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## **The LGBT-group STIMUL (Moscow)**

*For the session*

# **The International Covenant on Civil and Political Rights and the Russian Federation: Sexual Orientation and Gender Identity Questions**

**Submitted to the Human Rights Committee in relation to the consideration of  
the 8<sup>th</sup> ICCPR periodic report of the RF**

**2022-01-30**

**The 134th session of the HRCtte**

### **Introduction**

1. The LGBT-group “Stimul” is a Russian civic initiative created in 2015 with the aim of fighting for equal rights and ensuring human dignity regardless of sexual orientation and gender identity. Our main activities are providing legal aid to victims of hate crimes or discrimination and representing their interests in police and courts. We also monitor human rights violations, assist LGBT-refugees and do international advocacy, including the individual applications to the ECHR and the UN HRCtte. Currently, our lawyers deal with more than 50 legal cases. In 2017-2018, “Stimul” submitted its observations to the UN CAT and the UN CESCR, in 2020 – to the UN HRCtte and the UN CEDAW, in 2021 – to the UN CAT, the Special Rapporteur on the rights to freedom of peaceful assembly and the Independent Expert on protection against violence and discrimination based on SOGI. These submissions can be found on the official web-pages of the relevant bodies or experts.

2. Since our organization specializes in providing legal and psychological assistance to LGBT+ people and their loved ones in Russia, the following are mainly commentaries to the topics related to this group of individuals.

3. In 2020, in [our input sent](#) to the Committee, we raised a number of questions for the RF. Some of these questions to varying degrees were included in the *List of issues* on 14 August 2020. On 29 March 2021 the RF provided its *Replies* in relation to its eighth periodic report. Unfortunately, we have to state that the authorities’ answers cannot be considered satisfactory and reflecting the current situation with human rights in the country. This, in particular, is demonstrated by examples related to the rights of LGBT+ people and their communities. Therefore, we will comment on the responses of

the RF to relevant questions that in one way or another affect the LGBT+ agenda. In conclusion, we formulate the questions that it would be desirable for the Committee to put to the Russian authorities at the forthcoming session.

## **Racism and xenophobia and racial profiling (arts. 2, 20 and 26)**

### **Questions of the Committee:**

4. Please respond to concerns regarding the significant amount of hate speech in the media and on the Internet and report on measures taken to address racist and homophobic hate speech, including by politicians and religious leaders. In connection with the Committee's previous concluding observations (CCPR/C/RUS/CO/7, para. 9) and the State party's report (CCPR/C/RUS/8, para. 353), outline any specific steps taken to define and prohibit racial profiling by law and to train law enforcement personnel not to resort to such practices.

### **The State's reply (paras. 22, 24 of the replies):**

5. To combat racism, xenophobia and racial profiling in Russia, it has been made a criminal offence to commit acts intended to incite hatred or enmity or to degrade individuals or groups of persons on the grounds of sex, race, ethnicity, language, origin, attitude to religion or membership of any social group if these acts are performed in public, including through the use of mass media or information and telecommunications networks, including the Internet (Criminal Code, art. 282). The Ministry of Internal Affairs continuously monitors inter-ethnic and interfaith relations, including on the Internet.

### **Commentary:**

6. Monitoring shows that the authorities react to hate speech against LGBT+ people even more reluctantly than to hate-motivated violence. Such cases are practically not investigated by law enforcement agencies, it is almost pointless to complain about public or online hate speech.

7. In 2020, due to the transfer of a significant part of various types of human activity online because of the pandemic, the spread of hate speech has increased significantly. In 2020, [we recorded 40](#) hate speech incidents. People, being forced to stay at home for a long time, expressed their views in all available and possible forms online.

8. It is important to pay attention to the fact that incitement to hatred appeared in a video campaigning to vote for amendments to the Russian Constitution, which means that it became an element of political propaganda. On 2 June 2020 a provocative video inciting hatred against same-sex couples was posted on the *PolitRussia* YouTube channel and on the *riafan.ru* website. The video calls to come and vote for amendments to the Constitution. The video is a short story in which a child left without parental care is taken from an orphanage by a homosexual couple.

9. On 28 June 2020 in response to the rainbow flag displayed by the British Embassy, homophobic activists from the SERB and «*Сорок сороков*» movements held pickets with [offensive posters](#).

10. On 13 February 2020 the President Putin [announced](#) that he would not allow same-sex marriages to be registered in the country as long as he heads the state.

11. The MP, Mr. Milonov, known for his homophobic remarks, spoke out against LGBT+ people four times in 2020. He accused the Marvel's universe picture "Eternals" of gay propaganda and [called for it to be banned](#) in the RF. He [called the cartoon](#) from

Pixar about LGBT+ characters «a manual on same-sex relationships». In September, Milonov [called sexless emoji](#) «disgusting». Later in September 2020, he promised to prevent «the creation of homosexual Internet» and [wanted to ban](#) the entire ".gay" domain.

