
**Study on Homophobia, Transphobia and Discrimination on
Grounds of Sexual Orientation and Gender Identity**

Legal Report: Russian Federation

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A. Foreword

1. This report was prepared by Kseniya Kirichenko, a lawyer, legal researcher and Coordinator of the Legal Assistance Programme of the Russian LGBT Network.
2. The various regulations (international and national, federal and regional, laws and bylaws, published and non-published) were used as a normative basis for the study. Besides, several draft laws and materials to them, available in the main legal bases (“ConsultantPlus” and “Garant”), as well as on the official website of the State Duma of the Russian Federation, were discussed.
3. For the analysis of certain ambiguous provisions the doctrinal researches in different branches of law were involved. Where relevant, Russian regulations were analysed in comparison with the acts of foreign States.
4. The materials of the author’s own experience (obtained in individual consultations, seminars for professional groups and the LGBT community, etc.), published and unpublished court decisions, information about some court cases on the sites of human rights and LGBT organisations, as well as public bodies, were used as an empirical basis for the research. In this respect, a certain problem faced by the author in the course of preparation of the report, should be identified. At present, Russian courts of general jurisdiction (and just that courts review most of the cases relevant to this report) are not obliged to publish all decisions to the public, and there are no publicly-accessible comprehensive database of court practice. Consequently, this report does not claim to be exhaustive and to cover completely all the cases that occurred in Russian judicial practice. The reports and the practice of administrative bodies, as well as non-governmental organisations involved in the settlement of disputes in a particular area (for example, the media) were also analysed.
5. During the research, the requests for information concerning the rights of LGBT persons were also prepared and sent to a number of government agencies, academic researchers (psychologists, lawyers and sociologists), LGBT activists, health clinics and public organisations. Not all the letters were answered, but I would like to sincerely thank everyone who responded and provided valuable information for the study. It is also should be noted that information about the study and call for data on cases relating to certain aspects of the exercise of the rights by representatives of the LGBT community were distributed in specialised mailing lists and groups in social network.
6. Some findings of the study were illustrated with specific examples, details of which have been recorded in the reports on discrimination based on sexual orientation and gender identity in Russia and St. Petersburg,¹ or which were provided by individual informants or were posted on the Internet.

¹ See: Situation of Lesbians, Gays, Bisexuals, and Transgender People in the Russian Federations. Moscow: Moscow Helsinki Group, 2009. Available in English at, [www.ilga-europe.org/content/download/15773/97321/file/Russia_report WEB.pdf](http://www.ilga-europe.org/content/download/15773/97321/file/Russia_report_WEB.pdf), accessed 23 July 2010. [Hereinafter referred to as ‘Report 2009’] ; 2008 Regional St. Petersburg Report Based on the Results of Monitoring of Discrimination Based on Sexual Orientation and Gender Identity. Available in English at, http://piter.lgbtnet.ru/2009/01/27/monitoring-2/?langswitch_lang=en, accessed 16 January 2010.

B. Executive summary

Overall legal framework

7. Neither the Constitution of Russia nor any legislative act expressly establishes inadmissibility of discrimination on ground of sexual orientation or gender identity. Although from theoretical point of view such discrimination may be included in the broader concept of “other reasons” or “affiliation with any social group”, in practice this logic is not used by law enforcement authorities.
8. In general it can be ascertained that policy of silencing the problems associated with sexual orientation and gender identity dominates in Russian legal and political discourse. Alternative, private regulation by means of various contracts and agreements, which is used sometimes by representatives of LGBT community in order to eliminate existing legal gaps, not always adequately guarantees the rights and interests of individuals.

Freedom of assembly and association

9. Russian legislation establishes notification and not authorisation-based procedure for public events. However, the practice of organising LGBT public events in the most cases demonstrates contrary approach of the administrative bodies. Gay prides, marches and picketing are not supported by the law enforcement authorities with references to the grounds of public order, prevention of riots, protection of health and morals, as well as rights and freedoms of other people. On the other hand, there have been some incidents, when public events directed against LGBT persons (including actually aggressive actions), did not meet with any opposition on the part of public authorities.
10. Freedom of association is a constitutional provision. Nevertheless, the policy of refusal to register LGBT organisations has been conducted until recently. However, during 2009 two LGBT organisations were registered, and the refusal to register another one was successfully appealed in the court.

Freedom of expression

11. Freedom of expression is also guaranteed by the Constitution of the Russian Federation. However, the practical realisation of relevant provisions demonstrates many problems. Firstly, almost no action is being taken to curb the events, in which the expressed opinions and actions are of homophobic or transphobic nature. Secondly, it is very difficult to openly hold any event (including cultural event), which clearly aimed to support the development of tolerance towards homosexual, bisexual and transgender persons. Thirdly, the acts of hate speech targeting homosexual, bisexual and transgender persons remain virtually unpunished. Fourthly, recurrent attempts to impose criminal or administrative responsibility for the so-called “propaganda of homosexuality” are also the bottleneck in Russia.

Hate crime - Criminal Code

12. Despite the fact that the original version of the Criminal Code, adopted in 1996, included several provisions designed to prosecute hate crimes, homophobic/transphobic crimes did not fall into this category. The current version of the Code includes many articles, which recognise as criminal offence a number of deeds, committed by reason of political, ideological, racial, national or religious hatred or enmity, or by hatred or enmity toward a *particular social group*. Consequently, there is now a legal possibility of recognising

homophobic/transphobic crimes as extremist crimes, but in practice there is a problem of recognition of LGBT persons as a social group.

Family issues

13. The Family Code of the Russian Federation does not establish explicitly either the impossibility or admissibility of registration of a marriage between persons of the same sex. However, the references to the “voluntary consent of a man and a woman”, which is contained in the wording of the Family Code, are often made in theory and practice. Alternative registration schemes which are either similar to marriage or entail less rights and responsibilities than marriage, as well as cohabitation are not recognised by the Russian legal system.
14. Homosexual persons also cannot resort in Russia to joint adoption, and (as contrasted with the opposite-sex couples even unmarried) to second-parent adoption. There is no direct (and explicit) prohibition of individual adoption by homosexual persons, but there could be some problems concerning the interpretation of the term “interests of the child”. Besides, there are some theoretical possibilities for same-sex parents in such institutes as guardianship and trusteeship, and in the field of assisted reproductive technologies. However, legislation on assisted reproduction contains many gaps and collisions, and all such possibilities are following from the general provisions concerning two persons, and not same-sex couples as such.
15. Russian legislation does not specifically establish the possibility of family reunification in cases of same-sex families. The Family Code, in principle, allows the recognition of same-sex marriages entered into abroad, but in practice it could be complicated by the interpretation of the term “public order”.

Asylum and refugee issues

16. The theoretical possibility of recognition of LGBT person as a refugee or a forced migrant in view of the persecution against her/him on the ground of sexual orientation or gender identity exists, but there has not been any practice on such cases, and the problem of interpretation of the term “social group” rises once again.

Social security, social care and insurance

17. Since homosexual persons cannot get formal family status in relation to their partners and (or) children, in most cases they are also deprived of opportunities to receive relevant social support.
18. The possibility of social programmes, recognising LGBT community as a target group, exists, but it does not clearly expressed in legislation, and in practice such social assistance does not rendered by the State. The practice also shows that the private LGBT community centres are not funded through state or municipal programmes.

Education

19. Discussion of issues related to different forms of sexuality in schools is virtually impossible. University curricula, as a rule, do not provide the mandatory inclusion of homosexuality, bisexuality and transgender issues in educational plans, but relevant courses are taught in some universities on the initiative of individual teachers.

20. Another problem concerns social exclusion and violence within the school environment, including bullying and harassment.
21. In the last decade, a few dissertations, representing in some way research view on the issues of sexual orientation and gender identity, were defended, but there are many problems with the approval and defence of such topics.

Employment

22. Labour legislation does not contain any specific provisions explicitly prohibiting discrimination on ground of sexual orientation. However, inadmissibility of such discrimination is increasingly emphasised in the ethical standards of various organisations.
23. Another relevant problem is the inclusion (or rather non-inclusion) of issues related to sexual orientation and gender identity in training programmes for law enforcement bodies.
24. To the extent that violations of the rights of LGBT persons are also a violation of human rights, they fall within the purview of the Russian Ombudsman. Despite the fact that the Ombudsman has not undertaken any comprehensive action directly aimed at protecting the rights of LGBT persons as a specific social group or of individual members of the LGBT community until now, there are some factors showing promising possibilities in this regard.

Housing

25. Like the family legislation, the Housing Code forms the legal notion of the family, defining its subject composition; but unlike the family legislation, the determinant attribute of family membership is cohabitation and self-identification and not the state registration. Therefore, a homosexual partner can be protected as a family member of the owning partner, but only by court decision and not automatically.
26. Same-sex families are again to a large extent left out of the scope of social support (here – social programmes, aimed at the support of those who are in need of improved housing conditions), since the two cohabiting partner will not be considered as a family, and if at the same time they brought up a joint child, only this child and his/her legal parent will be considered as a family.
27. Homosexual person's partner in most situations cannot be his/her heir under operation of law. Inheritance by will is permitted in such cases, but homosexual partner has a greater tax burden than close relatives.

Health care

28. General non-discrimination provisions are contained in the Fundamentals of Legislation of the Russian Federation on Health Care, and there are also a number of ethical standards, emphasising inadmissibility of discrimination (including that on ground of sexual orientation) in medical practice. However, the real practice sometimes demonstrates the violation of this principle.
29. A great number of bylaws distinguishes homosexual persons as a separate group regarding issues concerning the spread of different infections: pre-eminently, sexually transmitted infections and HIV.

30. Apart from that, it should be noted that there is a certain progress that proves normalisation of homosexuality from the viewpoint of official authorities. Thus, “homosexuality” was excluded from the list of absolute grounds for rejection of blood donors.
31. Certain legal difficulties may arise in connection with information about the health of homosexual person. The lack of formal family status in regard to the members of homosexual families leads also to another problems.

Access to goods and services

32. The main legal source regulating the issues of citizens' access to goods and services is the Law on Protection of Consumer Rights. However, the text of this Law does not contain any non-discrimination provisions.
33. In practice, refusals to provide goods and services in connection with sexual orientation and gender identity occur.

Media

34. Russian legislation stipulates the prohibition on distribution of extremist materials and conduct of extremist activity through mass media.
35. Provisions relating to journalistic ethics, as well as inadmissibility of misuse of the freedom of mass communication as it relates to the activities of extremist nature or discrimination are also reflected in the recommendation documents adopted by associations of journalists.
36. There is a further point to be made here, namely the presence of working self-regulatory institutions in the media sphere in Russia.
37. Finally, some aspects concerning the issues of homophobia in media also are related to advertisement.

Miscellaneous

38. There are three groups of problems related to homophobia/transphobia and/or discrimination on grounds of sexual orientation or gender identity, which should be also disclosed in the present report: attempts to return the criminal prosecution for consensual homosexual relations; abusive acts of law enforcement bodies in relation to LGBT persons; and some procedural aspects concerning investigation of crimes and punishment for them.

Good practice

39. Two groups of good practice can be identified in the field of contributions to greater inclusion and recognition of LGBT persons as equal members of the Russian society.
40. The first group refers to relations with the State authorities (lack of refusals to register LGBT organisations in some regions; the first experience of dialogue with public authorities; and practice of monitoring studies and distribution of the reports, which leads to understanding and recognition of the problem of discrimination on grounds of sexual orientation and gender identity in Russia by some authorities).

41. The second group consists of practice of non-governmental organisations, contributing to changing the situation concerning homophobia, transphobia and discrimination against LGBT persons in Russia, and relates to the representatives of the LGBT community, to society in general or to the specific groups of it (educational events, publications, information campaigns, etc.).

C. Findings

C.1. Overall legal framework²

42. According to the analysis of the activity of the Council of Europe in general and the European Court of Human Rights in particular, a number of issues are regulated by the Russian legislation in compliance with the conclusions made at the international (European) level (decriminalisation consensual same-sex relations, equalisation of the age of consent to same and different-sex sexual relations, the possibility to rectify birth certificates and passports of transsexual people, etc.). However, the Russian legislation could be improved in other aspects considered by the European Court of Human Rights and the Council of Europe Committee of Ministers (the principle of non-discrimination based on sexual orientation and gender identity, freedom of assembly, etc.).
43. The main provisions stipulating the need to respect differences and to protect the rights and interests of the citizens, at least when they do not intrude on other people's rights and interests, are enshrined in the Constitution of the Russian Federation.³ It is said that Russia is a democratic law-bound State (Art. 1), a social State (Art. 7), where human rights and freedoms are of the 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 Art. 14 (official separation of religious associations and the State).
44. The main norm establishing the non-discrimination principle is included in Art. 19 of the Constitution. It speaks about equality based on three aspects: a) equality before the law and court; 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***"; c) equality of the rights of men and women, which is also emphasised separately.
45. Therefore, although a number of European states have already introduced provisions expressly prohibiting discrimination based on sexual orientation in their constitutions, the Constitution of the Russian Federation has no explicit reference prohibiting 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, from theoretical point of view, that discrimination based on sexual orientation is prohibited as well.⁴ 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 Russian Constitution uses a more favourable term, i.e. "other circumstances". But another point is that human rights and freedoms may, according to the Constitution, be limited – in compliance with the federal law and in order to protect morals, health, etc. However, all forms of the limitation of rights based on social background, race, nationality, language or religion (i.e. in this case list of the grounds is exhaustive and does not contain "other

² This chapter is based on the earlier author's reasoning, presented in the Report 2009 (p. 6–7, 19).

³ Конституция Российской Федерации: принята всенародным голосованием 12 декабря 1993 г. // Российская газета. – 2009. – 21 января. [*Constitution of the Russian Federation: adopted on nation-wide voting on 12 December 1993 // Rossiyskaya Gazeta. – 2009. – January 21*]. Available in English at, <http://www.constitution.ru/en/10003000-01.htm>, accessed 30 December 2009.

⁴ Leading constitutional law researchers also mention this fact. See, for example: Постатейный научно-практический комментарий к Конституции Российской Федерации коллектива ученых-правоведов под руководством ректора МГЮА, академика РАН О.Е. Кутафина [Paragraph-to-Paragraph Academic and Research Commentary to the Constitution of the Russian Federation of the Collective of Legal Researchers Leads by O.E. Kutafin, the Chancellor of the Moscow State Law Academy, Member of the Russian Academy of Sciences]. Available in Russian at, http://constitution.garant.ru/DOC_3866952.htm#sub_para_N_2000, accessed 30 September 2010.

grounds”) are prohibited. And here there is a problem: whether sexual orientation can be considered as a part of social backgrounds of a citizen. And the answer to this question can be found not in jurisprudence, but in related sciences – sociology, psychology, etc.

46. The social nature of homosexuality matters also in other, more specific issues. Thus, the Constitution of the Russian Federation prohibits propaganda or agitation inciting *social*, racial, national or religious hatred and enmity (Art. 29). Since the Russian legislation does not contain special norms prohibiting homophobic actions, and the Constitution has a direct effect, it is particularly important to prove the social nature of LGBT issues.
47. No labour discrimination is allowed (Art. 37 of the Constitution). Art. 38 speaks about state protection of the family, and neither the Constitution nor the Family Code of the Russian Federation⁵ describes the family. Moreover, unlike the family legislation (provisions of which cover only a specific range of subjects with a special status recognised by the State (mother, child, husband, etc.) – i.e., the family protected by the family legislation is limited by subject composition), the Constitution contains no details of a family, and therefore it is quite within reason to suggest that any family (including, for example, homosexual) should be protected by the State.
48. Speaking about constitutional norms establishing the fundamentals of the legal status of Russian citizens in the context of LGBT persons, it is impossible to omit the main procedural mechanism of observing the Constitution – the activity of the Constitutional Court of the Russian Federation. The Constitutional Court’s authority, order of formation, and activity are set out in the Constitution of the Russian Federation. In particular, the Constitutional Court is in charge of solving cases of compliance of the legislation of the Russian Federation, subjects of the Russian Federation, as well as regulations with the Russian Constitution, and examining citizens’ complaints about violation of constitutional rights and freedoms of citizens. By the present moment, the Constitutional Court has examined three complaints related to non-observance of human rights of homosexual persons.⁶ In all three cases the final decisions were not to admit the complaints to examination, and a number of conclusions that motivated such decisions made it possible to partly understand the official approach of Russian authorities to the issue concerning the rights of LGBT persons.
49. In general it can be ascertained that policy of silencing the problems associated with sexual orientation and gender identity dominates in Russian legal and political discourse. There are no special restrictions imposed on homosexual persons (the prime example – family legislation does not establish directly the inadmissibility of same-sex marriages or adoption

5 Семейный кодекс Российской Федерации: принят Государственной Думой 8 дек. 1995 г. // Собрание законодательства РФ. – 1996. – № 1. – Ст. 16. [*Family Code of the Russian Federation*: passed by the State Duma on 8 December 1995 // *Collected Legislation of the Russian Federation*. – 1996. – No. 1. – Art. 16]. Available in English at, www.jafbase.fr/docEstEurope/RussianFamilyCode1995.pdf, accessed 04 January 2010.

6 1) Об отказе в принятии к рассмотрению жалобы граждан Богданова Андрея Евгеньевича, Мальцева Дмитрия Сергеевича и Сыромолотова Михаила Евгеньевича на нарушение их конституционных прав статьей 23 Федерального закона «Об общественных объединениях»: Определение Конституционного Суда РФ от 15 февр. 2005 г. [On refusal to consider the complaint of citizens Bogdanov Andrey Evgenyevich, Malcev Dmitry Sergeevich and Syromolotov Mikhail Evgenyevich regarding the violation of their constitutional rights by Article 23 of the Federal Law on Public Associations: *Decision of the Constitutional Court of the Russian Federation of 15 February 2005*]; 2) Об отказе в принятии к рассмотрению жалобы гражданина Э. Мурзина на нарушение его конституционных прав пунктом 1 статьи 12 Семейного кодекса Российской Федерации: Определение Конституционного Суда РФ от 16 нояб. 2006 г. [On refusal to consider the complaint of citizen E. Murzin regarding the violation of his constitutional rights by Point 1 of Article 12 of the Family Code of the Russian Federation: *Decision of the Constitutional Court of the Russian Federation of 16 November 2006*]; 3) Об отказе в принятии к рассмотрению жалобы граждан Алексева Николая Александровича, Баева Николая Викторовича и Федотовой Ирины Борисовны на нарушение их конституционных прав статьей 4 Закона Рязанской области «О защите нравственности детей в Рязанской области» и статьей 3.10 Закона Рязанской области «Об административных правонарушениях»: Определение Конституционного Суда РФ от 19 января 2010 г [On refusal to consider the complaint of citizens Alekseyev Nikolay Aleksandrovich, Baev Nikolay Viktorovich and Fedotova Irina Borisovna regarding the violation of their constitutional rights by Article 4 of the Law of Ryazan Region on the Protection of Morality and Health of Children in Ryazan Region: *Decision of the Constitutional Court of the Russian Federation of 19 January 2010*]. Available in Russian at, <http://ksportal.garant.ru:8081>, accessed 7 January 2010. All three cases will be discussed in the next chapters.

by homosexual persons), but the practical realisation of the rights by LGBT persons is often difficult. Homosexual, bisexual and transgender persons could be considered as a social group, and from this point of view homophobic actions fall under the definition of extremism, but in practice there has not been any cases, in which that kind of logic was used (at the same time, there have been opposing arguments).

50. As for the representatives of the LGBT community themselves, the following conclusions can be drawn. Regulation of relations in private law (civil or family law), as well as a number of issues of public law (health legislation) allow individuals having homosexual relations to conclude different agreements aimed at creating a legal regime similar by its form and contents 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, and 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 formation of legal subcultures⁷ of individuals in connection with peculiarities of their sexual orientation and gender identity: in the absence of a special regulation of their relations they use gaps in the legislation in order to achieve their own goal – adequate reflection of social, actually formed relations by law.
51. Nevertheless, alternative, private regulation not always adequately guarantees 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.

C.2. Freedom of assembly and association

52. According to the Russian Constitution, “*citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets*” (Art. 31). This right “*may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State*” (the third part of Art. 55).
53. The realisation of this constitutional right is ensured by the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing.⁸ This Law aims at regulating the relations arising in the organising and conducting meetings, rallies, demonstrations, marches and pickets by the citizens of Russia, public and religious associations, as well as political parties. The Law establishes procedures for organising and holding public events, reveals the legal mechanism of interaction between state authorities, local governments and their officials with the organisers and participants in the public events, as well as procedures to ensure public safety during public events and the reasons for suspension or termination of such events. The text of this Federal Law does not include any anti-discriminatory provisions and, in particular, any mentions of discrimination on the grounds of sexual orientation or gender identity.
54. Russian legislation establishes notification and not authorisation-based procedure for public events. This procedure requires prior submission of the notice about holding the public event. A notice (except for a rally and picketing held by a single participant) shall be sent by its promoter in writing to the executive power body of the subject of the Russian

7 On the conception of legal subcultures (layouts) see, for example: Антокольская М. Проект Европейского гражданского кодекса и проблемы гармонизации семейного права // Ежегодник сравнительного правоведения, 2004. – М., 2005. – С. 20. [Antokolskaia M. The Draft of European Civil Code and the New Dilemmas for the Harmonisation of Family Law // Yearbook of the Comparative Law, 2004. – Moscow, 2005. – P. 20].

8 О собраниях, митингах, демонстрациях, шествиях и пикетированиях: Федеральный закон: принят Государственной Думой 4 июня 2004 г.; одобрен Советом Федерации 9 июня 2004 г. // Собрание законодательства РФ. – 2004. – № 25. – Ст. 2485. [On Assemblies, Meetings, Demonstrations, Marches and Picketing: *Federal Law*: passed by the State Duma on 4 June 2004; endorsed by the Federation Council on 9 June 2004 // *Collected Legislation of the Russian Federation*. – 2004. – No. 25. – Art. 2485]. Available in English at, www.legislationline.org/documents/action/popup/id/4367, accessed 30 December 2009.

Federation or the body of local self-government within the period not earlier than fifteen and not later than ten days prior to holding of the public event. In case of holding a picketing by a group of persons, a notice of holding the public event should be submitted within the period not later than three days prior to the holding of the event.

55. The executive power body of the subject of the Russian Federation or the local self-government body, upon receiving a notice about holding the public event, shall be obligated (1) to confirm documentarily a receipt of the notice indicating in so doing the date and time of its receipt; (2) to bring to the notice of the promoter of the public event, within three days from receipt of the notice (and in case of the notice about holding a picket by a group of persons submitted within less than five days prior to the day of its holding – on the day of its receipt) a well-motivated proposal to alter the place and/or time of holding the public event and also suggestions that any non-conformances, if any, between the goals, forms and other conditions for holding the public event specified in the notice and the requirements of the law, should be corrected by the promoter of the public event; (3) to appoint, depending on the form of the public event and the number of participants therein, its authorised representative for the purposes of offering assistance to the promoter of the public event in the holding of the public event; and (4) to ensure, within its competence and jointly with the promoter of the public event and the authorised representative of the internal affairs body, public peace and security of the citizens in the process of holding the public event and also provide them, in case of need, with emergency medical care.
56. In case the information contained in the text of a notice about holding the public event and also other data make it possible to suggest that the goals of the planned public event and the forms of its holding fall short of the provisions of the Constitution of the Russian Federation and/or violate bans envisaged under the legislation of the Russian Federation on administrative offences or the criminal legislation of the Russian Federation, the executive power body of the subject of the Russian Federation or the local self-government body shall immediately give to the promoter of the public event a motivated warning in writing that the promoter and also other participants in the public event, given such non-conformances and/or violations in holding the public event may be held responsible in the prescribed manner. Thereby, the Law by itself does not envisage a ban on activities such as events aimed at incitement of hatred or enmity, but indicates the possibility of liability for the commitment of such acts in accordance with other laws.
57. The grounds to terminate the public event shall be as follows: (1) creation of a real threat to the life and health of citizens and also to the property of individuals and legal persons; and (2) perpetration of illegal actions by participants in the public event or deliberate violation of the provisions of legislation concerning the procedure for holding the public event by the promoter of the public event.
58. The Russian legislation not only establishes the right of citizens to hold peaceful public actions, but also imposes liability on those who impede the holding of meetings, rallies, demonstrations, marches and pickets. Thus, according to the Administrative Offence Code of the Russian Federation,⁹ obstructing the arrangements for, or the conduct of, a meeting, rally, demonstration, procession, or picketing held in compliance with the laws of the Russian Federation, or obstructing participation therein shall entail a warning or the imposition of an administrative fine (Art. 5.38). As stated by the Criminal Code of the Russian Federation,¹⁰ *“Illegal obstruction of the holding of a meeting, assembly,*

9 Кодекс Российской Федерации об административных правонарушениях: принят Государственной Думой 20 дек. 2001 г.; одобрен Советом Федерации 26 дек. 2001 г. // Российская газета. – 2001. – 31 дек. [*Administrative Offence Code of the Russian Federation: passed by the State Duma on 20 December 2001; endorsed by the Federation Council on 26 December 2001 // Rossiyskaya Gazeta. – 2001. – December 31*]. Available in English at, www.russian-offences-code.com, accessed 3 January 2010.

10 Уголовный кодекс Российской Федерации: принят Государственной Думой 24 мая 1996 г.; одобрен Советом Федерации 5 июня 1996 г. // Собрание законодательства РФ. – 1996. – № 25. – Ст. 2954. [*Criminal Code of the Russian Federation: passed by the State Duma on 24 May 1996; endorsed by the Federation Council on 5 June 1996 // Collected Legislation of the Russian Federation. – 1996. – No. 25. – Art. 2954*]. Available in English at, www.russian-criminal-code.com, accessed 3 January 2010.

demonstration, procession, or picketing, or of participation in them, if these acts have been committed by an official through his official position, or through the use of violence, or through the threat of its use, shall be punishable by a fine or by deprivation of liberty for a term of up to three years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or permanent disqualification” (Art. 149).

59. However, practice of application of legislation on public events in Russia in cases concerning LGBT issues reveals many problems.
60. Thus, the organisers of a gay parade in Moscow unsuccessfully have attempted to agree on public events under the pride for several years (Pride March in 2006, Gay Prides in 2007–2009, and the pickets in 2006–2009). The same situation occurs every year: the organisers submit a notice about public event, but the authorities either immediately prohibit the holding of the event, or firstly offer to change the venue of the event, and then also prohibit its holding. For example, in 2006 the Mayor of Moscow argued that the agreement for the march was refused on the grounds of public order, prevention of riots, protection of health and morals, as well as rights and freedoms of others. It was indicated, in particular, that numerous petitions against the march had been brought by the representatives of legislative and executive state bodies, religious confessions, Cossack elders and other individuals; the march was therefore likely to cause negative reaction and protests against the march participants, which could turn into civil disorder and mass riots.¹¹ As noted in the special report on situation of LGBT people in Russia, “at the same time, the Moscow Government did not stop pickets with homophobic slogans that had not been agreed with them.”¹²
61. As also mentioned in the Report 2009, holding of public events are by no means always accompanied by the due performance of their duties by the law enforcement authorities.
62. Thus, “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”.¹³
63. “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.”¹⁴
64. In April 2008, the members of LGBT organisations “Coming Out” submitted to the District Administration a notice concerning the picket in order to attract public attention to the silence of hate crimes and discrimination. The District Administration did not approve the place originally referred in the notice, and offered another one, which was agreed with the organisers of the picket. However, the organisers were informed later that it is not possible to agree on the picket due to the police exercises. Nevertheless, the participants in the picket, who were there in this time, found that no exercises have been undertaken. A similar situation occurred a year later – the organisers of the picket were informed by the authorities that “the previously agreed [another] picket will be held at this place”, but members of the organisation “Coming Out” did not find in this time at this place any other picket.¹⁵

11 More detailed description of the cases on Moscow gay pride see: Annexes to chapter 2, cases 1–3.

12 Report 2009. P. 50.

13 Report 2009. P. 31.

14 Ibid.

15 Обращение к Уполномоченному по правам человека в Санкт-Петербурге от Председателя МОД «Российская ЛГБТ-Сеть», Директора Кинофестиваля «Бок-о-бок» и Директора АНО «ЛГБТ-организация Выход» от 25 августа 2009 г. (опубликовано не было) [Appeal to the Commissioner for Human Rights in St. Petersburg from the Chair of the

65. Such actions of the authorities not only failed to comply with the law, but also contradict the explanations of the Constitutional Court. As the Constitutional Court indicates in one of its rulings,¹⁶ *“the public authority cannot ban the holding of a public event, it may only propose to change the location and (or) time of its holding, and such a proposal has to be motivated and be caused either by the need to maintain a normal and uninterrupted operation of vital facilities of the communal or transport infrastructure, or by the need to maintain public order and security of citizens (both participants in the public events and persons who may be in the venue at a specific time), or by other similar reasons. The possibility of the achievement of the goal of the public event should be considered in discussing the proposal made by an official of the authorised body of public power with the organisers of the event. The goal of a rational government organisation cannot justify restrictions of the rights and freedoms. The legal concept of “a reasoned proposal” means that in the decision to change the venue or the time of the event strong arguments in support of the fact that holding the public event is not just undesirable, but is impossible due to the need for protecting the public interest should be given. The constitutional and legal sense, which is inherent in the concept of “agreement”, implies the duty of the public authority to invite the organiser of public events to discuss the options of a public event, which would allow realising its goals.”*
66. Freedom of association is also a constitutional provision. The first part of Art. 31 of the Constitution of the Russian Federation states: *“Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.”*
67. Registration of non-governmental organisations is carried out in accordance with the Federal Law on Non-Profit Organisations,¹⁷ the Federal Law on Public Associations,¹⁸ and the Federal Law on the State Registration of Legal Entities and Individual Businessmen.¹⁹ The text of these Federal Laws does not include any anti-discriminatory provisions and, in particular, any mentions of discrimination on grounds of sexual orientation or gender identity.
68. State registration of NGO may be refused for the following reasons: if the statutes run counter to the legislation; if the list of the documents, required for the state registration, has not been submitted in full, or if they have not been drawn up in proper order, or have been submitted to an improper body; if NGO, having the same name, has been registered before; if it has been established that the constituent documents, submitted for registration, contain unreliable information; if the name of a public association insults the morality and

IPM ‘Russian LGBT Network’, the Director of the Film Festival ‘Side-by-side’ and the Director of ANO ‘LGBT organisation Coming Out’ of 25 August 2009 (unpublished)].

