

**THE SITUATION  
OF LESBIANS, GAYS, BISEXUALS,  
AND TRANSGENDER PEOPLE  
IN THE RUSSIAN FEDERATION  
2008**

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## **Introduction**

This report is the result of specific monitoring of discrimination based on sexual orientation and gender identity in the Russian Federation carried out by the Moscow Helsinki Group in cooperation with the Russian LGBT Network in 2007-2008. This is the first specific study of the legal situation of gays, lesbians, bisexuals, and transgender people (the LGBT community) in Russia.

A long time ago, the international community, of which Russia is a part, recognised that all people are born free and have equal dignity and rights. At the same time, there are still social groups that are systematically excluded by society and the state from the respect for human dignity and the universality of human rights. The LGBT community made up of people with a sexual orientation and/or gender identity that is different from that of the majority of the population, is one of such groups.

Along with race, national and religious affiliation, gender and other characteristics, sexual orientation and gender identity are inherent elements of everyone's dignity and personality and, thus, should not be grounds for discrimination or the violation of rights. Society and the state must do their best to provide people of any sexual orientation and gender identity with equal opportunities and freedom. This is the only approach that corresponds to the modern understanding of the principle of the universality, indivisibility, interdependence, and interconnection of human rights.

In modern Russia, as well as in other countries of the world, violation of human rights and discrimination based on different grounds are widespread. Xenophobia, the intolerance towards minorities, is a common problem for the entire society, and homophobia is just one aspect. However, homophobic crimes, the violation of rights and discrimination are not only wide spread, but are also kept secret by authorities, the media and the leaders of public opinion. The LGBT community in our country is still “invisible” and “unnamed”.

This was the reason for carrying out this social study of the legal status of the LGBT community in Russia. The existing problems should not be kept secret; on the contrary, they must become a subject of public discussion with the participation of the authorities and the public.

It would be impossible to carry out the first such study in Russia without the joint effort of two organisations – the Moscow Helsinki Group and the Russian LGBT Network.

The Moscow Helsinki Group is the senior human rights organisation in Russia founded in 1976 in Moscow. Today, MHG is a multidisciplinary human rights organisation and, primarily, a resource centre for hundreds of non-governmental organizations, providing them with organizational, educational, information and other support.

The monitoring of the observance of human rights is one of MHG’s fields of activity. The all-Russia monitoring of human rights was possible due to the model provided by MHG. The human rights situation is monitored by joint efforts of Moscow and regional human rights

organisations. A permanent network of human rights organisations with experience in human rights monitoring was created in 2001. Regional human rights organisations have adopted the practice of presenting reports on human rights in their regions. Since 1999, MHG has been issuing the annual report “On Human Rights in the Russian Federation”. In the same year, besides the monitoring covering the entire range of human rights, MHG started carrying out studies focused on certain human rights.

In 2006, MHG established a partnership with the Russian LGBT Network. As a result of this partnership, the 2007 “Human Rights in the Russian Federation” report included a special chapter on “Discrimination Based on Sexual Orientation and Gender Identity”<sup>1</sup>.

The Russian LGBT Network was created in 2006. Within three years, it has been transformed from an initiative group of several activists into an *interregional* public movement with 13 regional offices (Saint Petersburg, Tyumen, Pskov, Tomsk, Kemerovo, Omsk, Arkhangelsk, Perm, Volgograd region, Khabarovsk and Krasnoyarsk federal districts, the Republic of Karelia, and Tatarstan). A number of representatives of the Network work in other regions as well.

The Russian LGBT Network aims to eliminate all forms of discrimination based on sexual orientation and gender identity, disseminating the idea of tolerance in Russian society, as well as encouraging gays, lesbians, bisexuals, and transgender people to take an active part in social life.

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<sup>1</sup> Human Rights in the Russian Federation. M.2008, page 356-366

The monitoring of violations of human rights and discrimination against members of the LGBT community is one of the organisation's fields of activity. In addition, the Russian LGBT Network provides legal and psychological assistance, educates and consults leaders of regional LGBT organisations, carries out information and other activities aimed at creating a society without discrimination and segregation in Russia.

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## **2.2. Legislation of the Russian Federation**

### **2.2.1. Antidiscrimination Provisions of the Constitution of the Russian Federation and State Obligations to Protect Citizens against Discrimination Based on Sexual Orientation**

Of course, the main provisions stipulating the need to respect differences and to protect the rights and interests of citizens, at least when they do not intrude on other people's rights and interests, are enshrined in the Constitution of the Russian Federation. It is said that Russia is a democratic law-bound state (art.1), a social state (art.7), where human rights and freedoms have supreme value, and the recognition, observance and protection of such rights and freedoms shall be the obligation of the state (art.2). Important provisions are also stipulated by art.13 (recognition of ideological diversity, equality of public associations), and 14 (official separation of religious associations and the state).

The main norm establishing the antidiscrimination principle is included in art.19 of the Constitution of the RF. It speaks about equality based on three aspects: a) equality before the law and courts; b) equality of human and civil rights and freedoms, regardless of "sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, *and also of other circumstances*" (italics by us – *Author*); c) equality of rights of men and women, which is emphasised separately. Thus, although the constitutions of a number of European states already contain provisions expressly prohibiting discrimination based on sexual orientation, the Constitution of the RF has no express reference that would prohibit the limitation of the citizens' rights and interests based on their sexual orientation. However, the list of prohibited discrimination grounds is open, and the unmentioned grounds fit in "other circumstances", which means that discrimination based on sexual

orientation is prohibited as well<sup>1</sup>. Unlike a number of documents, including international ones, which complete the list of prohibited discrimination grounds by the phrase “and other social factors” or “membership of another social group”, the Constitution of the RF uses a more favourable term, i.e. “other circumstances. Certainly, placing homosexuality among the category of social characteristics for a discrimination, might be subject to critic as homosexuality, which can be safely argued, might be associated to social as well as natural-biological factors.

The issue of the social nature of homosexuality can arise in the Russian context in connection with the possibility of limiting rights based on homosexuality. The point is that human rights and freedoms may, in fact, be limited, but only through compliance with the federal law and in order to protect morals, health, etc. However, all forms of limitation of rights based on social background, race, nationality or religion are prohibited. And here there is a problem: whether sexual orientation can be considered part of the social background of a citizen. And the answer to this question can be found not in jurisprudence, but in related sciences – sociology, psychology, etc.

The social nature of homosexuality matters also in other, more specific issues. Thus, the Constitution of the RF prohibits propaganda or agitation inciting *social*, racial, national or religious hatred and strife (art.29). Since the Russian legislation does not contain specific norms prohibiting homophobic actions, and the Constitution has a direct effect, it is particularly important to prove the social nature of LGBT issues.

Besides, according to an analysis of international sources, equality of the rights of men and women also matters in the legal regulation of people with different sexual orientations (access to assisted reproductive technologies, rights and obligations of people who underwent surgeries to alter their biological sex, etc.).

No employment discrimination is allowed (art. 37 of the Constitution of RF). Art.38 speaks about state protection of the family, and neither the Constitution nor the Family Code of the RF describe the family. Moreover, while provisions of family legislation cover a specific range of subjects with a special status recognised by the state (mother, child, husband, etc.). Thus, the family protected by the family legislation

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<sup>1</sup> Leading theorists in constitutional law also mention this fact. E.g. see: The Constitution of the Russian Federation: Clause-by-Clause Scientific and Practical Commentary / composite authors lead by O.E. Kutafin // [http://constitution.garant.ru/DOC\\_3866952.htm#sub\\_para\\_N\\_2000](http://constitution.garant.ru/DOC_3866952.htm#sub_para_N_2000).

is limited by subject composition as the Constitution of RF contains no details of a family. o any family (including homosexual partners) must be protected by the state.

Speaking about constitutional norms enshrining the fundamentals of the legal status of Russian citizens in the context of LGBT people, it is impossible to omit the main procedural mechanism of observing the Constitution – the activity of the Constitutional Court of the Russian Federation (hereinafter referred to as the CC RF). The CC RF’s authority, order of formation, and activity are set out in the Constitution of the RF, as well as in the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”. In particular, the CC RF is in charge of resolving cases of compliance with legislation of the RF, subjects of the RF as well as bylaws of the Constitution of the RF, examining citizens’ complaints about violation of constitutional rights and the freedom of citizens. At this time, the CC RF has examined two complaints related to the non-observance of the human rights of homosexuals. In both cases the final decision was not to submit the complaints to examination, and a number of conclusions can be drawn about what motivated such decisions to understand the official approach of Russian authorities to the issue of the LGBT community.

The first case was related to the refused registration of the human rights organisation the “Commonwealth of Homosexual Youth “Gayzer””<sup>1</sup>. Having examined the materials presented, the CC RF came to the conclusion that the Federal Law “On Public Associations” did not violate the Constitution of the RF. According to the CC RF, the right to association guaranteed to citizens by the Constitution of the RF implies the option, protected by the state, to create on a voluntary basis, public associations to protect their interests and achieve common goals. The refusal itself to register a particular association made by a particular authority or official does not imply unconstitutionality of the law, as the CC RF is not in charge of verifying the legality of actions taken by the specific authorities or officials.

The second case represented the appeal against the provisions of the Family Code of the RF, according to which, in order to register a marriage, the mutual free consent of a man and a woman was

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<sup>1</sup> The Decision of the Constitutional Court of RF of 15 February 2005 No.49-O “to refuse admitting the complaint of the citizens Bogdanov Andrei Yevgenyevich, Maltsev Dmitrii Sergeyeovich, and Syromolotov Mihail Yevgenyevich about violation of their constitutional rights by art.23 of the Federal Law “On Public Associations” to examination //website of CC RF ([http://ksportal.garant.ru:8081/SESSION/S\\_\\_3ND6vsSK/PILOT/main.html](http://ksportal.garant.ru:8081/SESSION/S__3ND6vsSK/PILOT/main.html)).

necessary<sup>1</sup>. E. Murzin and E.A. Mishin came to the Registry Office with an application for marriage registration. The registration was refused, and the appeal against the refusal in general courts did not help. Murzin appealed to the CC RF, and asked them to consider that provisions of the regulatory acts governing those actions and the actions themselves violated their rights guaranteed by art.17-19 and 23 of the Constitution of RF<sup>2</sup>.

Having considered the complaint, the CC RF came to the conclusion that the provisions of art.1 and 12 of the FC RF could not be seen as violation of constitutional rights and freedoms guaranteed by art.17-19 and 23 of the Russian Constitution. The CC RF gave two arguments: 1) according to international law and the Constitution of RF, one of the functions of the family is to give birth and bring up children; 2) there are national traditions of seeing a marriage as a biological union of a man and a woman. Finally, it is worth mentioning that the CC RF pointed out the fact that the international law contained no provision obliging the state “to create conditions for the promotion, support, and recognition of same-sex partnerships, and that the refused registration did not affect the level of recognition and guarantees provided for the rights and freedoms of the applicant as a man and citizen of the Russian Federation”.

## 2.2.2. Analysis of the Russian Criminal, Administrative, Civil, and Family Law for Discriminatory Provisions, Gaps, and Guarantees of Protection of the Rights of Sexual Minorities

### Criminal Law

#### *Criminalisation of Homosexual Relations*

Criminal prosecution of homosexual relations is also a characteristic of the national legislation. The Criminal Code of the Russian Socialist Federative Soviet Republic, in its initial version,

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<sup>1</sup> The Decision of the Constitutional Court of RF of 16 November 2006 No.496-O “to refuse admitting the complaint of the citizen Murzin E. about violation of his constitutional rights by p.1 of art.12 of the Family Code of the Russian Federation //website of CC RF ([http://ksportal.garant.ru:8081/SESSION/S\\_3ND6vsSK/PILOT/main.html](http://ksportal.garant.ru:8081/SESSION/S_3ND6vsSK/PILOT/main.html))

<sup>2</sup> According to art.17, recognition and guarantees in the Russian Federation shall be provided for the rights and freedoms of man and citizen according to the norms of international law and the Constitution itself. Art.18 states that the rights and freedoms of man and citizen shall be directly operative, determine the essence, meaning and implementation of laws, the activities of public authorities, and shall be ensured by the administration of justice. Art.19 establishes non-discriminatory principles. And finally, art.23 speaks about the inviolability of private life.

contained material elements of the crime of “sodomy” (art.121), according to which men found guilty of committing acts of sodomy were to be sentenced to 5 years in prison. Sodomy committed by physical violence, threats or abusing the dependant position of the victim was punished even more severely than rape: up to eight years of imprisonment. Underage sodomy committed (without violence) was also punished more severely than a heterosexual sexual act with a minor: up to eight years of imprisonment.

After the breakup of the Soviet Union, democratic transformations in Russia have lead to reforms in the criminal legislation. The need to decriminalise nonviolent homosexuality was emphasised at the official level in 1991<sup>1</sup>, and art. 121 of the Criminal Code of the RSFSR was amended in 1993: only sodomy committed with violence or threats, with a minor, or by abusing a dependant position or the helpless state of the victim was considered a crime, and the maximum sentence for this crime was reduced to seven years.

Provisions of the current Criminal Code of the RF 1996 can be characterised as a step forward in admitting homosexual relations<sup>2</sup>:

1) The special part of the Criminal Code of the RF, which contains specific constituent elements of crimes, does not consider same-sex sexual relations themselves a crime;

2) Despite distinguishing between two different components of crime – rape (heterosexual sexual act, art.131) and violent sexual actions (including sodomy and lesbian acts, art.132) – the liability for both crimes is identical (both of them can be sentenced to 3-6 years imprisonment in the case of non-aggravation and 4-10 years or 8-15 years in the case of aggravating elements, and are also formulated in the same way);

3) The Criminal Code of the RF considers together and equalises the crimes that consist of the compulsion to perform sexual acts (art.133) and sexual relations or other sexual acts with a person who has not attained 16 years of age (art.134), regardless of their homosexual or heterosexual nature (i.e. the age of consent to heterosexual and homosexual relations is equal), and the liability in both cases is stipulated within the same framework.

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<sup>1</sup> About the Concept of the Court Reform in the RSFSR: The Ordinance of the Supreme Soviet of RSFSR of 24 October 1991 // Records of SS RSFSR – 1991 – No.44 – Art.1435

<sup>2</sup> This approach is also confirmed by explanations of the Supreme Court of RF, see: The Ordinance of the Supreme Court of RF of 15 June 2004 “On Jurisdiction over Crimes Stipulated by Art.131 and 132 of the Criminal Code of the Russian Federation” // Rossiyskaya Gazeta – 2004 – 29 June.

However, since the passing of the Criminal Code, a number of political figures have made attempts to amend the criminal legislation and introduce criminal liability for the promotion of homosexual relations, but none of the draft laws was adopted<sup>1</sup>.

The draft law “On Supplementing the Criminal Code of the Russian Federation with the Provision Stipulating Criminal Liability for Propaganda of Homosexuality” repeatedly proposed by the MP A.V. Chuev between 2003-2006 in several versions is of particular interest. This draft law was meant to establish criminal liability for “propaganda of homosexuality within public life, public works or the mass media, including through the public demonstration of a homosexual way of life and homosexual orientation” to be punished by the deprivation of the right to hold specific positions or perform specific activities.

It is worth mentioning the stance of the Government of the RF on the amendments proposed by Chuev, expressed in the official comments to the draft law:

“Since homosexuality itself is not a criminally punishable act, its promotion cannot be considered a socially dangerous infringement of legal protection. The proposed supplement contradicts the provisions of article 29 of the Constitution of the Russian Federation (the limitation of the right to express one’s views and convictions), as well as articles 8, 10, and 14 of the Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms, stipulating the right to respect for private and family life, freedom of expression and prohibition of discrimination” (comments of the Government of RF of 24 November 2003).

“In order to ensure the protection of sexual freedom and sexual integrity for both men and women the legislature has established criminal liability for sexual offences, including for sodomy and lesbian acts, accompanied exclusively by violence or the threat of violence. In its turn, such actions committed by mutual consent of the parties represent neither material elements of a crime, nor an administrative offence. In this context, it is impossible to establish liability for propaganda of homosexuality in the absence of liability for itself. Moreover, this proposal contradicts the Law of the Russian Federation of 27.12.1991 No.2124-1 “On Mass Media”, particularly article 4, prohibiting only the dissemination of information, which is prohibited

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<sup>1</sup> The analysis covered texts of the draft laws and corresponding materials on the website of the State Duma of RF (<http://www.duma.gov.ru/faces/lawsearch/search.jsp>).

by federal laws” (comments of the Government of RF of 11 December 2003).

### *Punishment for Homophobic Crimes*

It is worth mentioning that art.63 of the Criminal Code of the RF stipulates a list of aggravating circumstances increasing a punishment. The Article distinguishes the commission of a crime motivated by national, racial, or religious hatred or enmity. But homophobic crimes are not considered aggravating circumstances. The same can be said about material elements of murder (art.105), intentional infliction of a grave injury (art.111), intentional infliction of injury of average gravity (art.112), torture (art.117), vandalism (art.214), or desecration of dead bodies and their burial places (art.244). According to art.357 (“Genocide”), “actions aimed at the complete or partial extermination of a national, ethnic, racial or religious group as such by killing its members, inflicting grave injuries to their health, forcible prevention of childbirth, forcible transfer of children, forcible resettlement, or by any other method of creating living conditions meant for the physical destruction of the members of this group” constitute a crime.

A number of articles of the Criminal Code of the RF contain a large list of prohibited grounds for discrimination. However, the issue of ensuring non-discrimination based on sexual orientation or gender identity again depends on the establishment of their social nature. Thus, art.136 of the Criminal Code of the RF contains a special element of a crime – “Violation of the Equality of Human and Civil Rights and Freedoms” – which is considered discrimination, i.e. “ the violation of the rights, freedoms and legal interests of man and citizen based on sex, race, nationality, language, origin, property or official status, place or residence, attitude to religion, convictions, or affiliation with public associations or any *social group*”. Art.282 (“Incitement of Hatred or Enmity, as well as Abasement of Human Dignity”) stipulates the punishment for the commitment of the corresponding deeds against a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any *social group*. Art.282.1 (“Organising an Extremist Community”) stipulates the creation of an extremist community, participation in it, as well as the leadership of such an extremist community as the corresponding offence. In that, the article defines extremist group as “a group of

persons organised for the preparation or for the performance of extremist crimes, with the motives of ideological, political, racial, national or religious hatred or enmity, as well as hatred or enmity towards any *social group*” (italics by us - *Authors*).

Not only the substantive, but also the procedural aspects of crimes and the punishments for them require separate consideration.

In democratic countries, the recognition of the importance of close relations between intimate people is reflected in the rules of not having to witness against each other. However, the Criminal Procedure Code of the Russian Federation appears to be discriminating in this sense: Art.56 provides for the basis of the legal status of a witness as a participant in criminal proceedings. The article mentions amongst other rights, the right to refuse being a witness against self, spouse and other close relatives as listed quite exhaustively in p.4 art.5 of the Code. According to this norm, close relatives include spouses, parents, children, adoptive parents, adoptive children, siblings, grandparents, and grandchildren. Obviously, the partner of a homosexual, against whom criminal proceedings are initiated, does not have the right to refuse to be a witness against his or her partner. S/He can be recognised as only a close person defined in p.3 art.5 of the CPC RF (“persons who have an affinity with the victim or witness, other than close relatives and relatives, as well as persons, whose life, health, and well-being are dear to the victim or witness by virtue of existing personal relations”). In such a situation, the partner has the right to expect certain security measures to be taken in order to protect them in case of threats (art.11 p.3, 166 p.9, 186 p.2, 241 p.2 pp.4, 278 p.5 of CPC RF).