12. On 3 July 2020 Ms. Lakhova, chairman of the Women's Union of Russia, complained to Mr. Putin about ice cream with a rainbow image. The President [replied](#) that if such pictures on the labels promote LGBT values, then this should be controlled, “but not aggressively.”

13. On 5 October 2020 an article was published in Rossiyskaya Gazeta by Mr. Medinskiy, the President’s staff member, who called same-sex marriage "deviant or perverted behavior in Russian."

14. Several episodes in 2020 featured calls for violence. Some of these episodes include a series of consistent, aggressive persecution of LGBT people that continues to this day. «The Men’s State» (its leader – Mr. Pozdnyakov) is a misogynistic channel in the *Telegram* messenger with 77,000 subscribers that calls for violence and discrimination. Previously, there was a popular group of the same name on the *Vkontakte* social network with more than 160,000 subscribers, where both women and LGBT people were treated with equal hostility. It was blocked in June 2020. The activity of the public continued in *Telegram*. To this day, the personal information of girls and LGBT people is actively published there, calls for discrimination and the approval of violence, after which the targets of the posts are terrorized by homophobes and misogynists, they write to them in private messages, call their personal numbers with threats and insults, follow them, seek out and catch them in the street and use violence.

15. In the summer of 2020 a new movement appeared, whose activities are aimed at inciting enmity and hatred towards LGBT and other social groups (feminists and Jews), their web pages contain insults and encourage extremist actions. It is titled "Russian anti-LGBT movement named after Dr. Jorgen"; it owns a website, a closed group in the social network *Vkontakte* and a channel in *Telegram*.

16. On 18 June 2020 the *Vkontakte* group "OTDG (One of your friends is a homonegativist)" posted a video demonstrating “hunting for gays”: according to the scenario, a father teaches his son to hunt gays in the forest with a rifle. Lawyers from human rights organizations filed applications with the Investigative Committee and the Prosecutor General's Office. However, the video is still in the public domain on the Internet.

17. As for the group "OTDG" in *Vkontakte*, 10-15 publications are published per day in this public. At the same time, the administrators of the group and the authors of the publications use specific vocabulary and wording to circumvent the legislative norms that prevent the incitement of hatred or enmity against social groups and the humiliation of human dignity (Article 282 of the Criminal Code, Article 20.3.1 of the Code of Administrative Offenses). Comments with calls for violence and murder are deleted by the administrators. Although the publications still clearly sound a discriminatory attitude towards LGBT+ people, complaints about the community have long been ignored by law enforcement agencies.

18. There are other *Vkontakte* groups that specialize in the dissemination of denigrating information against LGBT+. which are no less active, for example: “Homophobic Wolf” with over 24,000 subscribers and RIA-KATYUSHA with over 44,000 subscribers. Any gender and sexual identities that go beyond the heteronormative binary system appear to be “deviations”, mental illnesses and

disorders, and are pathologised in every possible way. To give weight, a pseudo-scientific-evidence base is used, for example, there is a whole community “Science for Truth”, which is engaged in the dissemination of material that pathologizes the LGBT+ community.

## **Discrimination on the grounds of sexual orientation and gender identity (arts. 2, 7, 9, 17, 19, 21 and 26)**

### **Questions of the Committee:**

19. Please report on recent measures taken or planned to prevent and combat all forms of discrimination based on sexual orientation and gender identity, including in employment, housing, health and family law, and to address harassment and violence against such individuals. Indicate whether attacks against lesbian, gay, bisexual, transgender and intersex individuals are defined in domestic law as “hate crimes”. Respond to allegations of mass detention, raids, harassment and torture perpetrated against individuals due to their sexual orientation and gender identity by the Chechen authorities, the reported so-called “honour killings” of lesbian, gay, bisexual, transgender and intersex individuals by families in Chechnya and measures taken to address such allegations. Provide information about cases in which the laws prohibiting the promotion of non-traditional sexual relations to minors have been applied and whether the State party is considering repealing those laws, including in view of the decision of the European Court of Human Rights in the case *Bayev and others v. Russia*. Clarify the measures taken to ensure for lesbian, gay, bisexual, transgender and intersex persons the right to peaceful assembly, including in view of the decision of the European Court of Human Rights in the case *Alekseyev v. Russia*. Please respond to concerns that the recent amendments to the Constitution limit the rights of same-sex couples and may contribute to homophobic attitudes in society.

### **The State’s reply (paras. 25, 32-34):**

20. The applicable Russian legislation on work and employment, health care and housing prohibits discrimination, including on grounds of sexual orientation and gender identity. Current criminal law contains a number of provisions intended to protect individuals from criminal assaults connected with their membership of a particular social group; these provisions establish higher penalties when the relevant offences are motivated by political, ideological, racial, ethnic or religious hatred or enmity or by hatred or enmity towards a particular social group.