16 По жалобе граждан Лашманкина Александра Владимировича, Шадрин Денис Петрович и Шимоволоса Сергея Михайловича на нарушение их конституционных прав положением части 5 статьи 5 Федерального закона «О собраниях, митингах, демонстрациях, шествиях и пикетированиях»: Определение Конституционного Суда РФ от 2 апреля 2009 г. [On the complaint of citizens Lashmankin Aleksandr Vladimirovich, Shadrin Denis Petrovich and Shimovolos Sergey Mikhailovich regarding the violation of their constitutional rights by provisions of the fifth part of Article 5 of the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing: *Decision of the Constitutional Court of the Russian Federation of 2 April 2009*]. Available in Russian at, <http://ksportal.garant.ru:8081>, accessed 30 December 2009.

17 О некоммерческих организациях: Федеральный закон: принят Государственной Думой 8 дек. 1995 г. // Собрание законодательства РФ. – 1996. – № 3. – Ст. 145. [On Non-Profit Organisations: *Federal Law*: passed by the State Duma on 8 December 1995 // *Collected Legislation of the Russian Federation*. – 1996. – No. 3. – Art. 145]. Available in English at, www.legislationline.org/documents/action/popup/id/4378, accessed 4 January 2010.

18 Об общественных объединениях: Федеральный закон: принят Государственной Думой 14 апр. 1995 г. // Собрание законодательства РФ. – 1995. – № 21. – Ст. 1930. [On Public Associations: *Federal Law*: passed by the State Duma on 14 April 1995 // *Collected Legislation of the Russian Federation*. – 1995. – No. 21. – Art. 1930]. Available in English at, www.legislationline.org/documents/action/popup/id/4374, accessed 4 January 2010.

19 О государственной регистрации юридических лиц и индивидуальных предпринимателей: Федеральный закон: принят Государственной Думой 13 июля 2001 г.: одобрен Советом Федерации 20 июля 2001 г. // Российская газета. – 2001. – 10 авг. [On the State Registration of Legal Entities and Individual Businessmen: *Federal Law*: passed by the State Duma on 13 July 2001; endorsed by the Federation Council in 20 July 2001 // *Rossiyskaya Gazeta*. – 2001. – August 10]. Available in English at, www.legislationline.org/documents/action/popup/id/4376, accessed 4 January 2010.

outrages the national and religious feelings of citizens; and if the person acting as a founder, cannot be a founder in accordance with the law.

69. According to the law, it shall be forbidden to create public associations and to allow them to function, if their goals or actions are aimed at the performance of an extremist activity. The inclusion of provisions on the protection of ideals of social justice in the constituent and programmatic documents of public associations may not be regarded as the inciting of social enmity.
70. It shall not be allowed to refuse state registration of a public association on the ground of inexpediency of its establishment. In case of the refusal of state registration of NGO the applicants shall be notified about it in writing with the indication of the specific provisions of the laws of the Russian Federation whose breach has entailed the refusal to carry out state registration. Refusal of state registration, as well as evasion of such registration may be appealed against with court. Denial of state registration of NGO is not an obstacle for repeated submission of documents for state registration.
71. There are some cases in Russian judicial and administrative practice when the laws and citizens' rights alleged to be violated at registration of LGBT organisations.
72. Thus, the Constitutional Court has examined the case, which was related to the refused registration of the regional youth human rights public association "Fellowship of homosexual youth Geyser".²⁰ Having examined the presented materials, the Constitutional Court came to the conclusion that the Federal Law "On Public Associations" did not violate the Constitution of the Russian Federation. According to the Constitutional Court, the right to association guaranteed to citizens by the Constitution of the Russian Federation implies the possibility, 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 cannot imply unconstitutionality of the law, and the Constitutional Court is not in charge of verifying the legality of actions taken by the mentioned authorities or officials.²¹
73. Another case has occurred in Omsk. The Omsk regional public organisation of gays and lesbians Club "Parus" had been operating as a public association without forming a legal entity on the territory of Omsk and the Omsk Region since 10 February 1994 under the State Regional Centre for Prevention and Control of AIDS. On 22 April 2000 the decision on state registration of the public association as a legal entity was made at the founding meeting of the Club "Parus". A package of documents was prepared and then delivered to the Department of Justice for registration. However, on 28 April 2000 the Justice Department denied the registration of the public associations. The refusal was unsuccessfully appealed to the district court. On the decision of the district court a cassation appeal was submitted. Judicial Division for Civil Cases of Omsk Regional Court did not find any reasons for reversal of the judgment, stating the follows. According to the Statute of the organisation, the above public association for the achievement of its purposes will publish magazines, books, newsletters, and conference materials; distribute the literature; organise evenings and banquets for persons of homosexual orientation; and conduct conferences, symposia, seminars, festivals and competitions of gay and lesbian people, that is, propagate by all available means their lifestyles, attitudes, beliefs, and homosexual orientation. In refusing to register the association the registration authority indicated that the activity of the organisation in accordance with the above goals does not

20 Об отказе в принятии к рассмотрению жалобы граждан Богданова Андрея Евгеньевича, Мальцева Дмитрия Сергеевича и Сыромолотова Михаила Евгеньевича на нарушение их конституционных прав статьей 23 Федерального закона «Об общественных объединениях»: Определение Конституционного Суда РФ от 15 февр. 2005 г. [On refusal to consider the complaint of citizens Bogdanov Andrei Evgenevich, Malcev Dmitry Sergeevich and Syromolotov Mikhail Evgenevich regarding the violation of their constitutional rights by Article 23 of the Federal Law on Public Associations: *Decision of the Constitutional Court of the Russian Federation* of 15 February 2005]. Available in Russian at, <http://ksportal.garant.ru:8081>, accessed 7 January 2010.

21 More detailed description of the case see: Annexes to chapter 2, case 5.

meet the established in the society moral and ethical standards, and in this connection many citizens and public associations will perceive the registration of the organisation as an insult to society in general and the violation of moral principles. The court agreed with the reasons for the refusal to register the public association, also noting that the actions envisaged in the Statute of the association for achieving its goals would violate the prevailing social moral and ethical standards.²²

74. The most outrageous case is probably the case of “Rainbow House”. The founder of the Tyumen regional public organisation of protection of sexual rights of citizens “Rainbow House” applied to the Regional Office of the Federal Registration Service for state registration of the organisation. However, the registration of the organisation has been repeatedly denied. The refusals to register the organisation were justified in particular by the fact that the goals of the organisation aimed “to protect the rights and freedoms of individuals, including persons of non-traditional sexual orientation, to promote education of identity of these individuals as citizens of society which are equal in rights and value”, which means “the propaganda of non-traditional sexual orientation”, which in turn “could lead to undermining the security of the Russian society and State”, since it would “undermine the moral values of the society, and undermined the sovereignty and territorial integrity of Russia because of a reduction of the population”, which means that activity of the organisation “infringe on institutions of family and marriage, protected by the State”. According to the state bodies, the activity of the organisation may violate the rights and freedoms of others, and may bring social and religious hatred and enmity. Accordingly, the activity of the organisation may bear the marks of extremism. Refusal to register the organisation was unsuccessfully challenged administratively and in the courts. The District Court, in particular, pointed out that because the organisation has in fact been created and is functioning now, the denial of state registration does not violate the constitutionally guaranteed right of association. A cassation appeal was filed on the decision of the district court. District Court’s decision to leave without satisfying the application concerning recognition as illegal the denial of state registration of the organisation was left unchanged, and cassation appeal was dismissed. This case became the basis for the application lodged to the European Court of Human Rights.²³
75. In February 2010, the General Directorate of the Ministry of Justice of the Russian Federation in Moscow denied the state registration of the Autonomous non-profit organisation of legal and information services “Marriage Equality Russia”. The authorities decided that the objectives of the organisation contravene existing legislation. Under the Charter of the NGO, “the purposes of the organisation are providing legal services on protecting the rights and freedoms of man and citizen in the area of marriage; promoting and providing information services to overcome discrimination, defamation and violations of human rights on the grounds of sexual orientation and gender identity; contributing to observance of human rights in the sphere of marriage and achieving of the marriage equality for gay, lesbian, bisexual and transgender persons in the Russian Federation, as well as conducting activities aimed at achieving the legalisation of same-sex marriage in the Russian Federation.” It was stated in the refusal notice that “the founding documents of the organisation are contrary to the legislation of the Russian Federation.” It was further noted that the objectives of the NGO was “contrary to para. 2 of Art. 2 of the Federal Law on Non-Profit Organisations, under which non-profit organisations can be created in order to achieve social, charitable, cultural, educational, scientific and management purposes, in order to protect public health, to develop physical culture and sport, to meet the spiritual and other non-material needs of citizens, to protect rights and lawful interests of citizens and organisations, to resolve disputes and conflicts, and to delivery legal assistance, as well as for any other purpose to achieve the public good.” In addition, the refusal indicated that the objectives of the organisation “in terms of activities aimed at achieving the

22 Жизнь среди людей: права человека в контексте ВИЧ-инфекции. Омск, 2001. С. 19–29. [Living among the People: Human Rights in the Context of HIV Infection. Omsk, 2001. P. 19–29.]. Available in Russian at, <http://sibaltcentr.narod.ru/infomaterials/jsl.doc>, accessed 6 January 2010. More detailed description of the case see: Annexes to chapter 2, case 4.

23 References and detailed description of the case see also: Annexes to chapter 2, case 6.

legalisation of same-sex marriage in the Russian Federation are incompatible with art. 3 and 12 of the Family Code of the Russian Federation [...] providing for marriage between a man and a woman subject to mutual and voluntary consent”.²⁴

76. In May 2010, in Arkhangelsk, the Region Office of the Ministry of Justice refused to register amendments to the charter of NGO “Rakurs”. This organisation, registered in 2007 as a woman rights organisation, actually carried out projects and programmes related to the protection of the rights of homosexual and bisexual women and to their social adaptation. In connection with this, the organisation’s leadership made a decision on amending the charter by specifying as its purposes “the protection of human dignity, rights and legitimate interests of the victims of homophobia and discrimination based on sexual orientation and gender identity – lesbian, gay, bisexual and transgender persons (LGBT); as well as socio-psychological and cultural support and adaptation of LGBT persons.” The Region Office of the Ministry of Justice refused to register the amendments because of “their contradiction to the law.” As was stated in the decision of the Office, it could be concluded on the basis of the above purposes that the organisation “plans to carry out activities aimed at propaganda of non-traditional sexual orientation and at the negation of the role of a family in society ... It is impossible to create a family, as well as to conclude a marriage between persons of non-traditional sexual orientation. Family is a social institution, and at the same time is a social mechanism of human reproduction. Furthermore, in terms of reproductive biology, the natural sexual orientation is heterosexual one, which is inherent for the overwhelming majority of people. Consequently, the NGO’s purposes aim at inciting social hatred between heterosexual and homosexual persons, which is contrary to the Law on Countering Extremist Activity”.²⁵
77. However, despite the existence of such cases (or cases when administrative authorities are refusing to register LGBT NGOs based on formal reasons – for example, unconformity between different provisions of the statute), another trend is also evident currently.
78. For example, autonomous non-profit organisation “LGBT Organisation Coming Out” was registered in the beginning of 2009 in St. Petersburg with the assistance of lawyers from the Human Rights Resource Centre. Accordingly to the statute, the purposes of the organisation are *“the realisation of socio-legal services and programmes aimed at protection of the rights and freedoms of man and citizen, development of civil institutions, and overcoming discrimination, defamation and civil rights violations based on sexual orientation and gender identity”*.²⁶
79. In late autumn of 2009 in Murmansk public association “Centre of social and psychological assistance and legal support to victims of discrimination and homophobia Maximum” was also registered.
80. Also in the year 2009 in St. Petersburg the founders of Autonomous non-commercial organisation of information, legal and psychological services “Feminist and LGBT Organisation Gender-L” applied for registration of their organisation. Registration authority refused to register the NGO, indicating three grounds for the refusal (relating to the specific wording of the statute), but the refusal was successfully appealed in a court. As decided by the court of the first instance (and a higher court agreed with these findings), the

²⁴ Live Journal, <http://gayrussia.ru/actions/detail.php?ID=15713>, accessed 10 June 2010.

²⁵ See: *Decision of the Office of the Ministry of Justice of the Russian Federation on the Arkhangelsk Region and Nenets Autonomous District of 31 May 2010 № 03-09-3266* on the refusal of state registration of amendments to the founding documents of a public association. Besides this ground, two formal grounds were set out as a reasons for the refusal: according to the Office’s Decision, the wording of the purposes of the organisation means that members of the organisation, who are not LGBT persons, cannot count on the protection of their rights and legitimate interests by the organisation, which is contrary to the Law on Public Associations; and in the title of the statute a full name of organisation is used (Regional Public Association ‘Arkhangelsk Regional Public Association of socio-psychological and legal assistance to lesbians, gays, bisexuals and transgenders (LGBT) Rakurs’), while in the text of the statute – a short one (Arkhangelsk Regional Public Association of socio-psychological and legal assistance to lesbians, gays, bisexuals and transgenders (LGBT) ‘Rakurs’).

²⁶ Rosbalt, www.rosbalt.ru/2009/02/12/617973.html, accessed 2 January 2010.

organisation should make only insignificant changes in accordance with one point of refusal to register, but all other notes of the Office of the Ministry of Justice was found unlawful.²⁷

C.3. Freedom of expression

81. Freedom of expression is guaranteed according to Art. 29 of the Constitution of the Russian Federation. It states: “everyone shall be guaranteed the freedom of ideas and speech” (the first part); “the propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed; the propaganda of social, racial, national, religious or linguistic supremacy shall be banned” (the second part); “everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way” (the fourth part); and “the freedom of mass communication shall be guaranteed” (the fifth part).
82. Concretisation of these provisions is made by the various laws and regulations, in particular, by the Law on Mass Media²⁸ (which states in Art. 4 that “no provision shall be made for the use of mass media for purposes of committing criminally indictable deeds, divulging information making up a state secret or any other law-protective secret, and the spreading of materials containing public calls to extremist activity or publicly justifying terrorism, as well as of other extremist materials and materials propagandising pornography or the cult of violence and cruelty” and describes in Art. 43 the right to refutation, i.e. the right of citizen or organisation “to demand from the editorial office disproof of information that does not correspond to the reality and denigrates their honour and dignity and that was spread by the given mass medium”), the Federal Law on Information, Information Technologies and Information Protection²⁹, the Civil Code of the Russian Federation³⁰ (Art. 152 regulates the protection of the honour, dignity and business reputation), the Criminal Code of the Russian Federation (which establishes responsibility for slander in Art. 129, insult in Art. 130, public calls to extremist activity in Art. 280, and incitement of hatred or enmity, as well as abasement of human dignity in Art. 282) and the Administrative Offence Code of the Russian Federation (which establishes responsibility for production and distribution of the extremist materials in Art. 20.29).
83. Therefore, in spite of general regulation of freedom of expression and its limitation in Russia, there are no provisions in legislation, which directly forbid hate speech and other forms of hatred in relation to LGBT persons or otherwise specifically address the issues related to homophobia and transphobia or discrimination on grounds of sexual orientation or gender identity.
84. Besides, as highlighted in the Report 2009, there are sometimes situations where law enforcement officials are inactive during the assaults of nationalist and fundamentalist organisation representatives on participants in public events organised by the LGBT community.³¹

27 Demos Center, www.demos-center.ru/news/26971.html, accessed 2 January 2010.

28 О средствах массовой информации: Закон РФ: утвержден Верховным Советом РФ 27 дек. 1991 г. // Российская газета. – 1992. – 8 февр. [On Mass Media: Law of the Russian Federation: passed by the Supreme Soviet of the Russian Federation on 27 December 1991 // *Rossiyskaya Gazeta*. – 1992. – February 8]. Available in English at, www.medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html, accessed 4 January 2010.

29 Об информации, информационных технологиях и о защите информации: Федеральный закон: принят Государственной Думой 8 июля 2006 г.; одобрен Советом Федерации 14 июля 2006 г. // Российская газета. – 2006. – 29 июля [On Information, Information Technologies and Information Protection: *Federal Law*: passed by the State Duma on 8 July 2006; endorsed by the Federation Council on 14 July 2006 // *Rossiyskaya Gazeta*. – 2006. – July 29]. Available in English at, www.medialaw.ru/e_pages/laws/russian/information-en.htm, accessed 4 January 2010.

30 Гражданский кодекс Российской Федерации: Часть первая: принят Государственной думой 21 октября 1994 г. // Собрание законодательства РФ. – 1994. – № 32. – Ст. 3301. [The Civil Code of the Russian Federation: The First Part: passed by the State Duma on 21 October 1994 // *Collected Legislation of the Russian Federation*. – 1994. – No. 32. – Art. 3301]. Available in English at: <http://www.russian-civil-code.com>, accessed 04 January 2010.

31 See concrete cases: Report 2009. P. 30–31.

85. Many problems concerning freedom of expression in the context of LGBT issues were revealed by the attempts to hold International LGBT Film Festival “Side by Side”³² in St. Petersburg, Kemerovo and Arkhangelsk. Thus, in 2008 the organisers of the festival made an attempt to hold the first set of events under the festival in St. Petersburg, but they were faced with very negative rhetoric from the side of Russian artists and producers.³³ In February 2008, cinema “Dom Kino” (“Film House”) terminated the preliminary contract with organisers of the festival “because of the building reconstruction”, although the building was not closed at that time. In September 2008, cinema “PEAK” under the pressure from the authorities also terminated the contract after the beginning of ticket sales without any explanation.³⁴ In October 2008, clubs “Sochi” and “The Place” were closed for two weeks by order of a fire inspection on the opening day of the festival, but they started their work immediately after the rejection of the event.³⁵ As a result, the film festival was held on 4–5 October 2008 in secret at the closed ground and programmed films have been shown in other film projects.³⁶ The same situation occurred in Kemerovo and Arkhangelsk in 2010.³⁷
86. The acts of hate speech in relation to homosexual, bisexual and transgender persons remain virtually unpunished.
87. In 2008, Tambov Governor Oleg Betin in a newspaper interview said that “faggots must be torn apart and their pieces should be thrown in the wind!” In connection with the official’s statement Moscow gay activists complained to the Prosecutor General’s Office, considering the Betin’s words as an offense under Art. 282 of the Criminal Code.³⁸ However, the investigation department for Tambov city of the Investigation Directorate of the Investigation Committee under the Prosecutor’s Office of the Russian Federation refused to open criminal proceedings, noting that in accordance with the expert verification the elements of a crime are not revealed in the Governor’s words. The experts did not find Betin’s remarks as offensive. They also gave the opinion that homosexual persons are not a certain social group, to which hatred or enmity may be incited.³⁹
88. There is the same trend in regard to incidents in the Internet.
89. On 8 August 2009, on the official website of the popular periodical “Komsomolskaya Pravda” an article titled “Mitvol was attacked in a gay club” was posted. This article described the inspection of the nightclub conducted by the Prefect and was written in the expressive and sharply negative manner. In comments to the posted article deputy editor S.A. Ponomarev made several statements expressing his assessment of homosexual persons, including, for example: “In fact, our attitude to the LGBT community (i.e., an informal association of sexual perverts) is quite normal: it is a kind of mixture of pity and fastidiousness – as those people are sick and has consistently failed to understand this and to go to treat their illness”; “The very existence of this category of citizens is an affront to morality and is violence not only against the laws of nature, but simply against the common sense”, “There is no words about homosexual persons and lesbians in the Constitution of Russia. With the same result you might find there links to the rights of necrophiliacs and zoophiliacs. But the Russian Constitution clearly spells out the human right to healthy environment, and perverts apparently poison it just by the fact of their existence.” Russian LGBT activists appealed to the prosecutor for checking out deputy editor’s statements for signs of a crime under Art. 282 of the Criminal Code. Following the results of the checking the interdistrict prosecutor’s office provided the following answer: “It is established that the statements of S.A. Ponomarev express a negative attitude to the

32 See official site of the festival (in Russian and in English) at, www.bok-o-bok.ru, accessed 30 September 2010.

33 Gazeta, www.gazeta.spb.ru/20488-0, accessed 4 January 2010.

34 Mr7, www.mr7.ru/news/2008/09/16/news_7011.html, accessed 4 January 2010.

35 Gazeta, www.gazeta.ru/news/culture/2008/10/03/n_1278246.shtml, accessed 4 January 2010.

36 Interfax, www.interfax.ru/culture/news.asp?id=37680, accessed 4 January 2010.

37 See, for example: <http://kem.kp.ru/online/news/652110>; www.arthouse.ru/news.asp?id=12867, accessed 23 July 2010.

38 Article 282 of the *Criminal Code of the Russian Federation* (‘Incitement of Hatred or Enmity, as Well as Abasement of Human Dignity’) stipulates punishment for 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.

39 News ru, www.newsru.com/russia/28jul2008/gubervsgeys.html, accessed 4 January 2010.

citizens of homosexual orientation. According to the Ponomarev's explanations, the fact of publication and discussion of article is conditioned by the public interest in its subjects. Ponomarev's position is based on the rejection of the imposition of homosexuality by television, as well as of the propaganda of homosexuality, including gay parades. The journalist expressed his views on the issue; he did not allow insults to specific individuals, did not fuel hatred on ethnic or religious grounds, and had no such intentions. <...> Publishing house was cautioned about the inadmissibility of violating the law on mass media".⁴⁰

90. The bottleneck in Russia is also recurrent attempts to impose criminal or administrative responsibility for the so-called "propaganda of homosexuality".
91. In 2003 and 2006, two similar in content draft federal laws on amending the Criminal Code of the Russian Federation to criminalise the propaganda of homosexuality were introduced by the deputy A.V. Chuyev. Both drafts proposed adding to the Criminal Code of Russia Art. 242.1 to read as follows: "*Article 242.1. Propaganda of homosexuality. Propaganda of homosexuality contained in a public statement, publicly demonstrated works or in the mass media, including those expressed in the public display of homosexual lifestyle and homosexual orientation, shall be punished by deprivation of the right to occupy certain posts or practice certain activities for a period of two to five years*".⁴¹
92. As stated in memorandums to the drafts, "*propaganda of homosexuality is steadily growing in contemporary Russia. The propaganda is conducted both through the media, and through the active implementation of educational programmes promoting homosexuality as a normal behaviour in educational institutions. This propaganda is especially dangerous for children and youth, who are not yet capable of a critical attitude to the avalanche of propaganda, which falls on them every day. And such propaganda is more dangerous when it is led by the teachers themselves. In this connection it is necessary to protect society, especially the youngsters, from the impact of homosexual propaganda, and this draft pursues this objective. The draft provides for criminal liability not for the fact of homosexual orientation of a person, but for the active propaganda of homosexuality. (...) In this regard, the punishment does not propose deprivation of liberty or the imposition of the fine, but aims to deprive the convicted person the opportunity to continue their homosexual propaganda using his/her job position. (...) Those who propagate the homosexual lifestyle should not be admitted to certain activities or certain positions, which are understood to be teaching, mentoring and other activities among children and youth, as well as the occupation of the leading posts in the army and prisons. This question is particularly relevant today because of the announced plans to undertake in the near future "the gay parade in Moscow" of the representatives of several Russian organisations and electronic media of sexual minorities, which has already provoked a serious social repercussions.*"
93. The Supreme Court of the Russian Federation did not support the draft, stating that "in accordance with the current legislation sodomy and lesbianism are considered as criminal only if these deeds are associated with the violence or with the threat of it, or in taking advantage of the victim's helpless condition. Committing mentioned deeds by mutual

40 Ответ Савеловской межрайонной прокуратуры Северного административного округа Москвы от 27 октября 2009 года (опубликован не был) [Response of Savelovskaya Interdistrict Prosecutor's Office of the Northern Administrative District of the Moscow of 27 October 2009 (unpublished)].

41 See: О внесении дополнения в Уголовный кодекс Российской Федерации, предусматривающего уголовную ответственность за пропаганду гомосексуализма: Федеральный закон: Проект № 367150-3: внесен депутатом Государственной Думы А.В. Чуевым 15 сент. 2003 г.; О внесении дополнения в Уголовный кодекс Российской Федерации, предусматривающего уголовную ответственность за пропаганду гомосексуализма: Федеральный закон: Проект № 311625-4: внесен депутатом Государственной Думы А.В. Чуевым 20 июня 2006 г. [On Amending the Criminal Code of the Russian Federation to Criminalise the Propaganda of Homosexuality: Federal Law: Draft No. 367150-3: proposed by deputy of the State Duma A.V. Chuyev on 15 September 2003 ; On Amending the Criminal Code of the Russian Federation to Criminalise the Propaganda of Homosexuality: Federal Law: Draft No. 311625-4: proposed by deputy of the State Duma A.V. Chuyev on 20 June 2006]. The drafts and relevant materials are available in Russian at www.duma.gov.ru/faces/lawsearch/search.jsp, accessed 30 September 2010.

consent do not form any crime or administrative offence. Federal Law on mass media prohibits the distribution of information, which promotes pornography, and a cult of violence and cruelty, and do not exclude the possibility of release of erotic publications under certain conditions (Art. 3 and 37)".⁴²

94. The Government of the Russian Federation also did not support the draft, noting that "the prohibition, proposed by the draft, contradicts the first part of Art. 14 of the Criminal Code, under which only socially dangerous deed may be recognised as a crime, and this phenomenon is not classed by legislation to such deed. Besides, the definitions, contained in the draft, do not enable to articulate clearly the content of the objective side of the proposed composition of the crime. In turn, in the disposition of the Article, introduced by the draft, subject to the crime (general or special) is not determined. The draft also has a number of errors and inaccuracies of legal-technical nature".⁴³
95. The State Duma Legal Administration did not support enactment of the draft, repeating the foregoing and adding that "a penalty of deprivation of the right to occupy certain posts or practice certain activities, proposed by the draft, can be applied in accordance with Art. 47 of the Criminal Code only to a narrow circle of persons".⁴⁴
96. The State Duma Committee on Information Policy, Information Technologies and Communication also did not support the draft for similar reasons.⁴⁵
97. On 8 May 2009 the draft was rejected by the State Duma.⁴⁶
98. However, in the Ryazan Region prohibition of "propaganda of homosexuality" is included in the regional legislation.
99. According to the Law of the Ryazan Region on Administrative Offences,⁴⁷ "*public actions aimed at propaganda of homosexuality (sodomy and lesbianism) among minors shall be punishable by a fine in the amount of from 1 500 to 2 000 rubbles on citizens, from 2 000 to 4 000 rubbles on officials, and from 10 000 to 20 000 rubbles on legal entities*" (Art. 3.10 "Public actions aimed at the propaganda of homosexuality (sodomy and lesbianism) among minors"). Similarly, Law of the Ryazan Region on Protection of Morality and Health

42 На проект Федерального закона «О внесении дополнения в Уголовный кодекс Российской Федерации, предусматривающего уголовную ответственность за пропаганду гомосексуализма»: Официальный отзыв Верховного Суда РФ от 20 апреля 2006 г. № 492-2/общ. [On the Draft Federal Law on Amending the Criminal Code of the Russian Federation to Criminalise the Propaganda of Homosexuality: Official Response of the Supreme Court of the Russian Federation No. 492-2/общ. of 20 April 2006].

43 На проект Федерального закона «О внесении дополнения в Уголовный кодекс Российской Федерации, предусматривающего уголовную ответственность за пропаганду гомосексуализма»: Официальный отзыв Правительства РФ от 13 июня 2006 г. № 2063п-П4. [On the Draft Federal Law on Amending the Criminal Code of the Russian Federation to Criminalise the Propaganda of Homosexuality: Official Response of the Government of the Russian Federation No. 2063п-П4 of 13 June 2006].