Art.116 of the Criminal Enforcement Code of the Russian Federation 1996 considers sodomy and lesbian acts to be gross violations of the established order with sentences of convicts, while mentioning nothing about heterosexual relations. This norm is enshrined in other acts. Thus, for example, the list of convicts **on preventive file**, includes “persons inclined to sodomy (lesbian acts)” along with those getting ready to abscond from prison, inclined to use, sell or purchase drugs, etc.<sup>1</sup>.

### Administrative Legislation

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<sup>1</sup> The Order of the Ministry of Justice of the Russian Federation of 30 December 2005 “On Approval of the Regulations on the Group of Convicts of the Federal Penitentiary Service” (see: [http://www.allbusiness.ru.BPravo/DocumShow\\_DocumID\\_79954.html](http://www.allbusiness.ru.BPravo/DocumShow_DocumID_79954.html)).

The main provisions of the administrative legislation in regard to ensuring civil rights in connection with sexual orientation and gender identity are connected with the registration acts of civil status, the passport system, as well as with the degree of ensuring the rights of transsexual people who have their legal gender changed (as shown by the practice of the European Court).

The previous legislation provided for the possibility of changing records indicating the sex of the citizen, but hermaphroditism was the only ground for doing so<sup>1</sup>. The current legislation not only stipulates the possibility in principle of documenting the changed gender in the case of surgical gender reassignment of transsexuals, but also specifies the procedural provisions related to his question. Some specific examples are:

- The Federal Law “On Acts of Civil Status” 1997, which provides for the possibility of rectifying acts of civil status based on the document confirming gender reassignment issued by a health institution (art.70), at the same time changing the name of the citizen (art.60) and issuing a new birth certificate;

- The Provision of a Passport of the Citizen of the Russian Federation of the 8<sup>th</sup> July 1997<sup>2</sup>, according to which gender reassignment is grounds for passport replacement;

- Administrative Regulations of the Federal Migration Service on the provision of state service relating to the issue, replacement and fulfilment of the state duty to keep records on passports of the citizens of the Russian Federation, attesting identity of the citizen of the Russian Federation on the territory of the Russian Federation, approved by the Order of MOI RF of 28<sup>th</sup> December 2006<sup>3</sup>, according to which, in the case of gender reassignment, it is necessary to present the passport to be replaced and the name change certificate in order to receive a new passport;

- The Order of the Federal Fund of Compulsory Health Insurance of the 15<sup>th</sup> August 2000 No.67 “On the Introduction of the Unified

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<sup>1</sup> The Order of CM USSR of 10 December 1976 No.1006 “On Approval of the Main Provisions Establishing the Order of Changing, Recovering, and Annuling Records of Acts of Civil Status, Order and Period of Keeping Registers: Approved by the Order of CM USSR of 10 December 1976” (see: <http://infopravo.by.ru/fed1991/ch03/akt15582.shtm>).

<sup>2</sup> See: <http://www.fmsrf.ru/document.asp?did=186>

<sup>3</sup> See: Rossiyskaya Gazeta – 2007 – 17 February – URL: <http://www.rg.ru/2007/02/17/reglament-pasport-dak.html> .

System of CHI Health Insurance Police Number Formation”<sup>1</sup>, according to which YYYYMMDDNNNN facets of the health insurance policy number remain unchanged during the entire life of the citizen except for cases of gender reassignment.

Thus, the Russian legislation provides for the main grounds establishing the possibility and orders relating to gender reassignment. However, there are certain gaps: art.70 of FL “On Acts of Civil Status” mentions not only a document confirming gender reassignment issued by a health institution, but a standard document. Such standard form has not been approved yet, and there are situations when registry offices do not recognise the document issued by a health institution as grounds for modifying the civil status. Thus, in order to use their rights (formally guaranteed by the legislation) citizens have to apply to the court. In their turn, courts deliver a judgment on establishing the legal fact of gender reassignment, which is not quite an unambiguous solution from the viewpoint of legal theory and legislative practice<sup>2</sup>.

### Civil Legislation

The civil legislation is characterised, in general, by gender neutrality, as well as by the legal unimportance of the family status of the person. However, there are several exceptions, which are of some interest in the context of ensuring civil rights in connection with sexual orientation and gender identity.

### Contractual Law

The Civil Code of the RF 1994 stipulates the freedom of agreement (art.1) as one of the civil legislation principles, which implies the possibility of a contract, both stipulated and unstipulated by legal acts (art.421). Since there are no legal relations between homosexual partners or parents, as it will be shown below, they can correct the existing deficiencies by similar contracts. These contracts can regulate property rights related to jointly acquired property, mutual support, but not personal non-property rights (such as, for example, parental rights).

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<sup>1</sup> The Order of the Federal Fund of Compulsory Health Insurance of 15 August 2000 No.67 “On Introduction of the Unified System of CHI Health Insurance Police Number Formation” (see: [http://www.businesspravo.ru/Docum/DocumShow\\_DocumID\\_81940.html](http://www.businesspravo.ru/Docum/DocumShow_DocumID_81940.html) ).

<sup>2</sup> See: Shelutto M.L. Conditions and Family-Legal Consequences of Birth Certificate Rectification in Case of Sex Transformation // Issues of Civil, Family, and Housing Legislation: Collected Articles / ed. by V.N. Litovkin – M.: Gorodets, 2005 – P.76

## Housing Law

The Housing Code of the RF 2004 is the main source of housing law. Like the family legislation, it forms a specific legal concept of the family, defining its subject composition; but unlike family legislation, the determinant attribute of family membership is cohabitation and self-identification and not state registration. Thus, special rights are accorded to members of the family of the owner and tenant of residential premises. The first case is regulated by art.31<sup>1</sup>, according to which spouses, children, and parents that cohabit with the owner of the premises in that premises are considered their family members. Other relatives, disabled dependants, and *in exceptional cases other citizens* can be recognized as the owner's family members, if they are moved in by the owner as their family members. Citizens recognised as family members of the owner of the premises have the right to use, and the obligation to maintain, that space. When family relations between the owner and one of their family members are terminated, the latter must leave the premises; however, if they do not have anywhere to live, the court can provide them with the possibility of living in the initial premises for a certain period of time. Thus, a homosexual partner can be protected as a family member of the owning partner only by a court decision, but not automatically.

## Succession Law

The Civil Code of the RF distinguishes two institutions: succession by operation of law and succession by will. The latter is the innovation of the post-soviet legislation; this is why a homosexual partner could not lay claim to the property of the deceased partner within the soviet period. Today, the situation with succession by operation of law is practically unchanged: only the registered spouse can be the first category heir (art.1142), and in the absence of a will the estate of the deceased person goes not to their partner, but to their relatives (even relatives of the fifth degree of kinship, i.e. a stepfather, stepmother, stepson, or stepdaughter have the chance to inherit, art.1145). The only exception would be when the partner of the deceased person was their disabled dependant (1148, 1149).

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<sup>1</sup> Family members of the tenant are covered by art.69 of HC RF.

However, the situation with succession by will is completely different. The citizen has the right freely to dispose of property in case of death, to determine any person (including the homosexual partner) to receive their property or a part (art.1119).

### Family Legislation

According to O. Khazova, the Family Code of the RF was initially developed with a high level of conservatism (unlike the already adopted Civil Code of RF, which was the symbol of the new economic order in Russia)<sup>1</sup>. This is why, it was natural that the FC RF contained neither the institution of homosexual marriage (or levelling of the gender aspect of the general institution of marriage), nor any other quasi-marital union recognised by the state (however, the latter is characteristic of unmarried heterosexual couples as well). According to O. Khazova, Russian family law was always based on the idea of marriage as a union of a man and a woman, which was always an implicit condition of marriage. Despite the fact that the FC RF has made no revolutionary changes in this regard, the heterosexual aspect of marriage was consolidated by the formulation of the notion of marriage not only among general principles of family legislation<sup>2</sup>, but also in the norms dedicated to the institution of marriage<sup>3</sup>.

“Apparently, such provision shall be considered the legislator’s reply to the claims of same-sex couples regarding legalisation of their unions”, – mentions one of the FC RF developers<sup>4</sup>.

### *Conjugal (Partnership) Relations*

Despite the fact that the Russian family legislation does not legalise same-sex marriages, the partners can create a regime for themselves similar to that of relations between registered partners. It is

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<sup>1</sup> Khazova O.A. Five Years of the Russian Family Code: The First Results // The International Survey of Family Law: 2002 Edition / ed. by A. Bainham – Bristol: Jordans, 2002 – P.347-348.

<sup>2</sup> P.3 art.1 FC RF stipulates: “The family relations shall be regulated in conformity with the principles of a voluntary conjugal union between *a man and a woman...*” (italics are ours – *Author*).

<sup>3</sup> Art.12 FC RF “The Terms for Entering into a Marriage” stipulates that “to enter into a marriage, a voluntary consent *of the man and of the woman...* is necessary” (italics are ours – *Author*). The former Marriage and Family Code of RSFSR (art.15), as well as the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and Family (art.10) used to mention the consent of “the persons entering into marriage”, not specifying their gender identity.

<sup>4</sup> Khazova O.A. The New Family Code // The International Survey of Family Law: 1996 Edition / ed. by A. Bainham – Hague; Boston; London: Martinus Nijhoff, 1998 – P.372.

worth mentioning that legal relations between spouses are divided into non-property and property ones. The former are poorly regulated by legal norms (because, for example, the provision on equality of spouses in the family and their mutual moral support is of a declarative nature and cannot be enforceable), the right to surname being the only exception (the spouses may take a surname of one of them as a common surname, add to their own surname that of the other spouse, or retain their own pre-marriage surname). In this regard, same-sex couples have similar rights as well, because the legislation on acts of civil status allows anyone to change their surname without having to present specific reasons for this right.

As far as the property of the spouses (with regard to conjugal property, as well as alimony), a similar legal regime can be created for same-sex couples by entering into civil law contracts on jointly acquired property or mutual material support (based on the above-mentioned principle of freedom of contract). These contracts will have legal effect, can be enforced in cases of violation, but they also imply certain negative aspects for the partners. Firstly, the payment of alimony. The obligation to pay alimony does not extend to maintenance agreements (which are of civil law nature only) agreed by same-sex partners, which, finally, can lead to **violation of interests** of one of the parties to such agreement. First of all, alimony payments are of a strictly personal nature, which is why the corresponding rights and obligations cannot be transferred under other agreements, cannot be inherited, mortgaged, etc. With regard to agreement on maintenance of one partner by the other, the interests of the partner who has initially agreed to support the other partner can be unprotected, when the property status of one or both of them subsequently changes. Secondly, a special, priority order of collection is established for alimony payments (thus, ensuring the interests of the persons with the right to maintenance). The specific measures include the following: individuals applying to court for alimony recovery are exempt from paying the state fee; top-priority writing off of amounts constituting alimony payments in case of insufficiency of funds in the account, as well as top-priority discharge of claims in the case of bankruptcy and in general based on enforcement documents; suits for alimony can be filed at the place of residence of both the claimant and the respondent; a reduced term of court examination is stipulated for alimony cases – one month; it is possible to

apply the respondent retrieval procedure; the amounts paid for alimony purposes cannot be collected based on enforcement documents, etc. A homosexual partner who has agreed a maintenance agreement will be deprived of all these benefits.

### *Parent Relations*

Parenthood of same-sex partners is an even more complicated issue. Here it is necessary to distinguish between biological and social parenthood. In the first case, the matter concerns the use of assisted reproductive technologies, the legal regulation of which is considered below. As far as social parenthood is concerned (adoption, tutelage and guardianship), the following opinions can be formulated:

Despite the fact that same-sex couples are not allowed to adopt a child, the Russian legislation provides for the possibility of child adoption by one individual (either married or unmarried). Therefore, homosexuality itself cannot constitute grounds for refusing adoption. However, any act of adoption should promote the child's interests, which, in their turn, are estimated specified by the law enforcement body (tutelage and guardianship authority or court). Whether the corresponding body would consider that the interests of a child will be violated if s/he is brought up by a homosexual parent – is an open question, but the lack of tolerance in Russian society towards homosexuals suggests that the answer will be positive. However, it is worth mentioning that any decision of the administrative body or court can be appealed against, including in the European Court of Human Rights, which has already recognized the refusal of adoption based only on sexual orientation to be a violation.

In the context of the considered issue, such institutions as tutelage and guardianship, as well as adoptive family have certain peculiarities.

Before 1 September 2008, adoptive family was a unique phenomenon: despite the recognition of registered marriage only, a civil partnership could be considered a family as well. Spouses, as well as individual citizens, without specifying their sex, sexual orientation, and mutual relations, could become adoptive parents. Thus, an adoptive family could provide same-sex partners with the possibility of bringing up a child together, recognising them as their legal representatives.

However, a new Federal Law “On Tutelage and Guardianship”<sup>1</sup> has come into effect, which considers the adoptive family to be a kind of tutelage or guardianship, as well as prohibiting unmarried individuals to play the role of adoptive parents. Nevertheless, the new legislation also presents signs of improving ensuring the rights and interests of homosexual parents. Despite the fact that the Russian legislation considers exclusively heterosexual parenthood to be a standard model of the family, which implies that a child should have only one parent of either sex at a given time, there is the possibility of appointing a specific person to be the child’s guardian. In other words, one of the partners, being the child’s legal parent, can appoint the other partner to be the child’s guardian when s/he is not able to fulfil their parental duties by themselves (e.g., in case of a long hospitalisation, a foreign trip, etc.), as well as in case the child is left without parental care for a long period of time (e.g., death, deprivation of parental rights, the legal parent is recognised as being incapable). The tutelage and guardianship body can deviate from these guidelines only in favour of the child’s interests, and the decision on the violation of the child’s interests by the homosexual orientation of the potential guardian can be appealed against in court, as has been mentioned above.

Finally, transsexuals constitute a gap in the current Russian family legislation, because the FC RF fails to provide for the situation of parent and matrimonial legal relations of such people. Thus, even despite surgical change of sex, the modification of gender on birth certificate and passport, marriage certificate and birth certificate of their child, a transsexual will have the status corresponding to their previous gender.

V. Jirinovski in his draft law “On Paternity” has made an attempt to solve the issue of parenthood of people who have changed their sex (in particular, it was proposed to introduce the following norm: “Obligations to maintain the child by their legal father shall be preserved if the latter changes his sex”), but the general content, legal and technical peculiarities of the document have led to its rejection.

### Health Legislation

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<sup>1</sup> The Federal Law “On Tutelage and Guardianship” of 24 April 2008 // Collection of Legislative Acts of the Russian Federation – 2008 – No.17 – P.1755; The Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation Related to Adoption of the Federal Law “On Tutelage and Guardianship” of 24 April 2008 // *ibid.* – P.1756.

A great number of bylaws distinguish homosexuals as a separate group when considering issues related to the spread of different diseases: firstly, sexually transmitted diseases and HIV.

Thus, for example, according to the Order of the Ministry of Health of the RF of 30 July 2001 No.291 “On the Measures to Prevent Spread of Sexually Transmitted Infections”<sup>1</sup>, “homosexuals” belong to the group of people with “risk behaviour” together with prostitutes, the homeless and alcoholics, who require education on the sexual culture of contraception and the free distribution of condoms.

Another document, on the one hand, stipulates that the majority of HIV-positive individuals do not belong to high-risk groups – drug addicts and homosexuals; on the other hand, it is emphasised that the educational information meant, first of all, for high-risk and stigmatised groups does not reach the addressee in the majority of cases, and homosexuals “may perceive the messages about the danger of infection as a result of homosexual contact disseminated through mass media as a means of suppressing non-traditional minorities by the state”. The means aimed at preventing dissemination of HIV among MSM (men having sex with men) including, in particular: the creation of long-term stable partnerships, use of condoms, and “less dangerous sex”. Finally, it is worth mentioning that the corresponding document emphasises the need to be tolerant of MSM and free of homophobia<sup>2</sup>.

The Order of the Ministry of Health of RF of 6 August 1999 No.311 “On Approval of Clinical Guidelines “Models of Diagnosing and Treating Mental and Behavioural Disorders”<sup>3</sup> considers bisexuality and homosexuality as deviations of sexual attraction. It provides for a special group of “Disorders of Sexual Preferences”, which presents the “sexual norm criteria”: pairing, heterosexuality, sexual maturity of the partners, free will, mutual consent, lack of physical and moral damage to health of the partners and other people. Any deviation from these criteria is considered a sexual preference disorder.

Still, there is a certain progress that shows the normalisation of homosexuality from the viewpoint of official authorities.

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<sup>1</sup> See: [http://www.businesspravo.ru/Docum/DocumSHow\\_DocumID\\_23222.html](http://www.businesspravo.ru/Docum/DocumSHow_DocumID_23222.html).

<sup>2</sup> Organization of HIV Prevention among Different Groups of Population: Methodological Recommendations / Ministry of Health and Social Development of RF – 2006 (See: <http://www.hivpolicy.ru/documents/index.php?id=961>).

<sup>3</sup> See: <http://www.psyinst.ru/page.php?p=70>.

Thus, the Order of the Ministry of Health and Social Development of the RF, issued in April 2008, excluded “homosexuality” from the list of absolute grounds for rejection of blood donors<sup>1</sup>.

### *Transsexuality Issues*

These issues are regulated by the above-mentioned Order of the Ministry of Health of RF of 6 August 1999 No.311, according to which transsexualism is “a stable condition of self-identification with the opposite sex, despite the correct formation of gonads, urinogenital system, secondary sexual characteristics, corresponding to the genetic gender; it is characterised by the urge towards sex change by hormone, surgical treatment and legalisation of the desired gender role in the society”. As that, transsexualism is considered a diagnosis, i.e. to be treated by psychosocial adaptation of the patient to their gender. The same order defines sex change as “a medical and legal act that allows the individual to play the desired gender role in the society”.

The decision on the advisability of gender reassignment is made by a special medical board formed by three doctors. Based on examination results, the board makes one of four decisions: to change the legal gender, to refuse the change of the legal gender, to postpone the decision until receiving additional information about the patient; to agree to a sex reassignment surgery.

Indications for gender reassignment include: the impossibility of the psychosocial adaptation of the patient with their innate gender; a high level of suicide attempts; the absence of endogenous mental disease; lack of homosexuality as the leading motive for gender reassignment; absence of delinquent behaviour; the formation of the opposite sexual identity from five-seven years old; the termination of sexual development; sufficient social maturity.

As it has been already mentioned, although the Russian legislation establishes the possibility of gender reassignment and the related rectification of a number of documents, there are certain gaps in the legislation related to the legal status of transsexuals. The listed medical acts cannot fill these gaps, neither do the separate provisions developed

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<sup>1</sup> The Order of the Ministry of Health and Social Development of RF of 16 April 2008 No.175H “On Amendments to the Order of the Ministry of Health of the Russian Federation of 14 September 2001 No.364 “On Approval of the Procedure of Medical Examination of Donors of Blood and Its Components” // Rossiyskaya Gazeta – 2008 – 24 May – URL: <http://www.rg.ru/2008/05/24/donor-doc.html>.

by clinics<sup>1</sup> (they ensure the interests of officials instead of the interests of patients; they do not establish legal relations after a sex reassignment surgery; they are not regulatory acts and, therefore, are not applied outside the clinic). Besides gaps in family legislation (related to the ambiguous status of spouse and parent), there is some uncertainty in the legislation on military service (the status of the citizen in this regard depends greatly on their sex, and the grounds for an excuse from duty must be expressly stipulated by law<sup>2</sup>, and “disorders of gender identity and sexual preference” are considered to be grounds for recognising the citizen as physically limited or ineligible for military service<sup>3</sup>).