21. It follows from a literal interpretation of the wording of this aggravating factor that the legislature considers an act to constitute a greater danger to society if the perpetrator is motivated by hatred or enmity towards any social group, regardless of its characteristics. Accordingly, for the purpose of applying these provisions of criminal law, a “social group” must be understood as any group of people with a common characteristic (for example, ethnicity, religion, occupation, property status or culture).

22. The approach described above is also reflected in case law. The Supreme Court, in assessing the legality of prosecution in a case of criminal mischief, found that “the target of a criminal assault within the meaning of article 213 (1) (b) of the Criminal Code may be any social group understood as a community linked by systematic relationships regulated by either formal or informal institutions”. Lesbian, gay, bisexual, transgender and intersex persons are no exception. An attack on members of this social group committed in connection with such membership would be categorized as an offence motivated by hatred or enmity towards a particular social group.

### **Commentary:**

23. A key feature of a hate crime is the presence of a special motive. This means that the offender chooses the object of the crime precisely on the basis of his/her belonging or alleged belonging to a certain social group.

24. In Russia, the crime motivated by political, ideological, racial, national or religious hatred or enmity, or motivated by hatred or enmity against any social group (extremist motives) is an aggravating circumstance (point "e" of part 1 of article 63 of the Criminal Code of the RF). In addition, crimes against life and health can also be qualified as containing a motive of hatred or hostility, under paragraph "l" of part 2 of Article 105, or under paragraph "e" of part 2 of Article 111, or under paragraph "e" of part 2 of Article 112, or under paragraph "b" of part 2 of article 115, or under paragraph "b" of part 2 of article 116 of the Criminal Code.

25. Those provisions themselves provide a prospective opportunity to protect a person against attacks of a discriminatory nature. It is rather a matter of normative regulation of the procedural establishment by the authorities of the motives of the crime at the stages of both pre-trial and courts' investigations, as well as the application – often too selective – of these provisions in practice.

26. Therefore, the motive of hatred in the prevailing number of cases is not taken into account by the investigation: LGBT+ is extremely rarely recognized as a social group, since all issues affecting gender identity and sexual orientation that do not correspond to the “traditional” values of Russian society are strictly tabooed. This is a crucial problem hindering a fair trial.

27. In this regard, it should be emphasized that the Russian criminal law system does not apply the doctrine of the mixed motive of crime, which exists in many other countries. With regard to hate crimes, this ban, in particular, was enshrined at the normative level in 2011, when the Plenum of the Supreme Court of the RF issued its resolution “On judicial practice in criminal cases of extremist crimes”. Since it is impossible to deny that any perpetrator could have a mixed motive, this instruction of the Supreme Court of the RF means that the prosecution and the court are imperatively called upon to single out the dominant, main motive, and qualify the crime solely by it.

28. In the legislative practice of other countries, the question of whether the doctrine of mixed motive is acceptable is treated differently. The position of the Russian legislator is one of the possible ones, although we emphasize that, for example, the OSCE / ODIHR considers it as best practice to take into account the mixed motive. Of course, drawing such a suspicion does not guarantee future investigation into the existence of a criminal motive for hatred, but it helps to ensure that the inquiry and preliminary investigation do not bypass this issue.

29. It is not clear whether the authorities' repetitive predilection in favor of the “hooligan motive” or “economical motive” (lust for loot) is consistently caused by the circumstances indicated above (in particular, because of the imperative order of the Supreme Court), or whether the authorities decided not to use the homophobic motive for any other reasons (for example, to hide shortcomings of a poorly conducted investigation or do not spoil some statistics). One thing is clear – the LGBT+ applicants do not receive adequate protection, they remain the most vulnerable crime targets.

30. Other important consequence of ignoring the motive of hatred is the lack of clear statistics available to the public and the press, which would make it possible to judge whether the Russian Federation battles against homophobic outbreaks. The failure to recognize the motive for hatred also encourages the false sense of impunity that

remains with criminals and pushes them to commit new crimes (as they consider that the Russian state is in no hurry to intervene).

31. Based on the foregoing, we believe that Russian legislation, excluding the doctrine of mixed motive, and the case law based on it does not provide with adequate protection in the situations of homophobic crimes committed against LGBT+ people. The authorities, having duty to respond to such manifestations of violence and extremism, in practice do not conduct a proper investigation into these facts, delay the investigative steps and miss the opportunity to collect basic evidence.

32. We call on the Russian authorities to investigate all cases of hate-motivated violence and to effectively respond to all incidents of aggression from radical groups. Even when the police in hot pursuit finds the perpetrators, they are judged for minor charges, and the punishment, as a rule, is not severe.

33. For example, in 2019, the police initiated 7 criminal cases based on reports from our lawyers about violence against LGBT+ people. But none of investigations involved the motive of hatred towards LGBT+ people, although, according to our lawyers, it was present in all seven. Thus, the perpetrators receive less punishment, the victims do not have the opportunity to receive a fair trial and decent compensation, which creates an atmosphere of impunity and strengthens social stigma.

