

Issues related to the violation of a number of articles of the Covenant on Civil and Political Rights (ADC Memorial, with support from FIDH)

Issue: Violation of LGBT rights – adoption of discriminatory laws that basically legalize homophobia and persecution of LGBT activists and social organizations by the government and various other aggressors.

Violation of articles 2, 18, 19, 21, 22, 24, 26.

1) In 2011 – 2012, a number of laws were adopted first in RF regions (Saint Petersburg, Arkhangelsk, Kostroma, Ryazan, Novosibirsk, Magadan, Samara, Kaliningrad, Irkutsk, Krasnodarsk, Bashkortostan) and then at the federal level in 2013 banning “promotion of non-traditional sexual relations between minors,” which have basically resulted in the legalization of homophobia and homophobic views. Attacks on LGBT demonstrations and representatives of the LGBT community have been occurring with greater frequency. There have even been cases where members of the LGBT community have been fired from their jobs, minors have been forced to undergo cures for “homosexuality” and “transsexuality,” and parents and classmates have subjected representatives of the LGBT community to mockery and abuse.

2) In 2013, Dmitry Chizhevsky, a participant in the closed event “Rainbow Tea Party,” lost vision in one eye as a result of an armed attack on this event in Saint Petersburg.

3) Various prosecutions of LGBT rights organizations have taken place: the Saint Petersburg Side by Side film festival was forced to shut down following administrative prosecution; cases are currently underway regarding forcing the LGBT organization *Vykhod* [Coming Out] to register as a “foreign agent;” and claims have been filed against the Russian LGBT Network.

4) Minors under the age of 18 are being prosecuted for administrative violations for being part of the LGBT community (in January 2014, a schoolgirl in Bryansk Region was registered with the Minors Committee for “promoting non-traditional sexual relations,” since she did not conceal her orientation).

5) The group Children-404, which supports LGBT children, has been subjected to persecution. Founder Elena Klimova is under constant threat of both physical reprisals and a new administrative case, after she was exonerated due to absence of *corpus delicti* under the law banning “promotion of non-traditional sexual relations between minors” on 21 February 2014.

Issue: violation of the rights of foreign citizens and stateless persons held in Foreign Citizen Detention Centers and subject to deportation (expulsion).

Violation of articles 2, 10, 12, 26

1) unacceptable conditions of detention: no walks, meager food servings, no use of telephone, complete isolation from information, visits only with approval of inspector and only with close relatives for a brief period in a room lacking natural light and ventilation that is also used to

perform body searches of prisoners (the ECHR found that the RF committed violations in this regard in the cases of Lakatosh et. al. v. Russia and Kim v. Russia).

2) absence of periodic judicial supervision over detention conditions and timeframes for carrying out deportation rulings (people held in these centers can spend up to two years in detention for insignificant administrative violations, which basically turns into a punishment). The law “On the Legal Situation of Foreign Citizens” does not contain a time limit on detention prior to deportation and instead only states “until the decision on deportation is carried out.” In cases where deportation is not possible (i.e., for stateless persons), this norm essentially amounts to deprivation of freedom for an indefinite period. An example is the Nigerian citizen Veronica M., who was held in the Saint Petersburg Foreign Citizens Detention Center for almost four years (2010 – 2013). In January 2013, the Saint Petersburg Municipal Court found that the detention of stateless person S. in a Foreign Citizens Detention Center for an indefinite period “until a decision on deportation is issued” was unacceptable.

3) lack of procedural ability to appeal detention upon the expiration of a certain period of time, making it impossible to end confinement in a center, even if deportation is not possible due to the status of stateless person (the ECHR found that the RF committed violations in this regard in the cases of Lakatosh v. Russia and Kim v. Russia).

4) lack of statutory or other regulatory documents setting the conditions under which people awaiting deportation can be held for a long period of time: detainees at these centers do not currently have access to legal assistance, the mechanisms for determining the identity of people who end up in these centers have not been clearly defined, and there is no time limit set for establishing their identities. Internal order, diet, and the opportunity to speak with a lawyer or relatives are all determined by “internal regulations,” which can often be much stricter than at pretrial detention centers or prisons.

Issue: migration laws that discriminate against children; illegal placement of migrant children in detention centers, deportation of children without their parents.

