

EQUALITY AND NON-DISCRIMINATION IN RUSSIA

Best Practice Guide for Lawyers

Practical Guide for lawyers advising victims of discrimination on the grounds of sex and gender, religion or belief, race and ethnicity, disability and sexual orientation and gender identity

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Acronyms

ADC Memorial	Anti-Discrimination Centre Memorial
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CERD	Committee on the Elimination of Racial Discrimination
CPRD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
HIV	Human Immunodeficiency Virus
HRC	Human Rights Committee
IBA	International Bar Association
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
ILO	International Labour Organisation
LGBT	Lesbian, gay, bisexual and transgender
LGBT+	Lesbian, gay, bisexual, transgender and persons of all other sexualities and genders, such as those who are intersex or asexual
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NGO	Non-governmental organisation
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
SOGI	Sexual orientation and gender identity
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHO	World Health Organization

Introduction

The Purpose of this Guide

This Guide is designed to support Russian lawyers to provide best practice information and legal advice to victims of discrimination, and to ensure that such individuals have equal access to justice.

It aims to provide a user-friendly summary on the domestic, regional and international laws relating to discrimination and equality together with relevant jurisprudence, with a particular focus on discrimination against women, racial minorities, ethnic minorities, religious minorities, persons with disabilities and LGBT+ persons. It also sets out practical considerations for strategic litigation.

Our approach to supporting lawyers to provide best practice legal advice and information for victims of discrimination is based on increasing understanding of **five key areas of knowledge**:

1. The experience of groups facing discrimination in Russia;
2. The rights to equality and non-discrimination;
3. Laws that protect equality and non-discrimination under domestic law, regional law and international law;
4. Key human rights issues that affect groups facing discrimination in Russia; and
5. Effective legal strategies for ensuring access to justice, including by way of strategic litigation, for victims of discrimination on specific issues.

This Guide is arranged around this structure. We hope that you will become familiar with the following topics under each area of knowledge.

1. The experience of groups facing discrimination in Russia

- Discrimination on the grounds of sex
- Discrimination against religious minorities
- Discrimination against racial and ethnic minorities
- Discrimination against persons with disabilities
- Discrimination against LGBT+ persons

2. The rights to equality and non-discrimination

- The rights to equality and non-discrimination
- Who is protected from discrimination?
- What are they protected from? The difference between direct and indirect discrimination
- Who owes obligations under anti-discrimination law?
- In respect of which activities do they owe those obligations?

3. Equality and non-discrimination under domestic law, regional law and international law

- Russian laws that can be used to protect against discrimination, including weaknesses of the current framework.
- Regional and international legal mechanisms that can be used to address discrimination and related violations of human rights affecting women, religious minorities, racial and ethnic minorities, persons with disabilities and LGBT+ persons.
- Practical considerations when using regional and international law, such as scope, admissibility and remedies.

4. Key human rights issues that affect groups facing discrimination in Russia

- Discriminatory violence.
- Freedom of expression, including anti-propaganda laws and hate speech.
- Freedom of assembly and association, including protest rights, ability to attend public meetings and events.
- Right to respect for private and family life.
- Right to work.
- Right to healthcare.
- Right to education.
- Right to participation in political and public life.
- Discrimination by the state and its agents.

5. Legal strategies for ensuring access to justice for victims of discrimination

- Strengths and weaknesses of domestic, regional and international mechanisms.
- Practical considerations for strategic litigation.

Part One: Experience of Groups Exposed to Discrimination in Russia

In the Russian Federation, various social groups are subjected to discrimination at the hands of both state and private actors. As will be demonstrated in this Guide, particular groups face increasing discrimination in various areas of life as a result of repressive laws, policies and state authority practices.