34. We believe that in order to effectively investigate homophobic attacks, which would be consistent with Russia's international obligations (in particular, within the Council of Europe), the authorities need to:

- When considering a victim' crime report, refrain from ordering the inquiry to local police officers, but transfer the dossier to the experienced investigator.

- Textually recognize LGBT+ people as a social group and take into account the motive of hatred as an aggravating circumstance when investigating crimes motivated by homophobia and transphobia.

- Keep a statistical record of crimes motivated by homophobia and transphobia, make such statistics open to public.

## **Asylum and non-refoulement (arts. 6, 7 and 13)**

### **Questions of the Committee:**

35. Please outline the steps taken to: (a) establish accessible and effective asylum and referral procedures at all border entry points; (b) ensure access to asylum at both the legislative and administrative levels and avoid the penalization of asylum seekers for illegal entry into or presence in the territory of the State party; (c) extend State services for free legal aid to stateless persons, asylum seekers and refugees; and (d) combat discrimination and xenophobic attitudes towards refugees and asylum seekers. Advise on the status of the draft federal legislation on asylum and clarify the roles of the various State institutions involved in the asylum procedure and the integration of refugees.

### **The State's reply (para. 66):**

36. The Ministry of Internal Affairs has developed a federal bill on the granting of asylum in the territory of the Russian Federation, which was drafted in accordance with the Outline of State Policy on Migration for 2019–2025 as approved by Presidential Decree No. 622 of 31 October 2018 and is intended to improve the asylum system and thus ensure that Russia fulfils its international obligations towards asylum seekers and refugees. The Convention relating to the Status of Refugees of 28 July 1951, the

Protocol relating to the Status of Refugees of 31 January 1967 and best practices from a number of other countries with many years of experience in implementation of this Convention were taken into consideration in the bill.

**Commentary:**

37. One of the main problems that we have identified is the total mistreatment by the Russian authorities of LGBT+ individuals seeking asylum. We do not know a single legal case when Russia would give asylum to a person because he or she is afraid of returning to their homeland due to their sexual orientation or gender identity.

38. In the past few years, we have been handling a number of cases in which we have unsuccessfully tried to secure at least temporary asylum for LGBT+ migrants who have come to Russia. These applicants arrived in the Russian Federation from countries where voluntary homosexual relations between adults are punishable by a prison term, and sometimes (Sudan or Nigeria) by the death penalty. The relevant provisions are included in the national Criminal Codes and, more importantly, are applied in practice. Furthermore, the applicants are persecuted there by society as well; most applicants faced harassment even within their families. All these risks were clearly underlined by the applicants when they applied to the Russian migration services for asylum. However, in all the cases we have dealt with, the Russian authorities ignored the applicants' allegations, without giving any decent assessment of the countries' oppressive legislation. The authorities, as a rule, constantly provide irrelevant country information, in general words citing the achievements of a particular country or quoting the geopolitical issues; at the same time, the authorities bypass the situation of the LGBT+ community in the region. Secondly, the authorities always emphasize that nothing threatens the applicants' relatives who remained in the country (although it is strange to say the opposite – as they are not LGBT+). Thirdly, the authorities say that the applicants did not participate in their country in military, political or religious organizations, which is also not relevant to LGBT+ issues. Fourth, the authorities often demand from the applicants some documented evidence of the criminal proceedings instituted against them for sodomy or the corresponding judicial sentences, although it is obvious that in such case the applicants would hardly have successfully reached Russia. The courts ignore the case law of international bodies – such as the ECHR or the UN CAT / HCRtte. Finally, as a rule, the authorities say that the applicants do not belong to a separate social group that is protected by refugee law, or that such association does not constitute a basis for protective measures. This, in our opinion, is a systemic problem of Russian legislation that does not have clear criteria by which it would be possible to determine how and in which cases LGBT+ migrants can count on refugee status, or at least on temporary asylum.

In recent months, the authorities have introduced two bills designed to reform the system of working with foreigners. Both drafts, in our opinion, do not improve the provisions concerning people seeking international protection.

39. In 2021, the Ministry of Internal Affairs prepared [a new federal law](#) "On the conditions for entry and residence in the Russian Federation of foreign citizens and stateless persons". Instead of a temporary residence permit, three new regimes for foreigners are introduced: a short-term residence regime (no more than 90 days in total during a year), a long-term regime (over 90 days) and a permanent indefinite residence regime.

40. In addition, areas that raise the most pressing issues from the point of view of respect for human rights – for example, procedural guarantees, issues of complaints or familiarization with the materials – are practically not touched upon in the text. Many of these areas are still regulated by government or even internal departmental acts, which

is condemned by the ECHR. For example, there is the Federal Security Service (*ФСБ*) instruction “On the organization of work to prevent the entry of foreign citizens and stateless persons into the RF”, it is classified; by using it, the FSS recognizes the stay of certain foreigners in the RF as undesirable for decades. The courts then endorse these decisions without even examining the materials, because the materials are also classified.