Relates to articles 2, 10, 12, 24, 26

The amount of time that migrant children can spend in the RF is not connected to their parents’ duration of stay: labor migrants may spend from one to three years straight in Russia under a labor agreement or other permit, but since amendments to the law “On the Procedures for Entering and Leaving the Russian Federation” have taken effect, children may only stay in Russia for up to 90 days out of a possible 180. This violates the right of children to live in a family and their rights to development and education (after three months, they have to break off their studies in school and leave Russia for the next three months).

Violation of migration rules (which children cannot possibly be guilty of) is an administrative violation and grounds for placing migrant children in so-called temporary detention centers for juvenile offenders, where conditions are close to prison conditions, even though the norms of Russian law prohibit prosecuting children under the age of 16 for administrative violations and placing them in detention centers without special circumstances. For example, in March 2014,

three Tajik children from the Musayev family, the youngest of whom was nine, were sent to the Saint Petersburg Temporary Detention Center for Juvenile Offenders. The cause for their detention was a typo in migration documents, and they were held at the center for two days and two nights without their parents before their court appearance.

Issue: extradition of foreigners to their countries of citizenship, where they face the threat of torture, harsh treatment, and persecution; “hidden extradition” (using procedures for administrative deportation for extradition).

Violation of articles 2, 7, 10, 12, 13, 26

1) Even though in specific cases RF courts, including the Supreme Court, have found it unlawful to extradite Uzbeks to Kyrgyzstan due to the likelihood that they will face torture and harsh treatment and their extreme vulnerability in the criminal prosecution system in their country of citizenship, decisions to refuse extradition are frequently reversed, ethnic Uzbeks are subject to arrest in the RF at the request of Kyrgyzstan, and attempts are made to hand them over to Kyrgyz authorities. In Kyrgyzstan, they are accused of “mass unrest” related to the events of the summer of 2010, when the Uzbek minority suffered from confrontations with Kyrgyz people (for example, Kyrgyz citizens Turgunov and Tadzhibayev are currently awaiting extradition to Kyrgyzstan at a prison in Saint Petersburg).

2) Russia is resorting more frequently to “hidden extradition,” where extradition is replaced with “deportation” to simplify document processing and court procedures. It was under this procedure of administrative deportation that individuals were handed over to Kyrgyz authorities even when their extradition had been refused by the Russian Office of the Prosecutor General. People such as this are sentenced to deportation to their native countries for fictitious administrative violations (usually because they did not have the proper documents on them).

Issue: Prejudice and bias in classification during investigation of criminal cases related to mass demonstrations (repression of peaceful citizens criticizing government policies, refusal to prosecute pogromists).

Violation of articles 5, 10, 14, 20

A clear political component has been noted in a number of important criminal cases, in spite of the government’s obligation to ensure a fair trial and pretrial investigation of the actions of every accused person, which involves the proper classification of the incriminating actions.

Of special concern is the arbitrary application of Article 212 of the RF Criminal Code (mass unrest, and in some cases, pogroms), which participants in peaceful civilian actions and authorized demonstrations (such as the one that took place on Bolotnaya Square in 2012) are charged with, while actual pogroms of markets and other places, where nationalists attack foreigners, destroy their property, beat them, and even take over buildings are not used in the investigations. Here it is also important to note the arbitrary application of Article 213 of the RF Criminal code, a vague article that defines “hooliganism,” which could mean absolutely

anything, as a crime (anything from hate crimes to attempts by environmentalists to hang a banner on a platform in the Arctic).

1) In June 2013, nationalists in Saint Petersburg held several so-called “Russian Cleanups.” These actions were distinctly racist and xenophobic in nature: nationalists would attack foreign citizens, overturn fruit and vegetable stands, use offensive language, and rudely call on foreigners to leave Russia. These actions were not classified as “mass unrest” (Article 212 of the RF Criminal Code) or “incitement of hatred and enmity and abasement of human dignity (Article 282 of the RF Criminal Code). The participants in these actions who were detained were charged with “hooliganism” under Article 213 of the RF Criminal Code, but no indication was made of the motives of hatred and enmity that their actions bore. In October 2013, nationalists held an even more frightening action in Biryulevo District in Moscow. During this action, a vegetable warehouse and shopping center were gutted, immigrants from the Caucasus and Central Asia were attacked, and their cars and vans holding their goods were overturned. Again, a criminal case was opened under Article 213 (hooliganism), and the guilty parties received virtually no punishment.

