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Joint submission about LGBT+ rights in Russia

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As a result of the previous UPR cycle in 2018, several recommendations were accepted by Russia (namely, 147.89 — 147.98, 147.123 — 147.129, 147.238). None of them were implemented and the situation worsened for the last 4 years.

This report on the situation with LGBT+ rights in Russia is provided by a coalition of LGBT+ organisations for the 44th UPR session. The following organisations contributed to this report:

"Sphere Foundation" (spherequeer.org) was an NGO based in St. Petersburg, Russia since 2011, through the years having evolved into the biggest Russian LGBT+ foundation. From the onset, Charitable Foundation 'Sphere' acted as a fiscal sponsor and implementing body for key LGBT+ rights initiatives across Russia. In April of 2022, it was ruled to dissolve the Foundation following a court process brought on by the Russian Ministry of Justice where the organisation's activity 'mainly aimed at LGBT+ people' was found as allegedly 'undermining moral foundations of the Russian society'. Sphere's team has remained intact and maintains its work, preserving and developing programs and activities aimed at supporting the rights of the LGBT+ community throughout Russia.

LGBT-Initiative group "Coming Out" (comingoutspb.com) is a regional nonprofit initiative group founded in 2008 in St. Petersburg, Russia. Coming Out works for universal recognition of human dignity and equal rights of all regardless of sexual orientation or gender identity by lobbying and advocacy, educational and cultural events, and providing psychological and legal services to LGBT+ people.

"ECOM" (Eurasian Coalition for Health, Rights, Gender and Sexual Diversity, ecom.ngo) is an international non-governmental association based in Tallinn, Estonia. We are a membership association open to non-profit organisations and activists working in the field of rights and health of LGBT+ communities in the Eastern Europe and Central Asia (EECA) region.

DELO LGBT+ (delo.lgbt) is a human rights association of lawyers and civil activists founded to protect the rights of LGBTI+, intersex, asexual, and polyamorous people and other groups subject to discrimination on the basis of sexual orientation, gender identity, or preferred type of relations. The group continues to operate in Russia, and its participants provide the kind of assistance that cannot be provided from abroad, namely, representation in courts and other law enforcement bodies and so forth.

Recommendations

- Ensure that the rights of LGBT+ people are respected and protected in Russia, including protecting them from discrimination, violence, and hate crimes based on their sexual orientation or gender identity;
- Create a legal mechanism to ensure that family rights of LGBT+ people are respected;
- Repeal laws and policies that discriminate against LGBT+ people, including the «LGBT- propaganda» law;
- Ensure that LGBT+ individuals can exercise their right to freedom of peaceful assembly and expression without fear of retaliation;
- Ensure that LGBT+ individuals have access to healthcare services without discrimination;
- Take steps to ensure that LGBT+ individuals have access to legal protections, including anti-discrimination laws, and that they can seek legal remedies for human rights violations;
- Continue the good practice of sending transgender prisoners to serve their sentence based on their interests and recognise it by law;
- To revise the guidelines, protocols on HIV and STIs and their adjustment in accordance with the WHO standards;
- Cancel the rules on the deportation of HIV positive migrants.

A. Equality and non-discrimination

1. Over the past 4 years, the LGBT+ community in Russia has faced increased responsibility for LGBT+ propaganda. Instead of implementing the recommendations of the previous review, the Russian Federation introduces additional discriminatory restrictions for citizens based on their sexual orientation and gender identity.

2. On November 24, 2022, State Duma adopted the law about complete ban of the so-called "LGBT+ propaganda" — not only among minors as it was since 2013, but among all age groups. The penalties in the new law show that the state equates the dissemination of information about LGBT+ people with the distribution of child pornography. The liability provided for under these articles has become identical from the end of 2022.

3. The first goal of this law lies not in the punishment of separate individuals, but rather in the ban on all and any information about LGBT+ on the Internet and inducement of homophobic views of the citizens. In April 2022, Meta and TikTok were fined for propaganda. In May, a lawyer at the LGBT Resource Center in Yekaterinburg was fined

twice for posting information on the organisation's website. In July, blogger Yury Dud was fined for a video with the artist Pavlov-Andreevich. In August, the head teacher of a school in Yekaterinburg was brought to administrative responsibility for the dance of graduates.