41. The draft also contains a formula that it is not allowed to expel not only refugees, but also persons whose application for asylum is under consideration. At the same time, it is emphasized that the expulsion of a foreign citizen should not limit his right to respect for private and family life, guaranteed by the Constitution and the European Convention. However, there is an important caveat right there: the right to respect for family life may not be taken into account if a foreigner commits an administrative offense related to organizing or participating in an unsanctioned rally or picket. Such a harsh measure is unlikely to pass the test of ECHR or UN the Committees for proportionality.

42. In addition, the draft law did not specify the procedures for depriving foreigners of new legal statuses (permanent residence, long-term and short-term residence). If it is left to the discretion of the administrative and law enforcement agencies, then nothing good can be expected. Now, say, a migrant is given only three days to challenge the cancellation of the residence permit before the court, although, as a general rule, a citizen of the RF has three months to file a claim against any actions of the authorities.

43. Besides, the draft does not describe the procedure for periodic review of restrictive measures for entry or stay. In Russia, there is no mechanism that would allow an interested person to demand a review of the imposed ban after some time. On the basis of a classified paper from the FSS, a migrant is banned from entering Russia for 35 years, and a revision can not be legally expected.

44. Further, on January 25, 2022, the Ministry of Internal Affairs submitted for public discussion [a draft law](#) on granting asylum on the territory of the Russian Federation. The authors pointed out that when granting such asylum, the authorities will proceed from the priority of the legitimate interests of Russians and the security of the state. The draft discloses the definitions of refugee status, temporary and political asylum, as well as temporary protection. Political asylum, as before, stands apart and is under the exclusive jurisdiction of the President, and the specifics of its granting are not established by the proposed law. The draft contains a large number of references to other laws and regulations that implement this bill. It also introduces a large list of grounds for asylum refusal. The current Refugee Law of 1993 provides only those grounds for refusal, which are contained in the UN Convention. The new bill provides for a maximum period for granting temporary asylum equal to two years (currently there are no restrictions). As a result, [it can be noted](#) that the proposed draft law has not resolved a single problem that state bodies, courts, citizens face in practice when implementing the legislation on refugees.

## **Harassment and violence against and the killing of lawyers, journalists, human rights defenders and opposition politicians (arts. 2, 6, 7, 9, 14 and 19)**

### **Questions of the Committee:**

45. Please respond to the multiple reports of intimidation and violence against and the killing of journalists, human rights defenders and opposition politicians in the State

party and inform the Committee about measures taken to investigate such incidents, prosecute the perpetrators and provide reparation to victims. With reference to the Committee's previous concluding observations (CCPR/C/RUS/CO/7, para. 9), respond to reports of arbitrary criminal or disciplinary proceedings against lawyers taken in the context of their professional activities, the lack of protection provided for them against attacks, threats and harassment, the difficulties faced by lawyers in gaining access to their clients in places of detention and the lack of confidentiality of lawyer-client meetings.

**The State's reply (para. 79):**

46. In accordance with the requirements of Federal Act No. 103-FZ of 15 July 1995 on the Custody of Suspects and Accused Persons, meetings between suspects or accused persons and their lawyers are not subject to any restrictions as to their number and duration, except in the cases provided for by the Code of Criminal Procedure.

**Commentary:**

47. Unfortunately, the authorities commented only on the last part of the list of questions on this topic, regarding the access of human rights defenders and lawyers to their clients. At the same time, the authorities referred to the norms of federal legislation, without going into the practical component of this issue. The rest, in our opinion, more pressing problems were ignored by the authorities.

48. The sphere in which LGBT+ CSOs operate in Russia predetermines the nature of the threats and obstacles that the lawyers and activists periodically have to face. They are influenced by the increasing level of homophobia and intolerance that one can observe in Russia in recent years. Generally, such pressure comes from non-State actors. The main problem in such situations is that the authorities do not respond to these actions performed by xenophobic groups, thereby ultimately encouraging the intensification of the activity of attackers.

49. For instance, the authorities did not take any meaningful actions in 2019, when the Russian LGBT+ community was stunned by the appearance of the so-called Saw (*Пила*) movement, which [publicly sent threats](#) to LGBT+ activists, and offered monetary rewards for executions, kidnappings and harassment of LGBT+ people. There was also information about [allegedly committed crimes](#) (including abductions and murders, about 50 cases), or about upcoming perpetrations. In particular, the page states that the attackers "[prepared very dangerous and cruel gifts](#)" for the listed citizens (well known Russian LGBT activists and human rights defenders), as well as for the editorial board of media "Novaya Gazeta" and "Radio Svoboda". Despite the massive amount of complaints lodged before the Federal Security Service, the police and the prosecutor's office by LGBT+ organizations and activists from all over Russia, the community has no information about who is behind this movement, not to mention the capture of any of the perpetrators.

