



# **LEGISLATIVE ANALYSIS RELATED TO SOGI AND HIV IN RUSSIAN FEDERATION**

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## ACRONYMS AND ABBREVIATIONS

**EECA** Eastern Europe and Central Asia

**HC** Hate crimes

**HIV** Human immunodeficiency virus

**LGBT** Lesbian, gay, bisexual and trans people

**MSM** Men who have sex with men

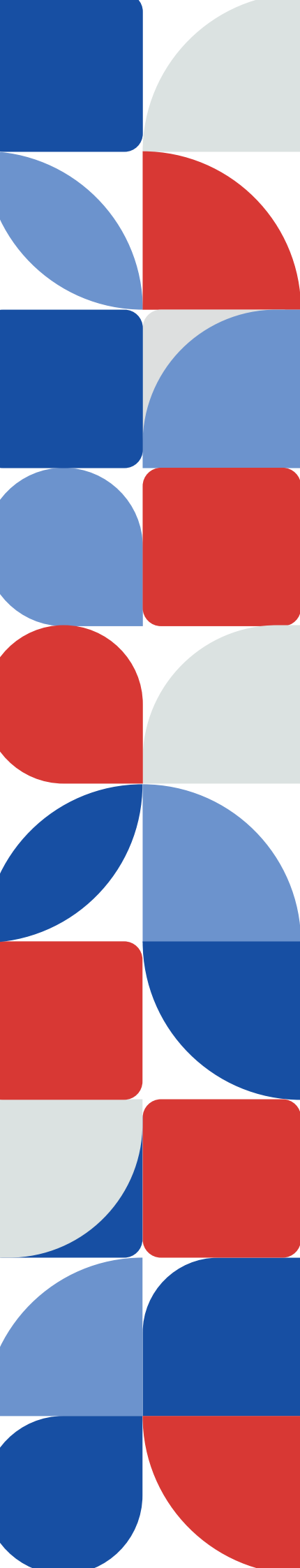
**NGO** Non-governmental organization

**PLHIV** People living with HIV

**SOGI** Sexual orientation and gender identity

**Trans** Describes a person who identifies as transgender, non-binary, or otherwise gender non-conforming, including but not limited to transgender, gender-queer, gender-mutable, agender, third gender, bigender

**WHO** World Health Organization



The aim of this comparative country analysis is to identify legal barriers and issues in areas where the necessary legislation already exists, but does not fully ensure the implementation of rights and freedoms for gay men, other MSM and trans people. In order to carry out this analysis, ECOM developed a methodology and questionnaire, which our local partners helped us to fill out. The analysis of legal practice took into account both judicial practice and government statistics, as well as reports of activists, information and statistics of organizations involved in documenting cases of violations and protecting human rights, press reports, and reports of non-governmental organizations to international bodies.

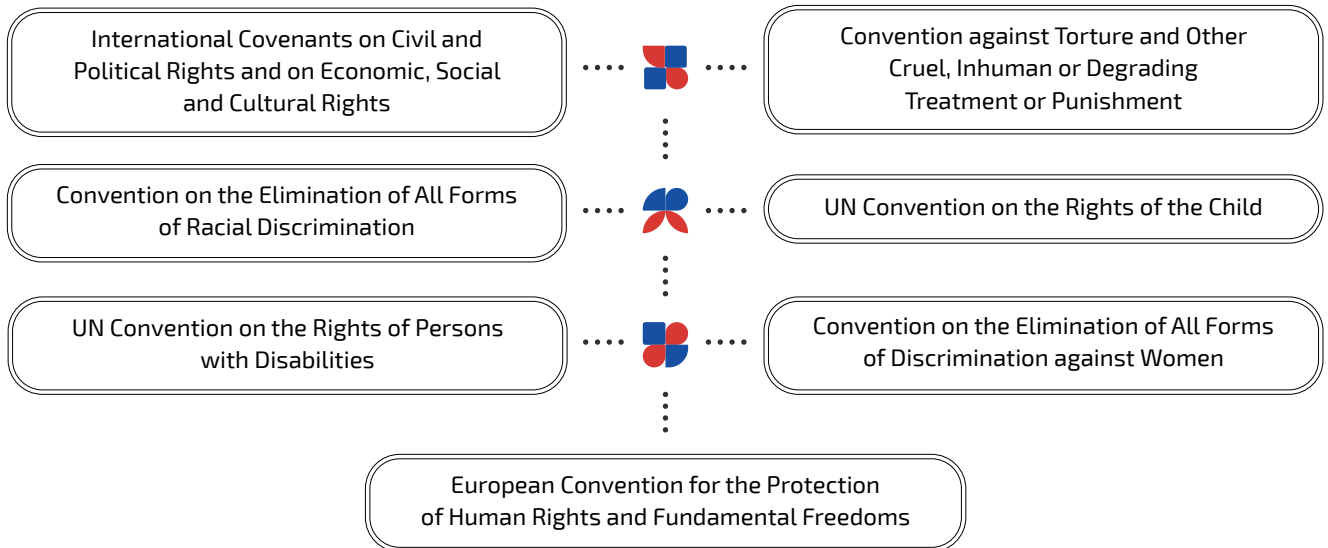
Two dimensions of legislation and law enforcement practice were reviewed. The first is their compliance with international standards of human rights and freedoms. The second is the actual ability of community members to receive protection and realize the rights and freedoms guaranteed under international obligations and national law. A situation where a law exists in a particular country, but a part of the population cannot avail themselves of its protection, indicates that barriers exist in the legal environment.