4. The second goal of this law is to rally citizens around the ideology of "traditional Russian values". In order to continue the war, an ideology is needed. For Putin, hatred, in particular, of LGBT+ people became such an ideology. The state propaganda machine began to use the hatred against LGBT+ community at the beginning of a Russian full-scale invasion. Federal channels spoke about the participation of representatives of the LGBT+ community in the war on the side of Ukraine as a negative characteristic of the quality of the armed forces. State representatives have started habitually demonising being LGBT+, associating it strictly with Western influence, equating it with an issue of national security.

5. This law is strongly against the principle of individual autonomy secured by the Constitutional Court decisions (see Constitutional Court decision in the case of Alexeyev, Evtushenko and Isakhov №24-II). The freedom of sexual self-identification means the duty of the State not to hinder the person's choice of their sexual behaviour (suggesting such behaviour as nonviolent and non-dangerous for others).

6. According to the law, cases of propaganda should be investigated by the police. However, Sphere Foundation is aware that since 2019, the FSB has been systematically engaged in identifying "propaganda of non-traditional sexual relations" on the Internet. FSB letters started the "propaganda" cases of Aleksey Pavlov from Naberezhnye Chelny, Ekaterina Topchiy and Sergey from Khabarovsk, Yulia Tsvetkova from Komsomolsk-on-Amur. Sphere's lawyers applied to FSB with the question, why they but not the police were in charge of this work. The involvement of the FSB shows us that countering information about LGBT+ is part of high-level government policy.

7. According to Mediazona, a Russian independent media outlet, first seven charges related to the new "LGBT+ propaganda" law were made against trans women sex workers, who are migrants¹. This shows that intersecting identities increase vulnerability². According to Kyrgyz Indigo's research, trans women sex workers migrants are struggling with human rights violations in Russia on a daily basis³. 83% of them were blackmailed, 74% faced illegal detention and 52% were forced to provide information about their clients to police.

¹ Russia has started expelling transgender women who lack Russian citizenship <https://meduza.io/en/news/2023/02/23/russia-has-started-expelling-transgender-women-who-lack-russian-citizenship>

² Position paper of ECOM and SWAN is available here: <https://ecom.ngo/news-eeca/trans-women-sex-workers-migrants-anti-lgbt-propaganda>

³ Challenges and barriers in migration as consequences of the economic vulnerability of trans*women in the Republic of Kyrgyzstan https://indigo.kg/uploads/File/2021/01/14/%D0%92%D0%AB%D0%97%D0%9E%D0%92%D0%AB-%D0%98-%D0%91%D0%90%D0%A0%D0%AC%D0%95%D0%A0%D0%AB-%D0%92-%D0%9C%D0%98%D0%93%D0%A0%D0%90%D0%A6%D0%98%D0%98-%D0%9A%D0%90%D0%9A-%D0%9F%D0%9E%D0%A1%D0%9B%D0%95%D0%94%D0%A1%D0%A2%D0%92%D0%98%D0%AF-%D0%AD%D0%9A%D0%9E%D0%9D%D0%9E%D0%9C%D0%98%D0%A7%D0%95%D0%A1%D0%9A%D0%9E%D0%98-%D0%A3%D0%AF%D0%97%D0%92%D0%98%D0%9C%D0%9E%D0%A1%D0%A2%D0%98-%D0%A2%D0%A0%D0%90_gdZauxB.pdf

B. Freedom of association

8. In spite of the earlier recommendations, civil society organisations faced unprecedented pressure by the Russian authorities since the 3rd Universal Periodic Review. By the beginning of the full-scale invasion, most of the notorious Russian human rights initiatives and independent media outlets were pushed out of the country or cracked down, their legal entities being liquidated and their managers and employees facing risks of criminal prosecution.

9. The main tool used to silence Russian civil society has been ‘foreign agents’ legislation, introduced in 2012. It was drastically widened and harshened⁴ at the end of 2020. Since then, the law targeted not only NGOs, independent media outlets, and ‘individual-media foreign agents’ but also non-registered entities as well as administrators, employees or members of all the above-mentioned entities. In case of individuals, a criteria of foreign funding was lifted, so ‘any form of support from abroad’ qualified a person to be labelled. Four different registers were introduced for each type of ‘foreign agents’. Evidently, the variety of the lists led to the amount of paperwork overwhelming even for the Ministry of Justice. Thus, in 2022 another bill was introduced, further widening the scope of repressions and as well as composing a united list of foreign agents⁵.