### *Reproductive Rights*

There is still no law on the reproductive rights of citizens or reproductive technologies in Russia, and the few provisions aimed at their regulation are scattered throughout various acts of different fields (chapter VII of the Fundamentals of Legislation of RF on Health Care, art.51, 52 of FC RF, the Order of the Ministry of Health of RF No.67 of 26 February 2003 “On Assisted Reproductive Technologies (ART) in Therapy of Female and Male Sterility”<sup>4</sup>). On the one hand, unlike a number of European countries, the Russian legislation does not deny access by individuals and same-sex couples to assisted reproduction. On the other hand, this right is ensured only for single women, and the possibility of establishing parenthood for a child born by a surrogate mother is provided only to married couples. In other words, a same-sex female couple can resort to donor impregnation, but only the woman who has carried and given birth to the child will be recognised as his/her legal parent (mother); same-sex male couples, in their turn, face difficulties with biological parenthood. Surrogacy is accessible neither for two men, nor to one of them, since the FC RF does not allow the possibility of abolishing the legal maternity of the surrogate mother with the establishment of legal paternity of the biological father of the child. This provision should be considered unreasonably discriminatory; it contradicts the standards of international law, because the principle of equality of men and women is established by the national legislation of

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<sup>1</sup> Maleina M.N. Transformation of Biological and Social Sex // Russian Law Magazine – 2002 – No.9 – P.52-53.

<sup>2</sup> See: the Federal Law “On Military Duty and Service” 1998

<sup>3</sup> The Provisions on Military-Medical Expertise is approved by the Order of the Government of the Russian Federation of 25 February 2003 No.123 (see: [http://www.rg.ru/oficial/doc/postan\\_rf/123-03.shtm](http://www.rg.ru/oficial/doc/postan_rf/123-03.shtm)).

<sup>4</sup> See: [http://www.mariamm.ru/doc\\_536.htm](http://www.mariamm.ru/doc_536.htm).

Russia (including its enshrinement at the constitutional level), and the equality of reproductive rights of men and women are guaranteed by the Women's Convention.

### *Burial Issues*

Burial issues are regulated by the Federal Law "On Burial and the Funeral Business" 1995. It also contains certain aspects related to the status of same-sex partners. The situation is similar to family regulation of relations between spouses, as well as to succession law. If the citizen while alive has not expressed his/her wishes with regard to decent treatment of his/her body after death, their spouse or relatives are vested with the right to settle issues related to burial, etc. Only in the case when the latter cannot solve these issues, can they be settled by other people. But if a will has been drawn up, this is the case where the will has precedence, implying that a homosexual can be appointed the executor of their partner's will.

### **2.3. General Conclusions and Recommendations for Legislation Improvement**

Thus, a study of Russian legislation and the standards of international law on their compliance with the objectives of protecting the rights and interests of people in connection with their sexual orientation and gender identity identifies both positive and negative issues.

According to the analysis of the activity of the Council of Europe and the European Court of Human Rights, a number of issues have been regulated by Russian legislation in compliance with the conclusions made at international level (decriminalisation of non-violent homosexual relations, equalisation of the age of consent for homo- and heterosexual sexual relations, the possibility of rectifying birth certificates and passports of transsexuals, etc.). However, the Russian legislation could be improved in other aspects at international level (parental rights of homosexuals and transsexuals, the principle of non-discrimination based on sexual orientation and gender identity).

Regulation of relations in private law (civil, family), as well as a number of issues of public law (health legislation) allow individuals having homosexual relations to enter into different agreements aimed at

creating a legal regime similar by its form and content to the legal regime established by law for heterosexual couples; however, this contract regime has a number of restrictions (it does not cover non-property relations or a number of benefits and guarantees, it excludes simultaneous legal recognition of two same-sex parents of the child, etc.). In this sense, one can speak about the formation of legal subcultures of individuals in connection with varieties in their sexual orientation and gender identity: in the absence of specific regulation of their relations they use gaps in the legislation in order to achieve their own goal – the adequate reflection of social, actually formed relations in law.

However, alternative, private regulation does not always adequately guarantee the rights and interests of individuals; this is why besides contractual regulation of relations there is a need for the legislation to enshrine a number of provisions. The following proposals could be made in this regard:

As a first stage, it is necessary to create a basis for equalisation of the legal status of individuals regardless of their sexual orientation and gender identity. The main problem is in the social perception of difference and negative attitude towards the LGBT community in general and its representatives from individuals, organisations, groups and public authorities. Besides, any legal norms should correspond to the level of development of society; this is why a radical reforming of all the legislation branches can lead to the appearance of inoperable norms and a further violation of rights and interests. Thus, the main task to be solved at this stage from the viewpoint of legislation is to ensure non-discrimination in general (enshrinement of the corresponding provisions in the Constitution of RF, doctrines, codes, etc., completion of the lists of prohibited discrimination grounds with respect to sexual orientation and gender identity, establishment of liability for homophobic actions), to create conditions for spreading the culture of tolerance (with special attention to the part of state authorities and their officials<sup>1</sup>, as well as

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<sup>1</sup> Thus, for example, one of the judges of CC RF proposes to pass a federal law that would “oblige our special services, by request of the community of judges, thoroughly to verify candidates to judges, of course, with their consent, and not only for presence or absence of any relations with the criminal world, but also for any possibility of blackmailing the candidate to judges (their relatives and close people), e.g. based on their excessive attachment to gambling, *non-traditional sexual orientation*, use of drugs, etc. in order for the special service to present an objective official conclusion based on the verification results, which could be one of the important grounds for making a decision on appointment or refused appointment of the verified candidate” (italics are ours – *Author*). See: Kleandrov M.I. Russian Justice Mechanism Improvement // Court Administrator – 2006 – No.1. Such provisions should be totally excluded on the part of officials (courts, the more so CC RF, should protect the rights of all citizens, regardless of their sexual orientation and gender identity).

mass media). It is also necessary to equalise the situation of men and women in the field of reproductive rights (first of all, the right to assisted reproduction regardless of marital status), as well as to solve general issues of the legal status of transsexuals, establishing legal mechanisms that would subject them to a regime corresponding to their new sex.

At the second stage, with the help of specific measures, it is necessary to provide equal opportunities for people in specific fields and branches of law regardless of their gender identity and sexual orientation (legalisation of marital and quasi-marital unions, enshrinement of the parental rights of homosexuals, provision to homosexual partners of the benefits and rights guaranteed to spouses).

Finally, we consider it very important to thoroughly develop legal regulation of relations in connection with gender identity and sexual orientation, which implies the creation of special interdisciplinary working groups aimed at: studying social, psychological, and legal differences of LGBT people, developing the necessary legislation; involving stakeholders and communities in this activity; creating conditions for civilised public discussions; improving the legal culture of the population in general and individuals who are discriminated against based on their sexual orientation or gender identity in particular; using different mechanisms of protecting the rights and freedoms guaranteed to everyone, including international legal instruments.

### **3. DISCRIMINATION AND VIOLATION OF THE RIGHTS OF HOMOSEXUALS AND TRANSGENDERS**

#### **3.1. Widespread Violations and Discrimination Based on Sexual Orientation and Gender Identity**

The survey carried out within the monitoring exercise (564 people from six regions were interviewed) detected an interdependency between discrimination and sexual orientation/gender identity. While about the same number of respondents among the interviewed heterosexuals and LGBT representatives associate discrimination against them with nationality and religion, discrimination based on sexual orientation/gender identity is much more prominent among representatives of the LGBT community.

Table 1. Do you associate the manifestations of discrimination against you:

		Heterosexuals	Gays, Lesbians, Bisexuals
With nationality	Yes	7.3%	6.9%
	No	92.3%	90.1%
With religion	Yes	3.1%	5.6%
	No	96.2%	94.4%
With sexual orientation/gender identity	Yes	4.2%	56.3%
	No	95.8%	43.4%

Thus, for more than half of the interviewed gays, lesbians and bisexuals their sexual orientation is an acknowledged reason for discrimination by society and the state. At the same time, the vast majority of heterosexuals do not experience any discrimination based on their sexual orientation. All these refute the statements made by a series of political and public figures claiming that the problem of discrimination based on sexual and gender identity is artificial.

Within the survey, the respondents were asked to answer four questions:

- 1) Have you been subject to physical violence after the age of 16?
- 2) Have you ever been subject to threats, blackmail and psychological pressure from surrounding people after the age of 16 (relatives, colleagues, etc.)?
- 3) Have you personally had difficulties (barriers) in your relationships with employers, which are not related to your business (professional) skills?
- 4) Have you ever encountered violence and abuse of power from the authorities?

The results are quite different depending on the region. This is partially caused by the fact that the sample selection methodology was not the same in all the regions. However, we can say that respondents with homosexual orientation (gays and lesbians) encounter physical violence and various forms of psychological coercion from surrounding people more often.

Have you been subject to physical violence after the age of 16?

Table 2. Voronezh

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	

Yes, many times	4.35%	7.55%	7.89%	7.02%
Yes, one or two times	26.09%	16.98%	23.68%	21.05%
Never	69.57%	75.47%	68.42%	71.93%
	100.00%	100.00%	100.00%	100.00%

Table 3. Omsk

	Sexual Orientation				All Respondents
	Bi	Gays	Hetero	Lesbians	
Yes, many times	0.00%	10.53%	3.03%	0.00%	6.36%
Yes, one or two times	11.76%	28.95%	12.12%	22.22%	19.09%
Never	88.24%	60.53%	84.85%	77.78%	74.55%
	100.00%	100.00%	100.00%	100.00%	100.00%

Table 4. Rostov-on-Don

	Sexual Orientation				All Respondents
	Bi	Gays	Hetero	Lesbians	
Yes, many times	5.26%	0.00%	3.70%	0.00%	2.86%
Yes, one or two times	42.11%	40.00%	24.07%	28.57%	31.43%
Never	52.63%	60.00%	72.22%	71.43%	65.71%
	100.00%	100.00%	100.00%	100.00%	100.00%

Table 5. Tyumen

	Sexual Orientation					All Respondents	
	Bi		Gays	Hetero			Lesbians
	Men	Women		Men	Women		
Yes	61.54%	33.33%	76.92%	34.78%	27.27%	69.23%	57.84%

No	38.46 %	66.67 %	23.08 %	65.22 %	72.73 %	30.77%	42.16%
	100.00 %	100.00 %	100.00 %	100.00 %	100.00 %	100.00 %	100.00%

Homosexuals manage to avoid problems in relations with their employers by carefully hiding their sexual orientation. Gays and lesbians more often have to give incomplete information about them in order to get a job.

Have you personally had difficulties (barriers) in your relationships with employers, which are not related to your business (professional) skills?

Table 6. Voronezh

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	
I was fired or had to leave the job	0.00%	9.43%	0.00%	4.39%
I was refused employment	8.70%	13.21%	10.53%	11.40%
There were difficulties with promotion	8.70%	5.66%	15.79%	9.65%
I had to provide incomplete information to get the job	17.39%	7.55%	13.16%	11.40%
Nothing of this kind	65.22%	64.15%	60.53%	63.16%
	100.00%	100.00%	100.00%	100.00%

Table 7. Omsk

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	
I was fired or had to leave the job	2.63%	12.00%	0.00%	6.25%
I was refused employment	7.89%	3.03%	0.00%	5.00%

There were difficulties with promotion	10.52%	9.09%	0.00%	8.75%
I had to provide incomplete information to get the job	26.31%	3.03%	33.33%	17.5%
Nothing of this kind	57.89%	72.73%	66.67%	65.00%
	100.00%	100.00%	100.00%	100.00%

Table 8. Rostov-on-Don

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	
I was fired or had to leave the job	4.00%	14.82%	0.00%	10.47%
I was refused employment	8.00%	7.41%	0.00%	6.98%
There were difficulties with promotion	16.00%	25.93%	0.00%	20.93%
I had to provide incomplete information to get the job	12.00%	11.11%	28.57%	12.79%
Nothing of this kind	72.10%	59.26%	71.43%	63.95%
	100.00%	100.00%	100.00%	100.00%

The need to hide one's sexual orientation is a serious stress factor, which reduces the quality of life of gays and lesbians. Among the interviewed users of the QGuys.RU portal (more than 3,000 people), 54% declared that this caused depression.

According to the survey results, gays and lesbians encounter violence and abuse on the part of law enforcement bodies and other authorities more frequently than heterosexuals.

Have you ever encountered violence and abuse of power from the authorities?

Table 9. Voronezh

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	

Yes, many times	4.35%	3.77%	2.63%	3.51%
Yes, one or two times	34.78%	11.32%	13.16%	16.67%
Never	60.87%	84.91%	84.21%	79.82%
	100.00%	100.00%	100.00%	100.00%

Table 10. Krasnodar

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	
Yes, many times	21.43%	12.12%	0.00%	12.96%
Yes, one or two times	50.00%	63.64%	28.57%	55.56%
Never	28.57%	24.24%	71.43%	31.48%
	100.00%	100.00%	100.00%	100.00%

### 3.2. Offences against Life, Violence and Other Treatment that Abases Human Dignity

According to a survey carried out in December 2007 among the users of one of the biggest Russian portals for gays and male bisexuals Qguys.Ru (3,800 people), 27.17% of the respondents had suffered from physical violence because of their sexual orientation. Physical violence was equally likely for all types of localities (capital cities, **oblast** centers, district centers, rural areas). 37.12% of the respondents had been subject to threats, blackmailing or other types of psychological pressure.

Only in rare cases do hate crimes against homosexuals become known to the law enforcement bodies and the public. Usually, victims do not contact the police, prosecutor's office or court and avoid disclosing the problem fearing homophobia on the part of the authorities.

At the beginning of October 2007, a young man called Denis was killed in Yekaterinburg near the night club "Moloko", where parties for gays and lesbians are organised. Several attackers inflicted numerous injuries and an open skull fracture. They wrote the word "queer" on the chest of their victim with his own blood. The information on this case was immediately closed to the public. When the friends of the murdered man came to the police department to find out about the progress of the investigation, they were told that none of what they were saying had

happened. The relatives refuse to provide any information either. According to unconfirmed information, the guilty people have appeared before the court and have only been sentenced to probation.

In Shabrovsk village, Sverdlovsk oblast, two local inhabitants were arrested on suspicion of the brutal murder of another villager. The prosecutor's office of Sverdlovsk oblast declared that the body of the victim was found on the snow near his house on 28 February 2008 with cut wounds on his neck, head and with a brain injury. On 5 March, two villagers aged 17 and 19 were arrested. They owned up to the murder. One of them was charged with "murder" and the other of "premeditated infliction of average bodily damage". People from the prosecutor's office said that the murder had been based on personal hostility as the accused considered the victim to be of a non-traditional sexual orientation.

On 11 October 2006, two servicemen beat a 28-year-old local inhabitant to death under the bridge over the Om River in Omsk City. The investigation established that the 20-year-old private Pavel Mertz and the 22-year-old corporal Victor Shevchuk had met in an Omsk hospital. To get rid of hospital boredom and to earn some money, Mertz offered his sexual "services" to the 28-year-old man, who was also called Victor. The curious Shevchuk decided to be present at that meeting. Having received what he was offered by the soldier and having paid him 200 rubles, Victor made a similar offer to Shevchuk. The corporal took offense and started beating Victor. Soon, Mertz joined him. They beat the young man for a long time, strangling him with a scarf. Then, they took his money, cell phone and shoes and left, certain that Victor was already dead. However, experts established that he was alive for another 24 hours lying dying in the cold. The servicemen said that it was an accident in a closed trial.

On the night of 20 January 2007, two young men assaulted a well-known journalist from Khabarovsk Konstantin Borovko and his friend Dmitry Cherevko who had left the gay-club "Taboo" near block No. 51 on Krassnogo Znameni Avenue in Vladivostok. They struck numerous blows with their heads and legs at their victims' heads and bodies. In addition, they stole cell phones and money from the victims. The passers-by who found the unconscious people called an ambulance. The doctors certified the death of Konstantin Borovko as a result of heavy brain injuries. Dmitry Cherevko was hospitalised and spent several days in the resuscitation unit. The Pervorechensk district court of Vladivostok

City found Alexander Poludeny and Alexander Y. who was not 18 at the time of the crime guilty of the assault on 27 February 2008.

On 3 March 2007, several people were beaten up with brutality at the night club “Zhara” in Kaliningrad. According to a victim’s testimony, the actions were accompanied by obscene words indicating that the reason was the non-traditional sexual orientation of the club visitors. As a result of the beating, several ribs and his nasal arch were broken. Other people received less serious injuries. Nobody filed a complaint with the police department.

Purposeful “gay hunting” cases are becoming more and more frequent. Criminals meet their victims in gay-clubs or other meeting places for homosexuals, worm themselves into their confidence, then beat them up or kill them.

“An acquaintance of mine agreed to meet a new pen pal in the summer of 2007. Nobody came to the meeting, but when he went to leave the place, he was overtaken by a group of men and somebody punched him on the head from the rear. As a result, he was unconscious and woke up in hospital with head injuries” (Sasha, 28 years old, Omsk City).

“Many heterosexuals meet gays on the Internet already full of hatred for this group of people, and if they do not manage to vent their anger at the “first date”, they threaten them through the Internet with beating up, rape or death” (Evgeni, 20 years old, Omsk City).

An open gay was killed on 25 January 2006 in Tyumen City. He did not have other relatives apart from his mother and they lived in a 2-room apartment in the centre of the city, near a traditional meeting place (“pleshka”). He was killed after his birthday. The attackers broke into the apartment and beat him and his mother for a long time. Then they strangled both of them with a guitar string. This crime has not been solved yet.

Tyumen gays report a great number of unsolved murders of homosexuals within the last six years. Beatings and assaults take place regularly at the “pleshka”. Criminals trace the men who go there then attack them certain that the victim will be afraid to go to the police.

On the night of 30 April 2007, a second-year student of the Ecclesiastical Academy and a psalm-reader at the Kazan Cathedral, Dmitry Zvyagintsev, was assaulted in Saint Petersburg. According to the police, he had spent the night at “Central Station” – one of the most famous gay-clubs. There he met a young man that he invited to his

place. At 5 o'clock in the morning, Dmitry was found at the entrance to his block unconscious with multiple knife wounds. The victim was taken to the resuscitation unit of Mariinskaya Hospital. The doctors had to remove an eye and a lung. They also found serious liver injuries.

According to the Saint Petersburg gay activist, manager of the "Central Station" club Ignat Fialkovsky, a favourite amusement for students is to meet a gay on the Internet and then the entire group beat him up .

On 12 January 2008, an anonymous young man contacted volunteers who were conducting monitoring in Voronezh. He told them the following on the phone: "On my way back from my boyfriend's, at about 22.30, I was walking through the yards as a shortcut and saw several young men at one of the entrances to the block. There were three of them. Then, one of them entered the block. They were smoking. I was passing by and the distance between us was quite big. Of course, I did not look at them and did not try to speak to them, because I was afraid of drawing their attention. But, what I feared happened. One of them shouted something obscene and the message was for me to provide sexual services to them. I did not make out what they said at once, so I stopped and asked them: "Sorry?" They started laughing and I understood that it was better for me to go. But they were shouting at me and continued offering various obscenities. The distance to my block was small, but they were following me rapidly. I could not bear it and started running. They also started running and shouting. Very scared, I entered the first entrance and knocked on a friend's door. He let me in. Then, he accompanied me to my block, when the cries outside stopped. I did not call the police. They did not do anything to me and I had no reason to complain. I have not walked though the yards since then. The worst thing is that I have got into the habit of looking back at that event. Tell me, how long do I have to feel like a tracked down hare trembling from every cry in the hunting season?!"

There are many cases of bullying when victims are considered to be gays or lesbians by the attackers.

In May 2007, a whole series of assaults based on homophobia took place at an attempt to have a gay pride march in Moscow and afterwards.

