination of homophobic and transphobic speeches of politicians and opinion leaders.
- raise awareness, provide fact-based information on LGBT-people and the problem of homophobia to staff of the judicial system, law enforcement agencies, government structures;
- consult and cooperate with LGBT human rights organizations on these questions.

Recommendations – Violence against women

- amend the list of motives, which are recognized as aggravating circumstances or cause to a special qualification of the crime, with the motive of hatred against LBT people, and also take measures to ensure the actual application of such norms;
- ensure collection and analysis of information on the crimes motivated by hatred against LBT people;
- take measures aimed at ensuring the proper investigation of cases involving crimes motivated by hatred against LBT people, as well as bringing the perpetrators to the real responsibility in order to prevent such crimes in the future;
- develop and implement programs aimed at drawing attention to the inadmissibility of discrimination and mistreatment against LBT people, committed by law enforcement officials;
- develop and adopt a law on domestic violence; including alternative forms of family relations in the sphere of application of this law

Recommendations – Recognition of a person's gender identity

- implement the 12 recommendations by Human Rights Commissioner Hammarberg;³⁹
- enhance existing legislation ("standard form") and eliminate any obstacles in its application, so that a clear and transparent procedure for changing documents for transgender people is in place;
- train staff at the civil rights offices about a.) existing legislation and its correct application and b.) raise awareness about the living situation of transgender people;
- make information in the different Russian regions about specialist centers and medical commissions publicly available;
- initiate research on the living situation of transgender people in Russia and the problems they face.

Recommendations – Discrimination and violence against LBT human rights defenders

- develop and implement measures aimed at ensuring the real possibility of non-governmental organizations and individual activists to act for LBT human rights, including opportunities for holding public and cultural events;
- develop and implement measures aimed at inclusion of programmes for the support and protection of LBT rights in the general context of civic engagement, and provide a real opportunity for public support of such programs.

Recommendations – Right to education

- develop and ensure implementation of programmes aimed at promoting tolerance and non-discrimination on the grounds of sexual orientation or gender identity, targeting representatives of educational institutions, pupils and students;
- ensure an adequate reflection of issues of sexual orientation and gender identity in curriculums and educational materials, especially for the future psychologists, social workers and lawyers.

Recommendations – Right to health

- ensure the development of health insurance programs so that to allow transsexual persons to obtain services related to the gender reassignment;
- provide the training opportunities for medical staff specializing in transsexuality issues, as well as the availability of the services of such specialists for transsexual people, particularly in non-capital regions;
- enable the legal recognition of gender identity without unnecessary and excessive requirements, including, in accordance with medical recommendations, the requirements related to specific surgical procedures;
- develop and ensure implementation of programmes aimed at preventing sexually transmitted diseases or HIV/AIDS for LBT women.

Recommendations – Discrimination in employment

- amend the list of reasons for prohibited discrimination in the Labor Code by discrimination on grounds of sexual orientation or gender identity;
- ensure proper consideration of cases concerning labor discrimination on grounds of sexual orientation or gender identity, as well as the actual bringing of the perpetrators to responsibility and dissemination of information about it in order to prevent similar violations in the future;
- develop and adopt legal norms on change of the work record books of transsexual persons, and provide a simple mechanism to implement these norms.

Recommendations – Discrimination in family relations

- amend a list of reasons for prohibited discrimination in the Family Code by discrimination on the grounds of sexual orientation or gender identity;
- take legislative, administrative and other measures to equalization of the legal status of persons in a registered marriage and those who are in de facto marital relationships (including same sex), at least concerning property rights and duties;
- develop and ensure implementation of programmes aimed at preventing discrimination against homosexual, bisexual and transsexual parents, especially among the courts', guardianship bodies' and social security bodies' staff;
- take legislative, administrative and other measures in order to allow second-parent adoptions in LBT families regardless of whether the marriage between legal and de facto parents of the child is registered or not, as currently is in effect for heterosexual families;
- take legislative, administrative and other measures in order to ensure for LBT women the possibility of non-anonymous sperm donorship, as well as to ensure non-discrimination of LBT persons in obtaining services related to the use of assisted reproductive technologies.