44 По проекту Федерального закона «О внесении дополнения в Уголовный кодекс Российской Федерации, предусматривающего уголовную ответственность за пропаганду гомосексуализма»: Заключение Правового управления аппарата Государственной Думы от 13 окт. 2006 г. № 2.2-1/3315. [On the Draft Federal Law on Amending the Criminal Code of the Russian Federation to Criminalise the Propaganda of Homosexuality: Opinion Letter of the State Duma Legal Administration No. 2.2-1/3315 of 13 October 2006].

45 На проект Федерального закона «О внесении дополнения в Уголовный кодекс Российской Федерации, предусматривающего уголовную ответственность за пропаганду гомосексуализма»: Заключение Комитета Государственной Думы по информационной политике, информационным технологиям и связи от 7 мая 2009 г. [On the Draft Federal Law on Amending the Criminal Code of the Russian Federation to Criminalise the Propaganda of Homosexuality: Opinion Letter of the State Duma Committee on Information Policy, Information Technologies and Communication of 7 May 2009].

46 О проекте Федерального закона «О внесении дополнения в Уголовный кодекс Российской Федерации, предусматривающего уголовную ответственность за пропаганду гомосексуализма»: Постановление Государственной Думы Федерального Собрания Российской Федерации от 8 мая 2009 г. № 2061-5 ГД [On the Draft Federal Law on Amending the Criminal Code of the Russian Federation to Criminalise the Propaganda of Homosexuality: Decree of the State Duma of the Federal Assembly of the Russian Federation No. 2061-5 ГД of 8 May 2009].

47 Об административных правонарушениях: Закон Рязанской области: принят Рязанской областной Думой 24 нояб. 2008 г. [On Administrative Offences: Law of Ryazan Region: passed by the Ryazan Region Duma on 24 November 2008]. Available in Russian at, www.duma.ryazan.net/cgi-bin/search.pl, accessed 5 January 2010.

of Children in Ryazan Region⁴⁸ states that “public actions aimed at the propaganda of homosexuality (sodomy and lesbianism) are not allowed” (Art. 4 “Non-allowance of public actions aimed at the propaganda of homosexuality among minors”).

100. On 30 March 2009, three members of the Moscow project GayRussia.Ru held a public event against the prohibition of “propaganda of homosexuality” among minors in Ryazan. They took to the streets with placards “Homosexuality – this is normal” and “I am proud of my homosexuality. Ask me about it”. The event took place near the school, in Ryazan and the Ryazan Region Children’s Library. The protesters were detained by police, and they were charged with committing an administrative violation in accordance with Article 3.10 of the Law of the Ryazan Region on Administrative Offences. This very day, the activists notified the City Administration about their intention to hold a picket and march of LGBT persons in the city, but their appeal were rejected with reference to Article 4 of the Law of the Ryazan Region on the Protection of Morality and Health of Children in Ryazan Region, and Art. 3.10 of the Law of the Ryazan Region on Administrative Offences. The District Court and the Regional Court recognised the refusals as legitimate. On 6 April 2009 the justice of the peace adjudged the action’s organisers guilty, and a fine in the amount of 1 500 rubbles was imposed upon the activists. On 14 May 2009 the District Court affirmed this decision. On 1 September 2009 the LGBT activists appealed to the Constitutional Court of Russia with the requirement to test the constitutionality of the laws of the Ryazan region banning the “propaganda of homosexuality” among minors. The applicants have indicated that these statutory provisions are contrary to several articles of the Russian Constitution, in particular Art. 29 (the freedom of ideas and speech), Art. 19 (the prohibition of discrimination) and Art. 55 (limitations of citizens’ constitutional rights only by federal law).⁴⁹
101. In 2010, the Constitutional Court of the Russian Federation, refusing to consider the complaint regarding this law, noted that “the family, motherhood and childhood in the traditional interpretation, received from our ancestors, are the values that provide a continuous change of generations, and are conditions for the preservation and development of the multinational people of the Russian Federation, and therefore require a special state protection”.⁵⁰

C.4. Hate crime – Criminal Code

102. The original version of the Criminal Code, which was adopted in 1996, included several provisions designed to prosecute hate crimes. However, homophobic and transphobic crimes did not fall into this category.
103. Thus, until the end of 2003 Art. 136 of the Criminal Code of the Russian Federation (“Violation of the Equality of Human and Civil Rights and Freedoms”) contained a closed list of reasons of prohibited discrimination, and did not include the belonging of a victim to any social group.

48 О защите нравственности и здоровья детей в Рязанской области: Закон Рязанской области: принят Рязанской областной Думой 22 марта 2006 г. [On the Protection of Morality and Health of Children in Ryazan Region: *Law of Ryazan Region*: passed by the Ryazan Region Duma on 22 March 2006]. Available in Russian at, www.duma.ryazan.net/cgi-bin/search.pl, accessed 5 January 2010.

49 Nasharyazan, <http://nasharyazan.ru/novost775.html>, accessed 5 January 2010.

50 Об отказе в принятии к рассмотрению жалобы граждан Алексева Николая Александровича, Баева Николая Викторовича и Федотовой Ирины Борисовны на нарушение их конституционных прав статьей 4 Закона Рязанской области «О защите нравственности детей в Рязанской области» и статьей 3.10 Закона Рязанской области «Об административных правонарушениях»: Определение Конституционного Суда РФ от 19 января 2010 г. [On refusal to consider the complaint of citizens Alekseyev Nikolay Aleksandrovich, Baev Nikolay Viktorovich and Fedotova Irina Borisovna regarding the violation of their constitutional rights by Article 4 of the Law of Ryazan Region on the Protection of Morality and Health of Children in Ryazan Region: *Decision of the Constitutional Court of the Russian Federation* of 19 January 2010].

104. Until the summer of 2007 Article 63 of the Criminal Code of the Russian Federation, stipulating a list of aggravating circumstances increasing a punishment, distinguished commission of a crime motivated by national, racial, or religious hatred or enmity, but homophobic crimes were not considered committed in aggravating circumstances. The same could 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), outrages upon bodies of the deceased and their burial places (Art. 244).
105. An attempt to correct the existing situation was undertaken in 2002, when the draft federal law on amending some articles of the Criminal Code of the Russian Federation by supplementing them with new item of aggravating circumstances, was accepted for consideration by the State Duma. As such a new circumstance *“the commission of a crime by reason of social or sexual hatred or enmity”* was proposed (Item (f) of the first part of Art. 63, Item (k) of the second part of Art. 105, Item (f) of the second part of Art. 111, Item (f) of the second part of Art. 112, Item (h) of the second part of Art. 117, and Item (b) of the second part of Art. 244 of the Criminal Code). Besides, the proposals to enter “sexual orientation” in the list of the grounds of prohibited discrimination (the first part of Art. 136 of the Criminal Code of the Russian Federation) and to supplement Art. 282 of the Criminal Code with indication of punishment for *“actions aimed at the incitement of ... sexual enmity ... and also propaganda of the exceptionality, superiority, or inferiority of individuals by reason of their ... sexual orientation, if these acts have been committed in public or with the use of mass media”* were formulated.⁵¹
106. As stated in a memorandum to the bill, establishing liability for discrimination based on social and sexual characteristics is consistent with Art. 19 of the Russian Constitution and is intended to develop social tolerance and equal rights of citizens. Incitement of sexual hatred and enmity undermines the equal rights and freedoms of men and women, and causes a clash between the parts of society, which recognise different sexual orientation. Moreover, the draft meets the trends of legal regulation in the developed countries.⁵²
107. The Russian Government did not support the draft, pointing out that *“[term] “sexual hatred” is ambiguous in its content. Therefore, addition of the norms of the Criminal Code will inevitably give rise to difficulties in law enforcement”*.⁵³
108. State Duma Legal Administration also indicated in its remarks that *“the very concept of “sexual hatred or enmity” is vague, allows for very different interpretations and is unlikely to be used in the construction of criminal law norms, one of the main requirements for which is an accurate fixation of the limits of the possible liability in the law”*. It was also stated that *“sexual orientation” cannot be considered as one of the fundamental criteria of equality of citizens. The issue of sexual orientation is a strictly private affair of every person; it is no more significant than the eating habits, attitudes toward arts or sports; there is not any*

51 О внесении дополнений в статьи 63, 105, 111, 112, 117, 136, 244 и 282 Уголовного кодекса Российской Федерации: Федеральный закон: Проект № 202723-3: внесен депутатом Государственной Думы А.Ю. Вульфом [On Introduction of Amendments to Articles 63, 105, 111, 112, 117, 136, 244, and 282 of the Criminal Code of the Russian Federation: Federal Law: Draft No. 202723-3: proposed by deputy of the State Duma A.Y. Wolf]. The draft and relevant materials are available in Russian at, www.duma.gov.ru/faces/lawsearch/search.jsp, accessed 30 September 2010.

52 Пояснительная записка к проекту Федерального закона «О внесении дополнений в статьи 63, 105, 111, 112, 117, 136, 244 и 282 Уголовного кодекса Российской Федерации» [Explanatory note to the Draft Federal Law on Introduction of Amendments to Articles 63, 105, 111, 112, 117, 136, 244, and 282 of the Criminal Code of the Russian Federation].

53 На проект Федерального закона № 202723-3 «О внесении дополнений в статьи 63, 105, 111, 112, 117, 136, 244 и 282 Уголовного кодекса Российской Федерации»: Официальный отзыв Правительства РФ от 20 июня 2002 года № 3585п-П4 [On the Draft Federal Law No. 202723-3 on Introduction of Amendments to Articles 63, 105, 111, 112, 117, 136, 244, and 282 of the Criminal Code of the Russian Federation: Official Response of the Government of the Russian Federation No. 3585п-П4 of 20 June 2002].

statute in Russia that provides for the determination of sexual orientation on appointment, work or study. In connection with this the proposed additions appear to be needless”.⁵⁴

109. Finally, State Duma Committee on Civil, Criminal, Arbitral and Procedural Legislation also recommended to reject the bill due to the fact that *“in explanatory note to the draft the necessity of these additions should be substantiated objectively and with reference to the specific facts; there is no argument for public danger of such offenses; the contents of the concept of “sexual hatred or enmity” is not disclosed*”. Agreeing with the Legal Administration, the Committee indicated that sexual orientation *“cannot be considered as a fundamental criterion of equality of citizens, because the issue of sexual orientation is a strictly private affair of every person and therefore it is no mere chance that the Russian laws do not provide for determination of sexual orientation in employment, entrance to universities, etc*”.⁵⁵
110. In May 2004 the bill was rejected.⁵⁶
111. However, in 2003 the Criminal Code was amended,⁵⁷ and from that moment Art. 136 establishes criminal liability for discrimination, i.e. *“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**.”*
112. Apart from that, the title of the Art. 282 of the Criminal Code has been changed from *“Incitement of National, Racial or Religious Enmity”* to *“Incitement of Hatred or Enmity, as Well as Abasement of Human Dignity”*, and accordingly has been changed the content of this article. At present, Art. 282 stipulates punishment for 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*.
113. Moreover, as was indicated by the Constitutional Court, *“Article 282 of the Criminal Code of the Russian Federation provides for liability for actions aimed at inciting hatred or enmity, as well as the humiliation of human dignity. The rule, contained in it, is aimed to protect public relations, guaranteeing recognition and respect for human dignity regardless of **any physical or social characteristics**”*.⁵⁸

54 По проекту Федерального закона № 202723-3 «О внесении дополнений в статьи 63, 105, 111, 112, 117, 136, 244 и 282 Уголовного кодекса Российской Федерации»: Заключение Правового управления аппарата Государственной Думы от 10 июня 2002 г. № 2.2-1/5765 [On the Draft Federal Law No. 202723-3 on Introduction of Amendments to Articles 63, 105, 111, 112, 117, 136, 244, and 282 of the *Criminal Code of the Russian Federation: Opinion Letter of the State Duma Legal Administration* No. 2.2-1/5765 of 10 June 2002].

55 На проект Федерального закона № 202723-3 «О внесении дополнений в статьи 63, 105, 111, 112, 117, 136, 244 и 282 Уголовного кодекса Российской Федерации»: Заключение Комитета Государственной Думы по гражданскому, уголовному, арбитражному и процессуальному законодательству: утверждено Решением № 3(9) от 12 февраля 2004 г. [On the Draft Federal Law No. 202723-3 on Introduction of Amendments to Articles 63, 105, 111, 112, 117, 136, 244, and 282 of the *Criminal Code of the Russian Federation: Opinion Letter of the State Duma Committee on Civil, Criminal, Arbitral and Procedural Legislation: approved by Decision No. 3(9) of 12 February 2004*].

56 О проекте Федерального закона № 202723-3 «О внесении дополнений в статьи 63, 105, 111, 112, 117, 136, 244 и 282 Уголовного кодекса Российской Федерации»: Постановление Государственной Думы Федерального Собрания Российской Федерации от 19 мая 2004 г. № 542-IV ГД [On the Draft Federal Law No. 202723-3 on Introduction of Amendments to Articles 63, 105, 111, 112, 117, 136, 244, and 282 of the *Criminal Code of the Russian Federation: Decree of the State Duma of the Federal Assembly of the Russian Federation* No. 542-IV ГД of 19 May 2004].

57 О внесении изменений и дополнений в Уголовный кодекс Российской Федерации: Федеральный закон: принят Государственной Думой 21 нояб. 2003 г.; одобрен Советом Федерации 26 нояб. 2003 г. // Парламентская газета. – 2003. – 11 дек. [On Introduction of Amendments and Additions to the Criminal Code of the Russian Federation: *Federal Law: passed by the State Duma on 21 November 2003; endorsed by the Federation Council on 26 November 2003 // Parlamentskaya Gazeta*. – 2003. – December 11].

58 Об отказе в принятии к рассмотрению жалобы гражданина Чулкина Виктора Александровича на нарушение его конституционных прав статьей 282 Уголовного кодекса Российской Федерации: Определение Конституционного Суда РФ от 19 февраля 2009 г. [On refusal to consider the complaint of citizen Chulkin Viktor Mikhailovich regarding the violation of his constitutional rights by Article 282 of the Criminal Code of the Russian Federation: *Decision of the Constitutional Court of the Russian Federation* of 19 February 2009]. Available in Russian at, <http://ksportal.garant.ru:8081>, accessed 2 January 2010.

114. In addition, a package of draft laws on counteracting extremist activity was adopted in 2002, and then was amended in 2006.⁵⁹
115. According to the Art. 1 of the Federal Law on Counteracting Extremist Activity as amended in 2006⁶⁰ the extremist activity includes, without limiting the following: *“incitement of **social, racial, national or religious hatred**; propaganda of exclusivity, superiority or inferiority of man on the grounds of **social, racial, national, religious or language identity or attitude to religion**; violation of rights, freedoms and legitimate interests of man and citizen according to his/her **social, racial, national, religious or language background or attitude to religion**; and crimes on the reasons specified in point (f) of the first part of Article 63 of the Criminal Code of the Russian Federation.”*
116. Pursuant to the Federal law of 25 July 2002 on introduction of amendments and additions to the legislative acts of the Russian Federation, the Russian Criminal Code was supplemented by Art. 282.1 and 282.2, providing for criminal responsibility for organising an extremist community and organising an activity of extremist community, respectively. The same law changed the title of Art. 280 from “Public Appeals for a Forcible Change of the Constitutional System of the Russian Federation” to “Public Appeals for Extremist Activity” and its content was changed accordingly.
117. In August 2007 the Federal Law on Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Improvement of Public Administration as Pertaining to Counteraction of Extremism⁶¹ came into force.
118. This Federal Law has supplemented the list of reasons, which presence in the commission of a crime is the basis for the imposition of a more severe punishment, with the political and ideological hatred or enmity and hatred or enmity against any social group. The law also changed accordingly the aforementioned articles of the Criminal Code. Furthermore, such orientation of a crime was additionally included in the articles, establishing liability for threat of murder or infliction of grave injury health (Art. 119), involvement of a minor in the commission of a crime (Art. 150), hooliganism (Art. 213), intentional infliction of light injury (Art. 115), and battery (Art. 116).
119. The law also expanded the legal definition of extremist crimes, which are understood now as *“crimes, commissioned by reason of political, ideological, racial, national or religious hatred or enmity, or by hatred or enmity toward a **particular social group** under the relevant article of the Special Part and item (f) of the first part of Article 63 of the Criminal Code of the Russian Federation.”*

59 О противодействии экстремистской деятельности: Федеральный закон: принят Государственной Думой 27 июня 2002 года; одобрен Советом Федерации 10 июля 2002 года // Собрание законодательства РФ. – 2002. – № 30. – Ст. 3031. [On Counteracting Extremist Activity: *Federal Law*: passed by the State Duma on 27 June 2002; endorsed by the Federation Council on 10 July 2002 // *Collected Legislation of the Russian Federation*. – 2002. – No. 30. – Art. 3031]. Available in English at: http://host.uniroma3.it/progetti/cedir/cedir/Lex-doc/Ru_Ext-2002.pdf, accessed 06 January 2010 ; О внесении изменений и дополнений в законодательные акты Российской Федерации в связи с принятием Федерального закона «О противодействии экстремистской деятельности»: Федеральный закон: принят Государственной Думой 27 июня 2002 года; одобрен Советом Федерации 10 июля 2002 года // Собрание законодательства РФ. – 2002. – № 30. – Ст. 3029. [On Introduction of Amendments and Additions to the Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law on Counteracting Extremist Activity: *Federal Law*: passed by the State Duma on 21 November 2003; endorsed by the Federation Council on 26 November 2003 // *Collected Legislation of the Russian Federation*. – 2002. – No. 30. – Art. 3029].

60 О внесении изменений в статьи 1 и 15 Федерального закона «О противодействии экстремистской деятельности»: Федеральный закон: принят Государственной Думой 8 июля 2006 года; одобрен Советом Федерации 14 июля 2006 года // Российская газета. – 2006. – 29 июля. [On Introduction of Amendments to the Articles 1 and 15 of the Federal Law on Counteracting Extremist Activity: *Federal Law*: passed by the State Duma on 8 July 2006; endorsed by the Federation Council on 14 July 2006 // *Rossiyskaya Gazeta*. – 2006. – July 29].

61 О внесении изменений в отдельные законодательные акты Российской Федерации в связи с совершенствованием государственного управления в области противодействия экстремизму: Федеральный закон: принят Государственной Думой 6 июля 2007 г.; одобрен Советом Федерации 11 июля 2007 г. // Собрание законодательства РФ. – 2007. – № 31. – Ст. 4008. [On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Improvement of Public Administration as Pertaining to Counteraction of Extremism: *Federal Law*: passed by the State Duma on 6 July 2007; endorsed by the Federation Council on 11 July 2007 // *Collected Legislation of the Russian Federation*. – 2007. – No. 31. – Art. 4008].

120. Consequently, there is now a legal possibility of recognising homophobic and transphobic crimes as extremist crimes, but in practice there is a problem of recognition of LGBT persons as a social group, as shown by the cases described in the Report 2009.
121. "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. Alekseyev and N. Baev."⁶²
122. The prosecutor's office referred in its order to the expert opinion of the head of the Family Sociology and Demography Department of the Moscow State University, PhD, professor A.I. Antonov, according to which "*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 homosexual persons, which means, probably, that anyone inciting hatred and enmity towards them can escape unpunished.⁶³
123. Another case, concerning statement of the Governor of the Tambov Region, was mentioned above (see para. 87 of the report).
124. In this case the Moscow LGBT activists submitted in May and June 2009 a petitions to the General Prosecutor's Office of the Russian Federation requesting to verify hostile statements of the governor of Tambov Region Oleg Betin addressed to gays and lesbians, and to initiate criminal proceedings against him.
125. The General Prosecutor's Office transmitted the petition to the prosecutor's office of Tambov Region for examination.
126. On 28 July, "Interfax" news agency disseminated the news that the investigation department for Tambov city 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 a conclusion that homosexual persons were not a social group and could not be considered subject to incitement of hatred or enmity.*"
127. GayRussia.Ru activists appealed that decision. On 6 October, Lenin District Court of Tambov declined the protest. On 13 November, the court of Tambov oblast declined the appeal despite provided opinion of a famous Russian sociologists and sexologists, Prof. Igor Kon, in which he proved that homosexual persons could be recognised as a social group.⁶⁴

C.5. Family issues⁶⁵

128. The Constitution of the Russian Federation does not contain any provision concerning the right to create a family or to conclude a marriage. There are also no specific provisions in the Constitution on non-discrimination in the field of family relations.

⁶² Report 2009, p.35.

⁶³ Ibid.

⁶⁴ Ibid. p. 36–38 (including the text of the Prof. Kon's opinion). Detailed description of the case see also: Annexes to chapter 4, case 1.

⁶⁵ This chapter is partly based on the earlier author's reasoning, presented in the Report 2009 (P. 14–16, 18).

129. However, according to the Family Code of the Russian Federation, “*Any forms of restricting the rights of the citizens in their entering into a marriage or in their family relations because of **social, racial, ethnical, language or religious affiliation shall be prohibited***” (Art. 1).
130. Unlike the legislation of several post-Soviet States, the Family Code of the Russian Federation does not establish explicitly the impossibility of registration of a marriage between persons of the same sex.
131. Nevertheless, the position of the impossibility of registration of same-sex marriages in Russia is supported in theory and practice. In support of this point of view the reference to the two norms of the Russian Family Code is made. Firstly, Art. 1 of the Family Code states that “*Family relations shall be regulated in conformity with the principles of a voluntary conjugal union **between a man and a woman...***” Secondly, Art. 12 of the Family Code, specifying the terms for entering into a marriage, also stipulates that “*To enter into a marriage, the voluntary consent **of the man and of the woman** entering into it, and their reaching the marriageable age, shall be necessary.*”
132. As noted by Olga Khazova, one of the leading family law researchers in Russia and one of the Russian Family Code developers, the Family Code was initially designed with a high level of conservatism (unlike the already adopted Civil Code of the Russian Federation, which was the symbol of a new economic order in Russia).⁶⁶ This is why it was natural that Family Code 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. According to O. Khazova, “*Russian family law has always been based on the idea that marriage is a union of a man and a woman, and this has always been an implied condition of marriage*”.⁶⁷ Despite the fact that the Russian Family Code 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, but also in the norms dedicated to the institution of marriage.⁶⁸ “*No doubt, this should be considered as the legislator’s response to same-sex couples’ demands for legalisation of their unions*”, added O. Khazova.⁶⁹
133. The issue concerning the possibility of registration of same-sex marriage in Russia has already been considered in judicial practice.
134. The first case was based on the appeal to the Constitutional Court of the Russian Federation against the provisions of the Family Code, according to which a mutual voluntary consent of a man and a woman is necessary to register a marriage.⁷⁰ E. Murzin and E.A. Mishin came to the Civil Registry Office with the application for marriage registration. The registration was refused, and the appeal against the refusal did not help. Murzin addressed to the Constitutional Court, considering that provisions of the legal norms governing those actions and the actions themselves violated his rights guaranteed by Art. 17–19 and 23 of the Russian Constitution.⁷¹

66 See; 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.

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

68 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.

69 Khazova O. The New Family Code. P. 372.

70 Об отказе в принятии к рассмотрению жалобы гражданина Э. Мурзина на нарушение его конституционных прав пунктом 1 статьи 12 Семейного кодекса Российской Федерации: Определение Конституционного Суда РФ от 16 ноября 2006 г. [On refusal to consider the complaint of citizen E. Murzin regarding the violation of his constitutional rights by Point 1 of Article 12 of the Family Code of the Russian Federation: *Decision of the Constitutional Court of the Russian Federation* of 16 November 2006]. Available in Russian at: <http://ksportal.garant.ru:8081>, accessed 07 January 2010.

71 Article 17: 1. In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognised principles and norms of international law and according to the present Constitution. 2. Fundamental human rights and freedoms are inalienable and shall be enjoyed by everyone since

135. Having examined the complaint, the Constitutional Court came to the conclusion that the provisions of Art. 1 and 12 of the Family Code could not be seen as a violation of constitutional rights and freedoms guaranteed by Art. 17–19 and 23 of the Constitution. The Constitutional Court formulated two arguments: 1) according to international law and the Constitution of the Russian Federation, one of the destinations of a family is to give birth and to 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 Constitutional Court pointed out the fact that the international law contained no provision obliging the State *“to create conditions for propaganda, support, and recognition of same-sex partnerships, and the refused registration did not affect the level of recognition and guarantees provided for the rights and freedoms of the applicant as man and citizen in the Russian Federation”*.⁷²
136. According to Russian LGBT activist Nikolay Alekseyev, this case became the basis for the application lodged to the European Court of Human Rights. However, on 13 June 2008 the European Court refused to examine the application of E. Murzin, concluding that his rights had not been violated. Murzin has repeatedly stated that he is heterosexual person, and his marriage initiative was an attempt to draw attention to the violation of human rights of sexual minorities in Russia.⁷³
137. The second case involved two lesbian women. On 12 May 2009, Irina Fedotova (Fet) and Irina Shipitko applied to the Tverskoy Civil Registry Office of Moscow city for registration of marriage between them. The Head of the Office refused to register the marriage, stating that *“the basic principle of a marriage in Russia is a union between a man and a woman”*. Thus, according to the representative of the administrative authority, a same-sex marriage cannot be registered on the territory of the Russian Federation.
138. In June 2009, Irina Fedotova (Fet) and Irina Shipitko filed a petition to the Tverskoy District Court of Moscow city. The applicants requested to recognise the acts of the Tverskoy Civil Registry Office as illegal, and to compel it to register the marriage. They argued that *“all the conditions prescribed by law, were satisfied”*. They also noted that *“the Russian Constitution and legislation in the field of regulation of family relations do not prohibit marriage between persons of same sex. Furthermore, the right to respect for family life and the right to marriage, including these of two individuals of the same sex, are guaranteed by Articles 8 and 12 of the European Convention on Human Rights and Fundamental Freedoms, ratified by the Russian Federation”*.⁷⁴
139. On 6 October 2009 Tverskoy District Court dismissed the applicants’ claims, thus confirming the legality of the refusal to register a marriage between two women.⁷⁵
140. Alternative registration schemes which are either similar to marriage or entail less rights and responsibilities than marriage, are not recognised by the Russian legal system. Such a construction is not developed in relation to both homosexual and heterosexual couples.

the day of birth. 3. The exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of other people.

Article 18: The rights and freedoms of man and citizen shall be directly operative. They determine the essence, meaning and implementation of laws, the activities of the legislative and executive authorities, local self-government and shall be ensured by the administration of justice.

Article 19: 1. All people shall be equal before the law and court. 2. The State shall guarantee the equality of rights and freedoms of man and citizen, 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. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned. 3. Man and woman shall enjoy equal rights and freedoms and have equal possibilities to exercise them.

Article 23: 1. Everyone shall have the right to the inviolability of private life, personal and family secrets, the protection of honour and good name. 2. Everyone shall have the right to privacy of correspondence, of telephone conversations, postal, telegraph and other messages. Limitations of this right shall be allowed only by court decision.

72 The description of the case see also: Annexes to chapter 5, case 1.

73 Live Journal, <http://alexeyev.livejournal.com/248878.html>, accessed 7 January 2010.

74 References and detailed description of the case see also: Annexes to chapter 5, case 2.

75 Gay Russia, www.gayrussia.ru/events/detail.php?ID=14288&phrase_id=428040, accessed 7 January 2010.

141. There have been reports in the media about developing a draft federal law on same-sex partnerships,⁷⁶ but the database of draft laws on the official website of the State Duma does not contain any information on such draft.
142. In much the same way, current family (or civil) legislation does not recognise cohabitation of both homosexual and heterosexual partners.
143. Although the judicial practice on disputes between same-sex cohabitants has not revealed, such practice in regard to heterosexual *de facto* couples demonstrates that the courts are refusing to apply to these cases the rules of the Family Code concerning alimony in connection with the upbringing of a common child (Art. 89 and 90),⁷⁷ as well as division of the property according to the rules on the joint property (Chapter 7).⁷⁸
144. Nevertheless, unmarried couples (including homosexual) could, in accordance with Russian legislation, settle part of its property and non-property relations using various civil agreements.
145. Non-property relations are poorly regulated by the legal norms (because, for example, the provision on equality of spouses in the family and their mutual moral support are of declarative nature and cannot be enforceable), and the right to surname is the only exception (according to Art. 32 of the Family Code 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 certain prospects as well, because the legislation on acts of civil status allows anyone to change his/her surname without conditioning this right by certain reasons (Chapter VII of the Federal Law on Acts of Civil Status).⁷⁹ The issues of custody, informed consent to medical intervention, orders the body after death can also be regulated by agreements and unilateral declarations, as will be discussed below.
146. As far as it concerns property relations of the spouses (conjugal property and alimony relations), a similar legal regime could be created by same-sex couples through the conclusion of civil law contracts on jointly acquired property or mutual material support. The Civil Code of the Russian Federation stipulates the freedom of agreement (Art. 1) as one of the civil legislation principles, which implies the possibility to conclude a contract, both stipulated and unstipulated by legal acts (Art. 421). Therefore, these contracts will have legal effect, can be enforced in case of violation, but also imply certain negative aspects for the partners. Thus, the peculiarities of alimony obligations will not extend to maintenance agreements (which are of civil law nature only) concluded by same-sex partners, which, finally, can lead to violation of the interests of one of the parties to such agreement. First of all, alimony payments are of strict personal nature, this is why the corresponding rights and obligations cannot be transferred under other agreements, cannot be inherited, mortgaged, etc. With regards to agreement on maintenance of one partner by the other, the interests of

76 See, for example: www.regnum.ru/news/765768.html, accessed 7 January 2010.

77 See, for example: Бюллетень Верховного Суда Республики Карелия. – 2008. – № 2 (19). [Bulletin of the Supreme Court of the Republic of Karelia. – 2008. – No. 2 (19)]. Available in Russian at, http://vs.kar.sudrf.ru/modules.php?name=docum_sud, accessed 11 December 2008. As was stated by the court in this case, 'Termination of *de facto* marital relations, no matter how long they were, does not entitle a woman to claim alimony for her maintenance from her former husband during pregnancy and during the three years since the birth of their child.'