50. On 24 May 2020, on the *Vkontakte* social network in the group named "Against LGBT propaganda", an unknown person published a comment from his account with the personal data of a number of individuals, including several attorneys and lawyers working with LGBT+ issues. Crime reports were filed, but the investigative body didn't carry out a proper investigation. In August 2021, the attorney working with "Stimul" began to receive insults and death threats from unknown persons in his Instagram. In response to these threats, The lawyer filed a crime report with the police, but so far we do not have information about any opened inquiry or its results.

## **Freedom of association (arts. 14, 19, 21 and 22)**

### **Questions of the Committee:**

51. Please respond to the consistent reports that the Federal Law No. 121-FZ on Non-Commercial Organizations, known as the “foreign agent law”, and the Federal Law No. 129-FZ on Amendments of Some Legislative Acts of the Russian Federation, known as the “undesirable foreign and international organizations law”, have been regularly used as a means of administrative harassment against human rights organizations and opposition groups and their members.

### **The State’s reply (para. 124):**

52. The requirement for a foreign agent to apply for inclusion on the applicable register before engaging in political activity is intended simply to ensure greater transparency and openness in the activities of such organizations. This obligation in itself does not violate the rights of such non-profit organizations.

### **Commentary:**

53. It is necessary to highlight two main trends that, in our opinion, pose a serious threat to the existence of human rights organizations and independent mass media in Russia including those that protect the rights of LGBT+ individuals in the country.

*a) Persecution of foreign agents: NGOs, media, unregistered movements, undesirable organizations.*

54. For the first time, the concept of “foreign agent” appeared in 2012 in the law “On non-profit organizations” and it referred to NGOs that receive foreign funding (money or property from foreign states, international or foreign organizations, foreign citizens, stateless persons, etc.) and participate in political activities. Now the term “foreign agent” has begun to apply not only to registered non-profit organizations, but also to unregistered public associations, to the media, and even to individuals.

55. The term "foreign media – foreign agents" is contained in Article 6 of the Law of the Russian Federation "On Mass Media". A person or organization is recognized as a “media-foreign agent” if they: a) Distribute printed, audio, audiovisual and other messages and materials intended for an unlimited circle of people (including on the Internet, for example, in online media or social media). Distribution includes not only the publication of the original post, but also the repost. b) Receive money or property from foreign sources. Moreover, the purpose of obtaining this money is not indicated. It can even be a transfer from relatives as a birthday present. The amount doesn't matter either. A foreign agent can be recognized as a person (or organization) who, for example, makes a repost of materials from a media – foreign agent.

56. Everyone who is recognized as a foreign agent must register a legal entity within one month after being included in the register. It follows from the text of the law that this also applies to individuals. In addition to registering a legal entity, foreign agents must mark their status on every message and material, not only on media websites, but also in social networks. The font size in which this notice is printed should be twice the font size of the material. The duration of the video tagging is at least 15 seconds. At the same time, a mark is also required when mentioning a foreign agent.

57. Also, the media recognized as foreign agents must submit a quarterly report on activities and financial operations to the Ministry of Justice. Once a year, it is necessary to undergo a mandatory audit and submit its results to the Ministry of Justice.

58. As for the liability of media foreign agents, first it is administrative liability under the Code of Administrative Offenses. Foreign agents are fined for violations, for

example, for late submission of reports or the absence of a mark, under article 19.34-1. These are fines. For citizens – 10 thousand rubles, for officials – 50 thousand rubles, for legal entities – 500 thousand rubles. Penalties for repeated violation: for citizens – 10 thousand rubles, for officials – 100 thousand rubles, for legal entities – 1 million rubles. Fines for gross, that is, repeated violation (more than twice during the year): for citizens – 100 thousand rubles or administrative arrest for up to fifteen days, for officials – 200 thousand rubles; for legal entities – 5 million rubles.

59. The punishment for the absence of a mark in the media is enshrined in Article 13.15 of the Code of Administrative Offenses. For distribution in the media (as well as in messages and media materials on the Internet) of information about NGOs, public associations and individuals recognized as foreign agents without a mark, they face: for individuals – a fine of 2 thousand to 2.5 thousand rubles with confiscation of the subject of an administrative offense or without one; for legal entities – a fine of 40 to 50 thousand rubles with or without confiscation of the subject of the administrative offense.

60. From 1 March 2021 a new version of Article 330.1 of the Criminal Code of the Russian Federation is also in force in Russia - “Malicious evasion of the performance of duties provided for by the legislation of the Russian Federation in connection with the recognition of a person performing the functions of a foreign agent». Organizations and people included in the register of media-foreign agents risk to violate part 2 of Art. 330.1 of the Criminal Code: «Violation of the procedure for the activities of a foreign agent, for example, an untimely submitted report or the absence of a mark, will be punished by a fine of 300 thousand rubles to imprisonment for up to two years». A criminal case can be initiated only if a person (the founder, editor-in-chief of a foreign agent or an individual included in this register) has already been brought to administrative responsibility under part 2 of Art. 19.34.1.