As part of this analysis, extracts from and references to regulatory legal acts were provided in order to provide information on current legislation. Unfortunately, these are not always correctly formulated and do not always comply with international standards of terminology. In this case, the original formulations are presented to objectively reflect the existing legal framework and the formal terminology adopted in the country regarding the issues under study. All citations from regulatory legal acts are in italics and have references provided.

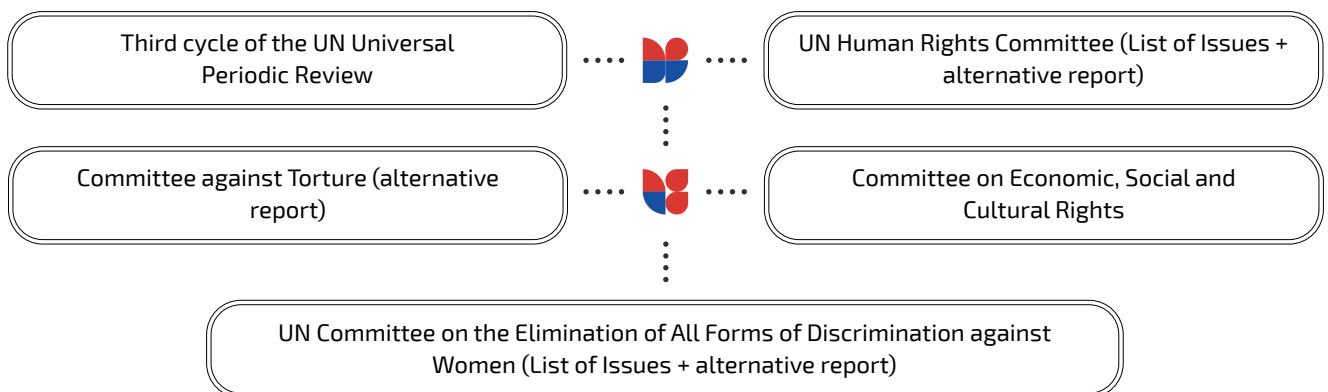
The information presented in this document can be useful for non-governmental organizations, community activists, and government representatives when planning advocacy processes and promoting the rights of PLHIV, gay men and other MSM, and trans people, addressing and eliminating barriers that prevent their access to healthcare services, and for protecting their rights and freedoms.



## INTERNATIONAL HUMAN RIGHTS STANDARDS RATIFIED BY THE COUNTRY






## CIVIL SOCIETY IN UKRAINE USES ALTERNATIVE REPORTING MECHANISMS TO UN BODIES





**AT THE NATIONAL LEVEL, INTERNATIONAL HUMAN RIGHTS STANDARDS  
HAVE BEEN TRANSLATED INTO THE FOLLOWING LAWS**

LEGISLATION	YES	NO
<b>PROTECTION FROM DISCRIMINATION</b>		
Provision on the prohibition of discrimination in the Constitution,	✓	
separate law defining and prohibiting discrimination, including based on SOGI		✗
Law on the prohibition of domestic violence,		✗
including based on SOGI		✗
Provision on hate crimes in the Criminal Code	✓	
<b>RIGHT TO HEALTH</b>		
Separate law on the rights of people living with HIV	✓	
Provision on the prohibition of discrimination (unequal treatment) in the field of health in relation to PLHIV	✓	
Provision on the prohibition of discrimination in the field of education based on HIV+ status	✓	
Prohibitions on immigration	✓	
or entry into the country for PLHIV		✗
Criminal liability for intentional and/or unintentional transmission of HIV	✓	
Prohibition on blood donation by MSM		✗
special screening procedures for MSM donors	✓	
<b>RIGHT TO HEALTH FOR TRANS PEOPLE</b>		
Legislatively enshrined procedure for legal gender recognition	✓	
Mandatory psychological and psychiatric examination	✓	
Required surgical procedures for legal gender recognition		✗
Adopted medical protocol for trans people in accordance with ICD-10	✓	
Permission to use international medical protocols for doctors treating trans people (not prohibited)	✓	
Normatively enshrined list of contraindications for legal gender recognition (other mental disorders)	✓	

LEGISLATION	YES	NO
 <b>RIGHT TO PRIVATE AND FAMILY LIFE</b>		
Recognition of same-sex partnerships at the legislative level (no, there were attempts to prohibit this)		✗
Recognition by courts of unregistered cohabitation of same-sex couples as a legal marriage		✗
Criminalization of voluntary homosexual relations		✗
Possibility for trans people to enter into a heterosexual marriage following legal gender recognition (yes, but there were attempts to prohibit this)	✓	
Adoption by same-sex couples		✗
Adoption by single LGBT people	✓	
Adoption by trans people following legal gender recognition	✓	
Adoption by PLHIV (if the child is already living in the family)	✓	
Age of consent for voluntary heterosexual and homosexual relations (same)	✓	
 <b>RIGHT TO FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY</b>		
Legislation governing peaceful assemblies	✓	
Mandatory authorization from local authorities for holding a peaceful assembly	✓	
Prohibition on peaceful assemblies for LGBT people		✗
Penalties for holding a peaceful assembly without the consent of the authorities	✓	
Law «on the prohibition of gay propaganda»	✓	
Attempts to introduce bills limiting the freedom of speech of LGBT people, including bills «on the prohibition of gay propaganda»	✓	
 <b>FREEDOM OF ASSOCIATION AND FUNDING OF NGOS</b>		
Opportunity for NGOs to receive funding from national and/or local budgets	✓	
Actual working mechanisms for the distribution of public funds to NGOs working in the social sector, excluding health, for example in the fields of education, culture, sport, youth, social protection	✓	
Actual working mechanisms for the distribution of public funds to NGOs working in the field of health	✓	
Mandatory authorization procedure for registration of a public organization	✓	
Registration of an LGBT public organization (procedure is complicated)	✓	
Possibility of obtaining donor support from international organizations and foundations		✗