78 See, for example: Определение Верховного Суда РФ от 19 апр. 2002 г.: Дело № 68-Вп02-1. Доступ из справ.-правовой системы «КонсультантПлюс»; Определение Судебной коллегии по гражданским делам Омского обл. суда от 25 апр. 2007 г. № 33-1307. Доступ из справ.-правовой системы «Гарант». [Decision of the Supreme Court of the Russian Federation of 19 April 2002: Case No. 68-Вп02-1. Available in Russian from the assistance legal system 'ConsultantPlus'; Decision of the Judicial Division for Civil Cases of the Omsk Regional Court No. 33-1307 of 25 April 2007. Available in Russian from the assistance legal system 'Garant']. In the second case the court noted that 'only a registered marriage generates the rights and responsibilities of spouses, including those in respect of the property. Therefore, the property of persons who are in *de facto* marital relationship cannot be recognised as belonging to them on the right of joint ownership only on the grounds that it was earned during their life together.'

79 Об актах гражданского состояния: Федеральный закон: принят Государственной Думой 22 окт. 1997 г.; одобрен Советом Федерации 5 нояб. 1997 г. // Российская газета. – 1997. – 20 нояб. [On Acts of Civil Status: *Federal Law*: passed by the State Duma on 22 October 1997; endorsed by the Federation Council on 5 November 1997 // *Rossiyskaya Gazeta*. – 1997. – November 20].

the partner who has initially agreed to support the other partner can be unprotected, when the property status of one or both of them changes afterwards. Secondly, a special, priority order of collection is established for alimony payments (ensuring the interests of the persons with the right to maintenance). A homosexual partner who has concluded a maintenance agreement will be deprived of all these benefits.

147. Parenthood of same-sex partners is an even more complicated issue. Here it is necessary to make a difference between biological and social parenthood.
148. With regard to social parenthood (adoption, guardianship and trusteeship) the following opinions can be formulated.
149. According to the Item 2 of Article 127 of the Family Code of the Russian Federation, "*The unmarried persons shall not jointly adopt one and the same child*". Therefore, Russian legislation does not allow joint adoption of a child by both members of a same-sex couple.
150. In Russia homosexual persons (as contrasted with the opposite-sex couples even unmarried) also cannot resort to second-parent adoption by virtue of the following.
151. Procedure for the Transfer of Children for Adoption⁸⁰ states that adoption is permitted in regard to minor children, single parent or both parents of which particularly give consent to the adoption in the prescribed manner (Item 2).
152. Pursuant to para. 1 and para. 2 of Article 137 of the Family Code, general consequence of adoption is that "The adopted children and their progeny with respect to the adopters and their relatives, as well as the adopters and their relatives with respect to the adopted children and their progeny, shall be equalised in the personal non-property and property rights and duties to the relatives by kinship. The adopted children shall lose their personal non-property and property rights and shall be relieved of their duties with respect to their parents (their relatives)." While personal non-property and property rights and duties of the child may be retained when a child is adopted by one person, the Family Code strictly states in para. 3 of Article 137, that it is possible only in relation to the child's mother, if the adopter is a man, or in relation to the child's father, if the adopter is a woman.
153. Since Russian legislation provides for the possibility of the adoption a child by one individual (regardless of his/her marital status), individual adoption is available to homosexual persons, and homosexuality itself cannot constitute a ground for refusal of adoption. However, any act of adoption should promote the child's interests, which, in their turn, are an estimated concept specified by the law enforcement body (guardianship and trusteeship body or court). It is worth mentioning that any decision of the administrative body or court can be appealed.
154. In the context of the considered issue, such institutions as guardianship and trusteeship, including foster family have certain peculiarities.
155. Before 1 September 2008, guardianship and trusteeship on the one hand, and foster family on the other hand, was separate forms of upbringing of children left without parental care. At the same time, a foster family was a unique phenomenon: despite the recognition only a marriage, entered into at the bodies for registering civil status act (Art. 1 of the Russian Family Code), unmarried couple could be considered as a family in the context of a foster family. Spouses, as well as individual citizens, without specifying their sex, sexual orientation, and mutual relations, could become foster parents. Thus, foster family could

80 Правила передачи детей на усыновление (удочерение) и осуществления контроля за условиями их жизни и воспитания в семьях усыновителей на территории Российской Федерации: утв. Постановлением Правительства РФ от 29 марта 2000 г. // Собрание законодательства РФ. – 2000. – № 15. – Ст. 1590. [Procedure for the Transfer of Children for Adoption and of the Exercise of Control over the Conditions of the Life and Upbringing of Children in the Families of the Adopters on the Territory of the Russian Federation: approved by Decision of the Government of the Russian Federation of 29 March 2000 // Collected *Legislation of the Russian Federation*. – 2000. – No. 15. – Art. 1590].

provide same-sex partners a possibility to bring up a child together, being recognised as his/her legal representatives.

156. In 2008, a new legislation on guardianship and trusteeship⁸¹ was introduced, and at present there are only two forms of upbringing of children left without parental care: adoption and guardianship (trusteeship), whereas foster family is regarded as a form of the latter.
157. Apart from that, the new legislation also presents another signs of better ensuring of the rights and interests of homosexual parents. Despite the fact that the Russian legislation considers exclusively heterosexual parenthood to be a standard model of family, which implies that a child should have only one parent of certain sex at a given time, there is a possibility to appoint 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 (for example, in case of a long hospitalisation, foreign trip, etc.), as well as in case the child is left without parental care for a long period of time (for example, death, deprivation of parental rights, recognition of the legal parent being incapable, etc.). The trusteeship 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 homosexual orientation of the potential guardian can be appealed against in court, as it has been mentioned above.
158. Finally, it should be noted that Russian family law provides for same-sex partner of a homosexual child's legal parent the possibility to receive alimony from that "de facto" daughter or son in a future. According to Art. 96 of the Family Code, "*The disabled persons in need of assistance who have actually brought up and maintained the under aged children, shall have the right to claim through the court a maintenance from their able-bodied wards, who have reached the majority, if they cannot get it from their able-bodied adult children or from their spouses (ex-spouses).*"
159. There are also some possibilities concerning parenthood available for homosexual persons in the field of assisted reproductive technologies.
160. First of all it is important to note that there is still no law on 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 the Russian Federation on Health Care,⁸² Art. 51 and 52 of the Family Code of the Russian Federation, and the Order of the Ministry of Health of the Russian Federation on Assisted Reproductive Technologies (ART) in Therapy of Female and Male Sterility).⁸³

81 Об опеке и попечительстве: Федеральный закон: принят Государственной Думой 11 апр. 2008 г.; одобрен Советом Федерации 16 апр. 2008 г. // Собрание законодательства РФ. – 2008. – № 17. – Ст. 1755 ; О внесении изменений в отдельные законодательные акты Российской Федерации в связи с принятием Федерального закона «Об опеке и попечительстве»: Федеральный закон: принят Государственной Думой 11 апр. 2008 г.; одобрен Советом Федерации 16 апр. 2008 г. // Собрание законодательства РФ. – 2008. – № 17. – Ст. 1756. [On Tutelage and Guardianship: *Federal Law: passed by the State Duma on 11 April 2008; endorsed by the Federation Council on 16 April 2008 // Collected Legislation of the Russian Federation. – 2008. – No. 17. – Art. 1755 ; On Introduction of Amendments to Certain Legislative Acts of the Russian Federation in Connection with Adoption of the Federal Law 'On Tutelage and Guardianship': *Federal Law: passed by the State Duma on 11 April 2008; endorsed by the Federation Council on 16 April 2008 // Ibid. – Art. 1755].**

82 Основы законодательства РФ об охране здоровья граждан: утв. Верховным Советом РФ 22 июля 1993 г. // Ведомости Съезда народных депутатов и Верховного совета РФ. – 1993. – № 33. – Ст. 1318. [Fundamentals of Legislation of the Russian Federation on Health Care: passed by the Supreme Soviet of the Russian Federation on 22 July 1993 // *Gazette of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation. – 1993. – No. 33. – Art. 1318].*

83 О применении вспомогательных репродуктивных технологий (ВРТ) в терапии женского и мужского бесплодия: приказ Минздрава РФ от 26 февр. 2003 г. // Российская газета. – 2003. – 6 мая. [On Assisted Reproductive Technologies (ART) in Therapy of Female and Male Sterility: *Order of the Ministry of Health of the Russian Federation of 26 February 2003 // Rossiyskaya Gazeta. – 2003. – May 6].*

161. On the one hand, unlike a number of European countries and despite the attempts to settle on the legislative level another solution,⁸⁴ the Russian legislation does not explicitly deny access of same-sex couples and individuals to assisted reproduction. Moreover, the Model Law on General Principles of the Protection of the Reproductive Health in EurAsEC Member States passed by the Inter-Parliamentary Assembly of EurAsEC states that “*Every citizen of the Community, regardless of ... sexual orientation, have equal right to full reproductive and sexual life*”.⁸⁵ However, proposals to deprive lesbian women access to artificial reproduction are formulated in the discussions of possible models of the Russian law on reproductive rights. This option, in particular, was suggested in October 2009 by the Head of the State Duma Committee for Family, Women and Children, Elena Mirzulina, at the parliamentary hearings “The Well-Being of Russian Families: Legal Problems and Their Solutions”.⁸⁶
162. It should be noted also that the few existing norms concerning ART contain some kind of gender bias. Thus, Art. 35 of the Fundamentals of Legislation of the Russian Federation on Health Care states only that “every adult woman of childbearing age shall have the right to artificial insemination and embryo implantation”. A right of a man to assisted reproduction (for example, right to surrogacy) is not mentioned at that. The same article also stipulates that “Artificial insemination and embryo implantation are carried out in facilities licensed for medical activity, with the written consent of the spouses (*a single woman*)”. Similarly, the Order on Assisted Reproductive Technologies mentions only spouses (a husband and a wife) and a single woman (the indication for IVF with donor sperm for woman is lack of sexual partner) in relation to artificial insemination, and only spouses in relation to surrogate motherhood. Nevertheless, since any limitations of the citizens’ rights are possible only by law and should be clearly expressed, it may be concluded that gays and lesbians (both individuals and couples) have at least the theoretical opportunity of access to medical services related to ART.
163. In principle, such a practice has already been in Russia. Some lesbian couples do not hide the real character of their relations from the staff of medical (reproductive) clinic, and many private clinics provide the possibility of joint delivery for a fee.
164. At the same time, the provisions of the Family Code on the establishment of maternity and paternity leave room for ensuing of the family and the legal consequences, which persons resorting to ART are seeking, only to women. In other words, a woman who has had recourse to artificial insemination using donor sperm can be recognised as the mother of a child born to her. However, it is impossible to record as the father of a child born to a surrogate mother, a man who is neither a surrogate mother’s husband nor one of the spouses, who gave consent to the procedure.
165. According to the Para. 2 of the Item 4 of Art. 52 of the Family Code, “*The married persons who have given their consent in written form to the implantation of an embryo in another woman for bearing it, may be written down as the child's parents only with the consent of the woman who has given birth to the child (of the surrogate mother)*”. A similar norm is included in Para. 5 of Art. 16 of the Federal Law on Acts of Civil Status: “*In the course of the state registration of a birth upon the application of the spouses who gave consent to the implantation of the embryo to another woman for her gestation, together with the documents proving the fact of the child's birth the document issued by a medical organisation and confirming the fact of obtaining the consent of woman who bore a child (surrogate mother), on registering these spouses as the parents of the child, should be submitted*”.

84 Thus, such a view was expressed in the doctoral thesis of G.B. Romanovsky, see: Романовский Г.Б. Теоретические проблемы права человека на жизнь: конституционно-правовое исследование: автореф. дис. ... д-ра юрид. наук. М., 2006. С. 48. [Romanovsky G.B. The Theoretical Problems Concerning Right to Life: The Constitutional-Legal Study: abstract of a thesis for a degree of doctor of legal studies. Moscow, 2006. P. 48.]

85 See the text of this Model Law in Russian, www.ipaeurasec.org/docsdown/reproduct_guard.pdf, accessed 6 June 2010.

86 Polit, www.polit.ru/news/2009/10/05/mizulina.html, accessed 6 June 2010.

166. Finally, there are other gaps in the Russian legislation regulating the use of ART, which is significant for homosexual, bisexual and transgender persons.
167. Thus, there is lack of institute of known sperm donorship. Only two situations could occur from the legal point of view: 1) donor sperm is used in artificial insemination, and the donor's identity is not disclosed to the woman (and the child will not receive the right to information about the donor in the future), or 2) a woman negotiates with a friend who agrees to give her his gametes, but in future this man will be able to demand recognition of his legal paternity even if he initially agreed not to take part in the child's life. In other words, either the woman chooses a donor at the clinic on the basis of anonymous data (and subsequently the information about the donor becomes a medical secret in accordance with Art. 35 of the Fundamentals of Legislation of the Russian Federation on Health Care, and the donor does not acquire any rights and obligations in respect of the child in accordance with the Order on Assisted Reproductive Technologies (ART) in Therapy of Female and Male Sterility), or a man actually operates as a known donor, but from a legal point of view his paternity may be established after the birth of a child (as derived from Art. 49 and 52 of the Family Code).
168. Another problem is uncertainty concerning ART (for example, artificial insemination) made at home. Such acts are carried out by lesbian couples in practice, and although there have not been any subsequent court cases, the absence of special norms do not allow to conclude whether the possibility of applying rules, concerning ART, would be recognised in such cases.
169. Russian legislation does not specifically establish the possibility of family reunification in cases of same-sex families.
170. The Federal Law on the Legal Position of Foreign Citizens in the Russian Federation⁸⁷ provides that *"A permit for temporary residence may be issued to a foreign citizen without an account for the quota, approved by the Government of the Russian Federation, if <...> he or she is married to a citizen of the Russian Federation whose place of residence is in the Russian Federation"* (Para. (4) of Item 3 of Art. 6). According to Para. (12) of Item of Art. 7, *"A permit for temporary residence shall not be issued to a foreign citizen, and the earlier issued permit for a temporary residence shall be cancelled, if the given foreign citizen <...> has married a citizen of the Russian Federation, which has served as a ground for receiving a permit for a temporary residence, but this marriage is recognised by the court as invalid."*
171. Art. 8 of the same Law states that *"In the course of the term of validity of the permit for a temporary residence, and if there are legal grounds, a foreign citizen may be issued a residence permit at his application. Before receiving a residence permit, a foreign citizen is obliged to live in the Russian Federation for at least one year on the grounds of a temporary residence permit. A residence permit is issued to a foreign citizen for five years. After the expiry of the term of validity of the residence permit, this term may be extended by another five years by application from the foreign citizen"*. According to Para. (12) of Art. 9, *"A residence permit to a foreign citizen shall not be issued, and an earlier issued residence permit shall be cancelled, if the given foreign citizen <...> has married a citizen of the Russian Federation, which served as a ground for receiving a temporary residence permit, and this marriage is recognised as invalid by the court"*.

87 О правовом положении иностранных граждан в Российской Федерации: Федеральный закон: принят Государственной Думой 21 июня 2002 г.; одобрен Советом Федерации 10 июля 2002 г. // Собрание законодательства РФ. – 2002. – № 30. – Ст. 3032. [On the Legal Position of Foreign Citizens in the Russian Federation: Federal Law: passed by the State Duma on 21 June 2002; endorsed by the Federation Council on 10 July 2002 // Collected Legislation of the Russian Federation. – 2002. – No. 30. – Art. 3032]. Available in English at, <http://www.imldb.iom.int/viewDocument.do?id={9CB64A73-8011-46A3-B384-A64F9DC0A821}>, accessed 11 January 2010.

172. As far as Federal Law on the Legal Position of Foreign Citizens in the Russian Federation does not contain the definition of the marriage or a married person, the issues concerning the recognition of marriages, entered into outside of the territory of the Russian Federation is of particular importance.
173. Such issues are regulated by Item 1 of Art. 158 of the Family Code. As outlined in this norm, *“The marriages between the citizens of the Russian Federation and the citizens of foreign states or the stateless persons, entered into outside of the territory of the Russian Federation, while observing the legislation of the State, on whose territory they were entered into, shall be recognised as valid in the Russian Federation, if there are no circumstances, interfering with entering into the marriage, stipulated by Art. 14 of the [Family] Code”*. Art. 14 of the Family Code, in turn, stipulates the list of the circumstances, which prevent entering into a marriage and includes consisting in another registered marriage, close kinship or relations of adoptee and adopter, as well as incapability of at least one of the intending spouses. This schedule is limiting, therefore same-sex couples are not prevented from entering into a marriage in accordance with this norm.
174. Up to date Russian courts have not been faced with the cases concerning recognition of same-sex marriages entered into by Russian citizens abroad. However, Irina Shipitko and Irina Fet, refusal to register the marriage between which are discussed above, reported about the intention to seek in the near future the recognition of their marriage, entered into in Canada.⁸⁸
175. As far as it concerns foreign citizens, the Family Code states that the marriages between them, *“entered into outside of the territory of the Russian Federation, while observing the legislation of the State, on whose territory they were concluded, shall be recognised as valid in the Russian Federation”* (Item 2 of the Art. 158).
176. However, there is another one norm in the Family Code. Art. 167 contains conditions for restricting the application of the norms of foreign family law. As stated by this rule, such norms *“shall not be applied if such application would contradict the fundamentals of public order of the Russian Federation. In this case, the legislation of the Russian Federation shall be applied”*. Despite the fact that the cases of the recognition of same-sex marriage in Russia have not yet been considered, the indicated rule gives to some legal researchers reason to argue that such marriages would not be recognised:
177. *“As regards same-sex unions, they are not allowed in Russia and are not regarded as marriages in accordance with Russian legislation. Pursuant to Item 3 of Art. 1 of the Family Code of the Russian Federation the voluntary nature of the union of men and women is one of the basic principles of family law, and in accordance with Item 1 of Art. 12 of the Code mutual voluntary consent of the man and the woman entering into a marriage shall be a necessary condition to enter into it. Therefore, in our view, recognition of same-sex unions entered into abroad as marriages under Art. 158 of the Family Code of the Russian Federation could not take place. The duty to recognise such unions also does not follow from the European Convention on Human Rights and Fundamental Freedoms”*.⁸⁹
178. The main problem concerning recognition of same-sex marriages in Russia rises from the uncertainty of the term “public order”. In Russian judicial practice there have been some cases, in which courts estimated this term. Thus, it was determined in one of the decisions that “Public order is understood to be the fundamental rules of public, economic and social structure of society established by the State, and the main principles of the fundamentals of

88 Live Journal, <http://gayrussia.ru/actions/detail.php?ID=14866>, accessed 11 January 2010.

89 Марышева Н.И. Семейные отношения с участием иностранцев: правовое регулирование в России. М. : Волтерс Клувер, 2007. С. 67–68. [Marysheva N.I. Family Relationships Involving Aliens: The Legal Regulation in Russia. Moscow: Wolters Kluwer, 2007. P. 67–68].

law and order”.⁹⁰ Another decision contains the following: “The content of public order concept does not coincide with the content of the national legislation of the Russian Federation. Since the legislation of the Russian Federation allows the application of the norms of a foreign State, the presence of fundamental differences between Russian law and the law of another State is not in itself the ground for the application of the public order clause. Such an understanding of the public order clause means rejection of the application of the law of a foreign State in the Russian Federation in general. Public order of the Russian Federation is understood to be the basics of the social system of Russian State. The public order clause is possible only in a few cases where the application of foreign law could produce a result, unacceptable from the viewpoint of Russian legal conscience”.⁹¹ As was noted in yet another document, public order is understood to be “the fundamental principles enshrined in the Constitution and the laws of the Russian Federation”.⁹²

C.6. Asylum and refugee issues

179. As stated by the Federal Law on Refugees,⁹³ *“The refugee is a person who is not a citizen of the Russian Federation and who because of well-founded fear of becoming a victim of persecution by reason of race, religion, citizenship, nationality or **belonging to a definite social group** or political conviction is to be found outside the country of his nationality and is unable or unwilling to avail himself of the protection of this country due to such fear, or having lost his or her nationality and staying beyond the country of his or her former place of residence as a result of similar developments, cannot return to it and does not wish to do so because of such fear”* (Art. 1).
180. According to the Federal Law on the Forced Migrants,⁹⁴ *“The forced migrant shall be interpreted as a citizen of the Russian Federation, who has left the place of his residence as a result of an act of violation or of suppression in other forms, committed against him or against his family members, or as a result of the real threat to be subjected to suppression because of his racial or national affiliation, religion or language, and also **because of his belonging to a definite social group** or because of his political convictions, which have become a pretext for launching hostile campaigns with respect to a particular person or a group of persons, or massive breaches of the public order”* (Art. 1).
181. Consequently, the theoretical possibility of recognition of LGBT person as a refugee or a forced migrant in view of the persecution against her/him on the grounds of sexual

90 Определение Верховного Суда РФ от 27 мая 2003 г.: Дело № 5-Г03-39. Доступ из справ.-правовой системы «КонсультантПлюс». [Decision of the Supreme Court of the Russian Federation of 27 May 2003: Case No. 5-Г03-39. Available in Russian from the assistance legal system 'ConsultantPlus'].

91 Определение Верховного Суда РФ от 29 дек. 1998 г.: Дело № 5-Г98-78. Доступ из справ.-правовой системы «КонсультантПлюс». [Decision of the Supreme Court of the Russian Federation of 29 December 1998: Case No. 5-Г98-78. Available in Russian from the assistance legal system 'ConsultantPlus'].

92 Постановление Президиума Верховного Суда РФ от 2 июня 1999 г. (извлечение). Доступ из справ.-правовой системы «КонсультантПлюс». [Decree of the Presidium of the Supreme Court of the Russian Federation of 2 June 1999 (extract). Available in Russian from the assistance legal system 'ConsultantPlus'].

93 О беженцах: Федеральный закон: утв. Верховным Советом РФ 19 февраля 1993 г. // Ведомости Съезда народных депутатов и Верховного совета РФ. – 1993. – № 12. – Ст. 425. [On Refugees: *Federal Law*: passed by the Supreme Soviet of the Russian Federation on 19 February 1993 // *Gazette of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation*. – 1993. – No. 12. – Art. 425]. Available in English at, www.legislationline.org/documents/action/popup/id/3986, accessed 04 January 2010.

94 О вынужденных переселенцах: Федеральный закон: утв. Верховным Советом РФ 19 февраля 1993 г. // Ведомости Съезда народных депутатов и Верховного совета РФ. – 1993. – № 12. – Ст. 427. [On the Forced Migrants: *Law of the Russian Federation*: passed by the Supreme Soviet of the Russian Federation on 19 February 1993 // *Gazette of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation*. – 1993. – No. 12. – Art. 427].

orientation or gender identity exists, but there has not been any such case in practice, and the problem of interpretation of the term “social group” rises once again.

182. As stated by Item 4 Art. 3 of the Federal Law on Refugees, *“The recognition as refugees of the persons who are members of one family shall be effected in respect of each family member who has attained the age of 18 years, subject to the circumstances provided for by Subitem 1, Item 1 of Article 1 of the Federal Law. In the absence of circumstances, provided for by Subitem 1, Item 1 of Article 1 of the Federal Law in respect of one family member who has attained 18 years of age for the purpose of the reunion of the family this family member shall be recognised as a refugee with his consent”*.
183. As long as mentioned law does not contain any definition of family or family members, these terms should be evaluated in light of the general norms of Russian, foreign and international law.
184. Although the practice on cases concerning LGBT families is not fixed, the Supreme Court of the Russian Federation, examining the practice of refugee status determination procedures, revealed some trends in the field of law enforcement, including the interpretation of the concepts of family and family members:
185. *“Since the Law contains no definition of family and/or the notion of a dependent, the courts resolve civil cases in this category on the basis of the Constitution of the Russian Federation, international agreements entered into by the Russian Federation, federal constitutional laws, federal laws and in accordance with a federal law or an international agreement entered into by the Russian Federation, have used foreign law. By doing so, if an international agreement entered into by the Russian Federation establishes rules other than those provided by law, the courts in resolving civil cases apply the rules of international agreement.”⁹⁵*
186. The above statement suggests that if a foreign law (the law of the State, from which the applicant come) recognises in some way relationships in same-sex families, they also should be recognised by the Russian authorities in deciding whether it is possible consider the applicant as a member of the refugee’s family.

C.7. Social security, social care and insurance

187. According to the Russian Constitution, *“everyone shall be guaranteed social security at the expense of the State in old age, in case of an illness, disability, loss of the bread-winner, for upbringing of children and in other cases established by law”* (the first part of Art. 39).
188. Various federal and regional laws were adopted in furtherance of the said rules. There is no codified act regulating relations in the sphere of social security in Russia, and the relevant rules are contained in numerous laws that govern the following areas:
- state provision of pension;
 - retirement pensions;
 - allowances;

⁹⁵ Справка Верховного Суда РФ по материалам изучения судебной практики в Российской Федерации, касающейся процедуры определения статуса беженца. Доступ из справ.-правовой системы «КонсультантПлюс». [Statement of the Supreme Court of the Russian Federation based on the study of judicial practice in Russia, concerning the procedures for determining refugee status. Available in Russian from the assistance legal system ‘ConsultantPlus’].

- State social assistance;
 - social services;
 - labour guarantees;
 - issues of burial;
 - budgetary infertility treatment.
189. Neither of these acts contain specific provisions aimed at regulating relations involving homosexual persons. The analysis shows that a person of homosexual orientation often cannot enjoy rights and privileges set forth in these acts in connection with the fact that the enjoyment of the rights and privileges is conditional upon the particular family status (but, as was shown above, Russian laws do not allow the conclusion of same-sex marriage or granting of the legal parental status to the both members of homosexual couple at the same time).
190. A more detailed analysis of the legislation in this area is below.
191. State provision of pension are regulated, in particular, by Federal Law on the State Provision of Pensions in the Russian Federation,⁹⁶ as well as by Law of the Russian Federation on Pension Provision for Persons Who Have Done Military Service in Internal Affairs Bodies, the State Fire-Fighting Service, Bodies for Control Over the Circulation of Narcotics and Psychotropic Substances and Institutions and Bodies of the Penal System, and for the Families of Such Persons.⁹⁷
192. As the circle of family members is defined by the legislation on State provision of pension exhaustingly, and Russian family law, as noted previously, does not permit either a marriage between persons of the same sex or the simultaneous acquisition of formal status (as parent or adoptive parent) in respect of one and the same child, homosexual persons are partly outside the scope of the system of the State provision of pension (as long as it conditioned by specific family status).
193. Provision of retirement pensions is regulated primarily by the Federal Law on the Retirement Pensions in the Russian Federation.⁹⁸ It should be also concluded here that homosexual persons are excluded from the scope of retirement pensions due to the limitations described above.
194. Nevertheless, it is important to note that the Federal Law on the Retirement Pensions in the Russian Federation provides some opportunities for homosexual persons. According to

96 О государственном пенсионном обеспечении в Российской Федерации: Федеральный закон: принят Государственной Думой 30 нояб. 2001 г.; одобрен Советом Федерации 5 дек. 2001 г. // Собрание законодательства РФ. – 2001. – № 51. – Ст. 4831. [On the State Provision of Pensions in the Russian Federation: *Federal Law*: passed by the State Duma on 30 November 2001; endorsed by the Federation Council on 5 December 2001 // *Collected Legislation of the Russian Federation*. – 2001. – No. 51. – Art. 4831].