10. As of March 2023, the list contained 559 ‘foreign agents’ of which 252 individuals. The list includes the main Russian federal and region LGBT+ organisations as well as vocal LGBT+ activists. Among them are Coming Out, Sphere Foundation, Russian LGBT Network, Moscow Community Center, Action, T*-Action, Irida, Revers, Majak, Resource LGBT Center, Federation of LGBT Sport, T9 NSK, Igor Kochetkov, Mariya Sabunaeva, Kirill Fedorov, Sasha Kazantseva, Regina Dzugkoeva, Karen Shahinyan, Yaroslav Sirotkin.

11. The list does not include any motivation for the designation of a foreign agent except for a reference to a respective provision of the law. Therefore, the main way to learn the reasoning behind an arbitrary decision is to file a complaint. One of the reasons for several persons even who are not LGBT+ activists is ‘LGBT propaganda’ (or ‘propaganda of non-traditional relationships’). Among such people are Elizaveta Gyrdaymova (singer Monetochka), Daria Serenko (co-founder of Feminist Anti-War Resistance), Moscow regional deputy Darya Besedina.

12. For an attorney at law Mikhail Benyash, the reasoning was his official remuneration from human rights organisations, including Human Rights Centre Memorial and Sphere Foundation. In February 2023, Benyash was disbarred by the rule of the Krasnodar Bar Association.

13. Designation as a ‘foreign agent’ causes both formal and informal discrimination for respective individuals and entities. All the individuals in the list are subjected to severe limitations in terms of their professional activities. Excessive reporting obligations consider every ‘foreign agent’. The Code on Administrative Offences and the Criminal Code were amended simultaneously in 2020, causing unbearable fines for organisations and individuals and criminal liability for up to 5 years of imprisonment for individuals for violations of the foreign agents legislation. Informal intimidation included the intensified smear campaign in

⁴Created and (or) distributed. Discriminatory aspects of the application of legislation on ‘foreign agents’// OVD-Info. <https://inoteka.io/ino/created-and-or-distributed-en#1>.

⁵ Website of the Ministry of Justice of the Russian Federation. Register of foreign agents <https://minjust.gov.ru/ru/activity/directions/942/>

state-related media and attacks on the work and private spaces of those designated as ‘foreign agents’.

14. The informal consequence of designation as a ‘foreign agent’ is becoming a target for a smear campaign. State-related media and public officials such as the State Duma deputies regularly mention human rights defenders, journalists and activists using such terms as ‘traitors’. Media outlets associated with Evgeniy Prigozhin, a notorious owner of the ‘Vagner’s PMC’, had been publishing ‘investigations’ based on various NGOs’ public reports calling to designate human rights initiatives and independent media ‘foreign agents’ and ‘undesirable organisations’ months and sometimes weeks prior to the designation of a respective initiative. The LGBT+ rights initiatives and activists faced numerous public accusations in ‘propaganda’ and ‘manipulations with fragile children’s psyche’.

15. The use of the law on undesirable organisations has also been widened. Since 2015, the label ‘undesirable organisations’ has been applied to foreign NGOs and media outlets. According to the Russian authorities, their activities ‘threaten the foundations of the constitutional system of the Russian Federation, the defence capability of the country, or the security of the state’.

16. ‘Undesirable organisations’ are prohibited from conducting any activities on the territory of the Russian Federation under the risk of administrative and criminal liability for the employees and founders. Russian citizens are also prohibited from participating in such organisations’ activities abroad. Participation in an “undesirable organisation” is punishable by a fine of up to 100,000 rubles. If a person has previously been held administratively liable, engagement in an “undesirable organisation” becomes a criminal act and can be punished with up to 5 years imprisonment.

17. Since 2022, the prosecutor's office has been investigating Alesandr Voronov, the CEO of the LGBT-initiative group Coming Out, for cooperation with an ‘undesirable organisation’. The reason was a brochure about LGBT+ parents, published jointly with The Heinrich Böll Foundation, which was recognized in Russia as an ‘undesirable organisation’. The brochure was published in 2009, when Voronov was not yet a director and the Bell Foundation was not an ‘undesirable organisation’ (it was recognized as such in 2022). This case shows how collaboration between NGOs can be dangerous and prosecuted if one of them is deemed undesirable. In addition, this case demonstrates that cooperation with “undesirable organisations” has no statute of limitations and can become a reason for persecution at any time.

18. As of 10 March 2023, the registry of undesirable organisations consisted of 78 organisations. Among them, there are international donor institutions, human rights organisations, independent media, political entities, research organisations, educational entities, socio-educational initiatives and projects, etc.