## INTRODUCTION

*Man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State.*

*Article 2 of the Constitution of the Russian Federation*

The modern Russian Federation (hereinafter, RF) is an independent state, claimed to be constitutional and democratic, which must comply with international human rights standards, adhere to the rule of law and ensure equal treatment of all its citizens and non-citizens under the jurisdiction of the country. It is a former Soviet republic with a presidential-parliamentary form of government and a federal structure that can be characterized as an authoritarian country with significant restrictions on civil, political and personal human rights and freedoms for both the heterosexual population and, to a much greater extent, for LGBT+ people. The RF is a country in which civil and political rights are rapidly being curtailed, which, among other things, results in a significant outflow of the dissident population, including members of the LGBT+ community, who are often forced to seek asylum in other countries<sup>1</sup>.

One of the largest «waves» of asylum seekers was launched during the «campaign to identify gays» in Chechnya in 2017. According to the Russian LGBT Network, 106 people left the country at this time. At the end of February 2017, mass detentions of men suspected of being homosexual began in Chechnya. They were kept in secret prisons, tortured, humiliated, or killed, or their relatives were forced to carry out the ancient custom of «honor killings» against their loved ones<sup>2</sup>. This was first mentioned in «Honor Killing» in the publication «Novaya Gazeta»<sup>3</sup>. Immediately after this, a hotline, organized by human rights activists of the Russian LGBT Network, began to receive dozens of complaints from victims.

According to the annual rating «Freedom in the World 2021: Democracy under Siege» by Freedom House<sup>4</sup>, Russia scored only 20 out of a possible 100 points, including 5 for the observance of political rights and only 15 for the observance of civil rights and freedoms. Meanwhile researchers rate freedom of speech and the ability of civil society and human rights organizations to freely carry out their activities at 0. They also rated the protection of equal rights, including for LGBT+ people, at 0 points, citing the second wave of persecution of gays in Chechnya in 2019, when at least 40 more people left the country, and cases of persecution of activists<sup>5</sup>.

<sup>1</sup> More at: <https://refugee.ru/news/лгбт-беженцы-в-россии-и-мире/> и <https://zona.media/article/2019/06/24/lishnie>

<sup>2</sup> More at: <https://chechnyagate.novayagazeta.ru/about/>

<sup>3</sup> <https://novayagazeta.ru/articles/2017/04/01/71983-ubiystvo-chesti>

<sup>4</sup> Report for 2020 available at: <https://freedomhouse.org/country/russia/freedom-world/2021>

<sup>5</sup> For example, the 2020 case of LGBT+ activist and feminist, Yulia Tsvetkova, who was released from house arrest in Khabarovsk on charges of distributing pornography. She faces a six-year prison sentence if found guilty in the current case. In 2019, Tsvetkova was fined 50,000 rubles (\$720) for administering two social media pages, one dedicated to the work of women artists and the other to LGBT+ issues. More at: <https://zona.media/article/2020/06/29/tsvetkova-chronicle> и <https://esquire.ru/articles/191433-delo-yulii-cvetkovoy-pochemu-hudozhnicu-kotoraya-shematichno-risuet-zhenskoe-telo-sudyat-za-propagandu-pornografii/>



The Russian Federation is also at the bottom of the list, in 150th place, in the Reporters Without Borders press freedom ranking<sup>6</sup>, having lost one point since 2020. Reporters point to phenomena such as draconian laws, website blocking, Internet shutdowns and the demise of leading news outlets, and pressure on independent media that has been steadily rising since major anti-government protests in 2011 and 2012.

At the same time, the country has signed and ratified the necessary minimum of international documents in the field of human rights. Some of these documents were implemented in national legislation in the 1990s-2000s, both in the Constitution and in other laws.



## THE RUSSIAN FEDERATION IS PARTY TO THE FOLLOWING INTERNATIONAL DOCUMENTS

- International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- UN Convention on the Rights of the Child;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- UN Convention on the Rights of Persons with Disabilities;
- European Convention for the Protection of Human Rights and Fundamental Freedoms.

However, Russia has only recognized individual complaint mechanisms<sup>7</sup> in relation to four UN instruments:

- International Covenant on Civil and Political Rights;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women.