Two friends aged 31 and 28 were coming back from a visit to somebody's place. At 14.00, a group of aggressive young men blocked their way in the Teatralnaya Underground Station. They asked: "Are you

queers?” And, without waiting for an answer, struck two blows and ran away. One of the victims had concussion, the other hematomas.

At the Belorusskaya Underground Station, a 25-year-old barman and a 22-year-old waiter of one of Moscow cafes were beaten up at about the same time on their way to work. They were not allowed to work with bruises.

Another victim who contacted the Russian network of LGBT organisations says: “I was beaten up by three unknown people on Tverskaya Street. When I was walking in the direction of Okhotny Ryad, I heard the question: “Are you a gay, mister?” I answered: “What difference does it make?” Having walked another few metres, I felt a strong blow on my back, then multiple blows with hands and legs on my body...” He went to the Chertanovo-Severnoye IAD (Internal Affairs Department) and to the trauma centre on the same day (27 May). No investigations were carried out on the basis of his request. The police did not even interrogate him.

Assaults on homosexuals are often committed for “ideological” reasons. According to the Lgbtrights.Ru website, a group of skinheads attacked a couple of gays, threatening them with murder on 14 December 2008 in Novosibirsk city. “It all started as usual, they asked for cigarettes. Then they started molesting Denis saying that they did not like the way he was dressed and particularly his braces. I tried to stop them, explaining that he was a designer and a visitor to the city. Of course, his dress style differed from other people. They said they were skinheads and they were killing gays. Then they showed me a big chain they used to bash gays and non-Russians” according to one of the victims. They managed to convince the skinheads that they were not gays, “to avoid being killed on the spot”.

“They overtook us and tried to attack Denis. I tried to help him and shot from my tear gas spray twice but missed. Then, a guy who was taller than me took the chain and started hitting me with it on my head and face. I fell on my stomach and turned over and the guy with the chain jumped on my chest and started beating me mercilessly on my face with his fists. I tried to protect myself, but it was useless. I was crying and calling for help, while Denis was fighting with the other guy (he had done martial arts a little). I thought that guy would kill me” tells the victim. Only the appearance of a passerby with a dog scared the attackers away<sup>1</sup>.

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<sup>1</sup> [http://lgbtrights.ru/index.php?option=com\\_content&task=view&id=401&Itemid=90](http://lgbtrights.ru/index.php?option=com_content&task=view&id=401&Itemid=90)

The victims of attacks are usually those who have tried to defend their dignity and rights in court, as well as activists of LGBT community-based organisations.

Andrei K. (Moscow city, 28 years old) was assaulted after he had gone to the court in relation to his illegal dismissal on the grounds of sexual orientation.

“On 13 November 2007, at about 23:30, near the Sevastopolskaya Underground Station and block No. 36 on Azovskaya Street, David (Andrei K.’s friend) and I were attacked by two unknown people. The attackers looked like skinheads: shaved heads, black leather jackets and boots with many metal studs, and rings on their fingers that looked like brass knuckles. The reason for the violence was seeing us kissing when they were passing by. They shouted: “Beat the bloody queers!” and attacked us, striking with their hands and legs on our face, head and groin. We could not show active resistance to them, because the first blows were so strong that we fell on the ground almost simultaneously so we tried to protect our faces with our hands. The beating lasted for about twenty minutes and ended only when a woman cried in a window: “I am calling the police!” Then, the attackers took our cell phones and ran away”.

The next attack on Andrei K. took place three days after the Khoroshev district court dismissed the claim. The victim describes what happened in the following way: “On 16 March 2008, at about 22:00, I was beaten with brutality by unknown people. Although I decided not to live in my apartment and went there very rarely to check the post box, a group of four young men waited for me near my block on Trekhprudny Street and pushed me in a white “Gazel” windowless minibus with a blue police number plate. There, they started beating me and applying special tools — electric shock and tear gas sprays. The young men were wearing black-and-white and white jackets with the “Nashi” (*Ours*) inscriptions, and there were bandages with the “druzhina” (*squad*) inscriptions in the car”. “You, queer, want to defend your rights? You will not live... we will bury you alive!” I do not remember how long it all lasted for, but when I woke up, I saw that they had thrown me out of the car in the street in the area of the Third Traffic Ring (in that part of it, which is close to my district), the passers-by asked a passing ambulance to provide medical assistance to me. The ambulance brought me to the S.P. Botkin Hospital. After medical examination and medical assistance provided to me I was sent to the neurosurgery department, but

because of the unbearable living conditions I refused hospitalisation, called a taxi and went to David's place, which was located in Pushkino town, Moscow oblast".

The members of the Russian LGBT Network and "Vykhod" (*Exit*) organisation from Saint Petersburg also face direct violence. On 3 May 2008, after the "Silence Day" action aimed at drawing the attention of the public to the issue of hate-based violence, three unknown people assaulted the president of the Russian LGBT Network I.Petrov, the executive director of "Vykhod" organization V.Sozhev and I. Fialkovsky who was the press-secretary of the LGBT film festival "Side by Side". As a result of this assault, Petrov and Fialkovsky received multiple injuries and bruises.

Cases of sexual violence or threats of sexual violence related to victims' sexual orientation are quite frequent. On 22 March 2008, the following happened in the centre of Voronezh city. According to the 19-year-old victim Elena, her brother and five of his friends were drinking, watching movies, laughing and talking loudly. Elena's relations with her brother were tense because of his intolerance of her sexual orientation, so she was sitting silently in her room. Then, the noise stopped. She heard the door slamming. Elena decided that the guests had left. She did not see anybody and went to the kitchen. There she heard a rustle and chuckles. She ran back to her room, but two or three young men stopped her; she ran to the door, opened it, but her brother and another person were standing there. They were all drunk and embittered. Her brother told her in a brutal way that he would finally teach his stupid sister a lesson on who she should love. He was crying, grabbed her by her shoulders, and smacked her on the face and head. Elena was afraid that they would rape her, but it did not happen. However, she received a serious psychological trauma. She did not inform her parents about this, because they did not know about her sexual orientation (her brother saw her kissing a girl). She did not report it to the police either.

Young men and women of school age who realise their homosexuality are in an extremely vulnerable position. They often face double pressure –from their classmates and from their parents. "In 2004 I was a student at a boarding-school. My friends and classmates started calling me names, blackmailing me, laughing at me when they found out about my homosexuality. I was in the eighth grade and had one more year left to study. So, I was abused physically, spiritually and mentally during that year" (Alexander, 21 years old).

Students with non-traditional sexual orientation often become the object of harassment from administration and staff of education institutions. An anonymous 20-year old woman from Saint Petersburg told us a typical story. “I was a student at the teaching college and my girlfriend was studying at the same college, but in a lower year. Her mother knew everything about her and when I was forced to come-out, she went to the director with three complaints: that I had seduced and introduced her daughter to hard drinking and drugs (which was not true, of course). Alex and I started being called to the dean’s office for long “explanatory discussions” every day: we were told that we required treatment, had to work on ourselves or, in the worst case, bury our attractions deep in our soul. Then, we started attending compulsory discussions with the psychologist who was trying to “correct” us three times a week; he was assuring me that I was not a true lesbian, because he had seen “true” lesbians; that I was just paying a tribute to fashion, listening to the “Tattoo” band (by the way, I have never listened to them), the front-girls of which are, in fact, heterosexual. Most of the students in our groups stopped talking to us; they started pointing fingers at us, laughing at us. Teachers (except for two of them) started picking on us and told us directly that we would not pass the examinations until we “corrected” ourselves. This was exhausting us, the psychological pressure was enormous; we could not keep up with the syllabus; we were permanently on the expulsion list. Finally, they offered me a choice: either they would expel me (although I had passed almost all of the failed tests) or I could go to the district psychiatric hospital for children (I was 17 then). I chose the second. The indifferent psychiatrist did not give me anything; he just prescribed Phenazepam and some other crap (I do not remember, because I did not even buy it). They opened a file on me with a “suicidal” diagnosis (I was not thinking of suicide, but Alex and I hurt ourselves because of the stress – we cut our hands). They would give me certificates in the hospital that I took to the dean’s office. They stopped paying attention to me there, but I had to take sabbatical leave because of the accumulated failed tests, although I continued visiting Alex at the college. Next year I was returned to her group, but it was impossible to study so they introduced distant learning for us, (thanks to my mother’s contact) which was a miracle, as it did not exist officially. Then, I turned 18 and was transferred to a psychiatric clinic for adults, where doctors had a good attitude, took me off the record and I stopped going there. This is how we studied for one year

until internship at a school began (teaching Russian language and literature). After my “treatment”, I did not change my preferences and they asked me to choose between: loving men, leaving the college of my own free will, or being expelled. I am not a person who gives up immediately and I tried to stay there in spite of everything. It was a pity to lose three years of study: I was in my third year already. However, permanent faultfinding on the part of teachers started: they said I did not correspond to the “Russian teacher image”, that I should wear skirts (although this did not apply to my other colleagues), make-up and have long hair, I had to quit smoking and a lot of other trifles. The teaching methodology specialist would not let us do the internship and then she would not give us a pass. My mother who saw the problems we were struggling with used her contacts to arrange for our transfer to a night school for working young people, but we did not attend that school. They gave us passes in the end and we received the certificate of secondary specialised education”.

### **3.3. Inaction and Abuse of Power by Law Enforcement Bodies, Violation of the Right to Fair Trial**

As mentioned above, people who suffer from physical violence or abasement of their human dignity because of their sexual orientation or gender identity, usually do not file complaints with law enforcement bodies, because not only do they not expect to find protection there, but they also fear the consequences of such complaints.

After the assault against Andrei K. (see above), he went to the police station. “On the following day, on 14 November 2007, at 12:00, we went to Zyuzino IAD, Moscow City, to file a complaint about what had happened. However, the duty officer, major Tyukaev, read the text of the complaint and refused to accept it saying: “Bugger off, queer sons of a bitch!” And added that if we ever tried to file complaints on harassment based on sexual orientation again, his colleagues and he would mutilate us so that we would not be able to walk away on our feet. “You got off cheap, people like you should be eliminated” added the captain on duty T.N.Bozhko”.

Usually, police officers refuse to record the homophobic reasons of attackers in the reports. This happened in the case of the skinheads’ attack on a couple of gays in Novosibirsk: “We were held there till six in

the morning, the police officers were brutal to us; they did not want skinheads and the fact that the reason for their attack was hate to be mentioned in the report. They issued the order for forensic medical expertise only two days later” said one of the victims. Cases of police inaction were also recorded during assaults by nationalist and fundamentalist organisation representatives on the participants in public events organised by the LGBT community in Moscow in 2006-2007.

At the end of April 2006, the organizers of the LGBT-culture festival “Rainbow without Frontiers”, planned for early May, filed a complaint with Moscow MIAD (Main Internal Affairs Directorate) about the threats of physical extermination that they had received. However, the MIAD officers initially refused to accept it. They managed to file the documents only at the second attempt with the help of the courier service, but there was no reaction to that whatsoever<sup>1</sup>.

On the night of 1 May 2006, a big group of skinheads and people calling themselves orthodox believers attacked the “Renaissance Event Club” night club, where the opening of the “Open Party” gay dance project was supposed to take place.

On the evening of 30 April, a column of about 200 young men chanting homophobic slogans started from Shabolovskaya Underground Station. There was no way the police could not notice the march, but they did not take any measures.

At 22:00, the extremists blocked the club, not allowing visitors to come in. Some guests of the party who tried to get in and several club staff were beaten up. The administration of the club called the police.

Two police officers turned up at 23:00 and in a brutal way told the staff to take their things and leave the place. For an unknown reason, the “police officers” made the organisers of the party responsible for what had happened: “You organised this, you face the consequences! We are closing your club!” Then, the attack on the metal doors to the club started. Bottles, soil from the flowerbed and stones were thrown accompanied by psalms.

The police bus arrived at 00:45. A “safety corridor” was created by seven or eight police officers. The first people started leaving the club and bottles, eggs, stones, and soil were thrown at them. The police did not do anything again.

Having caught up with one of the young women coming out of the club, several people started beating her on her head with sticks, crosses,

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<sup>1</sup> <http://gaynews.ru/news/article.php?ID=2245>

icons and other objects. They also kicked her in the stomach. The police officers did nothing again. The victim was taken to the trauma centre.

At two o'clock in the morning, the tired drunk and brutal crowd tried to attack the building. The police were watching. The people inside held an urgent meeting. They decided to cut off the power in the entire building and to switch off all the lights. The club's security staff announced that they refused to be responsible for the security of those who were inside.

A new evacuation attempt was made. The police brought the bus close to the exit. But the insane crowd would not let anybody leave the building.

Comfortable buses showed up at 02:10 and took part of the "protestors" away. Only crazy religious fanatics with icons and crosses chanting: "Queer buggers, you will all die! God will punish you!" were still there.

A representative of the prosecutor's office arrived and even recorded the testimony of people who were in the club. But we still do not know anything about the results of the investigation<sup>1</sup>.

The police took measures to prevent an attack and arrested the thugs only on the second day when a crowd of them under the command of the Russian National Union leader Igor Artemiev made an attempt to attack the "Three Monkeys" club.

The participants in the attempt to carry out a peaceful demonstration for the protection of sexual minorities' rights in front of the Moscow City Hall on 27 May 2007, as well as the observers from human rights organisations who were there saw that the police not only failed to prevent attacks and insults against the demonstrators by skinheads, nationalists and orthodox activists, but also supported the thugs. "Instead of protecting the victims, the police were obviously playing the same game as the thugs", says Maxim Anmeghichean, program director for the European region of the International Gay and Lesbian Association (ILGA). "They were not separating the two sides, but pushing them towards each other more and more to aggravate the assaults and then watch how the demonstrators were beaten".

According to the witnesses, "people in civilian clothes" were approaching the groups of opponents and pointing at gay-activists and representatives of sexual minorities, who were then assaulted. Later on,

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<sup>1</sup> [http://gaynews.ru/society/article.php?ID=2266&phrase\\_id=159450](http://gaynews.ru/society/article.php?ID=2266&phrase_id=159450)

those “people in civilian clothes” were seen at the police station among MIA staff.

Several dozen people, both gay-activists and attackers were arrested in relation to the events that took place at the City Hall. However, the latter were rapidly released without drafting any reports, while many gay-activists spent six to eight hours at the police station and then appeared before court.

On 12-21 June 2007, the young orthodox organisation “Georgievtzy” carried out daily picketing with homophobic slogans in the Ilyin square of Moscow. The deputy prefect of the Central Administrative District of Moscow City, G.S.Boryatinskaya, declared: “No requests to coordinate an action ‘in order to obstruct the gathering of persons with non-traditional orientation at the statue’ were submitted to the prefecture of the Central Administrative District” in a reply to the request of the Legal Information Agency LINA. In other words, the several-day picketing was not agreed with the authorities. The organisers of the Moscow “gay-pride” were arrested by the police and appeared before court for attempting to have an uncoordinated picket a unagreed week before those events. However, no sanctions were applied against “Georgievtzy”.

The participants in the picket were regularly provoking confrontation with the visitors of the square and assaulting those whom they considered to be “gays”. The police were separating them, but would not take any measures to stop the picketing, which became an obvious threat to public safety.

The repressive attitude towards homosexuals leads to continual abuse against gays and lesbians by law enforcement bodies. Unlawful arrests (both of individuals and groups) of people, as well as interfering in their private life and collecting personal data take place under the pretext of investigations for the sole reason of their real or imaginary homosexuality.

On the night of 31 August 2008, the SRRD (Special Rapid Response Detachment) broke into the “Hunter” club in Krasnoyarsk City, where a traditional Saturday party for gays and lesbians was taking place. According to the witness Igor N., the SRRD broke into the club at midnight. The SRRD announced its presence with filthy language, breaking glasses, pushing over furniture and firing guns in the air. They ordered everybody to lie on the floor face down and put their arms behind the heads. Some of the visitors were kicked in various parts of

their body; others were cut by the broken glass. Then the male visitors were accompanied to the bus with kicks of the SRRD officers who created a corridor. "People were sitting on each others' legs, in some cases even two on one person. The order was to turn off mobile phones and keep silent" Igor said.

The apprehended people were brought to the Department for Combating Organised Crime and Racketeering. Accompanied again with kicks they entered a room and were told to stand facing the wall holding their arms behind their heads. The police officers continued humiliating the "Hunter" visitors: they were calling them "f-ing queers" and "fags". "Then, they were told to do press-ups, squat and stand in a dog position. All this was filmed on the personal mobile phones of the "police officers" and was, of course, accompanied by obscene words, wild laughter and offences of a personal nature" Igor adds. The creation of a database, which was the aim of bringing the club visitors there, started after the "exercises". People were photographed in two projections; their address was recorded along with the purpose of their visit to Krasnoyarsk if their place of residence was not in the city; their wallets were checked as well as the business cards that were there; their SMS texts were read and the video-files watched on their mobile phones. According to Igor, this is how the owners of mobiles phones were discovered to be gays.

At about two o'clock in the morning, all the apprehended people were taken on the same bus to the Zheleznodorozhny BIAD (Borough Internal Affairs Department) where they were photographed again and their fingerprints were taken until the device broke down. Meanwhile, the SRRD officers were standing near the detainees arranged against the wall and were kicking those who, in their opinion, were not standing correctly. People were not allowed to use the bathroom for almost three hours.

They were released only at five in the morning. In addition, they all received summons to the prosecutor's office for a DNA investigation. "The officer, who gave us the papers, forced us to sign for receiving them, without letting us read the contents of the documents. If somebody tried to express their indignation, they received the explanation in a brutal form" Igor says.

When the events at the "Hunter" club were publicised, the Main Internal Affairs Directorate in Krasnoyarsk region issued an official

statement, declaring, in particular, the following: “On 30 August, the criminal office of the regional Main Internal Affairs Directorate received operational information, according to which there could be a person involved in crime in one of Krasnoyarsk clubs. Criminal investigation officers together with the special purpose police squad of the regional Main Internal Affairs Directorate carried out a crime-prevention operation at that establishment. The special operation was aimed at apprehending and verifying people with non-traditional sexual orientation, who regularly meet at this club. As a result of the raid, 31 people were brought in to internal affairs offices. All the apprehended people were subject to investigation aimed at establishing their implication in the crimes stipulated in Art.132 of the Criminal Code of the Russian Federation (violent sexual actions). All actions of the police officers were within the limits of the law; no physical force was used when apprehending and bringing the club visitors to the competent bodies. No apprehended person has gone to healthcare institutions complaining about any infliction of bodily injury. There have been no complaints on the part of the apprehended persons or their relatives with regard to the actions of the police officers yet”.<sup>1</sup>

Regardless of how the Main Internal Affairs Directorate has evaluated the actions of their subordinates, it is obvious that “non-traditional sexual orientation” is considered by them as the only and sufficient ground for “verification” – temporarily limiting freedom and applying coercive measures. In other words, homosexual orientation is considered a sign of social danger. The Head of the Krasnoyarsk Main Internal Affairs Directorate, Alexandr Gorovoy, declared it expressly in an interview in “Komsomolskaya Pravda v Krasnoyarske” of 26 March 2008: “906 potentially dangerous individuals have been checked for involvement in the crime. 737 individuals with past convictions for sex crimes have been **verified**. 135 former teachers and other staff dismissed from schools within the last four years have been also verified. One of the operations was carried out in the cruising area for people with non-traditional sexual orientation; and 90% of such people in the region have been verified at the moment”.

On 9 September, the investigation directorate transmitted complaints from two people apprehended during the “Hunter” raid – O.Iu. Ganichev and O.V. Suschinski – to the investigation office for particularly important cases of the Investigation Directorate of the

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<sup>1</sup> <http://www.krasguvd.ru/news/2008/09/08/5679>

Investigation Committee under the Prosecutor's Office of the Russian Federation for Krasnoyarsk region. On 12 September, the head of the office extended the investigation by ten days.