97 О пенсионном обеспечении лиц, проходивших военную службу, службу в органах внутренних дел, Государственной противопожарной службе, органах по контролю за оборотом наркотических средств и психотропных веществ, учреждениях и органах уголовно-исполнительной системы, и их семей: Закон: утв. Верховным Советом РФ 12 февраля 1993 г. // Ведомости Съезда народных депутатов и Верховного совета РФ. – 1993. – № 9. – Ст. 328. [On Pension Provision for Persons Who Have Done Military Service in Internal Affairs Bodies, the State Fire-Fighting Service, Bodies for Control Over the Circulation of Narcotics and Psychotropic Substances and Institutions and Bodies of the Penal System, and for the Families of Such Persons: *Law of the Russian Federation*: passed by the Supreme Soviet of the Russian Federation on 12 February 1993 // *Gazette of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation*. – 1993. – No. 9. – Ст. 328].

98 О трудовых пенсиях в Российской Федерации: Федеральный закон: принят Государственной Думой 30 нояб. 2001 г.; одобрен Советом Федерации 5 дек. 2001 г. // Российская газета. – 2001. – 20 дек. [On the Retirement Pensions in the Russian Federation: *Federal Law*: passed by the State Duma on 30 November 2001; endorsed by the Federation Council on 5 December 2001 // *Rossiyskaya Gazeta*. – 2001. – December 20].

Para. 12 of Art. 9 in case of death of the insured person before the destination for him/her the funded part of the labour retirement pension or before recalculation of the rate of this part of the pension taking into account the additional retirement savings, the funds recorded in the special part of his/her individual personal account should be paid in the prescribed manner to relatives. But the insured person may at any time identify specific persons from among relatives mentioned in the Law or *from among other persons* to whom such payment should be paid, as well as determine the shares, in which above means should be apportioned between them through the filing of an application to the Pension Fund of the Russian Federation. Therefore, a homosexual person may entitle any person, including his/her partner, to receive his/her pension savings (although in the absence of a special declaration such right should be granted to the relatives of the deceased homosexual).

195. Another set of issues regulated by Russian legislation in the sphere of social security concerns allowances. In this regard, the following laws should be addressed.
196. Law of the Russian Federation on the Employment of the Population in the Russian Federation.⁹⁹ This Law establishes the conditions for receiving unemployment allowance. According to Art. 5 of the Law, State policy in the field of promotion of employment aims to ensuring equal opportunities for all Russian citizens, regardless of nationality, gender, age, *social status*, political beliefs and attitudes towards religion of the realisation of the right to voluntary work and free choice of employment; delivering of output which promote the employment of citizens who have difficulties in job search.
197. The Law on the Employment of the Population in the Russian Federation also contains an exhaustive list of persons who have difficulties in job search. It includes: disabled people; persons released from institutions which carry out punishment in the form of imprisonment; minors aged from 14 to 18 years; preretirement persons; refugees and forced migrants; citizens dismissed from military service and members of their families; single parents and parents with many children raising minor children or disabled children; citizens exposed to radiation as a result of radiation accidents and catastrophes; citizens aged from 18 to 20 years from among the graduates of educational institution of primary and secondary vocational level.
198. As can be seen, LGBT persons as such are not included in the above mentioned circle of persons, and therefore do not benefit from additional guarantees and social assistance (although in principle the right to State social support is provided to LGBT persons, particularly through the assignment of unemployment allowance).
199. Federal Law on Compulsory Social Insurance against Temporary Work Disability and in Connection with Maternity.¹⁰⁰ This Law in Art. 5 stipulates that temporary work disability allowance is issued among others in cases of need for care for a sick family member, as well as of quarantine of the insured person, a child under seven years old or disabled family member.

99 О занятости населения в Российской Федерации: Закон: утв. Верховным Советом РФ 19 апр. 1991 г. // Собрание законодательства РФ. – 1996. – № 17. – Ст. 1915. [On the Employment of the Population in the Russian Federation: *Law of the Russian Federation*: passed by the Supreme Soviet of the Russian Federation on 19 April 1991 // *Collected Legislation of the Russian Federation*. – 1996. – No. 17. – Art. 1915].

100 Об обязательном социальном страховании на случай временной нетрудоспособности и в связи с материнством: Федеральный закон: принят Государственной Думой 20 дек. 2006 г.; одобрен Советом Федерации 27 дек. 2006 г. // Российская газета. – 2006. – 31 дек. [On Compulsory Social Insurance against Temporary Work Disability and in Connection with Maternity: *Federal Law*: passed by the State Duma on 20 December 2006; endorsed by the Federation Council on 27 December 2006 // *Rossiyskaya Gazeta*. – 2006. – December 31].

200. In this regard homosexual persons, if not registered as the mother or father of the child, are again outside the field of social security system because they are denied opportunities to acquire formal status of a relative or a parent of a partner's child.
201. Federal Law on State Allowances for Citizens with Children.¹⁰¹ This Law establishes the possibility of a one-time allowance at the birth of the child (for one of the parents or the persons substituting for them) and at the transfer of a child for upbringing to a family (for one of the adoptive parents, guardian or trustee), as well as monthly allowance for child care (for mother, father, other relatives and guardians, actually caring for the child). In this case it should be again noted that a homosexual person who is *de facto* parent of a child and *de facto* partner of a legal parent of the same child, has no mentioned rights.
202. Federal Law on Additional Measures of State Support for Families with Children.¹⁰² This Law stipulates the conditions under which persons are entitled to a so-called maternity capital, and also defines the procedure for its use. According to Art. 3 of the Law, the right to receive maternity capital appears at birth (or adoption) of a child (or children) and is granted to women who have given birth to (or adopt) the second, third or subsequent child (children), as well as to men, who are the only adopters of the second, third or subsequent child (children). Since joint and second-parent adoption by homosexual partners is not permitted, and two same-sex partners cannot be the child's parents at the same time, the right to receive maternity capital does not arise if two or more children with different legal parents are upbringing in a same-sex family (even if they are upbringing by couple from birth). At the same time, this right appears if a child was born into heterosexual family regardless of whether the parents are married. It should be noted also that if the mother died, is declared dead by the court or deprived of parental rights, the right to maternity capital is transferred to father (or another adopter) of the child. Of course, same-sex couples are deprived of such opportunity. At the same time, the Law also provides the right to receive maternity capital if the same homosexual person (both male and female) adopt two or more children.
203. In the Russian Federation various poverty reduction strategies and programmes as well as programmes supporting low-income citizens are implemented. In this connection the State social assistance, which is governed by the similarly-named federal law,¹⁰³ is of the special importance.
204. The State social assistance, according to Art. 1 of the Law, understood as *"the provision for low-income families, for low-income citizens who live alone, as well as for other categories of persons referred to in the present Federal Law, welfare benefits, social co-payments for pensions, subsidies, social services and essential goods"*. According to Art. 7 of the Law, the state social assistance from budget of the constituent of the Russian Federation may received by the poor families, poor citizens who live alone and other categories of citizens

101 О государственных пособиях гражданам, имеющим детей: Федеральный закон: принят Государственной Думой 26 апр. 1995 г.; одобрен Советом Федерации 4 мая 1995 г. // Собрание законодательства РФ. – 1995. – № 21. – Ст. 1929. [On State Allowances for Citizens with Children: *Federal Law*: passed by the State Duma on 26 April 1995; endorsed by the Federation Council on 4 May 1995 // *Collected Legislation of the Russian Federation*. – 1995. – No. 21. – Art. 1929].

102 О дополнительных мерах государственной поддержки семей, имеющих детей: Федеральный закон: принят Государственной Думой 22 дек. 2006 г.; одобрен Советом Федерации 27 дек. 2006 г. // Российская газета. – 2006. – 31 дек. [On Additional Measures of State Support for Families with Children: *Federal Law*: passed by the State Duma on 22 December 2006; endorsed by the Federation Council on 27 December 2006 // *Rossiyskaya Gazeta*. – 2006. – December 31].

103 О государственной социальной помощи: Федеральный закон: принят Государственной Думой 25 июня 1999 г.; одобрен Советом Федерации 2 июля 1999 г. // Собрание законодательства РФ. – 1999. – № 29. – Ст. 3699. [On the State Social Assistance: *Federal Law*: passed by the State Duma on 25 June 1999; endorsed by the Federation Council on 2 July 1999 // *Collected Legislation of the Russian Federation*. – 1999. – No. 29. – Art. 3699].

under the Law, which average income by reasons beyond their control is below the minimum subsistence income established in the respective constituent of the Russian Federation. The concept of family for such cases is determined by Federal Law on Minimum Subsistence Income¹⁰⁴ as “persons related through kinship and (or) affinity, living and keeping house together” (Art. 1). In addition, the Federal Law on Procedure of Calculation of Income and Per Capita Family Income and Income of Citizen Who Live Alone for Recognition Them as Law-Income and Providing Them with State Social Assistance¹⁰⁵ mentions set of persons who are included in low-income families: living together and leading a joint household spouses, their children and parents, adoptive parents and adopted children, brothers and sisters, stepchildren and step-daughter (Art. 13). Consequently, same-sex partners cannot be regarded as a family in relation to the sphere of the State social assistance to law-income families.

205. A large block of issues is related to social services, and the basis for the relevant regulation is created by the Federal Law on the Foundations of Social Servicing to the Population in the Russian Federation.¹⁰⁶ Social services, according to Art. 1 of the aforementioned Law, is understood to be “a work of social services for social support, provision of socio-domestic, socio-medical, psychological, pedagogical, socio-legal services and material assistance, social integration and rehabilitation of citizens who are in difficult situations”. The difficult situations, in accordance with Art. 3 of the Law, include “situations objectively violates the livelihoods of the citizen (disability, incapacity for self-care due to the old age, sickness, orphanhood, neglect, low income, unemployment, lack of fixed abode, conflict and abuse in the family, loneliness, etc.), which s/he cannot overcome without assistance”. As seen from the above definitions, the possibility of social programmes, recognising LGBT community as the target group, exists (as a list of difficult situation is open), but it does not clearly expressed, and in practice such social assistance has not been rendered by the State.

206. Art. 17 of the Federal Law on the Foundations of Social Servicing to the Population in the Russian Federation establishes the types of social service institutions. It includes:

- integrated social service centres;
- territorial centres of social assistance to families and children;
- social service centres;
- social rehabilitation centres for juveniles;
- centres for children left without parental care;
- social shelters for children and adolescents;
- centres for psychological and pedagogical assistance;

104 О прожиточном минимуме: Федеральный закон: принят Государственной Думой 10 окт. 1997 г.; одобрен Советом Федерации 15 окт. 1997 г. // *Собрание законодательства РФ*. – 1997. – № 43. – Ст. 4904. [On Minimum Subsistence Income: *Federal Law*: passed by the State Duma on 10 October 1997; endorsed by the Federation Council on 15 October 1997 // *Collected Legislation of the Russian Federation*. – 1997. – No. 43. – Art. 4904].

105 О порядке учета доходов и расчета среднедушевого дохода семьи и дохода одиноко проживающего гражданина для признания их малоимущими и оказания им государственной социальной помощи: Федеральный закон: принят Государственной Думой 7 марта 2003 г.; одобрен Советом Федерации 26 марта 2003 г. // *Собрание законодательства РФ*. – 2003. – № 14. – Ст. 1257. [On Procedure of Calculation of Income and Per Capita Family Income and Income of Citizen Who Live Alone for Recognition Them as Law-Income and Providing Them with State Social Assistance: *Federal Law*: passed by the State Duma on 7 March 2003; endorsed by the Federation Council on 26 March 2003 // *Collected Legislation of the Russian Federation*. – 2003. – No. 14. – Art. 1257].

106 Об основах социального обслуживания населения в Российской Федерации: Федеральный закон: принят Государственной Думой 15 нояб. 1995 г. // *Собрание законодательства РФ*. – 1995. – № 50. – Ст. 4872. [On the Foundations of Social Servicing to the Population in the Russian Federation: *Federal Law*: passed by the State Duma on 15 November 1995 // *Collected Legislation of the Russian Federation*. – 1995. – No. 50. – Art. 4872].

- centres of emergency psychological assistance by telephone;
 - centres (offices) of social assistance at home;
 - overnight homes;
 - special homes for single senior persons;
 - stationary institutions of social services (homes for the elderly and disabled, mental hospitals, homes for the mentally retarded children, homes for children with disabilities);
 - gerontology centre;
 - other institutions providing social services.
207. The model statutes or recommendations on the establishment and functioning of these institutions are adopted in the statutory regulations. But there are no provision related to social assistance to LGBT persons. In addition, the practice shows that the private LGBT community centres are not funded through State or municipal programmes.
208. A great number of norms of a social nature, aimed at protecting and supporting families (especially families with children), is also contained in the Labour Code of the Russian Federation.¹⁰⁷ Such norms are applied to parents of minor children or children with disabilities, to persons caring for a sick family members, and to parents raising children without a spouse. Once again, a homosexual person could not be a subject of such guaranties due to the lack of special family status.
209. Besides, the Labour Code stipulates some guarantees associated with the family as a whole. According to Art. 128, the employee may be given a leave without pay under family circumstances or for other good reasons. As noted in the literature, *“The possibility of providing an employee leave without pay depends on good reasons, which s/he calls in a statement in support of his/her request. Who assesses the reasonable character of these reasons, the Code does not say. Due to the fact that in these cases, the issue of granting of leave without pay is decided by employer, s/he also decides whether to recognize as good the reason specified by the employee”*.¹⁰⁸ Accordingly, a homosexual employee, in principle, has the right to receive such leave in connection with the circumstances connected with his/her same-sex partner, but the possibility of realisation of this right will depend on the employer.
210. Another range of issues, also related to labour relations, are governed by the Federal Law on Compulsory Social Insurance against Labour Accidents and Occupational Diseases.¹⁰⁹
211. In compliance with Art. 7 of the Law, the following persons are provided with the right to receive insurance payments in the event of death of the insured as a result of the insured event: person who was dependent on the deceased; children, parents, spouse of the deceased; other family members.

107 Трудовой кодекс Российской Федерации: принят Государственной Думой 21 дек. 2001 г.; одобрен Советом Федерации 26 дек. 2001 г. // Российская газета. – 2001. – 31 дек. [Labour Code of the Russian Federation: passed by the State Duma on 26 December 2001 // Rossiyskaya Gazeta. – 2001. – December 31]. Available in English at, www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm, accessed 14 January 2010.

108 Комментарий к Трудовому кодексу Российской Федерации (постатейный) / под ред. К.Н. Гусова. Доступ из справ.-правовой системы «КонсультантПлюс». [The Commentary to the Labour Code of the Russian Federation (paragraph-to-paragraph) / ed. by K.N. Gusova. Available in Russian from the assistance legal system 'ConsultantPlus'].

109 Об обязательном социальном страховании от несчастных случаев на производстве и профессиональных заболеваний: Федеральный закон: принят Государственной Думой 2 июля 1998 г.; одобрен Советом Федерации 9 июля 1998 г. // Собрание законодательства РФ. – 1998. – № 31. – Ст. 3803. [On Compulsory Social Insurance against Labour Accidents and Occupational Diseases: *Federal Law*: passed by the State Duma on 2 July 1998; endorsed by the Federation Council on 9 July 1998 // *Collected Legislation of the Russian Federation*. – 1998. – No. 31. – Art. 3803].

212. The questions of who is meant by a family member, carrying for dependents of the deceased, and whether a partner of the deceased homosexual could be recognised as such person, rise once again. As noted in the legal literature with regard to Art. 7, *“List of family members includes parents, spouses and other family members, in other words [this list is] not limited to a certain circle of relatives. It should be noted that the Family Code of the Russian Federation, for a wonder, does not contain the legal concept of a family member. However, addressing to the Federal Law of 24 October 1997 N 134-FZ on Minimum Subsistence Income, demonstrates that there is the definition of the family in Art. 1 of the Law as persons, living together and keeping a joint household, related through kinship and (or) affinity. Therefore, all of the sufferer’s relatives, complying with the shown definition, could be attributed to the members of deceased’s family”*.¹¹⁰
213. It is also worthwhile noting that according to the same article, the right to receive insurance payments in case of death of the insured as a result of the insured event may be granted by the court for disabled persons who had earnings during lifetime of the insured, in the case where the part of the earnings of the insured was their permanent and principal source of livelihood. Consequently, the disabled partner of the deceased homosexual person is entitled to receive insurance payments in case when the main part of his/her livelihood came from the deceased.
214. The next set of the issues is associated with the burial. Relations arising in this case are governed by Federal Law on Burial and the Funeral Business.¹¹¹
215. According to this Federal Law, if a citizen while alive has not expressed his/her will regarding 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. And only in case when the latter cannot solve these issues, they can be settled by other persons. But if the will has been expressed, this is the case of seniority of the will, implying that a homosexual can be appointed the executer of their partner’s will. Based on these considerations, the possibility of dealing with the burial of the deceased homosexual by his partner, exists, however, it does not function “by default”, as it should be a special expression of the will. Besides, the mechanism for the implementation of this possibility is not quite understandable. For example, it is not clear who and how will establish the existence of such an expression in the case of a discovery of body by law enforcement officials who are taking action to find relatives of a deceased person (especially if the relatives themselves are not aware of the presence of the expression of the will). In addition, same-sex partners are not subject to the guarantees set out in Art. 7 of the Law. According to this rule, the execution of the will of the deceased concerning the burial of his/her body (remains) or dust at a specified place of burial next to the previously dead is guaranteed if in the specified place of burial there is a free piece of ground or graves of close relative or former spouse of the deceased. In other cases, the possibility of execution of the will of the deceased concerning the burial of his/her body (remains) or dust at a specified place of burial is determined by a specialised service for the funeral business, taking into account the place of death, presence of free piece of ground at a specified place of burial, as well as the merits of the deceased before society and the State.

110 Белянинова Ю.В. Комментарий к Федеральному закону от 24 июля 1998 г. N 125-ФЗ «Об обязательном социальном страховании от несчастных случаев на производстве и профессиональных заболеваний». Доступ из справ.-правовой системы «Гарант». [Belyaninova Y.V. The Commentary to the Federal Law of 24 July 1998 № 125-FZ ‘On Compulsory Social Insurance against Labour Accidents and Occupational Diseases’. Available in Russian from the assistance legal system ‘Garant’].

111 О погребении и похоронном деле: Федеральный закон: принят Государственной Думой 8 дек. 1995 г. // Собрание законодательства РФ. – 1996. – № 3. – Ст. 146. [On Burial and the Funeral Business: *Federal Law*: passed by the State Duma on 8 December 1995 // *Collected Legislation of the Russian Federation*. – 1996. – No. 3. – Art. 146].

216. Finally, it can be also relevant in the context of the analysis of the situation of homosexual persons in the system of social protection to consider issues related to the treatment of infertility from budget resources. These issues are governed by the legislation of the subjects of the Russian Federation. In recent years, respective acts were adopted by a growing number of regions. However, analysis of these documents shows that the requirements to persons entitled to receive budgetary subsidies, exclude homosexual persons from such programmes. Thus, a marriage, or at least medical infertility, i.e., diseases of reproductive system, is considered as a prerequisite. Social infertility (inability to have children due to the lack of sexual partner of the opposite sex) is not included in the list of the grounds, in which presence the person can acquire a right to budgetary treatment of infertility. Therefore, despite the fact that, as noted above when considering family issues, lesbian families in Russia have access to donor artificial insemination, in practice they can implement this feature only at their own expense.

C.8. Education

217. As stated by the first part of Art. 43 of the Constitution of the Russian Federation, *“everyone shall have the right to education”*. Besides, *“everyone shall be guaranteed the freedom of scientific activity and teaching”* (the first part of Art. 44).
218. According to the Law of the Russian Federation on Education,¹¹² *“citizens of the Russian Federation are guaranteed access to education regardless of gender, race, nationality, language, origin, place of residence, attitude to religion, convictions, membership of public organisations (associations), age, health, **social**, financial and employment status, and criminal record. Restrictions on the citizens’ rights to professional education on the grounds of sex, age, health status, and criminal record can be established only by law”* (Art. 5).
219. Current Russian legislation does not contain any specific provisions on the protection of the rights related to educational opportunities regardless of sexual orientation or gender identity. In practice, however, there is a range of discussion questions.
220. One of the controversial issues is the sexual education in schools.
221. Another problem concerns social exclusion and violence within the school environment, including bullying and harassment.
222. It should be noted that Russian laws do not contain as a specific offence harassment or bullying (and even more so for cases of discrimination on the grounds of sexual orientation or gender identity).
223. In 2005 two courts in Moscow examined a case in the action of N.A. Alekseyev against Lomonosov Moscow State University for consumer protection.
224. Nikolay Alekseyev, a former postgraduate student of the Public Administration Faculty of the Moscow State University and famous Russian LGBT activist, claimed the recognition of the illegality of denial of approval as his dissertation topic *“Legal Regulation of the Status of Sexual Minorities”* in 2001, of discrimination based on sexual orientation which took place against him, as well as of compensation for material and moral damages.

112 Об образовании: Закон: утв. Верховным Советом РФ 10 июля 1992 г. // Ведомости Съезда народных депутатов и Верховного совета РФ. – 1992. – № 30. – Ст. 1797. [On Education: *Law of the Russian Federation*: passed by the Supreme Soviet of the Russian Federation on 10 July 1992 // *Gazette of the Congress of People’s Deputies and the Supreme Soviet of the Russian Federation*. –1992. – No. 30. – Ст. 1797].

225. Moscow State University indicated in statement of defence that *“the assignment of a person to homosexual persons cannot be libellous fact, since these deviations in the mental status of the individual is no longer seen as a disease, and through the efforts of persons belonging to these stratum, including Alekseyev, tolerant attitude to this kind of sexual preference is cultivated in society.”* Statement of the University also pointed out that homosexual orientation is “an inappropriate sexual orientation.”
226. The court of first instance dismissed the claim and, in particular, indicated that *“The Court cannot agree with the plaintiff’s reference to the fact that the refusal to change the topic of the dissertation research on title proposed by the plaintiff – “Legal Regulation of the Status of Sexual Minorities” – confirms his claim, since the testimony of a witness (the Dean of the Faculty) shows that the topic proposed by the plaintiff has the right to existence, but it is outside the research agenda of the faculty, and about discrimination against the plaintiff he learned only from the complaint.”*
227. District Court’s decision to leave without satisfying the complaint has left unchanged by the Judicial Division for Civil Cases of the Moscow City Court.¹¹³
228. On 15 May 2006, Alekseyev sent to the European Court of Human Rights full text of the complaint against Russia. He alleged that the Russian Federation acting by Lomonosov Moscow State University violated his right to respect for private life (Art. 8 of the Convention), the right to education (Art. 2 of the Additional Protocol 1 to the Convention), as well as these articles together with the antidiscrimination Art. 14 of the European Convention.¹¹⁴
229. Another relevant problem is the inclusion (or non-inclusion) of issues related to sexual orientation and gender identity in a training programme for law enforcement bodies.
230. Thus, as was noted in the Response of St. Petersburg Prosecutor’s Office to appeal on the issue of familiarisation with the Report 2009, *“curriculum of qualification courses for the officials of the city prosecutor’s office includes the examination of issues related to crime prevention, and to support and development of tolerance”*.¹¹⁵ However, we do not know whether, for example, the issues of homophobia and ways to overcome it specifically addressed in such courses.
231. Nevertheless, the first attempts to solve the discussed problem have already been made. Thus, The Draft of the Code of Judicial Ethics was published by V. Tkachev, the Chairman of the Rostov Regional Court, the member of the Council of Judges of the Russian Federation, and Candidate of Law, in 2003. One of the proposed provisions of this Code contained the following: *“When performing the duties the judge should not show a racial, gender, religious or national prejudices, as well as prejudices regarding disability, age, **sexual orientation** or socio-economic status”*.¹¹⁶

113 References and detailed description of the case see also: Annexes to chapter 8, case 1.

114 Live Journal, <http://gayrussia.ru/right/mgu>, 16 January 2010.

115 Ответ Прокуратуры Санкт-Петербурга на обращение по вопросу ознакомления с докладом Московской Хельсинкской Группы и МОД «Российская ЛГБТ-Сеть» «Положение лесбиянок, геев, бисексуалов и трансгендеров в Российской Федерации» от 11 сентября 2009 г. (не было опубликовано) [Response of St. Petersburg Prosecutor’s Office to appeal on the issue of familiarisation with the report of the Moscow Helsinki Group and the IPM ‘Russian LGBT Network’ called ‘The situation of lesbian, gay, bisexual and transgenders in Russia’ of 11 September 2009 (unpublished)].

116 Ткачев В. Кодекс судейской этики (проект) // Российская юстиция. – 2003. – № 4. [Tkachev V. The Code of Judicial Ethics (A Draft) // Russian Justice. – 2003. – No. 4].

C.9. Employment

232. The Russian Constitution recognises the right of everyone to freely use his/her labour capabilities, and to choose the type of activity and profession (the first part of Art. 37). According to the third part of Article 37, *“everyone shall have the right to labour conditions meeting the safety and hygienic requirements, for labour remuneration without any discrimination whatsoever and not lower than minimum wages and salaries established by the federal law, as well as the right to protection against unemployment”*.
233. According to the Labour Code of the Russian Federation,¹¹⁷ *“Everyone shall have equal opportunities to realise his/her labour rights. No one can be constrained in his/her labour rights and freedoms or get any advantages irrespective of sex, race, colour of skin, nationality, language, origins, property, social or position status, age, domicile, religious beliefs, political convictions, affiliation or non-affiliation with public associations as well as other factors not relevant to professional qualities of the employee. Establishment of distinctions, exceptions, preferences as well as limitation of employees’ rights which are determined by the requirements inherent in a specific kind of work as set by federal laws or caused by especial attention of the State to the persons requiring increased social and legal protection shall not be deemed discrimination. The persons considering themselves to be discriminated against in the sphere of labour shall be entitled to petition the federal labour inspectorate bodies and/or courts applying for restoration of their violated rights, compensation of the material loss and redress of the moral damage”* (Art. 3).
234. There are a number of cases when homosexual individuals manage to restore their labour rights through the court.
235. The first case was reviewed in 2004 by Dzerzhinsky district court of the City of Yaroslavl. On 28 December 2004, the Court heard the case of Elena Korneva who had been dismissed from her position as educator in a kindergarten with the official motivation “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. The court countermanded the dismissal and restored the plaintiff her rights.¹¹⁸
236. The second case was examined by Frunzensky district court of Saint-Petersburg in 2005. By decision of 20 September 2005, the Court 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 psycho neurological dispensary. However, the military enlistment office refused to remove the note from the military service record card, still considering him unfit for military service because of homosexuality, which they classified as “other gender identity disorders” that time. In 2003, the plaintiff addressed to the polyclinic of Oktyabrsky Railway for a medical opinion to be able to register for courses of train attendants. However, they refused to find him fit for the profession of train attendant at the polyclinic on the ground of the note in his military service record card and the fact that he had been registered with the psycho neurological dispensary. Having found the decision of the medical expert commission of the state healthcare institution with regard to the applicant invalid, Frunzensky district court made two important

117 Трудовой кодекс Российской Федерации: принят Государственной Думой 21 дек. 2001 г.; одобрен Советом Федерации 26 дек. 2001 г. // Российская газета. – 2001. – 31 дек. [*The Labour Code of the Russian Federation: The Third Part: passed by the State Duma on 21 December 2001; endorsed by the Federation Council on 26 December 2001 // Rossiyskaya Gazeta. – 2001. – 31 December*]. Available in English at, www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/65252/E01RUS01.htm, accessed 4 January 2010.

118 See: Report 2009. P. 49. References and detailed description of the case see also: Annexes to chapter 9, case 1.

conclusions: firstly, the Court found the practice of using military record to limit human rights illegal; secondly, it indicated that “perverse psychopathia” the plaintiff was diagnosed with in 1992 was based on his homosexual orientation only and confirmed it once again that homosexuality was not a mental disorder.¹¹⁹

237. As was illustrated above, labour legislation does not contain any specific provisions explicitly prohibiting discrimination on ground of sexual orientation. However, the inadmissibility of such discrimination is increasingly emphasised in the ethical standards of various organisations. The relevant provisions can be aimed directly at providing equal opportunities for the staff.¹²⁰
238. To the extent that violations of the rights of LGBT individuals are also a violation of human rights, they fall within the purview of the Russian Ombudsman, which activity is mainly regulated by special Federal Constitutional Law.¹²¹ The Ombudsman has not undertaken any comprehensive action directly aimed at protecting the rights of LGBT persons as a specific social group or of individual members of the LGBT community until now.
239. However, there are some factors showing promising possibilities in this regard. According to Igor Petrov (Kochetkov), the Chairman of the Russian LGBT Network, “A *direct dialogue at official level between representatives of the State (represented by the Russian Ombudsman) and the LGBT movement has started. During a meeting with representatives of the [Russian LGBT] Network, the Russian Ombudsman noted that gay, lesbian, bisexual and transgender persons have the same rights as everyone else. “If the rights of specific persons are violated in connection with their orientation, we are ready to defend their rights”, he said. An agreement on the continuation of contacts between the [Russian LGBT] Network and the Ombudsman was reached. Igor Mikhailov, the Ombudsman in St. Petersburg, has initiated a cooperation agreement with the [Russian LGBT] Network, and also made several public statements in defence of the rights of LGBT persons*”.¹²²
240. Finally, a number of the important aspects in the field of LGBT rights concerns support for action against human rights violations on grounds of sexual orientation and gender identity by civil society organisations.
241. In this respect it may be noted that only a few, mostly human rights organisations have openly declared their commitment to the ideas of non-discrimination, including that on grounds of sexual orientation or gender identity.