2) On 6 May 2012, a peaceful demonstration against the falsification of the election that put Putin in the post of RF president for the third time took place on Bolotnaya Square in Moscow. The demonstrators first faced forceful dispersal and severe violence from the police and later faced prosecution under Article 212 (mass unrest) and Article 318 (violence against law enforcement authorities). According to the investigation and the court, the mass unrest consisted of people coming out onto the square for an authorized peaceful demonstration and refusing to leave it at the first request of police officers who attacked them out of nowhere. As of now, in this case nine people have been given actual prison sentences, one has been given probation, another 10 are under arrest, five have been released on their own recognizance, one is under house arrest, and one is wanted.

3) The criminal case opened under Article 213 of the RF Criminal Code against 30 crew members of Greenpeace’s vessel Arctic Sunrise who participated in a peaceful protest action against oil drilling in the Arctic is a violation of both Russian and international law. Despite the peaceful nature of the protest, which included plans to hang a banner on the outer side of the platform, the environmentalists were initially charged under Article 227 of the RF Criminal Code (piracy), and likewise with infringement on Russia’s sovereignty, even though the platform is located in an exclusive economic zone where friendly ships are allowed to sail freely. Later these actions were reclassified under Article 213 (hooliganism). By seizing a foreign vessel, Russian authorities violated a number of norms of international law, including maritime law. After the vessel was seized, its crew was held for over two days on board without any charges being filed. The accused were granted amnesty in December 2013, but the case itself has still not been closed and the vessel remains in the hands of RF authorities.

4) A clear example of political orders in the administration of justice in Russia is the criminal prosecution of members of the punk group Pussy Riot, who were also prosecuted under Article 213(2) of the RF Criminal Code for performing a so-called “punk prayer service” in the Cathedral of Christ the Savior and were sentenced to two years in prison despite protests from

many Russian lawyers and the fact that two of the defendants had minor children at the time the sentence was handed down.

Thus, Article 213 (hooliganism) has served as the basis for charges against participants in attacks on foreigners, artistic protesters performing a song against Putin, and environmental protestors in the open sea.

These same double standards can also be observed in relation to the seizure of buildings, police departments, and even military bases by pro-Russian forces in eastern Ukraine, which the Russian government has openly supported and considers within the rights of local residents, while in Russia itself even symbolic protests (for example, when Petr Pavlensky burned automobile tires during his artistic action Mайдan Song, which resulted in his criminal prosecution) are prosecuted to the fullest. In March 2014 in both Moscow and Saint Petersburg, people were arrested, tried, and sentenced to high fines and even arrest for 10 – 15 days for peaceful protests against the war with Ukraine and the seizure of the Crimea.

Issue: crackdown on independent NCOs in the form of charges for “performing the functions of a foreign agent,” checks by the prosecutor’s office, trials, forced closure.

Violation of articles 19, 21, 22

In 2012, a number of amendments were made to the law on NCOs, which in actual fact led to a crackdown on civil society. Since March 2013, NCOs have been subjected to numerous checks, conducted under contrived grounds, which have obstructed the NCO’s express activities by requiring a large amount of documentation, frequent summonses to the prosecutor’s office and court, and constant pressure on NCO representatives.

In 2013 – 2014, ADC Memorial was prosecuted based solely on the fact that it published and distributed to the UN Committee against Torture its human rights report “Gypsies, Migrants, and Activists: Victims of Arbitrary Treatment by the Police” (at the same time it was shown that ADC Memorial received financing from abroad, specifically from Sweden). Thus, ADC Memorial was the first NCO to be found to be a “foreign agent” by two levels of courts (Saint Petersburg district and municipal courts) for the simple fact that it cooperated with the UN Human Rights Committee. This forced ADC Memorial to shut down its legal entity. Its continuation of human rights work without registration presents it with significant difficulties and risks, but it is absolutely impossible for this NCO to engage in any actual activities since its declaration as a “foreign agent” means that its partners and even clients refuse to work with it. Immediately following the court decision declaring ADC Memorial a “foreign agent,” local authorities started to pressure the group’s clients to stop working with this repressive organization. People on especially vulnerable positions (like residents of gypsy settlements who live in constant fear of being removed and evicted from their homes) have been forced to write comical denunciations of these human rights defenders, which assert that “they are trying to protect our rights, but we don’t need this; we are all satisfied, please protect us from ADC Memorial’s interference.”