REFERENCES

- ¹ See, for example: Kochetkov (Petrov), I. and Kirichenko, X. (2009). *The Situation of Lesbians, Gays, Bisexuals and Transgender People in the Russian Federation. 2008.* URL: http://www.ilga-europe.org/europe/publications/reports_and_other_materials/the_situation_of_lesbians_gays_bisexuals_and_transgender_people_in_the_russian_federation_2008; in Russian: Iidem (2009). *Diskriminatsiya po priznakam seksual'noj orientacii i gendernoj identichnosti v Rossii*, St. Petersburg: Moskovskaya Hel'sinskaya Gruppa, Rossiyskaya LGBT-Set'.
- ² Definition as used in the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, available at www.yogyakartaprinciples.org.
- ³ Ibid.
- ⁴ The All-Russian Scientific Research Institute of the Ministry of Internal Affairs of the Russian Federation (VNII MVD RF) replied to the request by the Russian LGBT Network in 2009, that "the issue [concerning discrimination on the ground of sexual orientation or gender identity] remains open in the sphere of the law-enforcement activity of the internal affairs bodies of the Russian Federation and any cardinal measures to solve it have not been developed so far." (The Letter of the VNII MVD RF of September 22, 2009. Available in Russian at <http://lgbtnet.ru/news/detail.php?ID=4475>).
- ⁵ See: Decision of the Judicial Division for Civil Cases of the Tyumen Regional Court on the cassation appeal of Zhdanov A.V. on the decision of the Centralny District Court of the Tyumen of December 17, 2007 (Case No. 33-2383).
- ⁶ See: Decision of the Tagansky District Court on application of Zhdanov A.V. for disputing the decision of the Federal Registration Service of October 26, 2007 (Case No. 2-2095-07).
- ⁷ See: Decision of the Office of the Ministry of Justice of the Russian Federation on the Arkhangelsk Region and Nenets Autonomous District of May 31, 2010 № 03-09-3266 on the refusal of state registration of amendments to the constituent documents of a public association. Besides this ground, two formal grounds were set out as a reasons for the refusal: according to the Office's Decision, the wording of the purposes of the organization means that members of the organization who are not LGBT can not count on the protection of their rights and legitimate interests by the organization, which is contrary to the Law on Public Associations; and in the title of the statute a full name of organization is used (Regional Public Association "Arkhangelsk Regional Public Association of socio-psychological and legal assistance to lesbians, gays, bisexuals and transgenders (LGBT) 'Rakurs'"), while in the text of the statute – a short one (Arkhangelsk Regional Public Association of socio-psychological and legal assistance to lesbians, gays, bisexuals and transgenders (LGBT) 'Rakurs').
- ⁸ URL: <http://www.regions.ru/news/ingush/2273023>.
- ⁹ URL: <http://lgbtnet.ru/news/detail.php?ID=4493>.
- ¹⁰ URL: <http://vote.ngs.ru/?apid=503>.
- ¹¹ Kochetkov (Petrov), I. and Kirichenko, X. *The situation ...*, pp. 22.
- ¹² See more detailed: Ibid, pp. 36–38.