The Russian Federation remains a member of the Council of Europe, therefore citizens and non-citizens can use its protection mechanism to file individual complaints with the European Court of Human Rights (ECtHR). However, several important aspects should be noted:

- The RF is the «leading country» in terms of the number of complaints to the ECtHR. In 2020 alone, the Court considered 10,163 complaints against Russia, of which 9,593 were declared inadmissible or were rejected. The ECtHR issued 185 decisions (on 570 applications), 173 of which found at least one violation of the European Convention on Human Rights<sup>8</sup>.

<sup>6</sup> 2021 Rating available at: <https://rsf.org/en/russia>

<sup>7</sup> List [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=EN)

<sup>8</sup> More at: [https://www.echr.coe.int/Documents/CP\\_Russia\\_ENG.pdf](https://www.echr.coe.int/Documents/CP_Russia_ENG.pdf)

- On December 15, 2015, Russian President Vladimir Putin signed a law allowing the Constitutional Court to completely or partially ignore the resolutions of the European Court of Human Rights<sup>9</sup>.
- The country has one of the longest implementation periods of ECtHR decisions, including the payment of compensation to victims.

All international documents ratified by the country have been «translated» at least into corresponding constitutional guarantees and into some separate laws. However, as in many other former Soviet republics, during the years since independence there has been a huge gap between declared rights and their actual observance in the Russian Federation. In addition, unlike its neighbors, every year the Russian Federation curtails the formal legislative guarantees of human rights observance at the national level, adopting new laws that either reduce the level of protection, or single out areas of public life where certain groups do not have any protection of their rights.



## PARTICULAR PROBLEMATIC ASPECTS OF LEGISLATION AND LAW ENFORCEMENT PRACTICE

The Constitution of the RF *«guarantees 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»*<sup>10</sup>.

This norm is exclusively declarative, and in practice, is not implemented in the legislation of the RF. The list of protected grounds is closed and does not include sexual orientation and gender identity. The country does not have a separate law that defines and prohibits discrimination against various social groups (protected characteristics) and in all spheres of public life. Among the nominal remedies, there are only two articles in the Criminal Code of the Russian Federation<sup>11</sup> and in the Code of Administrative Offenses of the Russian Federation<sup>12</sup>.

The lists of protected characteristics in these articles are in fact closed, despite the wording *«belonging or not belonging to public associations or any social groups»*, and also fail to include sexual orientation and gender identity.

In addition, the country still imposes criminal liability for the intentional and unintentional transmission of HIV infection, as well as significant restrictions on HIV-positive migrants, including in the context of access to antiretroviral therapy (ART).

● <sup>9</sup> More at: <https://republic.ru/posts/61018>

● <sup>10</sup> Article 19(2) of the Constitution of the RF: <http://duma.gov.ru/news/48953/>

● <sup>11</sup> Article 136 of the Criminal Code of the Russian Federation

● <sup>12</sup> Article 5.62 of the Code of Administrative Offenses of the Russian Federation

On the one hand, PLHIV can freely enter into the territory of the Russian Federation<sup>13</sup>, however, it is impossible for a migrant who is openly HIV-positive to obtain a work permit, since HIV-positive status is one of the barriers to obtaining a work permit. The specified permit is issued or reissued in accordance with the requirements of paragraph 5, part 2 and paragraph 6, part 9 of Art. 13-3 of [Law N114 ФЗ](#), according to which, in order to obtain/renew a permit, a foreign citizen must provide a **«certificate that this foreign citizen does not have a disease caused by the human immunodeficiency virus (HIV infection)»**. Moreover, according to paragraph 10, part 9 of Article 18 of the same law, a work permit is not issued, or an issued permit is revoked if the foreign citizen **«is a drug addict, or does not have a certificate that he does not have a disease caused by the human immunodeficiency virus (HIV infection), or suffers from one of the infectious diseases that pose a danger to others»**.

Treatment of HIV infection is not covered by the system of compulsory health insurance (CHI), and therefore even foreign citizens registered in the CHI system and who have a temporary residence permit or residence permit are not entitled to receive free and regular ART, which creates significant difficulties for many labor migrants from EECA countries, including gay men and other MSM, who either drop out of therapy or are forced to buy drugs on the black market or import them from their countries of origin.

Being HIV-positive is not an obstacle to employment (at the federal or regional level). Moreover, the [Federal Law of 30.03.1995 N38 ФЗ](#) contains a provision that prohibits **«... dismissal from work, denial of employment, denial of admission to educational organizations and medical organizations, as well as restriction of other rights and legitimate interests of HIV-positive people on the basis of their HIV status, as well as restrictions of housing and other rights and legitimate interests of family members of HIV-infected persons, unless otherwise provided by this Federal Law»**<sup>14</sup>.

At the same time, until January 1, 2021 in the RF, there was a [list](#)<sup>15</sup> workers of certain professions who were required to disclose their HIV status when undergoing a medical examination to detect HIV infection during mandatory pre-employment and periodic medical examinations.

Nevertheless, the fact that this list was abolished cannot be considered a breakthrough, since the norm of the law remains in force, which provides for **«mandatory medical examination to detect HIV infection during mandatory pre-employment and periodic medical examinations»**<sup>16</sup>.