119 Ibid case 2.

120 See, for example: Business Ethics Code of the Moscow International Bank (UniCredit Bank) (Кодекс деловой этики ММБ // Кадровик. Кадровое делопроизводство. – 2007. – № 5. [Business Ethics Code of the MIB // HR. HR Administration. – 2007. – No. 5]) ; Code of Ethics of the Evraz Group S.A. (http://www.ntmk.ru/ru/about/social1_5.php).

121 Об уполномоченном по правам человека в Российской Федерации: Федеральный конституционный закон: принят Государственной Думой 25 дек. 1996 г.; одобрен Советом Федерации 12 февр. 1997 г. // Собрание законодательства РФ. – 1997. – № 9. – Ст. 1011. [On the Ombudsman in the Russian Federation: *Federal Constitutional Law*: passed by the State Duma on 25 December 1996; endorsed by the Federation Council on 12 February 1997 // *Collected Legislation of the Russian Federation*. – 1997. – No. 9. – Art. 1011]. Available in English at, www.anticorruption.bg/ombudsman/eng/readnews.php?id=6085&lang=en&t_style=te&l_style=default, accessed 22 January 2010.

122 Conversation with Igor Petrov (Kochetkov) by e-mail (21 January 2010). Thus, ex-Ombudsman of St. Petersburg Igor Mikhailov stated in September 2009 that ‘any facts of violations of the rights of sexual minorities will not be ignored by me on just the ground that they have the same passport as I have.’ See, for example, www.ombu.ru/node/2252%20, accessed 30 September 2010. It should be noted also that above mentioned cooperation agreement has not been reached as far as Igor Mikhailov was resigned.

C.10. Housing

242. The first part of Art. 40 of the Russian Constitution states that *“everyone shall have the right to a home. No one may be arbitrarily deprived of his or her home”*. According to the third part of Art. 55, this right shall not be liable to limitations. In addition, pursuant to the second part of Article 40, *“the bodies of state authority and local self-government shall create conditions for exercising the right to a home”*. Apart from that, the Constitution of the Russian Federation stipulates that *“The home shall be inviolable. No one shall have the right to get into a house against the will of those living there, except for the cases established by a federal law or by court decision”* (Art. 25); *“The right of private property shall be protected by law; Everyone shall have the right to have property, possess, use and dispose of it both personally and jointly with other people; The right of inheritance shall be guaranteed”* (Art. 35); *“Citizens and their associations shall have the right to possess land as private property”* (Art. 36).
243. The main source of housing law is the Housing Code of the Russian Federation.¹²³ Art. 1 and 3 of the Code repeats abovementioned constitutional provisions.
244. Like the family legislation, the Housing Code forms the legal concept of the family, defining its subject composition; but unlike the 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. 31,¹²⁴ 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 recognised owner’s family members, if they are moved in by the owner as their family members. Citizens recognised as family members of the owner have the right to use and the obligation to maintain the premises. 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 any place to live, court can provide them with a possibility to live in the initial premises for a certain period of time.
245. Recently, the Supreme Court of the Russian Federation has issued the official explanations concerning the application of the Housing Code.¹²⁵ Although this document does not contain specific provisions relating to homosexual individuals, it gives a broader definition of family relations, and clearly indicates the possibility of recognising unmarried partners as family members (and it is apparently the first provision in modern legislation, which explicitly protects the *de facto* marital relationship). The Decision of the Plenum of the Supreme Court stated the following:
246. *“other relatives [of the owner] regardless of the degree of kinship (for example, grandparents, siblings, uncles, aunt, nephew, nieces, etc.) or disabled dependents of both the owner and of members of his/her family, and in exceptional cases, other citizens (for example, a person cohabiting with the owner without marriage) if they are moved in by the owner as members of his/her family, could be recognised [by the court] as members of the family of the owner. It is required for recognising these individuals as members of the owner’s family not only to establish a*

123 Жилищный кодекс Российской Федерации: принят Государственной Думой 22 дек. 2004 г.; одобрен Советом Федерации 24 дек. 2004 г. // Собрание законодательства РФ. – 2005. – № 1, ч. 1. – Ст. 14. [*Housing Code of the Russian Federation: passed by the State Duma on 22 December 2004; endorsed by the Federation Council on 24 December 2004 // Collected Legislation of the Russian Federation. – 2005. – No. 1, part 1. – Art. 14*].

124 Family members of the tenant are covered by Art. 69 of the Code.

125 О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации: Постановление Пленума Верховного Суда Российской Федерации № 14 от 2 июля 2009 г. // Российская газета. – 2009. – 8 июля. [On some issues that have arisen in judicial practice in the application of the Housing Code of the Russian Federation: *Decision of the Plenum of the Supreme Court of the Russian Federation No. 14 of 2 July 2009 // Rossiyskaya Gazeta. – 2009. – July 8*].

legal fact of moving [these individuals] in the premises by the owner, but also to clarify the content of the owner's will to moving them in, namely: whether s/he moving a person in the premises as a member of his/her family, or the premises was provided by him/her for the residing on other grounds (for example, for free use, under a contract of renting). In the event of a dispute the content of the owner's will is determined by the court on the basis of the explanations of the parties and the third parties, witnesses, written documents (for example, the contract of the settling in the premises) and other evidence. It should be borne in mind that family relationships are characterised by, inter alia, family members' mutual respect and concern for each other, their personal non-property and property rights and duties, common interests, responsibility to each other, a common household" (para. 11).

247. *"According to the first part of Article 69 [the Housing Code of the Russian Federation], any other persons [other than relatives and disabled dependents of the tenant of the premises] can be recognised as members of the tenant's family, but only in exceptional cases and only by the courts. In considering the possibility of recognising other individuals (for example, a person cohabiting with the tenant without marriage) as members of the tenant's family, the court must determine whether these individuals were moved in the premises as members of tenant's family or as other persons, whether they kept a common household with the tenant, how long they live in the premises, whether they have a right to another premise and whether they did not lost that right" (para. 25).*
248. Thus, homosexual partner can be protected as a family member of the owning partner (or partner who is a tenant) only by court decision and not automatically. But for the moment it is rather a theoretical possibility, and no examples of applying these provisions were found in actual practice.
249. Another set of issues, which is important from the standpoint of the possibility of the exercising by LGBT persons their rights to housing, relates to social programmes, intending support of those who are in need of improved housing conditions.
250. At present, the Priority National Project "Affordable and Comfortable Housing – To Citizens of Russia"¹²⁶ is being implemented. On 17 September 2001, the Federal Targeted Programme "Housing" for 2002–2010 years¹²⁷ was also approved. The main goal of this Programme is a comprehensive solution to the problem of transition to sustainable functioning and development of the housing sphere, ensuring availability of housing, as well as safe and comfortable living conditions. The structure of this Programme includes Subprogramme "Providing Housing for Young Families", aiming at public (i.e. state) supporting for young families, recognised in the prescribed manner as being in need of improved housing conditions, in solving the housing problems. The Subprogramme is implemented by providing young families with social payments, as well as by preferential loans for the purchase of housing.
251. The right to participate in the Subprogramme has a young family, if the age of the spouses does not exceed 35 years, and an incomplete family of a young parent who is not over 35 years and one or more children, if such family is in need of improved housing conditions.
252. Therefore, same-sex families are again to a large extent left out of the scope of social support, since the two cohabiting partner will not be considered as a family of spouses (and therefore they cannot participate in the Subprogramme at all), and if at the same time they brought up a joint

126 ROST, www.rost.ru/projects/habitation/habitation_main.shtml, accessed 21 January 2010.

127 Федеральная целевая программа «Жилище» на 2002 – 2010 годы: утв. Постановлением Правительства РФ от 17 сент. 2001 г. // Собрание законодательства РФ. – 2001. – № 39. – Ст. 3770. [The Federal Targeted Programme 'Housing' for 2002 – 2010 years: approved by the Decision of the Government of the Russian Federation of 17 September 2001 // *Collected Legislation of the Russian Federation*. – 2001. – No. 39. – Art. 3770].

child, only this child and his legal parent will be considered as a family (which affects the calculation of floor space, the definition of need, etc.).

253. Another issue – the relationships, which arise in inheritance, are regulated by the Third Part of the Civil Code of the Russian Federation.¹²⁸ The Code states in Art. 1111 that succession shall be by will and by operation of law. Succession by operation of law shall take place when and where it is not changed by a will and also in the other cases established by the Code.
254. In regard to inheritance by operation of law the following remarks should be formulated for homosexual individuals. Firstly, the Russian Civil Code stipulates several categories of the heirs (Art. 1141–1148). All of the persons mentioned in those provisions should be either relatives or affinals of the deceased. The only exception is disabled dependants of the testator. Secondly, if there are no will, the partner of deceased homosexual individual should not be entitled to inherit, unless s/he was disabled when the inheritance was opened, had been dependants of the testator at least for the one-year term preceding the death of the testator, and resided together with him/her (Art. 1148).
255. As far as it concerned inheritance by will for homosexual individual, the following should be stressed. One of the main principles of the inheritance law is the freedom of will (Art. 1119). It means that the deceased shall be entitled to leave by will at his/her discretion property to any persons, to set heirs' shares in the estate in any way, to deprive one, several or all legal heirs of inheritance without indicating reasons for such a deprivation and also to include other dispositions in the will in compliance with the rules of the Civil Code concerning succession, and to revoke or alter his/her created will. Therefore, a homosexual person can identify in his/her will any persons, including those who are not his/her relatives/affinals – for example, homosexual partner, or legal child of such partner, or both of them.
256. The freedom of the will shall be limited by the rules of compulsory share of estate (Art. 1149). And in this regard homosexual individuals once again could not be the party to a legal relationship in many cases. The purpose of the restrictions of the freedom of the will is to ensure that the property interests of persons, who are unable to support themselves independently and have lost their breadwinner. But according to Art. 1149 the right to a compulsory share of estate belongs only to three groups of persons:
- the minor or disabled children of the testator, his disabled spouse and parents;
 - legal heirs specified in Art. 1143–1145 of the Civil Code (i.e. relatives and affinals) who are disabled as of the date of opening of the inheritance if they had been dependants of the testator for at least a one-year term preceding the death of the testator, regardless of whether they resided together with the testator or not;
 - citizens not included in the circle of heirs specified in Articles 1142–1145 of the Civil Code but who were disabled when the inheritance was opened, who had been dependants of the testator at least for the one-year term preceding the death of the testator, and who resided together with him/her.
257. The issues of the legal status of homosexual individuals may also be discussed in the context of tax relationships arising in connection with inheritance. In this respect two groups of questions may be emphasised.

128 Гражданский кодекс Российской Федерации: Часть третья: принят Государственной думой 1 нояб. 2001 г.; одобрен Советом Федерации 14 нояб. 2001 г. // Российская газета. – 2001. – 28 нояб. [*The Civil Code of the Russian Federation: The Third Part: passed by the State Duma on 1 November 2001; endorsed by the Federation Council on 14 November 2001 // Rossiyskaya Gazeta. – 2001. – November 28]. Available in English at, www.russian-civil-code.com, accessed 4 January 2010.*

258. In the first place, the Tax Code of the Russian Federation¹²⁹ as a general rule considers property, obtained by inheritance, as the object of personal income taxation. Nevertheless, according to the fifth part of Art. 208 of the Tax Code, the term “incomes” (in the context of the personal income tax) shall not include incomes from transactions relating to property and non-property relationships of natural persons recognised as family members and/or close relatives under the Family Code of the Russian Federation, except incomes received by the said natural persons as a result of their concluding between themselves agreements of civil legal nature or labour agreements. Similarly, Art. 217 of the Tax Code states that incomes received by way of donation shall be exempt from taxation if a donor and a donee are the family members and/or close relatives under the Family Code of the Russian Federation (spouses, parents and children, including adopters and adoptees, grandfather, grandmother and grandchildren, as well as blood or non-blood brothers and sisters).
259. In the second place, the Tax Code also stipulates the rates of the fee for notarial actions. Pursuant to Art. 333.24, the amount of the fee for issuing a certificate of the right to the inheritance by operation of law and by will is:
- for children, including adopted children, spouse, parents, blood brothers and sisters of a testator – 0.3 percent of the value of inherited property, but not more than 100 000 rubbles;
 - for other heirs – 0.6 percent of the value of inherited property, but not more than 1 000 000 rubbles.
260. Though it is worth noting that if the partner of deceased homosexual person is entitled to inherit from him/her a premises in which they lived together and in which s/he continues to live, s/he is exempt from paying the state fee for issuing a certificate of the right to the inheritance of the dwelling in accordance with Art. 333.38 of the Tax Code.
261. Thus, in general the lack of opportunity for homosexual persons to acquire formal family status in relation to his/her partner once again leads to a lack of opportunity to reap the benefits, in this case – causes the additional costs due to the acceptance of the inheritance.

C.11. Health care¹³⁰

262. According to the Russian Constitution, “*Everyone shall have the right to health care and medical assistance*”(Art. 41).
263. Special non-discrimination provisions are contained in Art. 17 of the Fundamentals of Legislation of the Russian Federation on Health Care: “*the State provides health care to citizens regardless of gender, race, nationality, language, social origin, employment status, residence, attitude to religion, convictions, membership of public associations, as well as **other factors***” (Article 17).
264. There are also a number of ethical standards, emphasising the inadmissibility of discrimination in medical practice.

129 Налоговый кодекс Российской Федерации: Часть вторая: принят Государственной Думой 19 июля 2000 г.; одобрен Советом Федерации 26 июля 2000 г. // Собрание законодательства РФ. – 2000. – № 32. – Ст. 3340. [*The Tax Code of the Russian Federation: The Second Part: passed by the State Duma on 19 July 2000 // Collected Legislation of the Russian Federation. – 2000. – No. 32. – Art. 3340*]. Available in English at, www.russian-tax-code.com, accessed 21 January 2010.

130 This chapter is partly based on the earlier author’s reasoning, presented in the Report 2009 (P. 16–17).

265. Thus, the Oath of a physician,¹³¹ the text of which is contained in Art. 60 of the Fundamentals of Legislation of the Russian Federation on Health Care, runs as follows: *“Getting a high rank of the doctor and beginning the professional activity, I solemnly swear <...> to be always ready to deliver medical care, to keep medical secret, to treat the patient carefully and thoughtfully, to act solely in his/her interest regardless of gender, race, nationality, language, origin, property or employment status, residence, attitude to religion, beliefs, public associations, as well as **other circumstances**.”*
266. The Code of Ethics of the Society of Psychoanalytic Therapy contains three provisions in relation to discussed issue:
267. *Respect for the individual and the absence of discrimination. The therapist must be aware of his/her own values and beliefs, and not impose their on patients. Therapist should provide psychological assistance to patients, as well as promote the professional development of students and colleagues with respect and care. Discrimination on the grounds of age, disability, nationality or religious affiliation, gender, **sexual orientation** or socio-economic status, as well as on other grounds – is contrary to the ethics of psychotherapy.*
268. *The therapist should not allow discrimination of patients by sex, age, health status, ethnic or religious affiliation, **sexual orientation** and socio-economic status.*
269. *It is recommended for the therapist to refuse to participate in social and political movements that discriminate against people on grounds of gender, ethnic and religious affiliation, health status, **sexual orientation** and socio-economic status.*¹³²
270. There is also the oath of nurses which is included in the Medico-Social Charter of the nurses of the Russian Federation. The text of the oath embraces the following statement: *“I will not permit considerations of gender or age, illness or disability, religion, ethnicity, race or ethnicity, party-political ideology, **sexual orientation** or social status to stand between the performance of my duty and my patient”.*¹³³
271. Despite the fact that the last oath directly stresses the inadmissibility of discrimination on the ground of sexual orientation in the professional activity of the nurses, the real practice demonstrates the violation of this principle.
272. A great number of by-laws distinguish homosexual persons as a separate group when considering issues concerning the spread of different diseases: principally, sexually transmitted diseases and HIV.
273. Thus, for example, the Order of the Ministry of Health of the Russian Federation on the Measures to Prevent Spread of Sexually Transmitted Infections¹³⁴ belongs “homosexualists” to the group of people with “risk behaviour” along with prostitutes, homeless and alcoholics, who require education of sexual culture of contraception and free distribution of condoms. Another document, on the one hand, notes that the majority of HIV-positive persons do not belong to high-risk groups – drug addicts and “homosexualists”; on the other hand, it is emphasised that the educational

131 Persons who have graduated from higher medical educational institutions of the Russian Federation, when obtaining a diploma of a medical doctor take this oath (Art. 60 of the Fundamentals of Legislation of the Russian Federation on Health Care).

132 SPP, www.spp.org.ru/page.php?id=15, accessed 21 January 2010.

133 GOV, <http://gov.cap.ru/home/11/49/hartiy1.htm>, accessed 20 January 2010.

134 О мерах по предупреждению распространения инфекций, передаваемых половым путем: приказ Минздрава РФ от 30 июля 2001 г. Доступ из справ.-правовой системы «КонсультантПлюс». [On the Measures to Prevent Spread of Sexually Transmitted Infections: *Order of the Ministry of Health of the Russian Federation of 30 July 2001*. Available in Russian from the assistance legal system ‘ConsultantPlus’].

information meant, first of all, for high-risk and stigmatised groups, does not reach the addressee in the majority of the cases, and homosexual persons “*may perceive the messages about the danger of infection as a result of homosexual contacts 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) include, in particular: 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.¹³⁵

274. The Order of the Ministry of Health of the Russian Federation on Approval of Clinical Guidelines “Models of Diagnosing and Treating Mental and Behavioural Disorders”¹³⁶ considers bisexuality and homosexuality as deviations of sexual attraction. There is a special block “Disorders of Sexual Preferences” in this Order, which presents the “*criteria of sexual norm*”: *two-ness, heterosexuality, sexual maturity of the partners, voluntariness of the relations, a desire for mutual consent, lack of physical and moral damage to health of the partners and other people*”. Any deviation from these criteria is considered as a sexual preference disorder.
275. Apart from that, it should be noted that there is a certain progress that proves normalisation of homosexuality from the viewpoint of official authorities. Thus, on 16 April 2008, the Order of the Ministry of Health and Social Development of the Russian Federation, was issued. The Order excluded “homosexuality” from the list of absolute grounds for rejection of blood donors.¹³⁷
276. Official Russian psychiatry has moved to the international classification of diseases ICD-10, adopted by the World Health Organisation from 1 January 1999. Despite this, public calls to treat homosexual persons are still being used in public speech and statements against LGBT activism (as illustrated in the other chapters). Besides, there are also evidences of perception of homosexuality as a pathology in the field of psychology.¹³⁸
277. Certain legal difficulties may arise in connection with information about the health of homosexual individual. Thus, if the prognosis for a disease is unfavourable, the information about it should be conveyed in the most delicate form to the patient and his/her family, unless a patient has forbidden to report it to his/her family and (or) has appointed a person which should be provided with such information (Art. 31 of the Fundamentals of Legislation of the Russian Federation on Health Care). Therefore, gays and lesbians can tell their doctors that the details should be given only to they and their partners, and the lack of formal status of a spouse in this case should not have values. In the same way are also regulated the relationships when a person is placed in a psychiatric hospital. The administration and medical staff of the hospital must take steps to alert the family, the legal representative or other person (including, for example, the partner of

135 Организация профилактики ВИЧ-инфекции среди различных групп населения: Методические рекомендации: утв. приказом Минздравсоцразвития РФ от 30 июля 2001 г. Доступ из справ.-правовой системы «КонсультантПлюс». [Organisation of HIV Prevention among Different Groups of Population: Methodological Recommendations: approved by the Order of the Ministry of Health and Social Development of the Russian Federation of 20 December 2006. Available in Russian from the assistance legal system 'ConsultantPlus'].

136 Об утверждении клинического руководства «Модели диагностики и лечения психических и поведенческих расстройств»: приказ Минздрава РФ от 6 авг. 1999 г. Доступ из справ.-правовой системы «КонсультантПлюс». [On Approval of Clinical Guidelines “Models of Diagnosing and Treating Mental and Behavioural Disorders”: Order of the Ministry of Health of the Russian Federation of 6 August 1999. Available in Russian from the assistance legal system 'ConsultantPlus'].

137 О внесении изменений в приказ Министерства здравоохранения Российской Федерации от 14 сентября 2001 г. № 364 «Об утверждении порядка медицинского обследования донора крови и ее компонентов»: приказ Минздравсоцразвития РФ от 16 апреля 2008 г. // Российская газета. – 2008. – 24 мая. [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': Order of the Ministry of Health of the Russian Federation of 16 April 2008 // *Rossiyskaya Gazeta*. – 2008. – May 24].

138 The author was informed about such cases by experts during preparation of the report.

homosexual) under the direction of a patient within 24 hours from his/her arrival in a psychiatric hospital in the involuntary procedure.

278. However, in practice the application of these provisions is ambiguous. For example, the Internal Regulations of the Municipal Health Institution “Abakan City Clinic” contain the following provision: *“Information on the health should be conveyed to the patient and (or) his/her family by doctor in a form, which are accessible for them”*.¹³⁹ On the one hand, the Fundamentals of Legislation of the Russian Federation on Health Care did not establish the possibility of passing the information related to unfavourable prognosis, to third parties. On the other hand, information about unfavourable prognosis should be provided as a general rule, to the patient and to the members of his/her family, but if the patient has made a special order – only to the patient, to the patient, the members of his/her family and another person indicated by him/her (including homosexual partner), or just to the patient and to another person indicated by him/her. The second and the third possibilities are excluded from the above formulation of the Internal Regulations.
279. It is important to note also that a person could be recognised as incapable as a result of his/her mental condition. In this case, all matters relating to his/her health (consent to medical intervention¹⁴⁰ or refusal of medical intervention,¹⁴¹ information on health status, etc.) are solved by his/her legal representatives (by the guardians). In practice, a parent or spouse of incapable person are usually appointed as guardian, therefore the need to appoint homosexual partner as a guardian, of course, would not be obvious for the bodies of trusteeship and guardianship. Similarly, homosexual persons actually raising a child of his/her same-sex partner, are not normally recognised as a legal representative of the child, and therefore is not able to make respective decisions.

C.12. Access to goods and services

280. The main legal source regulating the issues of citizens’ access to goods and services is the Law on Protection of Consumer Rights.¹⁴² However, the text of this Law does not contain any non-discrimination provisions.
281. In practice, refusals to provide goods and services in connection with sexual orientation and gender identity occur. Any specific monitoring of such cases has not been conducted up to the present day, but information on such violations is provided for the Russian LGBT Network.
282. Other cases involving the refusal to rent premises for the LGBT Film Festival is also discussed in the sections 85 of this report.
283. Finally, it is important to note that some organisations providing various services and goods, establish the non-discrimination principle (including that in the context of sexual orientation) in regard to their consumers. Thus, according to the Code of Ethics of OAO “ROSTELECOM”, *“The said persons [the members of the Board of Directors and Audit Committee, management and employees of the Company] is treated with respect to their colleagues, as well as to all of the representatives of clients and business partners,*

139 GUZ, http://guz.abakan.ru/institutions/municipal_polyclinic/documents/inner_rules, accessed 19 January 2010.

140 Art. 32 of the Fundamentals of Legislation of the Russian Federation on Health Care.

141 Art. 33 of the Fundamentals of Legislation of the Russian Federation on Health Care.

142 О защите прав потребителей: Закон Российской Федерации: утв. Верховным Советом РФ 7 февр. 1992 г. // Собрание законодательства РФ. – 1996. – № 3. – Ст. 140. [On Protection of Consumer Rights: *Law of the Russian Federation*: passed by the Supreme Soviet of the Russian Federation on 7 February 1992 // *Collected Legislation of the Russian Federation*. – 1996. – No. 3. – Art. 140].

regardless of their age, disability, gender, nationality, ethnic origin, race, religion or **sexual orientation** and other factors not affecting the business interests of the Company.”¹⁴³ Another example is the Code of Ethics of the Company “Personal-Consulting”, which stresses: “We avoid any discrimination of our clients on the basis of nationality, religion, **sexual orientation**, physical or mental illness, language, socioeconomic status or other grounds”.¹⁴⁴ Nevertheless, for the present such initiatives remain the exception rather than the general rule.

C.13. Media

284. As noted in the third chapter, the Law on Mass Media states in Art. 4 that “no provision shall be made for the use of mass media for ... the spreading of materials containing public calls to extremist activity or publicly justifying terrorism, as well as of other extremist materials and materials propagandising pornography or the cult of violence and cruelty.”
285. Art. 11 of the Federal Law on Counteracting Extremist Activity also stipulates the prohibition on distribution of extremist materials and conduct of extremist activity through mass media. In cases prescribed by law such sanctions as discontinuation of the activity of the respective provider of mass information, as well as stoppage of the printing of issues of periodic publication or circulation of audio- or video recordings or programmes, or the issuance of corresponding tele-, radio- or video programmes could be used in the event of conduct of extremist activity through mass media. A similar prohibition is also set for network connections by Art. 12.
286. Public monitoring and supervision of compliance with Russian legislation in the sphere of media and mass communications, television and radio broadcasting exercised by the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications.¹⁴⁵
287. On the official website of the Service in the section “Monitoring and Supervisory Activity in the Media”¹⁴⁶ there are documents containing information on the warnings issued in connection with violation of the legislation on mass media from 2007 to 2009. However, part of the information in these documents does not reveal the exact nature of illegal publications (for example, only the name of the newspaper and the date of publication are specified), and in those cases where information is sufficient for classifying the content of the publications, a homophobic activities do not mentioned (although warnings for extremist material was issued).
288. During the period from 1999 to 2003 the Trial Chamber for Information Disputes under the President of the Russian Federation operated. It is important to note one of the cases examined by the Chamber.
289. The Chamber considered that one of the programmes produced for television had violated the constitutional rights of convicts.

143 Ростелеком, www.rt.ru/centr-invest/corporate/corp_doc/The_Code_of_Ethics_Rostelecom_ru.pdf, accessed 16 January 2010.

144 Personal Consulting, www.personal-consulting.ru/about_codex.html, accessed 16 January 2010.

145 О Федеральной службе по надзору в сфере связи, информационных технологий и массовых коммуникаций: Положение: утв. Постановлением Правительства РФ от 16 марта 2009 г. // Собрание законодательства РФ. – 2009. – № 12. – Ст. 1431. [On the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications: Regulation: approved by Decision of the Government of the Russian Federation of March 16, 2009 // *Collected Legislation of the Russian Federation*. – 2009. – No. 12. – Art. 1431].

146 RSOC, www.rsoc.ru/mass-communications/control-smi, accessed 18 January 2010.

290. The programme "Wild Field" commented on some aspects of the life of convicted prisoners in one of the penal colonies. A focus on the characteristics of sexual behaviour of women in prison was made at that.
291. To arrange the survey the author of the programme asked for preparing a completely different story and assumed the obligation to respect the right to give a consent to be filmed of the convicted person, and in case of refusal and at the request of the convicted person, to use the method of anonymous survey. However, in preparing the TV programme he grossly violated these commitments, and there have not been received consent of a number of convicted women, stories of whom were included in the programme. Unwillingness of the prisoners to serve as an object of journalistic attention was quite obvious in several episodes. Specific form of sexual orientation and related standards of conduct is attributed to the entire contingent of the colony.
292. The applicants pointed to the possible negative consequences of this programme for women who remain out of prison husbands, children, parents, etc. The Chamber agreed that the dissemination of such information derogates moral principles, as well as could cause significant non-pecuniary damage and destroy family ties.¹⁴⁷
293. In this case, the Chamber emphasised two important conclusions. Firstly, manifestations of homosexuality as such have been seen as something abnormal, potentially harmful, unnatural, and immoral. But secondly, the House recognised that the issues of sexual orientation should be included in the privacy sphere of a person, and therefore should be fully protected.
294. Provisions regarding journalistic ethics, as well as inadmissibility of misuse of the freedom of mass communication as it relates to the activities of extremist nature or discrimination, are also reflected in the recommendation documents adopted by associations of journalists.
295. Thus, the Code of Professional Ethics of Russian Journalist, which has been adopted by the Congress of Journalists of Russia on 23 June 1994 in Moscow, states:
296. *A journalist understands fully the danger of limitations, persecutions and violence, which his activities may provoke. In fulfilling his professional duties he counteracts extremism and restriction of civil rights on any basis including sex, race, language, religion, political or other views as well as social or ethnic origin.*
297. *A journalist respects the honour and dignity of the people who become the objects of his professional attention. He refrains from any derogatory allusions or comments in relation to race, nationality, colour of the skin, religion, social origin or sex as well as in relation to the physical handicap or disease of the person. He refrains from publications of that kind of information with the exception of cases having a direct relation to the content of the published article. A journalist is unconditionally obliged to avoid offensive expressions which may harm the moral and physical health of the people.*¹⁴⁸

147 О нарушении в программе А.Г. Невзорова «Дикое поле» от 30 июня 1995 года конституционных прав осужденных, содержащихся в учреждении УС-20/2: Решение Судебной палаты по информационным спорам при Президенте РФ от 19 окт. 1995 г. // Российская газета. – 1995. – 31 окт. [On violation of the constitutional rights of convicted prisoners in the establishment of УС-20/2 in a programme 'Wild Field' of A.G. Nevzorov on 30 June 1995: Decision of the Trial Chamber for Information Disputes under the President of the Russian Federation on October 19, 1995 // Rossiyskaya Gazeta. – 1995. – 31 October].