As a result of the verification, the Investigation Committee interrogated the police officers who had taken part in the special operation, as well as a number of the individuals who had been apprehended in the "Hunter" club. All of them claimed that there were no acts of force and abasement of human dignity of those apprehended. However, the verification confirmed the fact that the alleged sexual orientation had been the only ground for suspecting the apprehended people of committing a crime.

According to the investigator for particularly important cases of the Investigation Directorate of Krasnoyarsk Investigation Committee, D.Ia. Bekin, "regular actions aimed at identifying people of the specified category", i.e. homosexuals, are permanently carried out under the investigative action plan. One of the objectives of such "actions" is "to obtain samples of their blood and spittle for further comparative examination".

The head of the combat element of the special purpose police squad under the Krasnoyarsk Main Internal Affairs Directorate, V.G. Levitski, also confirmed that the special operation carried out in the "Hunter" club was aimed specifically at "apprehending people with non-traditional sexual orientation".

On 19 September, based on the results of the verification, the investigation office for particularly important cases made the decision to reject the initiation of a criminal case, which was over-ruled by the deputy head of the investigation directorate on 29 September, and the materials were transmitted for further examination. Subsequently, the Investigation Directorate under the Prosecutor's Office of the Russian Federation for Krasnoyarsk region has repeatedly rejected the initiation of a criminal case.

In September 2008, there were incidents in Saint Petersburg similar to those that happened in Krasnoyarsk.

On 8 September, around 8.30 p.m., officers of the Moscow District Directorate for Combating Organized Crimes burst into the "Bunker" gay club. During the "operational-investigative activity" they groundlessly broke the door and bars of the club, using metal fittings and other tools, seriously damaging the property, insulting the staff and visitors of the club; they presented neither themselves nor their service

certificates, establishing the identity of the club visitors in a rude and abusive manner, demanding documents. After that they brought the staff and the visitors of the club to the Moscow District Internal Affairs Directorate without giving any reason, where in the night the apprehended persons were subject to “operational-investigative actions”.

The complaints of the club staff sent to the director mention moral coercion, humiliation, threats, and other facts implying an express abuse of power by the staff of the Moscow District Directorate for Combating Organised Crimes. The club bar and storage inventory performed the next day showed the loss of alcoholic beverages; four computers and a video recording system were seized as well.

According to the club owner, the visit of the officers of the Directorate for Combating Organised Crimes was connected with the murder that took place on 19 August. The murdered man was a regular visitor of the “Bunker”.

On 17 September in the night, the police burst into “Tsentralnaya Stantsia” (Central Station) gay club, apprehended all the visitors and took them to the Moscow District Internal Affairs Directorate. According to a witness, around 60 apprehended people were taken away in a small bus. One of the police officers recorded everything on a video camera. All the apprehended people were asked about their sexual orientation at the police station. Two of them were released when they claimed to be heterosexuals. Two couples able to prove that they were married were allowed to leave as well. The police officers were free with homophobic insults and threats against those who remained, in particular against those with a piercing or coloured hair. “There was no violence, but they treated us like cattle, like slaves. Police officers would enter the room every five minutes and ask questions. They were interested to know who of us were homosexual and who were straight. According to the witness, they even took the liberty of asking the apprehended people who of them were “tops” or “bottoms”. Police officers attempted to blackmail the apprehended people by threatening to tell their families, superiors at work or their educational institution about the club they visited. At around 6 a.m., after having been photographed and signing documents obliging them to “help in further investigations” all the apprehended people were released. Although the reasons for apprehension were not given to the club visitors, the director and the co-owner of “Tsentralnaya Stantsia” Ilya Abaturov explained that the raid was connected to the investigation into the murder of a

Ukrainian citizen.<sup>1</sup> According to the available information, the body of the murdered man shown in a photo to the apprehended people was so mutilated that even with the best will in the world it was difficult to understand if it belonged to a human being.

One of the apprehended people, who signed the message on xs.gay.ru website as Domingos, reported the following: “I was among the apprehended people and think that the reason for detaining us was not the identification of the murdered person and the solution of a murder case in Saint Petersburg... It was provocation aimed at intimidating people, because not more than 10-15 seconds were dedicated to the murder case within the interrogation: a picture was shown to me and I was asked whether I knew that person. After that there were a lot of questions not related to the case: who are you living with, who you have sex with, how often do you have sexual relations with men, etc. They took my phone by force and started examining my pictures and messages: they asked why I corresponded mainly with guys and had many pictures of them in my phone. I told them not to meddle with my private life. After that I was let free, but the others, as I know, remained there until 9 a.m.”

An Omsk resident (Denis, 34 years old) told in the interview to the regional monitor: “On 18 April 2008, my partner and I were subject to investigative actions by police officers (bringing us to the police station, taking testimony, photographing) in relation to the case of a missing minor girl. At that interview, the investigation by the investigation group was only about our non-traditional orientation. We were interrogated separately. My partner was given to understand that he was there only because of me – I am on the lists of the Internal Affairs Directorate as homosexual. I was also offended by the fact that my orientation was directly connected with the search for the missing girl; I was asked many questions not at all related to the case, such as: “are you active or passive?” The investigators were also speaking among themselves about other gays they had already had discussions with. However, I did not know them”.

This example clearly shows the absurdity of the police actions and a biased attitude towards gay people as a social group. Homosexuality was the only reason for the “operational-investigative actions” against Denis and his partner, as in the other cases. They investigated the case of a missing *girl*.

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<sup>1</sup> [http://www.sptimes.ru/index.php?action\\_id=2&story\\_id=27163](http://www.sptimes.ru/index.php?action_id=2&story_id=27163)

Activists of the Russian LGBT movement mention many cases of the biased attitude of judges and prosecutors examining complaints and suits related to the violation of constitutional rights and offences against gays and lesbians.

In April 2007, Tverskaya inter-district prosecutor's office of Moscow city refused to start a criminal case against Talgat Tadjuddin, the Chairman of the Central Muslim Spiritual Board of Russia, according to Art.282 of the Criminal Code of the Russian Federation (incitement of hatred or enmity towards a social group), as requested by gay activists N. Alexeev and N. Baev. The prosecutor's office refers in its order to the expert opinion of the head of the Family Sociology and Demography Department of Moscow State University M.V. Lomonosov, PhD, professor A.I. Antonova, according to whom "sexual minorities are not a social group, much less a gender-defined social group, they are part of the deviant social group together with criminals, drug addicts, and other individuals with deviant behaviour". Based on this opinion the prosecutor's office concluded that Art.282 of the Criminal Code of the Russian Federation does not protect homosexuals, which means, probably, that anyone inciting hatred and enmity towards them can escape unpunished.

The justification for Tadjuddin's words that "they must be just beaten" was found not in the Russian legislation, but in "the legislative schools of Islam, in particular in the Mazhab of Imam Shafii. Due to the fact that shariah law has no statutory basis in Russia, this opinion, obviously, was of hyperbolic nature and implied **suppression** of criminal violent actions, including public propaganda of the homosexual ideology and way of life among the under-aged.

Thus, Tverskaya inter-district prosecutor's office not only bracketed gays and lesbians with criminals and drug addicts, but also accepted the **responsibility** of a legislator. There is no Russian legal act that would classify the dissemination of the information on homosexuality and the way of life of gays and lesbians (including among the under-aged) as "criminal hooliganism".

In March 2007, a group of human rights defenders made a public statement declaring that the insistent attempts to introduce the so-called homosexuality promotion into the legislation and law-enforcement practice is a direct violation of human rights and freedom. They mentioned in their statement the warning given by the prosecutor's office of Rostov oblast to two local TV channels in March 2006 for

broadcasting SMS messages of men interested in relationship with other men, which was classified as “the promotion of non-traditional sexual orientation” as “forbidden in Russia”, which is clearly untrue.

The General Prosecutor’s Office of the Russian Federation explains the ban on the broadcasting of men-to-men announcements by the fact that they can have “a potentially negative influence” on the under-aged and “ingrain in their consciousness the cult of promiscuity and antisocial behavior”.

On 19 May 2008, the activists of GayRussia.Ru project, Nikolai Alexeev and Nikolai Baev, submitted a petition to the General prosecutor’s Office of the Russian Federation requesting the verification of hostile statements by the governor of Tambov oblast Oleg Betin to gays and lesbians, and the initiation of criminal proceedings against him. On 23 June, the representatives of “LGBT Rights” movement, Nuar Necheaev and Veacheslav Revin, submitted a similar petition.

On 16 May, the governor in his interview to “Komsomolskaya Pravda”, speaking about sexual minorities, declared the following: “Tolerance?! To hell! Faggots must be torn apart and their pieces should be thrown to the wind!... This rotten nest must be wiped out!”

On 29 May, the General Prosecutor’s Office transmitted the petition of the gay activists to the prosecutor’s office of Tambov oblast for examination.

On 28 July, “Interfax” news agency disseminated the news that the investigation department for Tambov city of the Investigation Directorate of the Investigation Committee under the Prosecutor’s Office of the Russian Federation had refused to open a criminal case against Betin. The information source explained that the examination carried out by experts had found no elements of offence in the governor’s words. The Investigation Committee emphasised that the experts did not consider the governor’s statements abusive and gave the conclusion that “homosexuals were not a social group and could not be considered subject to incitement of hatred or enmity”.

GayRussia.Ru activists appealed that decision. On 6 October, Lenin District Court of Tambov declined the appeal. On 13 November, the court of Tambov oblast declined the appeal.

A famous Russian sociologist and sexologist, PhD, I.S. Kon., completely disagrees with the opinion that homosexual minorities are not a social group. In his opinion prepared especially for Lenin District Court of Tambov he writes, in particular, the following:

“Social group is one of the broadest sociological and social-psychological notions used in all social and human sciences. It means any relatively stable group of people with common interests, values, and standards of behavior, who share a feeling of unity. Although the definitions of a social group vary, they usually include such elements as: 1) interaction, information contacts with the help of sign systems (“languages”); 2) name, “label” that indicates group membership and its image in the mass consciousness; 3) identification, membership, self-identification with the group by distinguishing and opposing “us” to “them”, acceptance by the individual of a certain stand in the group and assimilation of certain attitudes specific to it...

It is important to emphasise that social groups appear not at the pleasure of the state; they exist regardless of their approval or disapproval by the public. They can be marginal (borderline) or deviant (out of the supposed norm), and this is a relative differentiation.

In a theocratic society with one main, “right” religion, gentiles are considered deviant groups, are restricted and suppressed, which contributes to their further isolation and the transformation of purely faith based groups into political faith-based groups. All faith-based groups are equal in a civilised society, and all those whose faith differs from that of the majority, whether they are gentiles or “separatists”, are considered religious minorities by sociologists. The state does not intervene in these conflicts, and only cares if they grow out of the legal frameworks.

Prostitution is considered a social and moral evil by the majority. However, prostitutes (called “sex workers” in the unbiased sociological language) belong to a social and professional group. The modern sociology of childhood sees children not as the object of education, but as a special social group with their own problems and interests. This approach helps to understand the multiplicity of children’s worlds, to develop the notion of “children’s rights”, etc. And no one ever denies the asymmetry of roles, relations, rights and obligations of children and parents based on this fact.

In short, “social group” is a formal term. The ways it is used depend on the social and intellectual context. The notion of a “classical social group” does not exist in professional sociological literature. Based on the abovementioned, such a notion just cannot exist.

“Persons of homosexual orientation” are often called “sexual minorities” in the impersonal sociological language. This notion belongs

to the category of social minorities, each of which, naturally, forms a social group. “Social minority” does not necessarily mean a minority based on quantity. It can be a group of people distinguished by their physical or cultural features, because of which they face prejudice and inequality, thus, perceiving themselves as an object of collective discrimination.

Modern homosexuals have a complex system of social and group features: 1) special sexual orientation; 2) name and self-designation (“gays”, “queers”, etc.); 3) group self-actualisation, identity, and well-being; 4) typical interests, habits, and way of life, which 5) materialise in the activity of various organizations. These phenomena do not have to appear at once and all together. When homosexual love was considered a disorder and/or offence, their proponents had no social recognition; their group was socially and legally unprotected, disunited, “unnamed”, “invisible”, but still hated. The abolition of criminal prosecution (in 1810 in France, and in 1993 in Russia) and of psychiatric diagnosis (the American Psychiatric Association did it in 1973, the World Health Organization – in 1990, Russia – in 1999, and China – in 2001) have eliminated the former normative prohibitions. In democratic countries, otherwise-loving people lead an open life, are well integrated into society, seem to be socially safe (with a higher level of education and a level of delinquency below average), have a lot of their own organisations, including international ones, together with representatives of other sexual minorities (their alliances are called organisations of lesbians, gays, bisexuals, and transgender people – LGBT in abbreviated form) and take an active part in the political process. A number of countries (the Netherlands, Belgium, Canada, Spain, Norway, and the Republic of South Africa) have equated same-sex partnerships with legal marriages; others look for compromise forms of their recognition and registration. The World Health Organization and all democratic governments actively cooperate with LGBT organizations in HIV prevention. Marketing experts, who study the tastes and consumer wants of this group, also confirm the fact that this community goes outside the framework of sexual weaknesses

In order to understand the prospects for homosexuals as a social group, the main question is: to what extent their inherent and/or imputable psychosocial features and properties result from their, allegedly innate, sexual orientation, and to what extent they are a product of a longstanding stigma (indelible disgraceful label),

prejudices, and social isolation. Basically, social integration of any minority attenuates their feeling of exclusiveness, transforming their “we-feeling” from total into a local one and allowing people to feel themselves not like representatives of a shameful minority, but full citizens of their country and members of the global human community, while preserving their individuality.

This long historical process has a very important legal aspect. Despite the fact that the rights of sexual minorities are recognised and protected in democratic countries like the rights of other people, they often encounter manifestations of hostility (homophobia), which particularly affects adolescents, and not only homosexual ones. A number of countries have passed special laws in order to protect homosexuals from violence, discrimination, and defamation.

There are no such laws in Russia. Article 282 of the Criminal Code of the Russian Federation, which punishes “Actions aimed at the incitement of hatred or enmity, abasement of human dignity of an individual or a group of people based on their gender, race, nationality, language, background, attitude to religion, membership in a social group, if these acts are committed in public or with the use of mass media”, does not provide for the element of “sexual orientation”. However, according to our opinion, the mentioned “membership in a social group”, as well as the entire text of the article expressly implies a wider understanding of this notion rather than a narrower, professional one, such as “police”, “religious workers” or “sex workers”. The law neither specifies the meaning of “race”, “nationality” or “background”, and if consulting special dictionaries the discord will be even greater than in the case of the “social group”. However, there is no ambiguity here. The law stipulates that no one should be humiliated and persecuted based on their social or group membership, it does not protect separate social groups, it protects the rights of every individual, regardless of their individual features and distinction from other members of the society. That is why lawyers sometimes call all such offences ‘hate-crimes’...”<sup>1</sup>

### **3.4. Invasion of Privacy**

Investigation authorities use citizens’ private information in order to intimidate, blackmail, and obtain the desired testimony. The criminal

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<sup>1</sup> <http://www.gayrussia.ru/society/detail.php?ID=12019>

legislation contributes to this. In the civilised world, the recognition of the importance of close relations between intimate people is reflected in the rules of not witnessing against such persons. However, the Criminal Procedure Code of the Russian Federation appears to be discriminating in this sense due to the following reason. Art.56 of the Criminal Procedure Code of the Russian Federation, which provides for the basis of the legal status of a witness as a participant in the criminal proceedings, mentions among their rights the right to refuse witnessing against self, their spouse and other close relatives, listed quite exhaustively in p.4 art.5 of the Code.

Artiom (27 years old, the Republic of Adygeya) told the following in his interview to Krasnodar regional monitor:

“Everything started last September (2007 – *Author*), when my family partner and I were working in the association of country house owners. We were in charge of management, i.e. usual administrative duties. Starting from September, a group of people, at the request of the district administration came and started forcing us out by various means, i.e. disseminating information about our private life, turning people against us. Finally, they started using the law enforcement system against us. My partner and I were arrested at the end of December. There was a search of our house on that day as well. We have gay-related books and movies at home, a complete set of things that tells about our private life. According to the Criminal Code, it is forbidden to disseminate information about someone’s private life. However, everyone in the Temporary Detention Facility got to know everything about us on that day as well. There was additional provocation, when the police told about our orientation to everyone in the mass cells. Consequently, we had problems... I was released one month ago – the type of restraint was changed, but my partner is still there. Our lawyer did not want to get involved so as not to destroy her reputation... There are many rumours going round about us, that we must be killed in Takhtamukaysky District, that we are second-rate people”.

Russian gays and lesbians suffer from the invasion of their privacy by religious organisations. The story of Andrei K. (36 years old, Moscow) is a vivid example of this. Being a religious orthodox Christian and concerned about the compatibility of homosexuality with a full church life, he decided to make a confession to his pastor.

“Concealment of my inner being and of its natural manifestation was similar to imprisonment for me, and I could not endure it. I could

not and did not want to pretend and lie any more, always shaking with fear of the day when my sexuality would be exposed and held up to ridicule. I preferred to reveal my inner being by myself, thus, gaining my inner and outer liberty. At the same time, I hoped that my confessor, who has morally and financially supported by me for a number of years, as I used to help him and the Church by my work, experience, and earnings, would give me the necessary spiritual and emotional support”, tells Andrei K.<sup>1</sup>

But the priest demanded he “pull the sin out of his soul”, hide his sexual orientation, and to discuss those issues with no one except him. However, Andrei K. shared his concerns with several parish members, whom he trusted a lot. The priest found out about it and Andrei K was anathematised within a week. It was not enough for the orthodox activists and they decided to disseminate the information about the homosexuality of Andrei K. among his neighbours and acquaintances.

“At that time, in January 2004, I was living with my mother, a Russian citizen, in her apartment. The priest and parishioners used to come to us before the severance. Within less than ten days after that memorable telephone conversation with the news of my anathematisation, mail boxes of both the neighbours at my registration place and the neighbours of my mother were full of flyers written in ultra-orthodox nuances, explaining the serious danger posed by homosexuals for Russia and its blessed people. The authors called homosexuals “devil incarnates”, “dead frost”. The flyers contained my picture, name, surname, apartment and telephone numbers, as well as the threat that I, as a “malicious sodomite”, am dangerous for public health and morality, especially for “young, nascent souls”. One of the flyers contained a caricature of me, where I was pictured as a rat with side-locks sexually abusing a child. The rat had a lash with an aglet in the form of a hexagram. There was a slogan below the caricature: “Russian – help!”

After that the K. family experienced aggressive homophobia. They would find up to ten flyers in their mail box every day. They started receiving telephone calls: some people would ask what was happening, others would be indignant, sometimes they would just laugh or shout out swearwords together with threats.

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<sup>1</sup> Here and elsewhere there are quotes from the testimonies of Andrei K., his mother L.K., and the staff drawn up by a notary in the form of affidavits, transmitted by human rights defenders.

“In the block, corridors and lift people would glower at me and my mother with hatred and disdain, and ask how we could end up like that. Men would spit in my face, call me “faggot”, throw used condoms into my mother’s mail box and butts under the door. The metal door to my mother’s apartment was upholstered with soundproof material, and this material was cut with a knife and filled with urine. The walls around our door were covered with homophobic swearwords and offensive pictures”.