<sup>13</sup> At one time, the issue of the illegality of the expulsion of migrants with HIV-positive status from the territory of the Russian Federation was considered by the ECtHR in the decision of Kyutin v Russian Federation, the full text of the decision in Russian is available at: <http://hiv-legalaid.org/index.php?id=1368971518>

<sup>14</sup> Article 17 of the Federal Law of the Russian Federation «On the prevention of the spread in the Russian Federation of a disease caused by the human immunodeficiency virus (HIV)»

<sup>15</sup> The list of employees of certain professions, industries, enterprises, institutions and organizations that undergo compulsory medical examination to detect HIV infection during mandatory preliminary examinations upon admission to work, and periodic medical examinations, approved by Decree of the Government of the Russian Federation No. 877 of September 4, 1995

<sup>16</sup> Article 9(3) of the Federal Law of the RF «On the prevention of the spread in the Russian Federation of a disease caused by the human immunodeficiency virus (HIV)»

It should also be noted that there is no separate federal law in the country that would prohibit domestic violence. Moreover, in 2017, the term «in relation to close persons» was removed from the text of Article 116 of the Criminal Code of the Russian Federation. Following this, according to human rights organizations, the number of complaints of domestic violence to NGOs increased sharply, while there was a sharp decrease in the number of complaints to the police, as the police refuse to register and impose punishment in such cases<sup>17</sup>. Attempts to submit a new draft law «On the Prevention of Domestic Violence in the Russian Federation» to the State Duma caused a flurry of criticism and protests both from government officials and representatives, and from the church. The bill was not brought to a vote.

Despite the decriminalization of same-sex relationships in the Russian Federation, which took place only in 1993, and although homosexuality was removed from the International Classification of Diseases by the WHO on May 17, 1990, the situation for LGBT+ people not only remains critical, but is worsening. Since 2003, there has been a tendency in the country to, if not prohibit and re-criminalize voluntary same-sex relationships between adults, then to at least do everything possible to hush up their existence, as well as the existence of the LGBT + community (not to mention recognition of equal rights and freedoms of the LGBT+ community)<sup>18</sup>.

In June 2013, three laws of the Russian Federation aimed at the protection of children were amended simultaneously<sup>19</sup>, as well as the Code of the Russian Federation of Administrative Offenses, to which Article 6.21 was added, establishing administrative liability for the so-called «propaganda of non-traditional sexual relations among minors»<sup>20</sup>. At the same time, separate articles of the Criminal Code of the Russian Federation establish for liability for:

- **«Sodomy, lesbianism or other actions of sexual character with the use of violence or with a threat thereof with respect to a male (female) victim or to other persons or by taking advantage of the helpless state of the victim»<sup>21</sup>;**
- **«Compulsion of a person to enter into illicit relations, sodomy, lesbianism, or the commission of other sexual actions by means of blackmail, threat of destruction, damage, or taking of property, or with the use of material or any other dependence of the victim»<sup>22</sup>;**
- **«Sodomy or lesbianism in respect of a person who has not reached sixteen years of age and sexual maturity effected by a person who has reached eighteen years of age»<sup>23</sup>.**

<sup>17</sup> Source: <https://www.themoscowtimes.com/2019/04/12/un-committee-sides-against-russia-in-first-domestic-violence-ruling-a65226>, <https://www.wonderzine.com/wonderzine/life/life/223639-decriminalization>, <https://www.kommersant.ru/doc/4605600>

<sup>18</sup> In fact, the Russian Federation is not the only country where laws prohibiting «propaganda of non-traditional sexual relations» exist, but the only one where the development of such laws and their rooting into the system of legislation and law enforcement practice has been consistent and irreversible for almost 20 years.

<sup>19</sup> Federal Law of June 29, 2013, No. 135 ФЗ; Federal Law «On the Basic Guarantees of the Rights of the Child in the Russian Federation» of July 24, 1998 No. 124- ФЗ, Article 14 (1); Federal Law of December 29, 2010, No. 436- ФЗ, Article 5(2)(4).

<sup>20</sup> Article 6.21 of the Code of Administrative Offenses of the Russian Federation

<sup>21</sup> Article 132(1) of the Criminal Code of the Russian Federation

<sup>22</sup> Article 133(1) of the Criminal Code of the Russian Federation

<sup>23</sup> Article 134(2) of the Criminal Code of the Russian Federation



## FREEDOM OF SPEECH AND FREEDOM OF PEACEFUL ASSEMBLY

Like other constitutions of the countries of the EECA region, the Constitution of the Russian Federation enshrines the right of citizens to participate in legally established meetings, rallies, demonstrations and peaceful marches<sup>24</sup>. However, according to the [Federal Law of 19 June 2004 N54-Φ3](#) the organizer of a peaceful assembly submits a notice about holding a public event «**in writing to the executive authority of a constituent entity of the Russian Federation or a local self-government body no earlier than 15 and no later than 10 days before the day of the public event**»<sup>25</sup>. In turn, the executive authority of a constituent entity of the Russian Federation or a local government, after receiving a notification about holding a public event, has the authority to allow the event or to prohibit it<sup>26</sup>. Despite the fact that the law contains only two reasons for refusing to allow an event: the notice was filed by a person who does not have the right to be an organizer, or a venue has been selected where it is prohibited to hold public events, the authorities have a fairly wide margin for assessing the possibility of holding an event, which leads to unjustified prohibitions.