19. Further risks were introduced for the remains of Russian civil society in February 2022 with the ‘war censorship’ legislation effectively prohibiting any public assessment of the actions of the state military forces and the government in terms of the invasion.

20. In December 2022, the repressive legislation was complemented by signing into force amendments to the law on ‘propaganda of non-traditional sexual relations’, pushing all the LGBT+ rights organisations and initiatives out of the legal field. According to the current version of the law, the ‘spread of information or public actions in order to <...> create a distorted perception of traditional and non-traditional relationships’ equal value’ if made

online and affecting minors leads to the same consequences for a legal entity as production and distribution of child pornography. Thus, for LGBT+ rights initiatives any public activity may lead to a 5 million RUB fine and 3 month suspended operations.

21. Should the civil society organisation survive the above mentioned measures and continue its operations in the country, the authorities take the extreme measures, namely the liquidation of a legal entity and criminal prosecution of individuals involved in its operations. The most notorious cases of such measures are the liquidation of the Memorial and the Moscow Helsinki Group⁶.

22. In February 2022, the Ministry of Justice filed a lawsuit against the Sphere Foundation which was supporting LGBT+ persons in Russia.⁷ According to the state position, the constitution of the country enshrines ‘basic traditional family values’, and the foundation’s work is aimed at ‘changing the legislation and moral foundations in the Russian Federation’. In April 2022, the Kuibyshev District Court of St. Petersburg issued a decision to liquidate the Sphere Foundation.

C. Rights of prisoners

23. The Russian Penitentiary legislation as well as the Federal Penitentiary Service (FSIN) does not have any specific guidelines or procedures for transgender prisoners. The main strategy the administration of penitentiary facilities uses in cases of transgender persons is solitary cells. This practice is punitive, poses a serious risk for mental health and is considered as humiliation of human dignity. Solitary cells make resocialization for transgender persons even more challenging after their sentence is finished. Moreover, solitary confinement may become a nearly permanent solution throughout a transgender person’s sentence, as it happened with Nazar Gulevich.

24. Nazar Gulevich is a transgender man, Belarusian citizen, who was detained in the Moscow region in August 2018 under suspicion of fraud. He was sentenced to 4,5 years in the standard regime penal colony. Later, the Moscow City Court ruled to reduce his sentence to 4 years. More than a half of Nazar’s sentence was spent in the solitary cell in the pre-trial detention centre with little to no human contact, and near to no time spent outside his cell.

25. The facility’s administration argued that solitary confinement was the only measure available to ensure safety of a transgender man in a female detention centre. After the verdict on Gulevich’s case came into force, he had to spend 3 months in prison from 4 appointed years. To serve such a short term of imprisonment, a prisoner is allowed to remain in a pre-trial detention centre. However, instead of this, he was sent for 3 months between male colonies, where each time he was kept in solitary confinement. After the release, Gulevich was deported to Belarus due to the ban on the presence on the territory of the Russian Federation of foreign citizens who were previously prosecuted in Russia. This was another additional punishment in the case of Nazar Gulevich

⁶ Russia: UN experts alarmed by escalation of crackdown on civil society. // The UN Office for the High Commissioner for human rights. Press-release. 27 January 2023. <https://www.ohchr.org/en/press-releases/2023/01/russia-un-experts-alarmed-escalation-crackdown-civil-society>.

⁷ The Kuibyshevsky District Court of St. Petersburg Liquidates Charitable Foundation Sphere // Sphere. 21 April 2022. <https://spherequeer.org/2022/04/21/liquidation-sphere-2/>.

26. Despite the claims on the lack of alternative measures to ensure safety of a transgender prisoners in a penitentiary facility, there is a case representing the opposite. Innokenty Alimov, also a transgender man, was sentenced to 4,5 years in the standard regime penal colony in February 2021. First two months of his term Alimov spent in the solitary cell in a female pre-trial detention centre. After his attorney's intervention, Alimov was transferred to the medical unit of the facility and later was allowed to remain in a pre-trial detention centre. In October 2022, Alimov was transferred to a female penal colony upon his official request.

27. These two cases demonstrate a certain willingness of the Russian penitentiary system to not only formally ensure safety of prisoners by keeping them in isolation, but also make further steps. Unfortunately, the solution remains to depend on the administration of the detention centre. The same applies to the medical examination of transgender persons in the penitentiary facilities, their access to gender-affirmative hormonal therapy, and other specific needs.