Andrei K. and his mother experienced strong mental and physical suffering in that situation. “Andrei was suffering a lot”, writes L.K. “It tormented him, he was ashamed and felt guilty because I had to share all the attacks and persecutions with him; he always asked me to forgive him for the grief and torture I suffered, as he thought, because of him... In that period, from February to July 2004, Andrei started suffering from deep depression and neuroticism and got early grey hair. He had to see a psychiatrist for professional healthcare and was taking psychoactive drugs. The psychiatrist V.A. Belkin, who started monitoring and treating Andrei, made the following diagnosis: severe depression accompanied by neuroticism. It was the first year that Andrei was not able to celebrate his birthday in August.

I tried to hide my worries and heartache; however, it was not always possible. In order to relieve the impact on my nervous system produced by the actions of the orthodox homophobes and neighbours I started, without Andrei’s knowledge, smoking and consuming alcohol (in modest quantities), as well as taking a potent sedative agent – relanium (diazepam). Andrei and I were feeling the clear effects of the strongest mental attack on us, as well as the deepest impact on our nervous system by the events and suffering. This “mirror” reflection of our own suffering in the dear person’s eyes oppressed and depressed each of us even more, making our life unbearable.

In addition, as a result of those nervous breakdowns Andrei’s asthma attacks became stronger and more frequent. In the nights, he would suffocate and could not stay horizontal, spending the night in an armchair. He became a real invalid, in the opinion of the health and social experts.

My health and state of mind were affected as well. In March 2004, I was declared an invalid of group II, but it was just the beginning. The events, to be more exact suppression, persecution, and torture, were developing with increasing force.

Andrei could not get anywhere to work during that period, he could do nothing, he did not want to wake up and start a new day in the morning”.

Soon, beside the harassment on the part of our neighbours we were subject to pressure from the authorities and local administration. Old neighbours, who daily gather on the benches near the block, told everything to the sector police officer, Major O.V. Panov, and wrote a letter to the head of the administrative board of Chertanovo-Severnoye District of Moscow City, Soloviev. After a while, an enlarged copy of the reply of the head of the administrative board was posted up near the entrance, where the house tenants were recommended to “provide every possible assistance” to the sector police officer in order “to counteract Andrei K.’s anti-social activity aimed at demoralising the environment in the residential block. After that the sector police officer started calling K. to the sector police office, demanding he change his way of thinking and life, otherwise promising “to fight the **piece** out with me”.

The chairman of the house committee, E.A. Fedorov, suggested invoking the court of comrades in order to discuss the “immoral issue” and measures of “social influence” of the “degenerate”. Fedorov actively contributed to the atmosphere of intolerance created towards the K. family. He used his power of controlling porters to collect operational information about K.’s visitors. The porters would ask every stranger about the apartment they went to. If the visitors mentioned the K.’s apartment, the porters would ask them to show their documents and copy their data. They would inform the chairman of the house committee about the visitors, and the latter, by L.K.’s assumption, would pass the information to the police. One of Andrei’s friends, David R., describes the situation in the following way: “At the entrance, the porter on duty always asked me what apartment I was going to; when hearing the number he would make a telephone call: “The bastard has a visitor”.

The Head of the Board No.2 of the Directorate for High-Rise Administrative and Residential Building Administration, V.Iu. Vostrikov, through his subordinate, supervising engineer, accused K. of intentional destruction of municipal property (walls of the staircase and landing) and demanded he repair the damage, as well as strongly recommended L.K. “not to pile on the agony in the house”. At the same time, Vostrikov refused to extend the garage rental agreement based on which L.K. had used the space on preferential terms for many years. He

said he would not extend the agreement on any terms, because he did not want the things happening in the house to be repeated in the garages.

Andrei K. together with his friend, a citizen of Belarus David R., decided to leave for T. village in Yaroslavl Oblast and to live in the house of Andrei K.'s mother.

The deacon (now, the priest) Evgenii Tremaskin is famous for fighting against “non-traditional cults” and “people with non-traditional orientation”. He lives and works in Moscow, but often comes with his family, followers, and friends to T. village. By Andrei's assumption, it was Tremaskin who disseminated the information about Andrei's sexual orientation and his anathematisation among village residents.

Andrei K. tells us: “My private life with David R. was accessible to our neighbours' eyes. I saw many parish members coming to the village in summer; they would demonstratively ignore me, stopped greeting me, would not return my salutation and turned their faces away when meeting me in the street or in the forest. In the evenings, passing by their houses, I often heard canticles and prayers against “the sin of Sodom”, as well as the anathematisation of “sodomites” from their open windows. On 30 October 2005, at around 7 p.m., our house was destroyed by arson<sup>1</sup>. Two days before, David R. and I had left for Moscow. I came suddenly down with the flu in Moscow, and we could not come back. We had left the radio and light on in the village house, for the others to think that we were at home, hoping that it would prevent them from destroying the garden patch or stealing something”.

Andrei K. and David R. had to return to Moscow, to the K. apartment. David R. tells about their situation during that period: “Our appearance in Andrei's block as permanent residents aroused a negative reaction. Once, when one of Andrei's neighbours from the top floor saw me going down stairs, she threw a bucket of dirty water used for floor cleaning over me... During the days, when Andrei would leave for work, I had to meet the sector police officer and the block supervisor, who would inequitably question me about the nature of our relationship with Andrei, what exactly we had in common, and they would check my registration (residence permit). Based on the fact that I was not registered at the place of my stay, I would be forced to go to the police station for “identity establishment” and held there groundlessly incommunicado for 10-12 hours without water and food. The police would not undertake any actions to establish my identity as they had no

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<sup>1</sup> The fact of incendiary crime was confirmed by fire inspection.

doubt about it and the authenticity of my passport. They would make any excuse to make Andrei's and my life a burden. In addition, we would always receive anonymous door knockings, on-door speakerphone, and telephone calls. Andrei bought a video door phone, video peephole, and telephone answerer; however, we would still receive calls on our mobile phones, they would knock instead of ringing at the door. We had to create the maximum isolation from the outer world – to put on an additional soundproof door, to draw heavy blinds”.

“In the middle of June, Andrei K. continues the story, I was surprised by the fact that my neighbours from apartment No.10, a pensioner couple Tamara and Valerii Odintsov, who would gladly inform the police and all those interested about details of our life, suddenly left, which was not typical for them at that time of the year. In the morning on 12 June 2006, a holiday, the sector police officer and a representative of the Sanitary and Epidemiological Service in the white coat rang at our door and told they wanted to check the “sanitary and epidemiological situation” in my apartment “because of frequent citizens’ appeals and complaints”. David and I decided not to open the door, and the woman in the white coat put on a respirator and carried out “disinfection” – she sprinkled the door and the adjacent corridor with a strong solution of toxic chemicals with a choking odour. Within thirty minutes it was impossible to stay in the apartment, I had asthma attacks, and we had to leave the house.

### **3.5. Violations and Attempts to Restrict the Freedom of Expression**

According to art.10 of the ECHR, “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. A free state and democracy cannot exist without a clear guarantee to the right to freedom of expression, protected by independent and unbiased courts. This has been said in the decisions of the European Court of Human Rights many times.

The court declared that art. 10 protects “not only information or ideas that are accepted kindly or viewed as harmless or are received with indifference, *but also ideas that offend, shock or worry the state or a part of the population.* These are the requirements of pluralism,

tolerance and breadth of views without which the democratic society cannot exist” (highlighted by us – *Auth.*)<sup>1</sup>.

The term “expression” does not include only the freedom of speech, written or oral, but also the areas of painting<sup>2</sup>, images<sup>3</sup> and actions related to the expression of ideas or transmission of information. Even the form of clothes can be subject to art. 10 in some circumstances<sup>4</sup>.

The freedom of expression perceived in this way is systematically violated in relation to Russian homosexuals. Moreover, there are attempts to legalise restrictions of the freedom of expression for them.

There are repeated attempts to introduce a ban on the so-called “promotion of homosexuality” in the legislation and in law enforcement practice.

While this idea used to be fostered by several marginal politicians in the past and was not taken seriously by many people, today the notion of “promotion of homosexuality” is not only part of the daily vocabulary of conservative politicians, but is also applied in practice despite the legislation not being in force.

In March 2006, the prosecutor’s office of Rostov oblast warned two Rostov TV stations – TRC “Pulse” and “ExpoVIM” Company for broadcasting SMS in TV-chat shows “that contained the promotion of non-traditional sexual orientation”. The warning issued by the prosecutor’s office said that “promotion of homosexuality in Russia is forbidden”.

Another example is the refusal of state registration of “Rainbow House” Tyumen organisation. The official letter of the Federal Registration Service Administration for Tyumen oblast, Khanty-Mansiysk and Yamal-Nenets Autonomous Areas says: “The activity of an organisation related to the promotion of non-traditional sexual orientation can result in the undermining of the security of Russian society and state”. The authors also say that the promotion of non-traditional sexual orientation threatens the territorial integrity of the Russian Federation.

The ban on the dissemination of information on homosexual relations has already been legalised in Ryazan oblast. The oblast Duma adopted the addenda to the local law on administrative contraventions on

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<sup>1</sup> Handyside v. the United Kingdom, 1976; Lingens v. Austria, 1986; Obershlick v. Austria, 1991

<sup>2</sup> Muller v. Switzerland, 1988

<sup>3</sup> Korkher v. Austria, 1993

<sup>4</sup> Stevens v. the United Kingdom, 1986

May 24, 2006: “Article 3.13. Public actions aimed at the promotion of homosexuality (sodomy and lesbianism) among minors”.

A group of human rights defenders<sup>1</sup> wrote to the General Prosecutor’s Office of the Russian Federation and received the following explanation regarding the above mentioned facts: “It has been determined that the reason for issuing warnings to the administration of TRC “Pulse” and “ExpoVIM” Company” broadcasting on the territory of Rostov oblast has been the violation of the legislation in force, which aims to protect the interests of minors (the broadcasting of TV chats on the basis of SMS with intimate offers, including those that promote non-traditional forms of sexual orientation and perverse sexual behavior)”. In this explanation, the General Prosecutor’s Office refers to international commitments of the Russian Federation within the Declaration of the Rights of the Child of November 20, 1959, the UN Convention on the Rights of the Child of November 20, 1989, as well as the Federal laws “on the main guarantees of the rights of the child in the Russian Federation” and “in the media”. However, the term “promotion of homosexuality” is not contained in any of these documents.

It should be noted that sexual education of minors and the development of respect towards individual differences is not only a right, but also an obligation of society and state. This also implies the provision of true information on homosexuality to them in appropriate forms, of course. In 2000, PACE recommended member-countries combat homophobia, especially in schools through education. It is clear to any person of good sense that the education of tolerance and sexual education does not have anything to do with the involvement of minors in sexual relations.

In March 2008, the heads of the main Russian protestant churches wrote a letter to the general prosecutor Yury Chaika requesting the closure of the “2×2” TV station. The reason given was the “hidden and open promotion of homosexuality and paedophilia and antisocial lifestyles, as well as many other vices”. The leader of Nizhny Novgorod Muslims Umar-khazrat Idrisov expressed his willingness to join this protestant initiative. The letter was also supported by the Congress of Jewish Religious Organizations and Unions of Russia.

A similar request was sent by the Associated Russian Union of Christians of Evangelical Faith in September 2008 to the Investigatory Committee of the General Prosecutor’s Office of the Russian Federation

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<sup>1</sup> <http://lgbtnet.ru/news/detail.php?ID=2961>

soliciting the opening of a criminal case in relation to the broadcast by the “2×2” station of the “South Park” cartoon serial. The letter asked for defining the cartoon serial as extremist and prohibiting it on Russian territory. According to one of the protesters’ leaders, “South Park” contains “hidden and open promotion of homosexuality and paedophilia as the norm in sexual relations”.

After a check, the Basmannaya district prosecutor’s office of Moscow city sent a request to the court to define the content of one of the series of the “South Park” cartoon serial broadcast by the “2×2” TV station as extremist.

At the beginning of June 2008, three committees of the State Duma of the Russian Federation made public the draft Concept of the state policy on the spiritual-moral education of children<sup>1</sup>. The MPs expressed their intention to produce sixteen draft laws in the autumn among which the introduction of criminal liability for the promotion of homosexuality and “other forms of sexual deviation” to children.

The authors of the “Concept” say that one of the main tasks of the state policy is: “Prohibition by law of the promotion of homosexuality among children, including the presentation of homosexuality as socially or morally acceptable, approvable or the normal form of sexual relations; the establishment by law of criminal liability for the promotion of homosexuality and other forms of sexual perversion (deviations) to children below 16”. Thus, the intention is to ban the dissemination of modern knowledge on homosexuality as a norm of sexual behavior based on the position of the World Health Organization in particular, and that it does not represent a threat to minors.

One of the provisions is the categorical prohibition of the dissemination of views on same sex family unions (partnerships) “as a normal, social acceptable or permissible form of the family”.

One of the draft laws proposed by the MPs – “on the introduction of amendments in certain legislative acts of the Russian Federation to increase the efficiency of the system of gender-based role education and the prevention of HIV-infection and other sexually-transmitted diseases among children”. It implies the introduction of a ban on using in the education system programmes and manuals that present views on homosexuality (male or female)... as socially normal or moral norms of sexual behavior and sexual relations or as a modern and fashionable

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<sup>1</sup> Text: <http://state-religion.ru/moral/concept/17-koncepcija-gosudarstvennoji-politiki-v-oblasti.html>

lifestyle”. A similar ban is proposed on the content of extra-curricular activities.

It should be mentioned that the legislators do not define the notion “promotion of homosexuality”. The only definition is given in Chuev’s notorious draft law: promotion is the “public demonstration of a homosexual lifestyle and homosexual orientation” in publicly shown productions and in the media. According to this definition, the publication of the works of Oscar Wilde, Plato’s “Dialogues”, some of Shakespeare’s sonnets, etc. could be considered a crime. In addition, the dissemination of any information required for the fully-fledged life of gays and lesbians will become impossible.

Experts confirm: the notion “promotion of homosexuality” makes no sense. I.S.Kon. says: “I do not understand what the promotion of homosexuality means. Is there anybody saying that homosexuality is better than heterosexuality? The selection of sexual orientation is not an issue of fashion. Something like this can and does exist in certain youth subcultures, where they may represent one thing or another. As for serious processes, they have deeper organic reasons. And if we refer to what is happening in our country, I see a homophobic campaign, requests to prohibit or close something, etc. This is obviously contradicting general cultural tendencies and our legislation. Unfortunately, this is related to a broader phenomenon – the consolidation of xenophobia, i.e. hate and hostility to other people. This is a really dangerous phenomenon that has to be combated”<sup>1</sup>.

### **3.6 Discrimination at Work and Employment**

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. 78.6% of gays surveyed by QGuys.Ru hide their homosexuality from their employers and colleagues. Only 17% reported that they did not hide their orientation at work and had not had any problems in that regard. The proportion of those dismissed or those refused employment is lower in towns, and at the same time the proportion of those who hide their orientation is higher there.

Gays and lesbians who work (or would like to work) in state institutions and organisations, as well as in the education system are most vulnerable. The respondents surveyed in the course of monitoring

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<sup>1</sup> [http://www.gayclub.ru/society/article.php?PAGEN\\_7=2&PAGEN\\_3=2&ID=2981](http://www.gayclub.ru/society/article.php?PAGEN_7=2&PAGEN_3=2&ID=2981)

pointed out repeatedly that people who take state employment undergo vetting about whether they are “normal” in their private life. If company management learns that an employee is homosexual, they often take measures to get rid of such an employee.

Andrei K. (Moscow, 36 years old, see above) found himself in this situation. In December 2005, he managed to get a job at a state institution – the Moscow City Council of Public Law Enforcement Units (MCC PLEU) directly subordinate to the government of Moscow – as president of the Public Law Enforcement Unit (PLEU), micro-district No.6, Presnensky district of Moscow City. The offer of employment was issued officially on 3 March 2006.

The employer did not know that Andrei K. was a homosexual. However, after his cohabitation with David R. became public, Andrei K. became subject to pressure from the MCC PLEU management.

This is how he describes it:

“The head of the Organisational Committee of the Administrative Board, A.Ya. Korotun, who supervised our work called me and my direct superior, president of PLEU, Presnensky district, V.N. Andrienko, to his office and started shouting and demanding in strong language that I should radically change my lifestyle (he referred to my private life), as my behavior threw a shadow on the law enforcement system, government bodies and Presnensky district: “I am not going to get into trouble because of you and sit here waiting until somebody goes to the Mayor or Moscow government directly... if you fail to change, you are going to lose not only your job, but also peace [of mind?] and you will see what insubordination to the Motherland means!..” **It turned out that all the addresses of inhabitants together with copies of leaflets had got to Korotun.** I was shown them. These were letters from neighbours, reports of sector police officers, petitions of the Veterans Council, leaflets. I said I would rather die than break up with David. “Damn you, son of a bitch!” was the reply of Korotun and he threw a banana skin at me. “Do not come back until you repent” he finished.”

As a result of a nervous breakdown, I started suffering from continuous intractable attacks of asthma, the course of my chronic illness (bronchial allergy) worsened. David had to call an ambulance to take me to the City Clinical Hospital No.61 in an extremely grave condition.

When I returned from the hospital, Andrienko asked me to write a letter of resignation of my own free will. I refused. Andrienko warned

me that I would be fired any way, and would not be able to get employed somewhere else in that case, as “they will keep mocking you”.

In order to find a pretext for my dismissal, Andrienko called two of his most loyal subordinates, members of “Edinaya Rossiya”, and asked them to allege I was absent without leave. However my colleague, N.V. Makeev, refused to sign the false document. Andrienko told him that two signatures would be enough.

I was soon fired, but I appealed the decision in court. Pressure and discrimination grew into persecution and torture.”

These facts are also confirmed by Makeev:

“Andrei K. presented himself as honest and open and a man of principle straight away, who always treated his duties with the greatest responsibility. His is distinguished by kind-heartedness and amiability, and readiness to help people, colleagues at work. I always considered him the most appropriate employee for the position he held in 2006. He was one of the best micro-district PLEU presidents.

Andrei K. had never been open about his sexual orientation, but due to his honesty and openness he was unable to deny it when asked about it. That made him rather exposed and vulnerable”.

Soon after Andrei K. began to work in PLEU, the management of the Administrative Board and PLEU learned that he belonged to a sexual minority, he was a homosexual. Information about his private life and circle of friends was gathered from sector police officers at his place of residence and place of work, as well as from inhabitants of the block of flats Andrei K. lived in. In particular, the sector police officer, N.V. Dyuzhev, had several leaflets distributed in the block of Andrei K. calling for action against Andrei K.

When Andrei K. was in hospital, our direct superior, V.N. Andrienko, held a meeting to inform all the PLEU staff about the information he had received and asked for their opinion. Having made sure that his colleagues condemned Andrei K., he suggested drawing up a collective letter to the MCC PLEU about the non-suitability of Andrei K. for the position he held and demanding his dismissal. That letter was signed by everybody except me.

Shortly after his discharge from hospital, Andrei K. came back to his duties and started to be subject to systematic pressure and insults. Andrienko and Korotun would always humiliate Andrei K. in meetings and kept bullying him.

I understood that the management of the Administrative Board and PLEU had made a decision to fire Andrei K. and thus get rid of the “moral responsibility” for the behaviour adopted by Andrei K. in his private life. The reason for his dismissal was the intolerance of minorities. However, Andrienko was looking for a way to make Andrei K.’s dismissal look legitimate. I witnessed how several times Andrienko insistently suggested that Andrei K. write a letter of resignation of his own free will, through persuasion or by trying to threaten him. As a result, Andrei K. was dismissed due to allegations made by Andrienko about his alleged absences without leave, which was ridiculous, since within that period Andrei K. did not have a workplace to be absent from.”

In July 2006, Andrei K. asked the lawyer R.Z. Mamiev to be his representative in court. The latter drew up a declaration to the Tverskoy district court of the City of Moscow.