For example, lawsuits filed by the activist Alekseev and his associates, who systematically submitted notifications about holding events in different cities of the Russian Federation for many years, as well as several decisions of the ECtHR<sup>27</sup>, adopted based on the results of their consideration, show the systemic problem of «non-coordination» by local authorities with respect to holding peaceful assemblies organized by representatives of the LGBT+ community. Moreover, these same court decisions also attest to another systemic problem – the lack of justice for LGBT+ people in Russia, since the position of the Russian courts<sup>28</sup> in such cases is far from both the principle of the rule of law and the principle of equality of rights.

In cases where local authorities coordinated the holding of public peaceful assemblies for the LGBT+ community (peaceful assemblies were held in St. Petersburg several times), the actions of law enforcement agencies were limited to isolating the participants of the public event from counter-protestors (separation by fences or riot police barricades, etc.)<sup>29</sup>. It should be noted that in 2020, not a single peaceful assembly could be coordinated with local authorities, and not a single lawsuit concerning the prohibition of peaceful assemblies has been won in Russian courts for 10 years<sup>30</sup>.

<sup>24</sup> Article 31 of the Constitution of the Russian Federation

<sup>25</sup> Article 7(1) of the Federal Law of the Russian Federation «On meetings, rallies, demonstrations, processions and picketing»

<sup>26</sup> Article 12 of the Federal Law of the Russian Federation «On meetings, rallies, demonstrations, processions and picketing»

<sup>27</sup> See, for example, decisions in the cases Alekseev v. RF, complaints Nos. 4916/07, 25924/08 and 14599/09 of October 21, 2010, and Baev and others v. RF, available in Russian at: <https://hiv-legalaid.org/index.php?id=1498769420>

<sup>28</sup> See, for example, Determination of the Armed Forces of the Russian Federation No. 78-АПГ12-16 of October 3, 2012, and the Decision of the Constitutional Court of the Russian Federation in the case of reviewing the constitutionality of Article 6.21(1) of the Code of Administrative Offences of the Russian Federation in connection with the complaint of citizens N. A. Alekseev, Y.N. Yevtushenko and D.A. Isakov of September 23, 2014. The full text of the decision is available at: <http://www.szrf.ru/szrf/doc.phtml?nb=100&issid=1002014040030&docid=180>

<sup>29</sup> See more at: <https://comingoutspb.com/upload/iblock/09d/09d7837b99cdfd6e560a1caa4fb7794b.pdf>

<sup>30</sup> More about the development of law enforcement practice under these regional and federal laws in the ECOM report «Permit do not prohibit. How laws on the prohibition of gay propaganda operate in the Russian Federation» <https://ecom.ngo/news-ecom/russia-permit-do-not-prohibit>



## FREEDOM OF ASSOCIATION FOR PLHIV AND LGBT+ PEOPLE

The procedure for the creation and registration of a non-governmental organization (NGO) in the Russian Federation is regulated by several laws, including Federal Law of 12.01.1996 N7 ФЗ<sup>31</sup>, Federal Law of 08.08.2001 N129 ФЗ<sup>32</sup> and the [administrative regulations](#) on the provision of state services by the Ministry of Justice for making a decision on state registration<sup>33</sup>. If the provisions of the [Federal Law of 20.07.2012 N121 ФЗ](#)<sup>34</sup>, regulating «the activities of non-profit organizations that perform the functions of a foreign agent» are added to this, it becomes clear how complicated it is to register NGOs and subsequently carry out independent and systematic work.

There are also LGBT+ organizations operating in Russia that do not receive funding from the state. If they want to receive funding from Western donors, they must register as «foreign agents». There are HIV-service organizations that provide assistance to gay men and other MSM and receive state funding. However, as a rule, such organizations do not openly declare that they specifically provide assistance to LGBT+ people (they do not advertise their services), and only mention this category of beneficiaries among others.



## PRIVATE AND FAMILY LIFE

The Family Code of the RF<sup>35</sup> recognizes as marriage only relations registered in civil registry offices<sup>36</sup>, with the following a condition for marriage: «**the voluntary consent of the man and of the woman entering into it, and their reaching the marriageable age**»<sup>37</sup>. The prohibition on «**Any forms of restrictions on the rights of citizens in their entering into a marriage or in their family relations because of social, racial, ethnic, language or religious affiliation**»<sup>38</sup> does not guarantee the equal right to marriage for the LGBT+ community. In the absence of adequate anti-discrimination legislation and the fact that law enforcement and judicial practice attest to constant violations of the rights of LGBT+ people, non-recognition of same-sex partnerships, lack of guarantees of equal protection of the right to privacy and family life, and also due to the lack of adequate protection against domestic violence, members of the LGBT+ community often choose to emigrate in an attempt to protect their partnerships and their children<sup>39</sup>.

<sup>31</sup> Federal Law of 12.01.1996 No. 7-ФЗ «On non-profit organizations»

<sup>32</sup> Federal Law of 08.08.2001 No. 129-ФЗ «On State Registration of Legal Entities and Individual Entrepreneurs»

<sup>33</sup> Administrative regulations for the provision of public services by the Ministry of Justice of the Russian Federation for making a decision on state registration, approved by Order of the Ministry of Justice of Russia No. 455 of December 30, 2011

<sup>34</sup> Federal Law of 20.07.2012 No. 121-ФЗ «On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of the Activities of Non-Profit Organizations Performing the Functions of a Foreign Agent»

<sup>35</sup> <http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=602263667&backlink=1&&nd=102038925>

<sup>36</sup> Article 10 of the Family Code of the Russian Federation

<sup>37</sup> Article 12(1) of the Family Code of the Russian Federation

<sup>38</sup> Article 1(4) of the Family Code of the Russian Federation

<sup>39</sup> More information at: <https://www.bbc.com/russian/news-49019175>. Subsequently, the couple left the Russian Federation and requested asylum in the United States.