148 Available in English at, http://ethicnet.uta.fi/russia/code_of_professional_ethics_of_russian_journalist, accessed 18 January 2010. The same provisions are contained in the Journalist Code of the Sverdlovsk Creative Union of Journalists of 28 June 2002, see in Russian at, www.medialaw.ru/selfreg/13/texts/291.htm, accessed 17 January 2010.

298. The Code of Professional Ethics of Belgorod Journalists,¹⁴⁹ adopted on 6 February 2007 by the Belgorod Public Journalistic Organisation “Press Club”, points out that for ensuring the use of media for the benefit of society *“the use of journalism for giving praise to extremist activity, promotion of pornography, the cult of violence and cruelty, as well as of other acts of cruelty and inhumanity, and incitement to commit acts of violence”* should be excluded.
299. On 8 June 2005, the heads of six Russian television channels signed “Charter of Television Broadcasters against Violence and Cruelty”.¹⁵⁰ This document states that media should take measures to prevent damage to public morals, the dissemination of information and materials of openly cynical or insulting nature and/or promoting a cult of violence and cruelty. As highlighted by the Charter, it is inadmissible to use the media for carrying out extremist activity, as well as for the spreading of programmes which promote pornography, a cult of violence and cruelty; to spread the information in order to discredit a citizen or individual categories of citizens solely on the grounds of sex, age, race or ethnic origin, language, religion, profession, place of residence and work, as well as in connection with their political convictions.
300. Effective ethical codes in the field of mass media explicitly prohibiting abusive and malicious actions on the ground of sexual orientation or gender identity has not been found, but the draft of such document was developed by the Guild of Press Publishers in 2007. According to the Draft of Professional Standards on Conduct of Journalists and Editors of Print Media,¹⁵¹ *“A journalist shall not submit for publication materials that contain libellous or offensive comments about race, colour, religion, sex, **sexual orientation**, physical or mental disability of people.”*
301. There is a further point to be made here, namely the presence of working self-regulatory institutions in the media sphere in Russia.
302. Public Collegium for Press Complaints¹⁵² was founded in 2005. The goals of the Collegium include rooting in the sphere of media of ideals of tolerance and a culture of peace in the context of preventing the dangers of prejudice and discrimination, xenophobia, aggressive nationalism, ethnic and religious disunity, as well as opposition to political and other forms of extremism in media. The target of the Collegium is to review complaints of media audiences about violation of the rules of professional ethics and conduct in this area for the purpose of resolving specific information disputes.
303. The Members of the Collegium rely on the ethical principles laid down in the provisions of the Russian Constitution concerning fundamental rights and freedoms of man and citizen, Russian legislation in the sphere of media, documents of the Council of Europe, UNESCO and the OSCE on issues of ethics and self-regulation in the media, as well as instruments of self-regulation of media organisations. Such sources involve the International Declaration of Principles on the Conduct of Journalists,¹⁵³ pointing out *“that the journalist shall be alert to the danger of discrimination being furthered by media, and shall do the utmost to avoid*

The first paragraph of this citation is literally reproduced by the Moscow Charter of Journalists, which has been adopted in 4 February 1994, see in Russian at, www.presscouncil.ru/index.php?option=com_content&task=view&id=321&Itemid=70, accessed 18 January 2010.

149 Media Law, www.medialaw.ru/selfreg/13/texts/292.htm, accessed 17 January 2010.

150 Press Council, www.presscouncil.ru/index.php?option=com_content&task=view&id=316&Itemid=62, accessed 17 January 2010.

151 Press Council, www.presscouncil.ru/index.php?option=content&task=view&id=166, accessed 16 January 2010.

152 See the site of the Collegium (only in Russian), www.presscouncil.ru, accessed 30 September 2010.

153 International Federation of Journalists, www.ifj.org/en/articles/ifj-declaration-of-principles-on-the-conduct-of-journalists, accessed 18 January 2010.

*facilitating such discriminations based on, among other things, race, sex, **sexual orientation**, language, religion, political or other opinions, and national and social origins”.*

304. In 2005, the Collegium examined the case “Angelica Steff v. the Newspaper “Komsomolskaya Pravda”. The complain was risen from the publication of the article entitled “Who killed the lesbian vagrants?” The article tells about the murder of two women of no fixed residence, with that the newspaper urged the readers to the competition. To participate in the competition the readers had to answer the question as to who was the murderer. A prize was promised for a win. The Collegium noted that the controversial paper in itself represents a rather typical for the mass media note on the criminal subject, but the transforming the murder of two women of no fixed abode into the theme for the detective entertaining competition goes far beyond the permissible limits. In addition, the Collegium stated that in drawing attention of the audience to the alleged non-traditional sexual orientation of the victims, the editors actually provoked a surge of xenophobia among readers, which is clearly manifested in the Internet forum. During the meeting of the Collegium the editors removed the article from the site. The authors of the note were brought to disciplinary liability.¹⁵⁴
305. Finally, some aspects concerning the issues of homophobia in media also are related to advertisement.
306. According to the sixth part of the Art. 5 of the Federal Law on Advertisement,¹⁵⁵ it is not permitted to use in advertising strong language, obscene and abusive images, comparisons and expressions, including those in regard to sex, race, nationality, profession, social category, age, language of person and citizen, official symbols of State (flags, emblems, anthems), religious symbols, objects of cultural heritage (historical and cultural monuments) of the peoples of Russia, as well as objects of cultural heritage included in the World Heritage List.
307. From this point of view the theoretical possibility of countering advertising with elements of homophobic nature exists, but there have been almost no such cases in the practice of the Federal Antimonopoly Service, which has to ensure legitimacy of the actions of the subjects of the advertising market.
308. A certain exception is the following case. On 21 March 2007, the Federal Antimonopoly Service held the meeting of the Expert Council on Administering the Advertising Legislation. The experts were asked to consider a garment advertisement that contains the expression “*Unless you are a “p...as” [Russian taboo for “homosexual”], buy Trespass*”. Having analysed the advertisement, the Expert Council unanimously found it unethical as it contains swearwords and offensive images that violate generally accepted moral norms,¹⁵⁶ although the manufacturer of sportswear on his own site claimed that he appealed to buy their

154 Press Council, www.presscouncil.ru/index.php?option=com_content&task=view&id=17&Itemid=31&limit=1&limitstart=3, 17 January 2010.

155 О рекламе: Федеральный закон: принят Государственной Думой 22 февр. 2006 г.; одобрен Советом Федерации 3 марта 2006 г. // Российская газета. – 2006. – 15 марта [On Advertisement: *Federal Law*: passed by the State Duma on 22 February 2006; endorsed by the Federation Council on 3 March 2006 // *Rossiyskaya Gazeta*. – 2006. – 15 March].

156 Press-release of 22.03.2007 ‘Expert Council on Administering the Advertising Legislation’. Available in English at, www.fas.gov.ru/english/news/n_11858.shtml, accessed 18 January 2010. See also the Protocol of the 14th meeting of the Expert Council on Administering the Advertising Legislation (in Russian) at, www.fas.gov.ru/adcontrol/expert/a_12437.shtml, accessed 18 January 2010.

products to all those who do not consider themselves to be a Papuans, because the latter do not need warm clothes due to the specific climate.¹⁵⁷

309. In this respect it should be noted that while advertising with the elements of homophobic nature was recognised as unethical, and so illegal, the experts referred rather to the fact that the expressions was in contradiction with generally accepted moral norms (the word in itself is a swear word), than to abusive nature of the expressions for homosexual individuals (as a particular social group from a position of the terminology of the Law).
310. Finally, a number of initiatives to establish the principle of non-discrimination in advertising on the level of ethical standards also should be described briefly. Thus, the Draft Russian Code of Advertising and Marketing Communications Practice of 26 March 2008 states: “*Marketing communication should respect human dignity and should not inspire any form of discrimination or tolerate it, including that on grounds of race, nationality, religion, sex, age, disabilities or **sexual orientation***”.¹⁵⁸

C.14. Miscellaneous

311. There are three groups of problems related to homophobia/transphobia and/or discrimination on the grounds of sexual orientation or gender identity, which should be also disclosed in the present report.
312. The first issue regards the attempts to return the criminal prosecution for consensual homosexual relations.
313. Law on Introduction of Amendments and Additions to the Criminal Code of the RSFSR, the Criminal Procedure Code of the RSFSR, and the Correctional Labour Code of the RSFSR¹⁵⁹ was published and put into effect on 3 June 1993. Since then, voluntary homosexual relations between men are no longer considered as a criminal offense. Russian LGBT Network is campaigning for the rehabilitation of convicted under article 121 (“Sodomy”) of the Criminal Code of the RSFSR: the year 2009 has been declared the Year of Memory of Gays and Lesbians – the Victims of Political Repression,¹⁶⁰ an open letter to the deputies of the State Duma of the Federal Assembly, the members of the Federation Council of Federal Assembly of the Russian Federation, the members of the Government of the Russian Federation, and the President of the Russian Federation in support of recognition of convicts for consensual sexual relations between men in 1934–1993 as victims of political repression, was prepared.¹⁶¹ Nevertheless, calls for the return relevant article in the Criminal Code are still being heard, and sometimes they develop into draft laws, presented to the State Duma.
314. Thus, the Draft Federal Law on Amending the Criminal Code was submitted in April 2002. This draft was proposed to restore the criminal liability for voluntary homosexual acts by way of adding to the Criminal Code with Art. 131.1 as follows: “*unnatural gratification of sexual needs of men*

157 Federal Antimonopoly Service of the Russian Federation, www.fas.gov.ru/article/a_11781.shtml, accessed 18 January 2010.

158 Gipp, www.gipp.ru/viewer.php?id=22362, accessed 21 January 2010.

159 О внесении изменений и дополнений в Уголовный кодекс РСФСР, Уголовно-процессуальный кодекс РСФСР и Исправительно-трудовой кодекс РСФСР: Закон: утв. Верховным Советом РФ 29 апреля 1993 г. // Ведомости Съезда народных депутатов и Верховного совета РФ. – 1993. – № 22. – Ст. 789. [On Introduction of Amendments and Additions to the Criminal Code of the RSFSR, the Criminal Procedure Code of the RSFSR, and the Correctional Labour Code of the RSFSR: *Law of the Russian Federation*: passed by the Supreme Soviet of the Russian Federation on 29 April 1993 // *Gazette of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation*. – 1993. – No. 22. – Art. 789].

160 Russian LGBT Network, <http://lgbtnet.ru/news/detail.php?ID=4193>, accessed 22 January 2010.

161 Ibid.

with other men (homosexuality, pederasty) is punishable by imprisonment for a term of one to five years”¹⁶².

315. As was noted in memorandums to the draft, *“the Draft aims to strengthen public morality and health of citizens. Its adoption will help to struggle against sexually transmitted diseases and AIDS, against the involvement of minors in prostitution, and against the spread of pornography. The concept of the draft is supported by many public organisations, including religious associations”*.
316. The State Duma Committee on Civil, Criminal, Arbitral and Procedural Legislation, in its opinion pointed out that these explanations do not contain sufficient justification for such additions, and also noted that the decriminalisation of simple form of sodomy *“corresponds to the Russian Constitution as it pertains to the right to the inviolability of private life, personal and family secrets (Art. 23 of the Constitution of the Russian Federation), and the Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. The cases where government intervention is necessary to protect the morals, health, rights and lawful interests of other persons (the third part of Art. 55 of the Constitution and Art. 131, 133 and 134 of the Criminal Code) are exceptions”*.
317. The State Duma Legal Administration also did not support the proposed bill, citing its contradiction to the norms of international and national law, as well as the fact that *“the deeds described in the draft art. 131.1 of the Criminal Code of the Russian Federation deprived of the basic features of any crime – i.e. social danger”*.
318. On 28 May 2004 the Draft was rejected by the State Duma.¹⁶³
319. The second problem regards to abusive acts of law enforcement bodies in relation to LGBT persons.
320. As stated in the Report 2009, *“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 apprehensions (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 life to threaten or blackmail them and force them to give the “right” declarations”*.¹⁶⁴
321. The Constitution of the Russian Federation stipulates that *“Everyone shall have the right to the inviolability of private life, personal and family secrets, and the protection of honour and good name”*. According to the third part of Art. 56, this right shall not be liable to limitations. Nevertheless, these provisions are violated by law enforcement bodies.

162 О внесении дополнения в Уголовный кодекс Российской Федерации: Федеральный закон: Проект № 199667-3: внесен депутатами Государственной Думы В.Е. Булавиновым, З.А. Муцоевым, Г.И. Райковым, Г.Н. Махачевым 17 апр. 2002 г. [On Amending the Criminal Code of the Russian Federation: Federal Law: Draft No. 199667-3: proposed by deputies of the State Duma V.E. Bulavinov, Z.A. Mutsoev, G.I. Raikov and G.N. Makhachev on 17 April 2002. The draft and relevant materials are available in Russian at: <http://asozd.duma.gov.ru>.

163 О проекте Федерального закона «О внесении дополнения в Уголовный кодекс Российской Федерации»: Постановление Государственной Думы Федерального Собрания Российской Федерации от 28 мая 2004 г. № 598-IV ГД [On the Draft Federal Law on Amending the Criminal Code of the Russian Federation: Decree of the State Duma of the Federal Assembly of the Russian Federation No. 598-IV ГД of 28 May 2004].

164 Report 2009. P. 60. Several concrete cases of such character are also included in the Report 2009 (P. 30–35).

322. One of the examples of this situation is the Order of the Ministry of Internal Affairs of the Republic of Udmurtia “On Measures to Prevent and Punish Violent Assaults Against Minors”.¹⁶⁵ According to the Order, the Action Plan for the Ministry of Interior Affairs in the Republic of Udmurtia to prevent, combat and exposure of violent assaults against minors includes the following:
323. “For the timely recording and conducting further preventive work [it is ordered] to undertake measures to identify: persons suffering from sexual abnormalities, including those **suspected of homosexual inclinations**; persons suffering from drug and alcohol addiction; persons who engage in dissolute lifestyle and indiscriminately having sexual affairs; persons previously convicted of crimes against sexual inviolability and sexual freedom” (until 1 July 2008, then – monthly).
324. The third set of issues concerns procedural aspects of investigation of the crimes and punishment for them.
325. In many democratic countries, the recognition of the importance of close relations between intimate persons is reflected in the rules of non-witnessing against such persons. However, the Criminal Procedure Code of the Russian Federation¹⁶⁶ appears to be discriminating in this sense due to the following reason. Art. 56 of the Code, which provides for the basis of the legal status of a witness as a participant in the criminal proceedings, mentions among his/her rights the right to refuse to testify against himself/herself, his/her spouse and other close relatives, listed exhaustively in Item 4 of 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 person, against whom a criminal proceeding is initiated, does not have the right to refuse to testify against him/her. S/He can be recognised only a close person defined in Item 3 of Art. 5 (“other persons, not including close relatives and relatives, who have the affinity with the victim or with the witness, as well as persons, whose life, health and welfare mean a lot to the victim or to the witness because of existing personal relations”). In such quality the partner has the right to expect certain security measures to be taken in order to protect them in case of threats (Item 3 of Art. 11, Item 9 of Art. 166, Item 2 of Art. 186, Subitem 4 of Item 2 of Art. 241, and Item 5 of Art. 278).
326. Art. 116 of the Criminal Enforcement Code of the Russian Federation¹⁶⁷ considers sodomy and lesbian acts to be gross violations of the established order of sentence service by those condemned to imprisonment, while mentioning nothing about heterosexual relations. This norm is concretised by other acts. Thus, for example, the list of convicts on preventive file, along with those getting ready to abscond from prison, inclined to using, selling or purchasing drugs, etc., includes “persons inclined to sodomy (lesbian acts)”.¹⁶⁸

165 О мерах по предупреждению и пресечению насильственных посягательств в отношении несовершеннолетних: Приказ МВД по Удмурдской Республике от 25 апреля 2008 года. Доступ из справ.-правовой системы «КонсультантПлюс». [On Measures to Prevent and Punish Violent Assaults Against Minors: *Order of the Ministry of Internal Affairs of the Republic of Udmurtia* of 25 April 2008. Available in Russian from the assistance legal system ‘ConsultantPlus’].

166 Уголовно-процессуальный кодекс Российской Федерации: принят Государственной Думой 22 нояб. 2001 г.; одобрен Советом Федерации 5 дек. 2001 г. // Российская газета. – 2001. – 22 дек. [*Criminal Procedure Code of the Russian Federation*: passed by the State Duma on 22 November 2001; endorsed by the Federation Council on 5 December 2001 // *Rossiyskaya Gazeta*. – 2001. – 22 December]. Available in English at, www.legislationline.org/documents/section/criminal-codes, accessed 22 January 2010.

167 Уголовно-исполнительный кодекс Российской Федерации: принят Государственной Думой 18 дек. 1996 г.; одобрен Советом Федерации 25 дек. 1996 г. // Собрание законодательства РФ. – 1997. – № 2. – Ст. 198. [*Criminal Enforcement Code of the Russian Federation*: passed by the State Duma on 18 December 1996; endorsed by the Federation Council on 25 December 1996 // *Collected Legislation of the Russian Federation*. – 1997. – No. 2. – Art. 198].

168 Положение об отряде осужденных исправительного учреждения Федеральной службы исполнения наказаний: утв. приказом Минюста РФ от 30 дек. 2005 г. // Российская газета. – 2006. – 2 марта. [Regulations on the Group of

C.15. Good practice

327. Two groups of good practice can be identified in the field of contributions to greater social inclusion and recognition of LGBT persons.
328. The first group includes actions of the State. In this respect three examples of good practice (or rather some positive development) could be described.
329. Firstly, as was emphasised in chapter two of the report, there are some evidences indicating change of policy of refusal to register LGBT organisations in some regions. As was reported, just in 2009 two LGBT organisations were registered, and the refusal to register another one was successfully appealed in the court. However, practice of refusal to register such organisations (including by reason of contradiction with morality principles, dangerous to marriage institution or demography considerations) remains widespread both in administrative acts and court decisions. Undoubtedly, “good practice” (in so far as the implementation of agreed human rights standards could be marked thus) of respecting freedom of association without discrimination on grounds of sexual orientation or gender identity should be extended to other Russian regions and is necessary for effectual recognition of and respect for human rights of LGBT persons.
330. Secondly, the first experience of conversation and beginning of open dialog with some public authorities (and especially with Russian and regional Ombudsmen), which was discussed partially in paragraph 239 of this paper, could be recognised as a good tendency.
331. Thirdly, practice of monitoring studies and distribution of the reports on their results to the State authorities has also begun to yield its first positive effects. As evidenced by the feedback of officials, acquaintance with the Report 2009 actually leads to an understanding and recognition of a problem of discrimination on grounds of sexual orientation or gender identity in Russia. Thus, according to the letter from the All-Russian Scientific Research Institute of the Ministry of Internal Affairs of the Russian Federation (VNII MVD RF), “...problems and suggestions expounded in the [Report 2009] will be remain within the sight of law enforcement bodies when developing package of preventive measures aiming at the protection of citizens, notwithstanding of their sexual orientation, against criminal infringements”¹⁶⁹.
332. The second group consists of practice of non-government organisations. While these initiatives in most cases are not supported by public authorities, their implementation contributes to changing the situation concerning discrimination and violation of the rights of LGBT persons in Russia. Such initiatives can be divided into two parts: one related to the representatives of the LGBT community, and another related to the society in general or the separate groups of it.
333. Among the measures which have as their target group LGBT persons should be marked the publication of brochures on the rights of LGBT persons in Russia, holding educational events and trainings, as well as targeted professional juridical consulting. Thus, the practical guide “Family Rights of Gays and Lesbians in Russia”¹⁷⁰ was published in two

Convicts of the correctional facilities of the Federal Penitentiary Service: approved by the Order of the Ministry of Justice of the Russian Federation of 30 December 2005 // *Rossiyskaya Gazeta*. – 2006. – March 2].

169 The Letter of the VNII MVD RF of 22 September 2009. Available in Russian at, <http://lgbtnet.ru/news/detail.php?ID=4475>, accessed 28 September 2010.

170 Available in Russian at, <http://lgbtnet.ru/publications/lgbtfamily.pdf>, accessed 22 January 2010.

editions, and about ten seminars and trainings on legal issues were held in 2009 for more than 100 participants.¹⁷¹

334. The initiatives aimed at society in general or at the specific groups (for example, professional communities) also include publications¹⁷² and educational events,¹⁷³ as well as information campaigns.¹⁷⁴

C.16. Annexes

C.16.1. Annex 1 – Case law

Chapter 2, Freedom of Assembly and Association, case 1

335. Case title	On the Pride March 2006 and the pickets
336. Decision date	(1) 26 May 2006, 19 September 2006; (2) 22 August 2006, 28 November 2006
337. Reference details	(1) Тверской районный суд города Москвы, Московский городской суд [Tverskoy District Court of Moscow, Moscow City Court] (2) Таганский районный суд города Москвы, Московский городской суд [Taganskiy District Court of Moscow, Moscow City Court]
338. Key facts of the case	(1) On 15 May 2006 the organisers submitted a notice to the Mayor of Moscow stating the date, time and route of the Pride March. On 18 May 2006 the organisers were informed of the Mayor's decision that the agreement for the march was refused. On 19 May 2006 the organisers challenged before a court the Mayor's decision. On 26 May 2006 the Tverskoy District Court of Moscow dismissed the complaint. On 19 September 2006 the Moscow City Court upheld the first instance judgment as lawful and justified in the circumstances. (2) Having received the reply of 18 May 2006, the organisers filed a notice for holding another event (picketing) on the same date and time as the refused march. On 23 May 2006 the Deputy Prefect of the Moscow Central Administrative Circuit refused the permission to hold the picketing. On 16 June 2006 the organisers challenged before a court the prefect's decision of 23 May 2006. On 22 August 2006 the Taganskiy District Court of Moscow dismissed the complaint, having found the ban justified on safety grounds. On 28 November 2006 the Moscow City Court examined the appeal against the judgment of 22 August 2006 and dismissed it.

171 For example, 'Legal Aspects of LGBT Parenthood' (Novosibirsk), 'The Foundations of Legal Protection for LGBT' (Omsk), 'Legal Assistance for LGBT' (Arkhangelsk), 'Family Rights of Gays and Lesbians in Russia' (Petrozavodsk), 'Legal Support for Public Events' (Tyumen), etc.

172 Thus, brochures 'Myths and facts about gays, lesbians and bisexuals' <http://lgbt.net.ru/publications/mythsandfactslgbt.pdf>, accessed 30 September 2010, and 'Homosexual persons are Received by the Doctor: Psychological Guidelines for Interaction with Patients', <http://lgbt.net.ru/publications/doctorpatient.pdf>, accessed 30 September 2010, was published in 2009.

173 Such events includes, for example, educational two-day seminars for psychologists <http://lgbt.net.ru/news/detail.php?ID=4401>, accessed 30 September 2010, and lawyers, <http://lgbt.net.ru/news/detail.php?ID=4427>, accessed 30 September 2010, which were held also in 2009.

174 For example, 'Week against Homophobia' in 2007, 2008 and 2009 <http://rwaho.wordpress.com>, accessed 30 September 2010; 'Homophobia Victims' Remembrance Day', <http://memorial.lgbt.net.ru>, accessed 30 September 2010; 'Silence – is not the answer, let's talk' in 2007, <http://rmx.ru/news/?news=7351>.

339. Main reasoning/ argumentation	<p>The Mayor of Moscow argued that the agreement for the march was refused on the grounds of public order, prevention of riots, protection of health and morals and rights and freedoms of others. It was indicated, in particular, that numerous petitions had been brought against the march; the march was therefore likely to cause negative reaction and protests against the march participants, which could turn into civil disorder and mass riots. The Deputy Prefect of the Moscow Central Administrative Circuit refused the permission to hold the picketing on the same grounds.</p> <p>The organisers argued that Art. 12 of the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing (hereinafter referred to as Law on Assemblies) imposed an obligation on the authorities, and not the organisers, to make a reasoned proposal for changing the event venue or the time indicated in the notice. They also challenged the finding that the ban was indeed justified on safety grounds claiming that the concerns for safety could have been addressed by providing the protection to the event participants.</p>
340. Key issues (concepts, interpretations) clarified by the case	<p>The courts referred to norms of the Law on Assemblies concerning the authorities responsible for ensuring safety of the events, who were entitled to suggest changing the time and/or the venue of the proposed event on safety grounds (Art. 12 and 14). They also noted that a public event may be held at any suitable venue unless it threatens to cause collapse of buildings or constructions or bears safety risks to its participants (Art. 8). They then noted the organisers' right to hold the event at the venue and time indicated in the notice to the authorities or at the venue and time agreed with the authorities had they suggested a change thereof, and that it was prohibited to hold the event if the notice had not been given on time or if the organisers had failed to agree to a change of venue or time proposed by the authorities (Art. 5). Finally, the courts noted that it is prohibited to interfere with the expression of opinion by the participants of the public event unless they breached public order or the format of the event (Art. 18). They concluded on the basis of these provisions that the authorities could ban the public event on safety grounds and that it was for the organisers to file a notice about the change of venue and time to be considered by the authorities. The refusal for holding the event had legitimate grounds and the applicant's right to hold assemblies and other public events had not been breached.</p>
341. Results (sanctions) and key consequences or implications of the case	<p>The refusals for holding the events was evaluated as having legitimate grounds and the applicant's right to hold assemblies and other public events, according to the courts, had not been breached.</p> <p>This case became the basis for the application lodged to the European Court of Human Rights.</p>

Chapter 2, Freedom of Assembly and Association, case 2

342. Case title	On the Gay Pride 2007 and the pickets
343. Decision date	(1) 4 September 2007, 6 December 2007 (2) 24 August 2007, 8 November 2007
344. Reference	(1) Тверской районный суд города Москвы, Московский городской суд [Tverskoy District Court of Moscow, Moscow City Court] (2) Таганский районный суд города Москвы, Московский городской суд

details	[Taganskiy District Court of Moscow, Moscow City Court]
345. Key facts of the case	<p>(1) On 15 May 2007 the organisers submitted a notice to the Mayor of Moscow stating the date, time and route of the Gay Pride. On 16 May 2007 the Department for Liaison with Security Authorities of the Moscow Government informed the organisers that the agreement for the march was refused. On 30 May 2007 the organisers challenged before a court this decision of 16 May 2007. On 4 September 2007 the Tverskoy District Court dismissed the claim. The judgment was upheld on 6 December 2007 by the Moscow City Court.</p> <p>(2) Having received the reply of 16 May 2007, the organisers filed a notice for holding other events on the same date and time as the refused march. They informed the Prefect of the Moscow Central Administrative Circuit of their intention to hold picketing in front of the Moscow Mayor's Office and another one in the park. On 23 May 2007 the organisers were informed of the Prefect having refused the permission to hold the picketing in both venues. On 26 June 2007 the organisers challenged before a court the prefect's decision. On 24 August 2007 the Taganskiy District Court of Moscow dismissed the complaint. The judgment was upheld on 8 November 2007 by the Moscow City Court.</p>
346. Main reasoning/ argumentation	<p>The Mayor of Moscow argued that the agreement for the march was refused on the grounds of potential breaches of public order and violence against the participants, with reference to the events of the previous year. The Prefect refused the permission to hold the picketing on the grounds of public order, prevention of riots, protection of health and morals and rights and freedoms of others.</p> <p>The organisers alleged that under the Law on Assemblies the authorities were not entitled to ban public events, but could only propose changing their time and location, which in the present cases they did not. They also argued that the official disapproval of the purpose of a public event was not by itself sufficient, in a democratic society, for a ban.</p>
347. Key issues (concepts, interpretations) clarified by the case	<p>The Tverskoy District Court upheld the grounds for the ban on the march and confirmed the lawfulness of the authorities' acts.</p> <p>The Taganskiy District Court of Moscow founded the ban justified on safety grounds.</p>
348. Results (sanctions) and key consequences or implications of the case	<p>The courts upheld the grounds for the bans on the march and the picketing confirmed the lawfulness of the authorities' acts.</p> <p>This case became the basis for the application lodged to the European Court of Human Rights.</p>

Chapter 2, Freedom of Assembly and Association, case 3

349. Case title	On the Gay Pride 2008 and the pickets
350. Decision date	<p>(1) 17 September 2008, 2 December 2008</p> <p>(2) 22 July 2008, 14 October 2008</p>

351. Reference details	(1) Тверской районный суд города Москвы, Московский городской суд [Tverskoy District Court of Moscow, Moscow City Court] (2) Таганский районный суд города Москвы, Московский городской суд [Taganskiy District Court of Moscow, Moscow City Court]
352. Key facts of the case	(1) On 18 April 2008 the organisers submitted a notice to the Mayor of Moscow stating the date, time and route of ten intended marches to be held on 1 and 2 May 2008 in central Moscow. On 24 April 2008 the Department for Liaison with Security Authorities of the Moscow Government informed the organisers that the agreement for all marches was refused. On 22 April 2008 the organisers filed a notice for holding another 15 marches on 3-5 May 2008. On 28 April 2008 the Department for Liaison with Security Authorities of the Moscow Government informed the organisers that the agreement for the 15 marches was also refused on the same grounds. The organisers filed a number of alternative proposals for holding marches on different dates in May 2008 and in various locations. These proposals were refused, on the same grounds. From 28 April 2008 to 17 June 2008 the organisers filed several court actions challenging the Moscow Mayor's decisions refusing the marches. The Tverskoy District Court joined these applications and on 17 September 2008 dismissed the claim. The judgment was upheld on 2 December 2008 by the Moscow City Court. (2) The organisers also attempted to arrange picketing to call for criminal charges to be brought against the Mayor of Moscow under Article 149 of the Criminal Code for banning the public events. The picketing intended to be held on 17 May 2008 was refused on 13 May 2008 on the same grounds as the previous events. This decision was reviewed and upheld by the Taganskiy District Court on 22 July 2008 and, on appeal, by the Moscow City Court on 14 October 2008.
353. Main reasoning/argumentation	The Authorities argued that the agreement for the march was refused on the grounds of potential breaches of public order and violence against the participants.
354. Key issues (concepts, interpretations) clarified by the case	The courts upheld the grounds for the bans on the march and the picketing confirmed the lawfulness of the authorities' acts.
355. Results (sanctions) and key consequences or implications of the case	The courts upheld the grounds for the bans on the march and the picketing confirmed the lawfulness of the authorities' acts. This case became the basis for the application lodged to the European Court of Human Rights.