According to Mamiev, the strong bias of the executive of the court was felt from the very beginning of the proceedings. They refused to accept his declaration without reason, delayed the proceedings, and then displayed open unwillingness to decide on the merits of the case and grant judicial defense to the defendant.

The complaint of Andrei K. was not considered for three months. Through all that time, neither the plaintiff nor his lawyer could get any information from the court. This was despite the month requirement for claim acceptance set by the criminal procedure code, usually complied with by courts, especially within the last few years, since the Supreme Court of the Russian Federation has started monitoring compliance more seriously with the procedural periods by courts of general jurisdiction.

After such a long period of time, the court decided to ignore the claim as Andrei K. had not appeared before the court for hearing. When drawing up the appeal against the order of the court, the lawyer managed to establish that no summons had been forwarded to Andrei K. except for one that he received on the day of the sitting, after the time it had been set, while the court office would give no information to Andrei K. on the telephone.

When the lawyer appealed to the higher court, Moscow City Court, “strange changes appeared in the case papers containing the evidence I was referring to, which destroyed all of our evidence.” The postal stamp on the envelope for the summons to the court was blurred over so that the date could not be seen, and the date next to the signature of the

receiver was corrected. Also, the case papers lacked any note about the issue of the case for information to the defendant or their representative. Such modifications could have been done only by court officers.

Mamiev tells: “When, for no explicable reason, the claim I had filed was **satisfied**, the federal judge of Tverskoy district court, L.I. Bykovskaya, that was in charge of the case of Andrei K., was just as surprised as me. She invited me for a discussion and asked how well I knew Andrei K. and what information I had about his “moral image”. I answered that my relations with Andrei K. were limited by my professional activity as a lawyer and I did not have the right to judge the moral image of my client. As for the hidden motive of Andrei K.’s dismissal that was related to the “clearing” of state institutions of representatives of sexual minorities, I knew about it.

After one sitting to solve procedural matters, the judge invited me again and asked me to file a request to transfer the case to another court, where we would have more chances: “Under the given circumstances, I will not be able to progress your case, so if you do not want a case dismissal, you had better take my advice and file a request.”

Andrei K. agreed to transfer the case to Khoroshevsky district court of the City of Moscow, to the federal judge Saltykova.

In March 2008, the case was heard and the court made the decision to dismiss all claims. On 26 May, the court of appeal, Moscow City Court, upheld the decision of Khoroshevsky district without change, and dismissed the cassation appeal.

As it has already been mentioned, disclosure of the sexual orientation of a person most frequently leads to their dismissal in Russian towns, after which it is practically impossible for the affected people to find a new job in the same town. This is particularly clear from the evidence from the Russian LGBT network.

Aleksey (Volgograd oblast): “I had worked as a locksmith at an installation department from November 2005 to December 2006. I have category V. Upon a request from an engineer of sector I, they did not sign agreements on the carrying-out of work. I have never made special efforts to hide my orientation. A year after I had got a job with the organisation, my direct superiors found out I was gay. Despite the fact that I had not received a single reproach within the entire year, I was refused renewal of my contract. In a private discussion, they just told me: “You have the wrong sexual orientation”.

Alexandr (40 years, Pskov oblast): “I had worked at a secondary school in Pskov oblast. Since 2003, constant mockery began from teachers, students and school administration. One of the teachers told me directly that I should go to prison and be isolated from society. The circumstances did not allow me continue working there. At the employment office, they told me I had better leave the town. The difficulties started after I had openly declared my orientation. I had been working at that school since 1984.”

There are rare cases when homosexuals manage to obtain their employment rights through the court.

The decision on 20 September 2005, Frunzensky district court of Saint-Petersburg over-turned the discriminatory decision of JSC “Russian Railways” concerning a candidate who was refused registration for training just because his military service record card contained a note on “mental deviation” made solely on the basis of his homosexuality. In 2003, he was taken off the books at the psychoneurological dispensary. However, the military enlistment office refused to remove the note from his military service record card, still considering him unfit for military service because of his homosexuality, which they classified as “other gender identity disorders” that time (when the 2003 List of Diseases pointed out directly that homosexuality was not a ground for limiting fitness for the military service).

In 2003, the plaintiff wrote to the polyclinic of Oktyabrsky Railway for a medical opinion to be able to register for a course for train attendants. They refused to find him fit for the profession of train attendant at the polyclinic on the grounds of the note in his military service record card and the fact that he had been registered with the psychoneurological hospital.

The psychiatric human rights centre representing the interests of the plaintiff in the case of the disputed decision of the railway polyclinic claimed that such a decision violated the right to education and the right to labor guaranteed by the Constitution of the Russian Federation. Moreover, the Psychiatric Human Rights Centre also maintained that the homosexuality of the applicant should never be considered as a mental disorder.

Having found the decision of the medical expert commission of the state healthcare institution invalid, Frunzensky district court made two important conclusions:

1. The court found the practice of using a military record to limit human rights illegal. The court specified that the military service record card was the military record document and its data should be used exclusively for military records and not for determining medical fitness for labour activity. The court noted that the federal legislation obliges employers to consider reports on absence due to psychiatric contraindications issued by authorised healthcare institutions only, and in that case the applicant had the report of the psychoneurological hospital about the absence of any contraindications, which was illegally ignored by the Railway polyclinic.

2. The court indicated that the “perverse psychopathia” that the plaintiff was diagnosed with in 1992 was based on his homosexual orientation only. Thus, the court confirmed once again that homosexuality was not a mental disorder. In particular, the court decision stated: “The diagnosis of “perverse psychopathia” was entirely based on the former opinion that homosexual orientation was a pathological personality condition and was a disease, and while there were no other grounds for diagnosing the plaintiff with mental disorder, then such a diagnosis could be removed without any special hospital or even ambulatory examination. The grounds would be the mere fact of exclusion of homosexuality from the list of mental disorders and acknowledgement of the latter as a norm. Homosexuality is not considered a mental disorder any more...”

On 28 December 2004, the Dzerzhinsk district court of the City of Yaroslavl heard the case of Elena Korneva who had been dismissed from her position as educator in a kindergarten officially “for health reasons”, while at the court sitting the director of the kindergarten explained that he had dismissed the employee just because she was a lesbian. “I could not keep her at our kindergarten for reasons of morals and virtue”, said the defendant. The court countermanded the dismissal and restored the plaintiff her rights.”

### **3.7. Limitation of Freedom of Peaceful Assembly and Association**

The ban in 2006-2008 on peaceful marches in defense of the rights of sexual minorities in Moscow was openly motivated by the authorities by the unacceptability of its goals, and made reference to religious dogmas as if they were binding norms. At the same time, the Moscow

Government did not stop pickets with homophobic slogans that had not been agreed with them. Thus, they violated the principle of equal rights and freedom for all the citizens, in particular, the right to peaceful demonstrations and pickets.

On 18 April 2008, Gay Pride organisers submitted ten notifications about public activities planned for 1 and 2 May to the Moscow Mayor. On 22 April, another 15 applications were submitted for 3, 4, and 5 May. “In the near future, we are going to inform the Moscow authorities about the organisation of five gay marches per day until the end of May”, the organisers declared at the end of April.

On 23 April, the Moscow Mayor’s Press Secretary Sergei Tsoi said in an interview with the “Interfax” Agency that Moscow authorities would not allow the unauthorised events for sexual minorities planned for the beginning of May in the capital. He stated: “On behalf of the Mayor and the Moscow Government I declare that the city government, as in previous years, will be resolute and uncompromising in suppressing attempts to carry out those activities, as the absolute majority of society does not accept such demonstrations, the gay way of life, and their philosophy”.

On Friday, 25 April, the organisers received official refusal for the gay marches planned for 1 and 2 May in the capital; however, the letter signed by the deputy head of the Moscow Directorate for Security Activity Coordination, V.V. Oleinik, contained an error with the date: it was written as 2007 instead of 2008.

The letter “on behalf of the Moscow mayor” stated that the goals mentioned in the application provoked a negative reaction from society, and such public activities could disturb public order, which represented a threat to the safety of the participants: “Based on the norms of the International Convention for the Protection of Human Rights and Fundamental Freedoms of the 4 November 1950, in particular Art. 11 (freedom of assembly and association), according to which the right to peaceful assembly can be restricted in the interests of public order, in order to prevent disturbances, to protect health and morals, as well as the rights and freedoms of other people, I would like to inform you that the mentioned marches are not authorised”.

It is worth mentioning that such an interpretation of Art.11 of ECHR clearly contravenes the explanations given by the European Court of Human Rights. In May 2007, the Court made a unanimous decision against the ban on the 2005 gay pride march in Warsaw,

declaring that it had violated Art.11 of ECHR. The Court explained that Art.11 did not allow banning gay marches and mentioned the obligation of the authorities to ensure the safety of such activities.

On 28 April, the gay pride organisers appealed in Tver District Court against the bans by the city authorities on the ten marches planned for the beginning of May.

On Friday, 16 May, the Moscow gay pride organisers sent a letter to the President of the Russian Federation, D.A. Medvedev, asking him to protect the rights of the LGBT community and to stop discrimination against sexual minorities by the Moscow Mayor. In a separate application, they asked for authorisation for the march in Alexandrovsky Garden, under the jurisdiction of federal authorities, planned for 31 May. On 28 May, the Administration of the President of the Russian Federation informed the applicants that it had ordered the prefect's office of the Central Administrative Okrug of Moscow to coordinate carrying out the activity on one of the sites in the capital, where public demonstrations were usually held, as well as to ensure the safety of the participants.

On 1 June, at 1 p.m., around 30 gays, lesbians, and their supporters raised their banners and rainbow flags by the P.I. Tchaikovsky monument near the Moscow Conservatory in Bolshaya Nikitinskaya Street. "Homophobia Is a Part of Xenophobia" and "The Rights of Sexual Minorities are Human Rights" was written on one of the banners. The demonstrators raised a rainbow flag in the form of a sail. Since the gay pride participants had not gathered in the announced place, neither the police nor the neo-Nazi and fundamentalist opponents had time to do anything. The demonstration lasted for twenty minutes.

In 2007, two community-based organisations of sexual minorities "Radujny Dom" (Tyumen) and "Favorite" (Omsk) were refused state registration.

In the first case, the grounds for the refusal given by FRS officials were of an expressly homophobic nature. The founding of the Tyumen regional community-based organization "Radujny Dom" was announced in 2005. They declared the following goals: protection of the rights of people with homo-and bisexual orientation, their social and psychological **adaptation**, the consolidation of their self-respect and trust, the provision of the necessary legal, social, and economic rights; support for the struggle against discrimination based on sexual orientation, the promotion of tolerant attitudes towards people with non-

traditional orientation; the elimination of homophobia from the public, the promotion of an open discussion on homosexuality in society; HIV prevention and support for homosexuals living with HIV and AIDS.

During 2006, FRS Office for Tyumen Oblast, Khanty-Mansiysk and Yamalo-Nenets Autonomous Area refused state registration of “Radujny Dom” twice. Among the reasons for the refusal in the official letter to the head of the organisation, A. Zhdanov, they stated: “The goal of the organisation is to protect the rights and freedoms of people with non-traditional sexual orientation. The objectives stipulated in the Statute aim at achieving this goal, so their fulfillment leads to the promotion of non-traditional sexual orientation. The activity of the organisation in promoting non-traditional sexual orientation could result in the subversion of Russian society and the state because:

- The spiritual values of society would be undermined;
- The sovereignty and territorial integrity of the Russian Federation would be affected due to population reduction”.

In January 2007, “Radujny Dom” received their third refusal from the FRS regional office. There were new “arguments” added to the above-mentioned reasons. In particular, the officials consider that the promotion of non-traditional sexual orientation was against the state-protected institutions of family and marriage, and that it could incite social and religious hatred and enmity. In addition, the lack of pagination in the **Statute** was also considered a serious non-compliance as it did not allow registering the community-based organisation. It was referred to as “unreliable data contained in the documents presented”.

On 18 April, Russian FRS agreed with the decision of their regional colleagues with reference to the expertise of the Statute of “Radujny Dom” carried out by the Tyumen Legal Institute of MIA. According to that document, the Statute contained “features of extremist nature”. That expertise abounded in absolutely absurd statements. Tyumen lawyers, in particular, decided they were quite competent sexologists and offered their own hypothesis on the origin of homosexual orientation. In their opinion, it appears in people with “traditional sexual orientation” as a result of “propaganda”.

According to the “Kommersant-Ural” newspaper, Tyumen officials admit in private discussions with journalists that the Federal Registration Service would keep coming up with new motives to refuse the registration of the gay organisation. “Our society is not ready for a radical change of mindset. Gays are too flamboyant in Tyumen,

religious groups will always hold it against them, so it is rather unlikely to register such an organisation”.

A professor of Moscow State Law Academy, expert of the Independent Expert Legal Board, Doctor of Law Boris Strashun, has drawn up an independent opinion on the refusal of registration of “Radujny Dom”. In particular, he notes: “Is the Statute really that horrible, and does an association of three people, which it is for the moment, threaten such disastrous consequences for the country? They are not talking about any promotion of non-traditional sexual orientation, RD founders are only trying to help representatives of sexual minorities to unite and protect themselves from discrimination. And the statement that the activities of RD could undermine the sovereignty and territorial integrity of the Russian Federation due to population reduction, is just ridiculous. The reasons for population reduction in the Russian Federation are not related to non-traditional sexual orientation in the smallest part: it existed even when the population number was growing. If you applied the logic of the Office, such people should be removed from society entirely. It is also not clear how the statutory activity of RD “could incite social and religious hatred and enmity”. It looks as if the Office was afraid of something they did not know about, and were blinded by that fear so that they violate the constitutional rights and freedoms of citizens, primarily, their right to assembly”.

The lawyer representing the interests of “Radujny Dom”, a legal analyst of inter-regional human rights association “AGORA” Ramil Akhmetgaliev declared: “The FRS has abused its authority. They decided to determine which organisations were extremist and which were not without the court. The refusal of FRS is illegal and violates the standard of freedom of assembly in the Constitution of the Russian Federation and the European Convention on Human Rights. If the FRS officers had read the Statute of “Radujny Dom” carefully, they would not have a reason to state that that organisation threatened state security”.

On 24 May, Akhmetgaliev petitioned the Basmany Court of Moscow appealing the decision of Russian FRS.

On 20 August, the head of “Radujny Dom” filed a claim with the Central district court of Tyumen and requested they invalidate the refusal of the FRS Office for Tyumen Oblast, Khanty-Mansiysk and Yamalo-Nenets Autonomous Areas to register the organisation.

The hearings took place on 26 October in the Tagansky Court of Moscow under the judge M.Yu. Kazakov. The lawyer for the complainant, Irina Khrunova, pointed out that the FRS not only failed to overrule the illegal decision of the territorial body refusing registration of a community-based organisation, but also did not think it necessary to give a full answer to the reasoned complaint of the “Radujny Dom” representative, limiting themselves to a formal reply. Despite the documents and arguments brought by the lawyer, the court decided to dismiss the claim of the president of “Radujny Dom” A. Zhdanov.

After the announcement of the court decision, a State Duma deputy, member of the Parliamentary Commission on Women, Family and Children, Nikolai Bezborodov, declared that we should not protect the rights of sexual minorities at all, otherwise “we start promoting this minority”. The deputy also said that the existence of gay and lesbian organisations can lead to “clashes in our society”, including religious ones. “Registration of such associations undermines the foundations of national security of the state”, concluded Bezborodov.

On 7 November, the Central district court of Tyumen dismissed the claim of Zhdanov against the FRS Office. The decision was appealed in Tyumen oblast court. The latter confirmed the decision of the district court, which thus came into effect.

On 3 March 2008, Zhdanov filed a claim with the ECHR.

The case of “Radujny Dom” has received large public attention both in Russia and abroad. The case of the organisation was covered in the reports by Human Rights Watch, Human Rights without Frontiers, Youth Human Rights Movement, and the Moscow Helsinki Group. Amnesty International also makes reference to the illegal refusal of registration of “Radujny Dom” in one of its reports.

The “Radujny Dom” case clearly shows that the Russian state, from local administration and district courts to supreme legislative powers, not only has absurd and ignorant motives and intentionally refuses equal civil rights for sexual minorities, including the right to create community-based organisations, but also does not agree that gays and lesbians can stand up for their rights in a civilised way.

### **3.8 Defamation and Stigmatisation by Mass Media**

#### 3.8.1 The main orientation of publications

In Russia there is no discourse about LGBT issues. The subject of homophobia and discrimination based on sexual orientation is almost never discussed. The articles in mass media related to LGBT issues are scandalous, biased and, generally, contain so called “hate speech”.

In most of the publications, in which the author’s opinion is overtly expressed, the rights of heterosexuals are emphasised, based on the fact that LGBT people are a minority and the conclusions support the legitimacy of the limitation of their rights. A lot is written about the danger of being part of the “homosexual community”, which involves mental disorders, HIV and other illnesses and risks.

The reports which do not contain the author’s opinion on the issue are, however, riddled with phrases demonstrating a negative attitude or unfamiliarity with the subject.

Many publications contain negative opinions from church members, politicians and all sorts of “experts” about LGBT issues.

Despite various LGBT events happening during the assessment period, one way or another, most of them were not covered by the press. The mass media is mostly attracted by scandals (Moscow gay-pride, criminal cases etc.).

It is worth mentioning, that currently there is, practically, no culture of writing reports about LGBT issues. Most of the publications on this subject contain mistakes, due to the widespread stereotypes relating to LGBT people and to the lack of knowledge of the subject and of the terminology.

The monitoring also revealed a predominance of masculinity in the reports on LGBT issues. Only in a small number of publications are lesbians mentioned. Usually, the expression “non-traditional love” refers to relations between men.

### 3.8.2 The most discussed subjects

One of the most popular subjects was the Moscow gay pride. Some of the titles were: “Moscow gays make another attempt to organise a gay pride”, “The organisers of Moscow gay pride were refused again”, “The court did not satisfy the gays” etc.

The action “The day of silence” organised in Sank-Petersburg was another subject of discussion. Both events were organised almost at the

same time, but, compared to the one organised in Moscow, this one was authorised. Many mass media institutions paid attention to that. According to comments posted on blogs, forums and other types of social networks, the activists did not succeed in informing society about their problems. Most of the reports covered the event superficially. Usually, they did not give any examples of homophobia or discrimination against LGBT people. In many internet media, which offer the opportunity to comment on their publications, many homophobic and even extremist statements were posted, about the organisers and the entire gay-community.

The Russian “Day of silence” also attracted the attention of journalists. It is worth mentioning the journalists’ calm manner in covering the position of the activists – “hate speech” was almost completely absent, and although there was a lack of knowledge of the subject, traditional mistakes made by journalists did not critically affect the integrity of the information.

The LGBT film festival “Side by side” organised in St. Petersburg was often mentioned. A discussion was initiated immediately after the publication by several internet media of the statement by the film actor and president of the Association of Cinematographers of Slavic and Orthodox Peoples, Nicolai Burleav, who harshly criticised the idea of organising such a film festival. The comments of the former chief of the city cultural committee, Nicolai Burov, who stated that city authorities will not support, nor impede the organisation of the event, added fuel to the flames. It is worth mentioning that the position of the organisers was hardly mentioned in the media; if the journalists asked for comments, they asked those people who are known as activists, even if they had nothing to do with the organisation of the festival.