D. Digital rights

28. The ultimate goal of the "propaganda law" lies not in the punishment of separate individuals, but rather in the ban on all and any information about LGBT+ on the Internet and inducement of homophobic views of the citizens. In recent years, organisations such as the Sphere Foundation, the Russian LGBT Network, Prini Plus, Coming out, the Resource Center for LGBT in Yekaterinburg, Rainbow World from Perm, Mayak from Vladivostok and others have faced blocking of their sites.

29. The new law on "propaganda" makes it possible to block sites despite the presence of age verification on entry. Previously, the question "Are you over 18 years old?" saved many LGBT+ sites from blocking.

30. The authority responsible for blocking of LGBT+ content is Rosmolodezh. Since 2019 this agency has the authority to block websites on the Internet without a court decision.

E. Protection from violence

31. The problem of "fake dates" is still a great challenge for the Russian LGBT+ community. "Fake dates" is a type of hate-crimes against LGBT+ community (topical mostly for cisgender gay or bisexual men and transgender women). In these crimes the criminals call their victim to the "date". After this they demand money/some actions with the threats of using violence and outing. Russian courts and law enforcement agencies don't consider such crimes as hate-crimes. The Criminal Code of the Russian Federation has some provisions against hate-crimes (see Art. 63 of the Russian Criminal Code). Anyway, the criminals get their punishment because of "ordinary" robbery, extortion etc. It happens even in the cases where accused openly declare their homophobic motive. Such crimes hurt the most vulnerable groups such as migrants and people from Caucasian parts of Russia.

32. The "fake dates" crimes are possible because of stigmatisation of LGBT+ people in Russian society. Homophobic policy provided by the Russian Government is also a cause of such crimes. The fear of outing and possible problems because of "bad" sexual orientation

make LGBT+ people "easy victims".

F. Family rights

33. Russia recognizes only one form of registered relationships - heterosexual marriage. It leads to the situation when partners in same-sex relationships have no possibilities to get rights that usually spouses have (right not to testify against a spouse, right to take part in social programmes for young families, right to an inheritance under the law, right to tax deductions; the right to visit a spouse in the ICU; the right of a foreign-born spouse to not be deported from Russia etc.). This position found support in the European Court of Human Rights (ECHR) case *Fedotova and Others v. Russia*. The Court found the right of the applicants to respect their private and family life was violated.

34. The new court practice causes concern. Since 2022 courts have started to invalidate marriages where one of the spouses is a transgender person. According to the court's decisions, marriage considered as a union of a man and a woman and "same-sex" marriages are against Russian traditions and foundations of the state.

35. At the same time in the Russian legislation "sex change by one of the spouses" doesn't exist among the grounds for invalidating a marriage.

36. Russia does not recognize legal situations where a child can have same-sex parents. Moreover, Family Code of Russia prohibits people in same-sex marriages and people who are citizens of a country that allows same-sex marriage and are unmarried from adopting children (Art. 127(1)(13) of the Russian Family Code). Such people also cannot be foster parents (guardians) for a child (Art. 146(1) of the Family Code).

37. Such nonrecognition leads to legal insecurity of LGBT+ families. It also leads to discrimination of the "second" parent (the biological parent's partner) in LGBT+ unions. Such people (who are de-facto parents) have no possibility to use parents rights such as the right to raise a child together; the right to demand that a child be returned from a person who is wrongfully keeping that child; the right to advocate for the child's interests in relationships with other people and represent the child's interests, etc.

G. Right to health

38. Gay, bisexual men and trans people are the key population. Due to the "LGBT propaganda" law, "foreign agents" communities are excluded from publicly funded HIV prevention programs and do not have access to foreign funds. Both of these laws prevent the creation of low-threshold assistance services.

39. Russia is the only country in the EECA region, where PREP (pre-exposure prophylaxis) is completely absent. It shows that one of the most effective HIV prevention methods is not available to key populations, including LGBT+. Inability to test for STIs through rectal and oropharyngeal swabs limits access to STI prevention and treatment among people who practise anal and oral sex.

40. The existing system of epidemic surveillance obliges doctors of public institutions to report personal data each person tested and received positive for syphilis, gonorrhoea and chlamydia. According to the regulations, employees of the epidemiological service should call and call a person for additional examination, or send a notification with a request to appear. These discriminatory practices call into question the issue of data retention, leading to

the risk of disclosure of information about health and sexual orientation and gender identity.

41. Due to legislation, HIV positive migrants could face deportation in spite of the fact that such legal provisions do nothing to prevent the spread of the virus, but only make people afraid to get tested and get necessary treatment.