In the absence of legal recognition of same-sex relationships, LGBT+ couples have limited access to a wide range of rights and privileges that the state provides to married couples. These rights and privileges include access to public housing and loan programs, the right to be considered an heir under probate law, and the right to receive tax benefits. Partners in same-sex relationships cannot obtain medical information about the other partner or visit the partner in intensive care as a relative. In addition, partners cannot jointly access assisted reproductive technologies, since this opportunity is provided only to opposite-sex couples<sup>40</sup>.

The procedure for legal transgender transition deserves special mention. On the one hand, there have been positive changes thanks to the simplification of the procedure; on January 19, 2018, the Ministry of Justice of the Russian Federation registered an [order](#)<sup>41</sup>, which approved the format of Certificate N087/y «Certificate on gender reassignment» and the procedure for obtaining it. After receiving this document, trans people have one year to apply to the registry office to amend their birth certificate.

On the other hand, given the size of the Russian Federation and the composition of its subjects (85 regions), medical commissions licensed to issue Certificate N087/y exist in only 10 regions, as well as in some large cities (Moscow, St. Petersburg, Samara, Novosibirsk, etc.). In some cases, transgender people have to travel thousands of miles to undergo a medical examination<sup>42</sup>. Other barriers for transgender people that cannot be ignored include:

- Absence of gender-positive medical interventions in the list of medical services covered under the compulsory health insurance. **Explanation:** expensive surgical interventions; the vast majority of medical professionals do not have the knowledge and experience to treat transgender patients. This applies not only to medical needs related to transitioning, but also to any sort of medical services: trans people are often denied treatment and face transphobic insults from doctors<sup>43</sup>.
- Inability to change their legal gender on their children's birth certificate if they had children before transitioning. **Explanation:** these circumstances unreasonably force people to disclose their transgender status every time they present documents related to the transition period, in addition to their child's identity card.

• <sup>40</sup> Quote from the report «Rights to Equality and Freedom from Discrimination in Russia. Best Practice Guidelines for Service Providers», Equal Rights Trusts, available in Russian at: [https://www.equalrightstrust.org/sites/default/files/ertdocs/service%20provider%20guide\\_RUS\\_e-version.pdf](https://www.equalrightstrust.org/sites/default/files/ertdocs/service%20provider%20guide_RUS_e-version.pdf)

• <sup>41</sup> Order of the Ministry of Health of the Russian Federation «On approval of the form and procedure for issuing a document on gender reassignment by a medical organization» of 23.10.2017 N850H

• <sup>42</sup> Quote, see more in: Discrimination and Violence Against Lesbian and Bisexual Women and Transgender Persons in the Russian Federation. For the adoption of List of Issues to The Convention on the Elimination of All Forms of Discrimination against Women. Submitted for the consideration of the 9th periodic report by the Russian Federation within The 78th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women (CEDAW)

• <sup>43</sup> See more in: Human Rights Violations Based on Sexual Orientation and Gender Identity in the Russian Federation. Alternative report as a commentary on the Eighth Periodic Report CCPR/C/RUS/8 by the Russian Federation. 129th Session of the Human Rights Committee Review of the eighth periodic report by the Russian Federation.



## HATE CRIMES

The Criminal Code of the RF contains a definition that can be considered to fall under the meaning of a hate crime (HC), and is contained in an article that defines aggravating circumstances: «**commission of a crime by reason of political, ideological, racial, national or religious hatred or enmity or by reason of hatred or enmity with respect to some social group**»<sup>44</sup>.

In addition, a number of articles contain a provision allowing for the qualification of an act as more serious if it is «**committed by reason of political, ideological, racial, national or religious hatred or enmity, or by reason of hatred or enmity with respect to some social group**»<sup>45</sup>.

At the same time, not a single provision of the Criminal Code of the Russian Federation or of the Code of the Russian Federation on Administrative Offenses contains a mention of sexual orientation and gender identity as protected characteristics. The current practice for opening and conducting investigations of crimes against LGBT+ people as hate crimes suggests that investigating such crimes as hate crimes is the exception rather than the rule and established practice. Great efforts are required on the part of the victim (his representatives) to persuade the authorities (law enforcement agencies) to qualify crimes against LGBT+ people as hate crimes. In most cases, cases are initiated under the «ordinary» articles of the Criminal Code of the Russian Federation (murder, assault, causing harm to health without the aggravating circumstance of hatred or enmity, or with the additional circumstance of hooliganism, etc.)<sup>46</sup>.

According to the monitoring data of the «SOVA» Center, the number of attacks on LGBT+ people has been increasing over the past three years: in 2020, the Center recorded 16 assaults, in 2019, 7 assaults and one murder, and in 2018, five assaults and one murder<sup>47</sup>.



## STATISTICAL DATA

The RF is a large, heterogeneous and conservative country, characterized by a low level of income in many regions remote from large cities, combined with a low level of education. This, along with other factors such as high levels of corruption and violence among law enforcement, creates a significant threat of the forced disclosure of the status of LGBT+ individuals, and room for intimidation, extortion and violence.