Various crimes related to LGBT people were also a popular subject. Here we can mention the two gays from St. Petersburg who shot themselves, the owner of a gay porn site who was killed and the story of the former boxer who killed a young man, allegedly because he committed a violent sexual attack against his stepson. Many of those reports, especially the last ones, supported the stereotype of paedophilia in the LGBT community, creating an unhealthy climate around LGBT people. In fact, the expression “paedophile-homosexual” is quite commonly used. “Moskovskiy Komsomolets” even published an article with the title “The north capital is being terrorized by maniac-homosexuals”

The festival “EuroPride’08” (August 2008, Stockholm) - a European event attended by 50,000 people, was practically ignored by the media. Despite the fact that, for the first time, a Russian organisation was invited to participate in the festival and that during the event special attention was paid to the situation in Russia – a round table was organized on the subject. Only the radio station “Echo Moskvi” mentioned the event in one of its shows.

### 3.8.3. The characterisation by the mass media

The main conclusion that can be made based on the analysis of publications is that “serious” mass media do not pay attention to LGBT issues, the reports on LGBT issues are mainly published by the so called “zhyoltaya pressa” (tabloid press): the tabloid newspapers, radio and TV programmes covering “scandals, intrigue and investigations”. Among the leaders on the coverage of LGBT subjects are “Komsomolskaya Pravda”, “Moskovskiy Komsomolets”, NTV channel, “Tvoy Deni”. The first two newspapers have an extremely large circulation and high ratings and are available to almost all categories of readers. The audience of NTV channel exceeds 120 million people and scandal programmes have the highest rating.

### 3.8.4 Stereotypes

Most of the publications are riddled with various stereotypical judgments, usually erroneous. These are a few of them:

One of the most common judgments that we see in the media is the idea that “being gay is trendy.” This opinion can often be seen in various media, whether intentionally or accidentally used.

Another common opinion – “homosexuality is synonymous with perverseness and immoral behavior”. Usually the intimate aspect of homosexual relations is emphasised.

Journalists still attribute femininity to gay men, saying they are woman-like and wear women’s clothes. One of the programs of the federal TV channel contained the following idea: “The veterans of previous gay-prides come here with their own ammunition. Here men try on banners instead of sarongs and scarves. It’s a lot of fun.”

Many comments, for various reasons, show a negative attitude supported by the theory that homosexuality negatively affects demography.

Often in the context of a “good-bad” juxtaposition, homosexuality is opposed to heterosexuality. From time to time, the opinions of people concerned about their children and their sexuality are published. The opinion that one can contract homosexuality is widespread and circulated.

Homosexuality is often perceived as a synonym of paedophilia. From time to time, both the headlines and text in the tabloids point that out. Furthermore, the journalists of the tabloids give a lot of colourful “examples”.

The commentators do not forget about the “promotion of homosexuality” and “the pink mafia” either. These expressions are also quite common.

Generally, the articles are accompanied by scandalous, colourful photographs and TV material contains corresponding images, which fully illustrate and even reinforce the stereotypes existing in society, inculcating the viewers with ideas about the preternatural sexual orientation of LGBT.

Quite often prostitution and sexual and mental disorders are mentioned along with LGBT.

### 3.8.5 The most common errors

Most of the errors committed by journalists are caused by insufficient knowledge about LGBT issues. In fact, journalists talk about one event or another, without actually knowing much and then rely on their own understanding of the subject, which is often erroneous, as well as on common stereotypes.

The journalists even spell the acronym LGBT in a wrong way. Usually, the transgender people are the most affected, being called transvestites, or travesties. Sometimes, amusing incidents happen, when journalists jump to conclusions about a character’s sexual orientation.

### 3.8.6 Hate speech

Part of the materials published during the analysed period contained the so called “hate speech”. Generally, these are the articles

on criminal issues. For example, if the subject is about a raped boy, the suspect is groundlessly called a “paedophile-homosexual”, as for example in the report of the “ROSBALT” news agency: “In Petersburg, a paedophile-homosexual raped an eighth grader.” The headline to a report about the situation in Israel of the main news programme on the NTV channel contained the following statement: “This is a rare reason which brings orthodox Jews together with orthodox Muslims and Christians. Half naked minorities next to religious sanctuaries – make a lot of people angry.” This is an obvious example of biased coverage of a subject, intentionally stirring a negative reaction in the viewer towards LGBT people.

In general, the media obviously overuses the expression “sexual minority”. Every word in this report sets the LGBT against “healthy society”, which only contributes to the promotion of homophobia.

The straight-from-the-shoulder headlines of periodicals are also judgmental. For example, “Petersburg against a film of sexual minorities”- which actually did not correspond to reality, since there was no expression of citizens’ will or an official decision of the authorities against the festival. However, the homophobic charge is obvious.

We have to say that the homophobic position is quite well represented in the media. Journalists are not shy in using expression like “perverts”, “sick people”, “sickness” etc.

### 3.8.7 Propaganda

An example of homophobic propaganda is the report broadcast in the spring of 2008 during the news programme of a regional radio station. The journalist turned it into five minutes of hatred.

The presenter: “An artist in Russia is more than an artist. He is the promoter of a certain ideology. And often of a specific orientation. It would be an exaggeration to say that the arrival of Boris Moiseev broke the peace of Omsk. But we can’t say that it went unnoticed. His numerous fans gathered in front of the circus to greet the singer of “the Blue Moon”. They carried placards stating “URF (Union of Right Forces) the party of the majority, ready to protect the minority”, “From freedom in love to a free country. URF for freedom.” In an hour the

square was invaded by people who, to put it mildly, do not quite like the art of Moiseev.”

Anton Klimenco: “Actually it perverts society and good morals.”

Tatiana Volkova: “I have a son and for that reason I am against gay culture, I am raising a child and I am worried about his future. Gay culture is evil.”

The presenter: “Boris Moiseev said that his concert was a Valentine’s Day present for the people of Omsk. A Trojan horse for you. This is how the representatives of the irreconcilable society called the concert. Among these were Cossacks from Omsk, who are ready to fight against the promoters of bohemian culture with the sword in their hands, for what can be good in Moscow, in Siberia is against human nature. But the Cossacks were not the only ones to share that opinion. The participants in the meeting against the promotion of gay-culture in Russia agreed - immorality is against the culture, the history of our country and against the traditions of family education. If the situation was different, there would have been no Russia, or Russia would now be very different. So you had better “let sleeping dogs lie”.”

Valentina Voloshkina: “I came here, to protest against gay-culture in our town, because I am worried about my grandchildren and I want a town free of bad things, free of evil, of the culture promoted by Moiseev.”

Victor Mutovin: “We do not agree with the culture promoted by Moiseev. We do not agree with the lifestyle he proposes. We are not against him as a person; we are against the culture he brings.”

The presenter: “Russia loses 700 thousand people every year – the population of a middle size town. And the artist promoting same sex love by means of his stage image does not deserve the title of national artist. Vladimir Putin did not openly say that, but this was approximately his message. For the first time the annoying journalists asked him about “that” during the annual press conference.”

Vladimir Putin: “My attitude towards gay-prides and sexual minorities is simple and is related to my professional obligations and to the fact that one of the biggest problems of our country is the demographic one...”

The presenter: “An ideology which changes orientation. Entertainment resembles politics in a way. The openness of Russia to all western influences is associated today with a true phobia by parents: what if their beloved child will not become interested in a person of the opposite sex but in these overseas gimmicks? That is why the funny question about who is behind Boris Moiseev does not seem so funny to parents. They

perceive entertainment as the carrier of the bohemian virus that one can contract just by going to a concert.”

As another example we can mention the article “Why is the planet getting pinker?” published in the magazine “Sobesednik” in July 2008. Starting from the issue of the gay-scandals in the Orthodox Church, they continue by “analysing” the situation, turning to a psychiatrist for advice. The overall biased attitude of the article is emphasised by expressions like “statistics are merciless”, “pink epidemic”, “the crawling hydra of sexual counterrevolution”, homosexuality is being compared to cannibalism etc. They also use the favorite trick of asking for “expert opinion”, for example of a psychiatrist or a psychologist. Statements which relate sexual orientation to rape are published.

In July “Moskovskiy Komsomolets” published an article about gay-pride in Berlin. The author listed the participants in the gay-pride: “Fetishists, sadomasochists, transsexuals – they all invaded the central streets of Berlin, in order to show the city their pride- in the proper and figurative way”. The article abounded with stereotyped judgments and inventions, and contained all sorts of hate speech: “The many kilometres long parade of dancing painted gays marched across the Potsdam square to the Victory Stela. From six p.m. until midnight the love birds drank, danced and even organised orgies”.

“In Russia they are right to forbid gay-prides”, declares the student of the Free University of Berlin, Valentina Perevedentseva, who is from Nizhny Novgorod. “If humankind wants to survive and continue its evolution, it should not support such forms of social relations. After all, it is just not aesthetic, it is unpleasant to watch these people.”

“During that day, it was impossible to distinguish in Berlin who was a woman and who was a man- the big breasted hotty on high heels was actually a transsexual, while the muscular, shaved boxer- a woman-lesbian.”

“The party lasted long into the night. Even the storm could not cool the couples – some of them started enjoying their love right there in the bushes of Tirgarten park. The love birds did not settle down until dawn.”

#### **4. CONCLUSIONS AND RECOMMENDATIONS**

1. Discrimination based on sexual orientation and gender identity, as a component of the general xenophobia in modern Russia, represents a serious social threat along with discrimination based on race, ethnicity or other reasons. Firstly, it results in the exclusion of millions of people – people with homosexual and bisexual orientation and transgender people – from a full social life, it endangers their lives and health and affects their human dignity. Secondly, the tolerant attitude of the government and society towards such discrimination contributes to the legitimacy of neo-Nazism and religious fundamentalism, as well as to the activation of organisations which are openly violating public peace in Russia.

2. The assessment of the activity of the Council of Europe, as well as of the European Court for Human Rights reveals the fact that a series of cases regulated by Russian legislation in accordance with decisions made on the international level (decriminalisation of non-forced homosexual relations, uniformity of the age of consent for homo- and heterosexual relations, the possibility of changing the birth certificate and passport of a transsexual etc.). However, there is still room for improvement in the Russian legislation in relation to other issues discussed on an international level (parental rights of homosexuals, consolidation of the principle of non-discrimination based on sexual orientation and gender identity etc.)

3. The law enforcement and court systems do not provide sufficient protection for homosexuals and transgender people from the infringement on their lives and health. Aggressive homophobia and transphobia is a common reason for crimes against people (including very serious ones). Meanwhile, the law enforcement structures do not take any measures to prevent crimes based on homophobia and transphobia.

Moreover, police officers are often the ones to display prejudice and negative attitudes towards homosexuals who are the victims of criminal attacks. This leads to the situation where the victims of crimes based on homophobia and transphobia prefer not to report them to law enforcement agencies and courts and the perpetrators remain unpunished.

The state needs to ensure that an active criminal investigation is carried out in each case of infringement on the lives and health of people because of their sexual orientation and gender identity, both by law enforcement officers and by other people and groups and, if there is

enough evidence, to make sure the perpetrators face charges, are taken to court and punished.

The state needs to take all legislative, administrative and other necessary measures to prevent the use of sexual orientation and gender identity of the victims being a reason or justification for acquittal or the reduction in the seriousness of the crimes committed against them.

It is urgently necessary to develop and implement government programmes for the prevention of crimes based on homophobia and transphobia and the prevention of homophobia and transphobia by law enforcement officers, prosecutor's office employees and judges during the fulfillment of their professional obligations.

Despite the decriminalisation of voluntary homosexual relations between adult people, the process of decriminalisation of homosexuality in Russia is still not complete. The attitude of the police towards homosexuality leads to the continuation of aggression and crimes against gay and lesbian people on the part of law enforcement agencies.

Under the pretext of operational-investigative measures they perform the illegal apprehension (of both individuals and groups) of people, solely based on their actual or perceived homosexuality, and they interfere with people's personal lives and collect personal information.

Investigation agencies use the information about citizens' personal lives to threaten or blackmail them and force them to give the "right" declarations. The criminal law contributes to this situation. In the civilised world the recognition of the importance of close relationships between people is reflected in the provisions regarding the right not to testify against such people. However, the Criminal Procedures Code of the Russian Federation, establishing the grounds of the legal status of a witness as a participant in criminal proceedings, stipulates, as one of the rights of the witness, the right to refuse to testify against himself, his-her spouse and other close relatives, which are listed in p. 4 article 5 of the Criminal Procedures Code of the RF.

Despite the removal back in 1993 of criminal liability for voluntary sexual relations between adult men, people who were convicted based on article 121 of the Criminal Code of RSFSR are still not rehabilitated. The introduction of this provision in the criminal law was obviously based on political and ideological reasons. Thus, people convicted in the USSR for "sodomy" should be recognised as victims of political repression. It is not only a formal obligation, but also a moral obligation of the state.

Moreover, the state must take a number of legislative and administrative measures that would allow:

- Taking into account, when bringing criminal proceedings, the relationships between people of the same sex
- Ensuring the respect and inviolability of citizens' personal life, notwithstanding their sexual orientation and gender identity
- Guaranteeing the right of every person to independently decide when, whom and how to disclose the information about his/her sexual orientation or gender identity, as well as protect against illegal or unauthorised disclosure or threats with disclosing such information to third parties.

4. The Russian government prefers to ignore and keep quiet about the problem of discrimination based on sexual orientation and gender identity. With such an attitude from the government, the problem cannot be solved. Thus, in annual reports of the Representative of the RF on human rights, the violation of rights and discrimination against sexual minorities was never mentioned, despite the fact that relevant material was sent to him many times.

Sexual orientation and gender identity are not included in the list of prohibited reasons for discrimination, for criminal, employment and civil legislation. This creates the situation where homosexuals and transgender people cannot count on the effective legal defense of their rights and where discrimination and the instigation to discriminate or to commit violence towards citizens because of their sexual orientation and gender identity remains unpunished most of the time.

The Prosecutor's office regularly refuses to open a criminal case in relation to the instigation to hatred and call for violence against gay people, saying that homosexuals are not "a social group".

The state must, finally, recognise the existence of the issue of discrimination based on sexual orientation and gender identity and take measures for the dissemination of the non-discrimination principle, established in international law and in the constitution of the RF, notwithstanding people's sexual orientation and gender identity.

It is necessary to include sexual orientation and gender identity in the list of prohibited reasons for discrimination in the corresponding laws, including by means of amendments and additions.

According to the general meaning of article 19 of the Constitution of the RF, when making decisions, the courts must not allow the limitation of rights and freedoms of citizens because of their sexual orientation and gender identity. It also refers to the prosecutor's supervision of law enforcement.

Measures must be taken to prohibit and eradicate prejudice based on sexual orientation and gender identity at every stage of civil, criminal and other judicial or administrative proceedings, related to the determination of the rights and obligations of people. It should be unacceptable, as well, for the authority or the role of anyone as party to a trial, i.e. a witness, expert, lawyer or decision making person, to be diminished because of their sexual orientation or gender identity.

It is necessary to organise training and education programmes for judges, court clerks, prosecutors and others, aimed at clarifying international human rights standards and the principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

5. General grounds establishing the option and procedures of gender reassignment have been set in the Russian legislation. However, here there are also a number of deficiencies: art. 70 of the Federal Law "On State Registration Documents" does not provide only for documents regarding gender reassignment issued by medical institutions, but also a specific form. So far, such form is not approved, so there are situations when the Registration Offices do not recognize the document issued by the medical institution as grounds for modification of civil state documents.

6. A number of politicians do not give up the attempt to introduce criminal liability for the so called promotion of homosexuality, defined as the "public manifestations of homosexual lifestyle and homosexual orientation". Despite the fact that the government previously pointed out in its decisions that such provisions are against the Constitution of the Russian Federation. In 2008 a similar Draft law was again introduced in the State Duma.

Despite the fact that the notion of the "promotion of homosexuality" is not in the legislation, it is actively used in law enforcement practice. On this illegal basis the prosecutor's office issues warnings to mass

media and the Ministry of Justice refuses to register public associations. This notion is also actively used by public people for the stigmatisation of homosexuals.

The use of the notion of the “promotion of homosexuality” in practice means nothing more than the violation of the right to freedom of speech, guaranteed by the ECHR and the Constitution of the RF. It should be taken into account that freedom of speech also refers to the freedom to express unpopular opinions, requiring pluralism, tolerance and open-mindedness, without which a democratic society cannot exist. Many emotional and aesthetic aspects of world perception of homo- and bisexuals may be unfamiliar to the heterosexual majority. However, this cannot be the reason for the limitation of freedom of speech.

The state must take measures in order to prevent the use of the notion of the “promotion of homosexuality” in law enforcement practice, to exclude it from legislative documents of the Russian Federation and official documents.

The state is obliged to apply legislative, administrative and other measures with the purpose of ensuring the full exercise of the freedom of opinion and freedom to express it, taking into account the rights and freedoms of other people and without discrimination based on sexual orientation and gender identity. It includes the right to receive and transmit information and ideas, related to sexual orientation and gender identity, as well as to speak about legal rights related to them, to publish materials, to broadcast, to organise conferences and participate in them, as well as to disseminate information about safe sexual behavior and access to such information.

7. Russian homosexuals and transgender people have to face discrimination at their workplace and when trying to get employment. The gays and lesbians who work (or want to work) in government institutions and organisations, as well as in the education system are the most vulnerable. The respondents interviewed during the monitoring repeatedly talked about the practice of verifying the “normality” of the personal life of citizens to be employed in state services. If the management of the institution finds out about an employee’s homosexuality, it often takes measures to get rid of that employee.

The state must take all legislative, administrative and other necessary measures in order to eradicate and prohibit discrimination based on sexual orientation and gender identity in employment in the state and

private sectors, including in professional training, recruitment of employees, promotion, dismissal, terms of the employment contract and in remuneration.

Special attention should be paid to state services and the education system. It is necessary to provide equal opportunities for employment in state services and promotion in all government bodies, law enforcement bodies and the army and education institutions. The development of training and education programmes, aimed at overcoming discriminatory attitudes, is very important.

Currently the LGBT community is practically deprived of the option of organising public demonstrations, including cultural ones. Without any legal grounds for bans, the government bodies use rough administrative pressure on public associations and private companies.

Every person has the right to freely participate in cultural life, notwithstanding his sexual orientation and gender identity, as well as to express, by means of such participation, the diversity of sexual orientation and gender identity. The state, for the purpose of keeping civil peace and harmony in society, should contribute to the dialogue between representatives of different culture groups and mutual respect among them, including groups with different opinions regarding sexual orientation and gender identity.

10. Peaceful marches and demonstrations supporting equal rights, initiated by LGBT activists are subjected to open bans by local government. The attempts to organise such marches in Moscow and other cities ended with the apprehension of participants and administrative charges for invented reasons.

Peaceful demonstrations are one of the civilised means of expression of people's opinions, including those which provoke ambiguous reactions in society. The state has an obligation to respect the right of citizens to peaceful demonstrations, including those related to issues of sexual orientation and gender identity.

From the point of view of modern international law standards it is unacceptable to use the notions of national security, public order, health or the morality of the population for any kind of limitation of the right to peaceful assembly and association, based on the reason that such a right is exercised with the purpose of affirming the diversity of sexual orientation and gender identity.

All the attempts of LGBT organisations (Radujny Dom, Favorit) to be registered by the state have been refused. Responsible officers, both in official documents and in the media identify the reasons for the refusal to be because of the “promotion of homosexuality” and that the presence of homosexuals and transgender people in public places is unacceptable.

The establishment and registration of associations without discrimination based on sexual orientation and gender identity does not represent any danger for society or the state. On the contrary, the creation of public associations will contribute to the realisation of the rights and legal interests of citizens.

The state must take measures to eradicate existing administrative impediments and prevent new impediments to the establishment, state registration and activities of public associations and other forms of non-commercial organisations, aimed at disseminating information among people of different sexual orientation and gender identity, disseminating information about such people and contributing to the communication to such people and the protection of their rights.