- ¹³ The General Prosecutor's Office reply to the request made under the national study of the situation of homosexual and bisexual people in 2010 (The Letter of the General Prosecutor's Office of February 11, 2010 No. 27-32-2010).
- ¹⁴ Kochetkov (Petrov), I. and Kirichenko, X. *The situation ...*, pp. 28.
- ¹⁵ URL: <http://www.newsru.com/crime/23jun2009/wifemfrmanpastvolg.html>.
- ¹⁶ On Acts of Civil Status: Federal Law of the Russian Federation: passed by the State Duma on October 22, 1997; endorsed by the Federation Council on November 5, 1997 // Rossiyskaya Gazeta. 1997. November 20. Art. 70.
- ¹⁷ It is the case from practice of the Legal Assistance Program of Russian LGBT Network.
- ¹⁸ Council of Europe Commissioner for Human Rights. (2009). *Human rights and gender identity. Issue Paper* commissioned and published by Thomas Hammarberg. URL: <https://wcd.coe.int/ViewDoc.jsp?id=1476365>.
- ¹⁹ Kochetkov (Petrov), I. and Kirichenko, X. *The situation ...*, p. 28.
- ²⁰ All of these incidents occurred during "Week against Homophobia – 2010", organized by Russian LGBT Network, see: <http://rwaho2010.wordpress.com>.
- ²¹ URL: <http://www.arthouse.ru/news.asp?id=12535>.
- ²² Kochetkov (Petrov), I. and Kirichenko, X. *The situation ...*, p. 29.
- ²³ See: Il'in, E.P. (2006) *Differencial'naya psihofiziologiya muzhchiny i zhenschiny*. St. Petersburg: Piter.
- ²⁴ See, for example: Chernega K.A. (2003). Pravovye aspekty legalizatsii "netraditsionnoj semji" v Rossii. *Grazhdanin i pravo*, No. 4 ("In modern Russia there are no sufficient legislative obstacles to the propaganda and dissemination of various forms of sexual perversion... However, it is necessary to thank the drafters of the penultimate 9th revision of the International Classification of Diseases of the World Health Organization (WHO), which have attributed homosexuality to the category of sexual perversions and malfunctions. At list this fact does not make it possible to equate the loathsome things of Sodom to the lawful cohabitation of husband and wife.")
- ²⁵ See, for example: Pal'kina, T.N. (2009) *Lichnye neimuschestvennye prava i nematerial'nye blaga v grazhdanskom i semejnom prave Rossijskoj Federacii*: abstract of a thesis for a degree of candidate of legal studies. Moscow, p. 7–8. The proposals to deprive access to artificial insemination also are formulated in legal research papers in regard to lesbian women, see, for example: Romanovskiy, G.B. (2006) *The Theoretical Problems Concerning Right to Life: The Constitutional-Legal Study*. abstract of a thesis for a degree of doctor of legal studies. Moscow, p. 48.
- ²⁶ On the Protection of Morality and Health of Children in Ryazan Region: Law of Ryazan Region: passed by the Ryazan Region Duma on March 22, 2006; On Administrative Offences: Law of Ryazan Region: passed by the Ryazan Region Duma on November 24, 2008, available in Russian: <http://www.duma.ryazan.net/cgi-bin/search.pl>.
- ²⁷ On refusal to consider the complaint of citizens Alekseyev Nikolay Aleksandrovich, Baev Nikolay Viktorovich and Fedotova Irina Borisovna regarding the violation of their constitutional rights by Article 4 of the Law of Ryazan Region on the Protection of Morality and Health of Children in Ryazan Region: Decision of the Constitutional Court of the Russian Federation of January 19, 2010.
- ²⁸ OO "Inight" (2010). *Situacija transgenderov v Ukraine*, Киев (2010) http://insight-ukraine.org.ua/media/TRP_report.pdf.
- ²⁹ Federal State Statistics Service: monthly Income per capita (2008): 640\$ http://www.gks.ru/bgd/regl/b09_12/lssWWW.exe/Stg/d01/07-05.htm.
- ³⁰ All prices are exemplary and refer to St. Petersburg. Comprehensive data for the remaining country is missing.
- ³¹ Whittle, S. et al. (2008) *Transgender EuroStudy: Legal Survey and Focus on the Transgender Experience of Health Care*, p. 10. URL: http://www.ilga-europe.org/europe/publications/reports_and_other_materials/transgender_eurostudy_legal_survey_and_focus_on_the_transgender_experience_of_health_care_april_2008.
- ³² Kochetkov (Petrov), I. and Kirichenko, X. *The situation ...*, p. 23–24.
- ³³ See, for example: Kochetkov (Petrov), I. and Kirichenko, X. *The situation ...*, p. 49.
- ³⁴ URL: http://www.gayrussia.ru/events/detail.php?ID=14288&phrase_id=428040.
- ³⁵ On Assisted Reproductive Technologies (ART) in Therapy of Female and Male Sterility: Order of the Ministry of Health of the Russian Federation of February 26, 2003 // Rossiyskaya Gazeta. 2003. May 6.
- ³⁶ See the text of this Model Law in Russian: http://www.ipaaursec.org/docsdown/reproduct_guard.pdf.
- ³⁷ URL: <http://www.polit.ru/news/2009/10/05/mizulina.html>.
- ³⁸ URL: <https://wcd.coe.int/ViewDoc.jsp?id=1606669>.
- ³⁹ See: Council of Europe Commissioner for Human Rights. (2009). *Human rights and gender identity*.