- <sup>44</sup> Article 63(1)(f) of the Criminal Code of the Russian Federation
- <sup>45</sup> Article 105(2)(l), Article 111(2)(f), Article 112(2)(f), Article 115(2)(b), Article 116, Article 117(2)(h), Article 119(2), Article 150(4), Article 213(1)(b), Article 214(2), Article 244(1)(b), Articles 282 - 282-3 of the Criminal Code of the Russian Federation
- <sup>46</sup> More information at: <https://www.aidsactioneurope.org/sites/default/files/lgbt%20hate%20crime%20russia.pdf>
- <sup>47</sup> Report for 2020 available in Russian at: <https://www.sova-center.ru/racism-xenophobia/publications/2021/02/d43593/?fbclid=IwAR0Sllxl3tD2bSdCsjLotIfbCXCN3t5bKn0A2NgCLHcrN3o5JARGzKvNlxx>
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Researchers estimate that the total population of the country is 146 million people. It is clear that there is no data on the number of LGBT+ people, as in other countries of the region. Official statistics on PLHIV include only MSM, while data from HIV-service organizations, including on difficulties in obtaining ART, may indicate attempts to downplay the problem and hide the real number of people in need of HIV services.

At the official level, not enough data is published in the country to systematically monitor human rights violations, nor to understand which groups are vulnerable. In the field of healthcare, data on the number of PLHIV is collected and published by the Federal Scientific and Methodological Center for the Prevention and Control of AIDS<sup>48</sup>, but such data is not disaggregated, and does not show a breakdown of all reported cases into subcategories. Therefore, it is impossible to understand how many PLHIV belong to the LGBT+ community, and how many PLHIV belong to other vulnerable groups. Accordingly, state programs “do not see” and do not take into account the needs of these vulnerable groups.

There is also a lack of data on the number of cases of complaints of domestic violence. Such data is published on the basis of registered cases only by the Ministry of Internal Affairs. However, according to human rights activists, the victims (mostly women) do not trust the police and 70% of cases are not registered<sup>49</sup>. The available data of the Ministry of Internal Affairs is not disaggregated, and there is no separate category «complaints of domestic violence based on SOGI».

There are also no statistics on the number of HCs or complaints of discrimination. However, there are statistics on so-called «crimes of an extremist nature» (i.e. already registered crimes), which include crimes committed based on political, ideological, racial, national or religious hatred or enmity, or based on hatred or enmity against any social group. Such statistics fail to separately indicate the number of crimes against members of the LGBT+ community<sup>50</sup>.

Formally, the state observes certain deadlines for the adopted mandatory reporting to international bodies on progress in relation to the observance of human rights and freedoms, submits reports to UN committees, and provides some access to information to the OSCE/ODIHR. However, in practice, there is neither a mechanism nor political will to implement and introduce into legislation or practice the recommendations and comments received from international institutions and other parties, especially if they relate to the public recognition of the rights of the LGBT+ community. There is not a single mention of the rights of the LGBT+ community either on the website of the Commissioner for Human Rights of the Russian Federation, nor in the report for 2020 on the observance of human rights in the Russian Federation.

• <sup>48</sup> <http://www.hivrussia.info>

• <sup>49</sup> <https://www.rbc.ru/rbcfreenews/5dd6844f9a794787117e082d>

• <sup>50</sup> List No. 20 of crimes of extremist groups. Order of the Prosecutor General's Office of Russia No. 738/11, Ministry of Internal Affairs of Russia No. 3 of December 25, 2020 «On the introduction of the lists of articles of the Criminal Code of the Russian Federation used in the formation of statistical reporting» contains a list of content entailing so-called extremist crimes. It should be borne in mind that the statistics reflect the already registered (i.e. initiated) crimes, and not the number of appeals, which can be much greater, since not every appeal leads to the initiation of a criminal case



## RECOMMENDATIONS



### FOR THE GOVERNMENT

- 1 Adopt an anti-discrimination law on that includes protected characteristics, such as HIV status, sexual orientation and gender identity.
- 2 Abolish laws restricting the freedom of speech and freedom of association of LGBT+ people+.
- 3 Simplify and make accessible the procedure for registering and monitoring the work of NGOs, including NGOs providing services to PLHIV and LGBT+ people, and guarantee their access to competitions for funding from the national and local budgets on an equal basis with other NGOs.
- 4 Amend the forms for collecting statistical information, and assess the quality and quantity of services received by LGBT+ people as part of assessments of the total quality and quantity of services received by citizens in the Russian Federation.
- 5 According to the decision of the European Court of Human Rights in the case of Fedotov et al. v. Russia, develop and implement a procedure for registering same-sex partnerships that would guarantee same-sex couples the same rights to protection of private and family life as opposite-sex couples in «traditional marriages».



### FOR CIVIL SOCIETY

- 1 Join the working group on the development of an anti-discrimination law, and provide the necessary arguments for the inclusion of protected characteristics such as HIV status, sexual orientation and gender identity.
- 2 Collect disaggregated data on the number of complaints of discrimination, including HC, based on various grounds, including SOGI; publish this data together with information on what actions the government is taking to punish such human rights violations and to prevent such violations in the future.