Chapter 2, Freedom of Assembly and Association, case 4

356. Case title	По кассационной жалобе истцов Гилева Д.А. и Каринина П.М. на решение Центрального районного суда г. Омска об отказе в регистрации Управлением юстиции Администрации Омской области в качестве юридического лица Омской региональной общественной организации геев и
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	<p>лесбиянок Клуб «Парус».</p> <p>[On cassation appeal of the plaintiffs D.A. Gilev and P.M. Karinin on the decision of Centralnyj District Court of Omsk to refuse of the Office of Justice Administration of the Omsk region to register the Omsk regional public organisation of gays and lesbians Club “Parus” as a legal entity]</p>
357. Decision date	6 September 2000
358. Reference details	Судебная коллегия по гражданским делам Омского областного суда [Judicial Division for Civil Cases of Omsk Regional Court]
359. Key facts of the case	<p>Omsk regional public organisation of gays and lesbians Club “Parus” operates as a public association without forming a legal entity in the territory of Omsk and the Omsk Region from 10 February 1994 under the State Regional Centre for Prevention and Control of AIDS.</p> <p>On 22 April 2000 the decision on state registration of the public association as a legal entity was made at the founding meeting of the Club “Parus”. A package of documents was prepared and then delivered to the Department of Justice for registration. However, on 28 April 2000 The Justice Department has denied the registration of public associations. The refusal was unsuccessfully appealed to the district court. On the decision of the district court a cassation appeal was submitted.</p>
360. Main reasoning/argumentation	<p>Applicants argued that denial of state registration is not based on law; violations that would prevent the registration of the Club “Parus” are not indicated. The order denies the rights of Russian citizens to the association for protecting their interests, as well as freedom of public association guaranteed by the Constitution of Russia.</p> <p>The representative of the Department of Justice noted that create the formation of this public association is contrary to morality, because the Statute of the organisation implies that it aims at publishing magazines and books, distributing literature, and conducting other activities for involvement in the organisation of other young people.</p> <p>The District Court ruled to dismiss the complaint, stating, inter alia, that “the denial of registration does not infringe the constitutional rights of members of existing organisations to association for protecting their interests. The denial does not mean a ban on their activities, it just does not give them the opportunity to acquire legal personality.”</p>
361. Key issues (concepts, interpretations) clarified by the case	<p>Judicial Division has not found any reasons for reversal of the judgment, stating the follows.</p> <p>According to the Statute of the organisation, the above public association for the achievement of its purposes will publish magazines, books, newsletters, conference materials, distribute the literature, organise evenings and banquets for persons of homosexual orientation, and conduct conferences, symposia, seminars, festivals and competitions of gays and lesbians, that is, propagate by all available means their lifestyles, attitudes, beliefs, and homosexual orientation. In refusing to register the association the registration authority indicates that the activity of the organisation in accordance with the above goals does not meet the established in society moral and ethical standards, and in this connection many citizens and public associations will perceive the registration of the organisation as an insult to society in general and the violation of moral principles.</p> <p>The court agreed with the reasons for the refusal to register the public association, also noting that the actions envisaged in the Statute of the association for achieving its goals would violate the prevailing social moral and ethical standards.</p>

362. Results (sanctions) and key consequences or implications of the case	District Court's decision to leave without satisfying the application concerning recognition as illegal the denial of state registration of the organisation has left unchanged, and cassation appeal has dismissed.
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Chapter 2, Freedom of Assembly and Association, case 5

363. Case title	N 496-О «Об отказе в принятии к рассмотрению жалобы граждан Богданова Андрея Евгеньевича, Мальцева Дмитрия Сергеевича и Сыромолотова Михаила Евгеньевича на нарушение их конституционных прав статьей 23 Федерального закона "Об общественных объединениях"» ["On refusal to consider the complaint of citizens Bogdanov Andrei Evgenevich, Malcev Dmitry Sergeevich and Syromolotov Mikhail Evgenevich regarding the violation of their constitutional rights by Article 23 of the Federal Law on Public Associations"]
364. Decision date	15 February 2005
365. Reference details	Конституционный Суд Российской Федерации [Constitutional Court of the Russian Federation]
366. Key facts of the case	Several citizens applied to the Administration of the Ministry of Justice for registration of a regional youth human rights public association "Fellowship of homosexual youth Geysler". However, the Administration denied registration of the public association on various grounds. The district court found one of the decisions to deny as unlawful and ordered the Administration to reconsider the package of documents of the public association in order for a decision to be made on state registration in the manner prescribed by the law. The court referred to the fact that Article 23 of the Federal Law on Public Associations does not limit the registrar's right to refuse state registration on the grounds enumerated in this article, for the reason that the earlier decision to refuse the registration is not cited such grounds. This decision was overturned soon and the case was reopened. Then the case was leave without consideration due to the absence of the parties. The members of the association appealed to the Constitutional Court of the Russian Federation for the challenge of the constitutionality of Article 23 of the Federal Law on public associations, which provides that in case of refusal of state registration of public associations applicants shall be notified in writing, stating the specific provisions of Russian legislation, the violation of which resulted in the denial of state registration of the association.
367. Main reasoning/ argumentation	Applicants argued that the rule of Article 23 of the Federal Law on Public Associations in view of the meaning attached to it by legal practice does not conform to Article 30 of the Russian Constitution, because it allows the registering authority to refuse repeatedly the registration of public association, and that violates right to association and freedom of association of citizens who wish to acquire rights of legal entity and to function in such conditions.

<p>368. Key issues (concepts, interpretations) clarified by the case</p>	<p>As indicated by the Constitutional Court, the public association “Geyser” is actually created and operates without state registration and the acquisition of the rights of legal entity. Consequently, the complainants' assertion that the right of association is violated by the denial of state registration of the public associations, do not comply with the provisions of the Federal Law on public associations.</p> <p>The Constitution of the Russian Federation (the first part of Article 30) guarantees the freedom of public associations. A manifestation of this freedom is the legal ability, which is provided by the Federal Law, either to register the public association and to acquire the rights of legal entity, or to operate without state registration and the acquisition of those rights.</p> <p>Article 23 of the Federal Law on Public Associations is in itself designed to protect everyone's right to association and to ensure compliance with the principle of freedom of public associations, as this article obliges the registration authority in case of refusal of state registration of public associations to inform the applicant in writing form, indicating the specific grounds for refusal and citing the provisions of the Russian legislation. Such a refusal or evasion of state registration may be appealed in court. Deciding whether to refuse the registration of public associations, the court must follow grounds for such denial, established by Article 23 of the Federal Law on Public Associations, and cannot be limited to the establishment of the formal conditions of application of the provisions of this article.</p> <p>Thus, the challenged provisions of Article 23 of the Federal Law on Public Associations by themselves do not violate any constitutional rights of citizens. In fact, the applicants asked the Constitutional Court to verify the legality and well-foundedness of the denial of the state registration of public association established by them, but such review is not within the competence of the Russian Constitutional Court.</p>
<p>369. Results (sanctions) and key consequences or implications of the case</p>	<p>The Constitutional Court found no grounds for considering the application.</p>

Chapter 2, Freedom of Assembly and Association, case 6

<p>370. Case title</p>	<p>Дело № 33-2383 По кассационной жалобе Жданова А.В. на решение Центрального районного суда г. Тюмени [Case No. 33-2383 On the cassation appeal of Zhdanov A.V. on the decision of the Centralny District Court of the Tyumen]</p>
<p>371. Decision date</p>	<p>17 December 2007</p>
<p>372. Reference details</p>	<p>Судебная коллегия по гражданским делам Тюменского областного суда [Judicial Division for Civil Cases of the Tyumen Regional Court]</p>
<p>373. Key facts of</p>	<p>Founder of the Tyumen regional public organisation of protection of sexual rights of citizens “Rainbow House” applied to the Regional Office of the Federal</p>

<p>the case</p>	<p>Registration Service for the state registration of the organisation. However, the registration of the organisation has been repeatedly denied. Refusal to register the organisation was unsuccessfully challenged in the courts and administratively. The District Court, in particular, pointed out that because the organisation has in fact created and operates, the denial of state registration does not violate the constitutionally guaranteed right of association. A cassation appeal was filed on the decision of the district court.</p>
<p>374. Main reasoning/ argumentation</p>	<p>The refusals to register the organisation were justified in particular by the fact that the goals of the organisation aimed “to protect the rights and freedoms of individuals, including persons of non-traditional sexual orientation, to promote education of identity of these individuals as citizens of society which are equal in rights and value”, which means “the propaganda of non-traditional sexual orientation”, which in turn “could lead to undermining the security of Russian society and State”, since it would “undermine the moral values of society, and undermined the sovereignty and territorial integrity of Russia because of a reduction of the population”, which means that activity of the organisation “infringe on institutions of family and marriage, protected by the State”. The activity of the organisation may violate the rights and freedoms of others, and may bring social and religious hatred and enmity. Accordingly, the activity of the organisation may bear the marks of extremism. The complainant argued that an extremist nature of the activity of organisation does not follow from the statute of the organisation. Other grounds for refusal of registration are insubstantial and disposable. Acts of the Regional Office of the Federal Registration Service impede the realisation of the rights of the applicant as a member of the public organisation.</p>
<p>375. Key issues (concepts, interpretations) clarified by the case</p>	<p>As indicated by the court of cassation, the analysis of the provisions of the statute of the organisation shows that some of its provisions had signs of extremism (propaganda of non-traditional sexual orientation, which poses a threat to security of the State and society, create a prerequisite for initiating the social and religious hatred and enmity, and violates the foundations of marriage and family contrary to the provisions of Articles 29 and 38 of the Russian Constitution, Articles 1 and 12 of FC RF, Article 16 of the Federal Law on Public Associations), and this is a legitimate reason for refusing to register the organisation in accordance with paragraphs 1 and 2 of the first part of Article 23 of the Federal Law on public associations. In addition, the refusal did not violate the rights and freedoms of the applicant as a member of the organisation, because it is possible to reapply for registration of legal entity after eliminating the existing deficiencies in the statute.</p>
<p>376. Results (sanctions) and key consequences or implications of the case</p>	<p>District Court’s decision to leave without satisfying the application concerning recognition as illegal the denial of state registration of the organisation has left unchanged, and cassation appeal has dismissed. This case became the basis for the application lodged to the European Court of Human Rights.</p>

Chapter 4, Hate Crime – Criminal Law, case 1

377. Case title	По кассационной жалобе на отказ Следственного отдела по городу Тамбову Следственного управления Следственного комитета при прокуратуре РФ в возбуждении уголовного дела в отношении губернатора Тамбовской области Олега Бетина [On cassation appeal on the refusal of the investigation department for Tambov city of the Investigation Directorate of the Investigation Committee under the Prosecutor's Office of the Russian Federation to open criminal case in relation to the governor of Tambov oblast Oleg Betin]
378. Decision date	13 November 2008
379. Reference details	Судебная коллегия по уголовным делам Тамбовского областного суда [Judicial Division for Criminal Cases of the Tambov Regional Court]
380. Key facts of the case	<p>On 16 May 2008, the Governor of Tambov oblast Oleg Betin 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 in the wind!... This rotten nest must be wiped out!"</p> <p>The Moscow LGBT activists submitted a petition to the General prosecutor's Office of the Russian Federation requesting to verify hostile statements of the governor addressed to gays and lesbians, and to initiate criminal proceedings against him. On 29 May 2008, the General Prosecutor's Office transmitted the petition of the gay activists to the prosecutor's office of Tambov oblast for examination. On 8 July 2008, 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.</p> <p>GayRussia.Ru activists appealed decision of 8 July 2008. On 6 October 2008, Leninsky District Court of Tambov declined the protest. A cassation appeal was filed on this decision.</p>
381. Main reasoning/ argumentation	<p>The applicants claimed that "the Betin's deeds are a crime, criminal liability for which is stipulated by the Article 282 of the Criminal Code ("Incitement of Hatred or Enmity, as Well as Abasement of Human Dignity)". Activists also pointed out that "Betin spoke in the media intentionally, on the basis of hostility towards persons of homosexual orientation, being a public figure, and with the purpose of inciting social hatred – the hatred towards a particular social group. Wielding a certain social influence, the Governor of the Tambov Region urged to commit violence against persons of homosexual orientation."</p> <p>The investigation department had refused to open a criminal case emphasised that the experts did not consider the governor's statements abusive and gave a conclusion that "homosexual persons were not a social group and could not be considered subject to incitement of hatred or enmity".</p> <p>The activists also applied to Russian famous researcher Igor Kohn for an expert opinion on the issue. According to the Kohn, homosexual persons can be regarded as a social group. This conclusion was admitted as evidence by the court of first instance.</p> <p>In the cassation appeal, the applicants referred to several decisions of the Constitutional Court of Russia, from which they were entitled to appeal against the decision of the investigation. Furthermore, they insisted that, as a person of</p>

	<p>homosexual orientation, they are included in the relevant social group, in the address of which spoke Betin with the offensive and hate speech.</p> <p>The District Court concluded that the refusal of the investigation department to open a criminal case did not affect the legitimate interests of the applicants.</p>
382. Key issues (concepts, interpretations) clarified by the case	<p>The Judicial Division for Criminal Cases of Tambov Regional Court stated that “as seen from the case, the applicants requested an opening of criminal case against Betin for inciting hatred or enmity toward persons of homosexual orientation as towards the persons of a particular social group. However, the deeds described in Article 282 of the Criminal Code, referred to the crime by the legislator only when they are aimed at inciting hatred or enmity, as well as the humiliation of man not on any reason, but on those reasons, which are listed in the article, i.e. gender, race, nationality, language, origin, religion, or belonging to any social group. Individuals cannot be attributed to a particular social group only on the ground of its sexual characteristics and manner of meeting the sexual needs.”</p> <p>The Judicial Division also emphasised that “the court's finding that the decision of an investigator of 8 July 2008 does not affect the interests of applicants who do not belong to any particular social group, is correct and conforms to the norms of substantive and procedural law.”</p>
383. Results (sanctions) and key consequences or implications of the case	<p>District Court's decision to leave without satisfying the application has left unchanged, and cassation appeal has dismissed.</p> <p>As reported in the press, on 2 April 2009 the applicants filed a supervisory appeal to the Presidium of the Tambov Regional Court, claiming to overturn the earlier decisions. On 5 May 2009 the supervisory appeal was dismissed. On 2 September 2009 confirmed this decision was affirmed by the Chairman of the Tambov Regional Court, and then the applicants appealed to the Supreme Court of Russia. The Supreme Court also recognised all previously decisions as legitimate.</p> <p>This case became the basis for the application lodged to the European Court of Human Rights.</p>

Chapter 5, Family issues, case 1

384. Case title	<p>N 496-О «Об отказе в принятии к рассмотрению жалобы гражданина Э. Мурзина на нарушение его конституционных прав пунктом 1 статьи 12 Семейного кодекса Российской Федерации» [“On refusal to consider the complaint of citizen E. Murzin regarding the violation of his constitutional rights by Point 1 of Article 12 of the Family Code of the Russian Federation”]</p>
385. Decision date	16 November 2006
386. Reference details	Конституционный Суд Российской Федерации [Constitutional Court of the Russian Federation]
387. Key facts of the case	Two men, Edward Murzin and Edward Mishin, applied to the office of civil registration for registration of marriage between them. Their requirements were refused to meet. The refusal was appealed to the district court in Moscow, but the court found no violation, and indicated that in this case was not (and could not be) met one of conditions of marriage, established in Paragraph 1 of Article 12 of

	<p>the FC RF, namely, mutual voluntary agreement between man and woman entering into marriage. The court of cassation has left that decision unchanged. Then E. Murzin appealed to the Constitutional Court of the Russian Federation for the challenge of the constitutionality of Paragraph 1 of Article 12 of the FC RF.</p>
<p>388. Main reasoning/ argumentation</p>	<p>According to the applicant, Paragraph 1 of Article 12 of the FC RF, as a basis for refusing registration of a marriage between persons of the same sex violates the rights guaranteed by Articles 17-19 and 23 of the Russian Constitution. The applicant relies on the experience of several European countries that recognise the same-sex marriage or registered partnership.</p>
<p>389. Key issues (concepts, interpretations) clarified by the case</p>	<p>As indicated by the Constitutional Court, both the Constitution of the Russian Federation, and international standards based on the fact that one of the intended purposes of the family is the bearing and upbringing of children. With this in mind, as well as national traditions related to marriage as a biological union between a man and a woman, the FC RF indicates that family relations are regulated in accordance with, inter alia, the principles of the voluntary nature of the union of men and women, the priority of family child-rearing, and caring for their welfare and development (Article 1). Thus, the federal legislator within its competence referred a voluntary mutual agreement between man and woman to the conditions of marriage that cannot be regarded as a violation of constitutional rights and freedoms enumerated in the application.</p> <p>Formally challenged the constitutionality of Paragraph 1 of Article 12 of the FC RF, the applicant actually requires a public recognition of his relationship with another man by their registration in the form of a specific union, which is protected by the State.</p> <p>Meanwhile, neither the Russian Constitution, nor obligations assumed by Russia under international law does not imply the duty of the Russian Federation to create conditions for propaganda, supporting and recognition of same-sex unions, and the mere absence of such registration does not affect the level of recognition and safeguarding of the applicant's human and civil rights and freedoms in Russia.</p> <p>The fact that several European countries support another approach to addressing the demographic and social issues also does not constitute a violation of the applicant's constitutional rights, the more so because the right to marry and to found a family is recognised just for men and women by Article 23 of the International Covenant on Civil and Political Rights, and Article 12 of the Convention on the Protection of Human Rights and Fundamental Freedoms expressly provides for the possibility of the family foundation in accordance with the national laws governing the exercise of this right.</p>
<p>390. Results (sanctions) and key consequences or implications of the case</p>	<p>The Constitutional Court found no grounds for considering the application.</p>

Chapter 5, Family issues, case 2

391. Case title	По заявлению об оспаривании отказа Тверского ЗАГСа Москвы в регистрации брака между Ириной Федотовой (Фет) и Ириной Шипитко [On Applications for Disputing the refusal of the Tverskoy Office of Civil Registration of Moscow to register a marriage between Irina Fedotova (Fet) and Irina Shipitko]
392. Decision date	6 October 2009
393. Reference details	Тверской районный суд города Москвы [Tverskoy District Court of Moscow]
394. Key facts of the case	<p>On 12 May 2009, two women, Irina Fedotova (Fet) and Irina Shipitko, applied to the Tverskoy Office of Civil Registration for registration of marriage between them.</p> <p>The Head of the Office refused to accept the application for registration at first, citing the fact that, according to the Family Code, marriage can be entered into only by a man and a woman. But after the intervention of counsel of the couple the Head of the Office accepted free-format application. Half an hour later an official refusal to register the marriage, stating that “the basic principle” of a marriage in Russia is a union between a man and a woman, was granted. Thus, a same-sex marriage cannot be registered on the territory of Russia.</p> <p>In June 2009, Irina Fedotova (Fet) and Irina Shipitko filed a petition to the Tverskoy District Court of Moscow. The applicants requested to recognise the acts of the Tverskoy Office of Civil Registration as illegal, and to compel it to register the marriage.</p>
395. Main reasoning/argumentation	<p>The appellants argued that “all the conditions prescribed by law, were satisfied.” They also noted that “the Russia Constitution and legislation in the field of regulation of family relations do not prohibit marriage between persons of same sex. Furthermore, the right to respect for family life and the right to marriage, including these of two individuals of the same sex, are guaranteed by Articles 8 and 12 of the European Convention on Human Rights and Fundamental Freedoms, ratified by the Russian Federation.”</p>
396. Key issues (concepts, interpretations) clarified by the case	<p>On 6 October 2009 Tverskoy District Court dismissed the applicants' claims, thus confirming the legality of the refusal to register a marriage between two women.</p>
397. Results (sanctions) and key consequences or implications of the case	<p>On 3 November 2009 Irina Fedotova (Fet) and Irina Shipitko filed to the Moscow City Court the cassation appeal from the decision of the Tverskoy District Court. Consideration of the cassation appeal is scheduled for January 2010. The complainants insist that both Russian and the international law does not prevent the registration of a same-sex marriage, and therefore the Tverskoy District Court of Moscow misused the provisions of the Family Code, the Constitution and the European Convention on Human Rights.</p> <p>According to press reports, the deeds of the Russian authorities in this case could be a cause for complaint to the European Court of Human Rights.</p>

Chapter 8, Education, case 1

Case title	По иску Н.А. Алексеева к МГУ им. М.В. Ломоносова о защите прав потребителя [In the action of N.A. Alekseyev against Lomonosov Moscow State University for consumer protection]
Decision date	10 June 2005, 9 September 2005
Reference details	Никулинский районный суд города Москвы, Московский городской суд [Nikulinsky District Court of Moscow, Moscow City Court]
Key facts of the case	A former postgraduate student of Public Administration Faculty of Moscow State University claimed the recognition of the illegality of denial of approval as the dissertation topic "Legal Regulation of the Status of Sexual Minorities" in 2001, of discrimination based on sexual orientation, which took place against him, as well as of compensation for material and moral damages.
Main reasoning/argumentation	In statement of defence Moscow State University indicated that "the assignment of a person to homosexual persons cannot be libellous fact, since these deviations in the mental status of the individual is no longer seen as a disease, and through the efforts of persons belonging to these stratum, including Alekseev, tolerant attitude to this kind of sexual preference is cultivated in society." Statement of the University also pointed out that homosexual orientation is "an inappropriate sexual orientation."
Key issues (concepts, interpretations) clarified by the case	The court of first instance dismissed the claim and, in particular, indicated that "The Court cannot agree with the plaintiff's reference to the fact that the refusal to change the topic of the dissertation research on title proposed by the plaintiff - "Legal Regulation of the Status of Sexual Minorities" - confirms his claim, since the testimony of a witness (Dean of the Faculty) shows that the topic proposed by the plaintiff has the right to existence, but it is outside the research agenda of the faculty, and about discrimination against the plaintiff he learned only from the complaint." District Court's decision to leave without satisfying the complaint has left unchanged by the Judicial Division for Civil Cases of the Moscow City Court.
Results (sanctions) and key consequences or implications of the case	Both courts found the plaintiff's claim as groundless. On 15 May 2006 N. Alekseyev sent to the European Court of Human Rights full text of the complaint against Russia. Claimant alleges that the Russian Federation acting by Lomonosov Moscow State University violated his right to respect for private life (Art. 8 of the Convention), the right to education (Art. 2 of the Additional Protocol 1 to the Convention), as well as these articles together with the antidiscrimination Art. 14 of the European Convention.

Chapter 9, Employment, case 1

398. Case title	По иску о признании незаконным увольнения и восстановлении на работе [In the action for recognition of the dismissal as illegal and reengagement]
399. Decision date	28 December 2004
400. Reference details	Дзержинский районный суд города Ярославля [Dzerzhinsky District Court of the Yaroslavl]
401. Key facts of the case	The woman of homosexual orientation had been dismissed from her position as educator in a kindergarten with the official motivation "for health reasons".

402. Main reasoning/argumentation	At the court sitting the director of the kindergarten explained that he had dismissed the employee just because he was a lesbian: "I could not keep her at our kindergarten for the reasons of morals and virtue".
403. Key issues (concepts, interpretations) clarified by the case	N/A
404. Results (sanctions) and key consequences or implications of the case	The court invalidated the dismissal and restored the plaintiff to her rights.

Chapter 9, Employment, case 2

405. Case title	По иску о признании незаконным решения врачебной экспертной комиссии государственного учреждения здравоохранения [In the action for recognising the decision of the medical expert commission of the state healthcare institution as invalid]
406. Decision date	20 September 2005
407. Reference details	Фрунзенский районный суд города Санкт-Петербурга [Frunzensky District Court of St. Petersburg]
408. Key facts of the case	The military service record card of the plaintiff had contained a note on a "mental deviation" made solely on the basis of his homosexuality. In 2003, he was taken off the books at the psycho neurological dispensary. However, the military enlistment office refused to remove the note from the military service record card, still considering him unfit for military service because of 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 addressed to the polyclinic of Oktyabrsky Railway for a medical opinion to be able to register for courses of train attendants. They refused to find him fit for the profession of train attendant at the polyclinic on the ground of the note in his military service record card and the fact that he had been registered with the psycho neurological dispensary.
409. Main reasoning/argumentation	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 labour guaranteed by the Constitution of the Russian Federation. Moreover, the Psychiatric Human Rights Centre also sustained that homosexuality of the applicant should never be considered as a mental disorder.

<p>410. Key issues (concepts, interpretations) clarified by the case</p>	<p>The court made two important conclusions:</p> <p>1. The court found the practice of using 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 record and not for determining medical contraindications to labour activity. The court noted that the federal legislation obliges employers to consider reports on absence of psychiatric contraindications issued by authorised healthcare institutions only, and in that case the applicant had the report of the psycho neurological dispensary on absence of any contraindications, which was illegally ignored by the Railway polyclinic.</p> <p>2. The court indicated that “perverse psychopathia” the plaintiff was diagnosed with in 1992 was based on his homosexual orientation only. Thus, the court confirmed it once again that homosexuality was not a mental disorder. In particular, the court decision stated: “The diagnose of “perverse psychopathia” was entirely based on the former opinion that homosexual orientation was one of pathological personality conditions and was a disease, while there were no other grounds for diagnosing the plaintiff with mental disorder, then such diagnose 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...”</p>
<p>411. Results (sanctions) and key consequences or implications of the case</p>	<p>The court invalidated the discriminatory decision of JSC “Russian Railway” concerning a candidate who was refused registration for training just because his military service record card contained a note on a “mental deviation” made solely on the basis of his homosexuality.</p>

C.16.2. Annex 2 – Statistics

412. Official statistics on cases related to some or other aspects relevant for this report have not been collected (or at least are not in the public domain). When preparing this report, the attempts to contact several public authorities (in particular, the Prosecutor General's Office – regarding homophobic crimes, and the Ministry of Education – regarding the adoption of children by homosexual persons) were made.
413. According to the reply of the General Prosecutor's Office, “*the General Prosecutor's Office has no statistical or other data on crimes... related to hatred or enmity toward people of non-traditional sexual orientation*”.¹⁷⁵
414. The Department of State Policy in Education, Additional Education and Social Protection of Children of the Russian Ministry of Education and Science in the same way replied that “*the Department has no statistics on the questions posed*”.¹⁷⁶

¹⁷⁵ The Letter of the General Prosecutor's Office of 11 February 2010 No. 27-32-2010 (unpublished).

¹⁷⁶ The Letter of the Department of State Policy in Education, Additional Education and Social Protection of Children of the Russian Ministry of Education and Science of 18 February 2010 No. 06-PG-MON-588 (unpublished).