61. At the end of last year, several LGBT+ organizations and their leaders were included in various lists dedicated to foreign agents. On November 12, 2021, Mr. Kochetkov, the leader and founder of the Russian LGBT Network (*ЛГБТ-сеть*), was included [in the list of media foreign agents](#) (no. 95).

62. The movement "Russian LGBT Network" itself was included in [the list of unregistered associations - foreign agents](#). Later, they were also joined by the Vladivostok movement "Mayak" (*Маяк*) (their mission is creating conditions for inclusion in society, improving the quality of life of stigmatized groups), the St. Petersburg LGBT initiative group "ComingOut" (*Выход*), Initiative group LGBT+ "Revers" (*Реверс*).

63. Thus, out of the six associations on this list, 4 are LGBT+ initiatives, which cannot but lead to certain conclusions about the increased interest of the authorities in this topic and their discriminatory attitude.

*b) Persecution for the so-called "propaganda of non-traditional sexual relations among minors".*

64. In 2013, the Code of Administrative Offenses of the RF incorporated Article 6.21, punishing so-called “promotion of non-traditional sexual relations among minors”: these amendments were adopted in a very short time with the aim of “protecting children from information that promotes the denial of traditional family values” (see [materials and transcripts](#) of parliamentary hearings).

65. This law caused a wide public turmoil and was negatively assessed by the PACE (*Resolution 1948 (2013)* of 27 June 2013), as well as by the Venice Commission ([Opinion of 14-15 June 2013](#)).

66. The ECHR also had the opportunity to assess these norms for their compliance with the Articles 10 and 14 of the Convention. In [Bayev and Others v. Russia](#) (20.06.2017, became final on 13.11.2017), six out of seven judges came to the conclusion that this law in itself contradicts the Convention, and by adopting such laws the authorities reinforce “stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society” (para. 83).

67. Nevertheless, these legislative provisions continue to be actively used by the authorities to suppress media freedom.

68. For instance, on 30 March 2018 the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), the body exercising supervision in Russia in the field of communications, information technology and the media, put one of the oldest Russian LGBT media “Gay.ru” into the register of prohibited resources; the site was blocked. This happened by decision of the one of the courts in the Republic of Khakassia, the reason for blocking was “the placement of information promoting non-traditional sexual relations, recognized as prohibited on the territory of the RF”. It should be noted that the site, which has existed for more than 20 years, is for persons over 18 years of age and contains a corresponding note about it.

69. On 19 March 2021 it became known about the blocking of the *Vkontakte* page (one of the most popular social networks in Russia) of “Alliance of heterosexuals and LGBT for equality” ([vk.com/straights\\_for\\_equality](https://vk.com/straights_for_equality)). The “Alliance” is a social movement without formal registration with the Ministry of Justice. This is an initiative group of individuals, founded in May 2012 in St. Petersburg. At the same time, in May 2012, members of the “Alliance” created a page for the movement on the *Vkontakte* social network, the materials there were of an exclusively informational and educational nature, related to violations of the rights of LGBT people and other vulnerable social groups. At the time of blocking, the group had almost 33,000 subscribers. This material was blocked on the basis of the decision of the District Court of Chelyabinsk dated December 11, 2019 No. 2a-3052/2019. It turned out that back on November 5, 2019, the Chelyabinsk prosecutor's office filed an administrative lawsuit with the court. Of course, the court did not try to summon any representatives of the “Alliance”. One court session was held on the lawsuit, and on December 11, 2019, the judge of the district court authorized the blocking of the resource because of “non-traditional sexual relations”. No specific analysis of the content of the page was carried out by the court; there is no information about this in the published text of the court decision. Currently, the “Alliance”, with the help of lawyers from the LGBT group “Stimul”, lodged a complaint before the European Court of Human Rights about the violation of Article 10 of the Convention.

70. The recent case against the popular youth television channel in Russia, Muz-TV, received a wide response. On 17 November 2021 the channel was fined for promoting non-traditional sexual relations among children. A court in Moscow [has imposed a fine](#) of one million rubles (\$13,780) on Russian music channel ‘Muz TV’ after being found guilty of promoting so-called non-traditional sexual relations among teenagers.

71. The penalty was the [largest possible](#) that can be given to a company for breaking this law. The court decision came after an announcement in June by Roskomnadzor, which revealed that it would analyze the recording of the Muz-TV Music Awards. The ceremony was not marked as 18+ and was broadcast during the day. The broadcast pictured pop stars Philipp Kirkorov and Dava arriving in a white convertible surrounded by flowers and topless men. Muz-TV also showed footage of

famous blogger Igor Sinyak wearing a dress and TikTok star Danya Milohin donning an outfit consisting of half a tuxedo and half a pink dress. In addition to the channel itself, Andrei Razygraev, the former program director of the channel, was also fined 100 thousand rubles for the same offense.

72. Thus, it can be seen from the above examples that the Russian authorities restrict the activities of CSOs and the media in the field of protecting the rights of LGBT+ people using two controversial legislative mechanisms. These mechanisms, which are obviously discriminatory and politicized, should be reviewed taking into account the requirements of international treaties, to which the Russian Federation joined at one time, and generally recognized principles and norms of international law.

### **Suggested Questions to the RF for the session**

#### **Regarding racism and xenophobia and racial profiling (arts. 2, 20 and 26)**

73. Please comment on the increasing cases of public statements by politicians and senior officials that contain discriminatory statements against LGBT+ people. Please comment on the homophobic rhetoric used by the state and pro-government media to campaign for the 2020 constitutional amendments vote. Also please comment on the steps taken by the authorities to combat extremist resources associated with the so-called "Men's State" and its founder, Mr. Pozdnyakov.

#### **Regarding discrimination on the grounds of sexual orientation and gender identity (arts. 2, 7, 9, 17, 19, 21 and 26)**

74. Please indicate whether steps have been or are being taken to include into anti-discrimination legislation the explicit prohibition of discrimination based on sexual orientation and gender identity. For instance, please indicate whether the State party plans to include sexual orientation and gender identity among the hate-motivation grounds that are recognized as aggravating circumstances in article 63 of the Criminal Code.

75. Additionally, please clarify whether the present-day provisions of article 63, paragraph 1 (e), of the Criminal Code apply to cases involving violence against LGBT+ individuals, particularly to cases of extortion and robbery via fake dates with homosexuals. Please provide examples of the application of the named provisions by the courts.

76. Please also comment on the limited use of motive of hatred as an aggravating circumstance in the cases involving LGBT+ victims. Please explain whether this is due to the fact that the Russian penal system, including courts, does not apply the doctrine of the mixed motive of crime. Please respond to reports about a lack of effective, prompt and impartial investigations into past and ongoing cases of hate crimes against LGBT+ individuals.

77. Please also indicate whether there exists separate state statistics related to "hate crimes" and "homophobic crimes" or they are mechanically included in the group of "extremist crimes", which also embraces "extremist statements".

#### **Regarding asylum and non-refoulement (arts. 6, 7 and 13)**

78. Please inform the Committee whether the relevant drafts of the prepared migration laws contain explicit provisions about sexual orientation and gender identity as the cause for protection and non-refoulement of LGBT+ individuals.

79. Similarly, please comment whether the provisions of the current Russian legislation i.e. norms about "a particular social group", embrace LGBT+ community.

Please also indicate whether the provisions about “humane incentives” (*из гуманных побуждений*), permit to grant asylum to an LGBT+ migrant from a country where is a criminal prosecution for same-sex relations.

80. Please explain the absence in the draft law of the procedure for periodic review of restrictive measures for entry or stay of foreigners. Also please explain the need for a legal limitation of the duration of temporary asylum to two years, which is introduced by the draft law "On Asylum" (currently, there are no restrictions on the duration of asylum in the law).

81. Please comment on the nonexistence of LGBT+ migrants who successfully received asylum in the RF. In this respect, please provide information on: (a) the number of applications lodged by LGBT asylum seekers before the Russian migration services; (b) the number of cases where the temporary asylum or refugee status was granted to LGBT+ applicants. Regarding the cases where the relevant applications were rejected, please report on measures taken to ensure strict compliance with the principle of non-refoulement of LGBT+ asylum seekers in law and in practice. What guarantees exist, in law and in practice, against possible refoulement of LGBT+ individuals who may be exposed to a violation of their rights under article 7 of the Covenant in the country of return?

82. Please indicate whether authorities, adjudicating asylum claims, have an effective instrument to consistently comply with the non-refoulement principle. In that regard, please indicate whether there are any written criteria or adopted guidelines for them to deal with the applications lodged by LGBT+ individuals. Please provide information on the model assessment of risks in those cases, including the assessment of the penal legislation in the countries concerned.

**Regarding harassment and violence against lawyers, journalists, human rights defenders (arts. 2, 6, 7, 9, 14 and 19)**

83. Please comment on the steps taken by the authorities to investigate cases of undue interference our lawyers face in the exercise of their legal profession and incidents of aggression and hatred from radical groups.

84. More specifically, please comment on reports of harassment, threats, and intimidation related to the activities of so-called “Saw” (*Пиля*) movement. Please provide updated information on the number of investigations launched, convictions and penalties imposed on those responsible for such acts.

**Regarding freedom of association (arts. 14, 19, 21 and 22)**

85. Please explain the reasons and legal grounds for including 4 LGBT+ initiatives in the list of «unregistered public associations – foreign agents», which took place at the end of 2021. Please clarify whether the protection of the rights of LGBT+ people, in particular the provision of legal and psychological assistance to them, is a political activity within the meaning of the law on "foreign agents".