Sex discrimination in Russia takes a wide range of different forms, many of which are severe. Discrimination on the grounds of sex mainly affects women and encompasses discrimination in the labour market, where, for example, women are excluded from certain professions;¹ discrimination in political and public life, as evidenced by the low participation rates of women in decision making roles;² and with respect to access to healthcare, where, for example, state policies make access to abortion difficult.³ At its most severe, discrimination against women encompasses violence leading to injury and death.⁴ Sex discrimination is reported across Russian society as a whole, and particular types of discrimination, including gender-based violence, are reported in specific regions, notably the North-Caucasus.⁵ Ethnic minority women are exposed to multiple discrimination, with Roma women and indigenous women experiencing discrimination only or particularly because of the intersection of their sex and ethnicity, and experiencing additional difficulty in accessing rights, including the rights to education, health, employment and participation in decision making processes.⁶

Religious discrimination is prevalent across Russia and mainly affects religious minorities. The Council of Europe has recently pointed out that “whilst the Russian Constitution guarantees every citizen the right to freedom of religion or belief, this fundamental right is at risk as the Russian authorities continue to foster an atmosphere of intolerance, discrimination and persecution against religious minorities throughout the entire Federation.”⁷ Most notably, religious minorities face discriminatory restrictions in professing religious beliefs in community, manifesting their religion publicly and legally registering their religious association.⁸ In the Republic of Mordovia, for example, discrimination in the fields of education and employment has been reported; teachers and staff members at public

1 Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Russia*, UN Doc. CEDAW/C/RUS/CO/8, 20 November 2015, Para 9.

2 *Ibid.*, Para 30.

3 *Ibid.*, Para 35.

4 *Ibid.*, Para 23.

5 *Ibid.*

6 See above, note 1, Paras 35–40; Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations: Russian Federation*, UN Doc. CERD/C/RUS/CO/23-24, 20 September 2017, Paras 21–22.

7 Council of Europe Parliamentary Assembly, *Religious Freedom in Russia*, Written Declaration No. 647, Doc. 14430, October 2017.

8 Forum 18, *Russia: Property sell-offs, alternative service denials follow Jehovah's Witness ban*, December 2017, available at: http://www.forum18.org/archive.php?article_id=2344; United Nations Human Rights Committee (HRC), *Concluding Observations: Russian Federation*, UN Doc. CCPR/C/RUS/CO/7, 28 April 2015, Para 20.

schools and universities have been banned from wearing religious clothing and threatened with dismissal in the event of non-compliance with this ban.⁹

Discrimination on the grounds of race or ethnicity is a pressing problem in Russia which mainly affects racial and ethnic minorities, including the Crimean Tatars and the Roma community.¹⁰ Abuses range from arbitrary arrests and detention by law enforcement agencies, discrimination at work and segregation of children belonging to ethnic minorities in education, to xenophobic statements by policy makers and discriminatory violence.¹¹ Public authorities have been reported to discriminate against this group by committing unlawful acts through their agents, and by failing to adequately investigate and prosecute acts of discrimination committed by public or private actors.¹²

What are Racial and Ethnic Minorities?

According to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, minorities are groups with a national, racial or ethnic, cultural, religious and linguistic identity.¹³ There is no internationally agreed definition as to what constitutes a minority group. The standard approach to establish the existence of a minority is a question of fact, and any definition must include:

- a. objective factors, such as a shared ethnicity, language or religion; and
- b. subjective factors, such as that individuals identify themselves as members of a minority.¹⁴

Persons belonging to racial or ethnic minorities, often face multiple forms of discrimination due to their differences from the majority population, resulting in marginalisation and exclusion. This adversely affects the ability of racial and ethnic minorities to exercise their human rights in the same way as the majority population. Racial and ethnic minorities should be able to express their characteristics freely and to partici-

⁹ Anti-Discrimination Centre Memorial (ADC Memorial), *The Russian Federation: Violation of the Economic and Social Rights of Vulnerable Groups*, 2016, p. 27, available at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28708_E.pdf; Chulkovskaya, Y., "Can you wear a hijab in Russia? And if so, where – and where not?", *Russia Beyond*, 19 October 2016, available at: https://www.rbth.com/politics_and_society/2016/10/19/can-you-wear-a-hijab-in-russia-and-if-so-where-and-where-not_640217.

¹⁰ See above, note 6, CERD, Paras 9, 11 and 21.

¹¹ ADC Memorial, Crimea SOS, SOVA Center and Federation for International Human Rights (FIDH) *Submission to the CERD's Session on Russia*, 2017, p. 5, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fRUS%2f28206&Lang=en.

¹² Joint submission of CSOs, *Submission to the Human Rights Committee's Session on Russia*, 2015, pp. 3 and 8–9, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fRUS%2f19663&Lang=en.

¹³ United Nations General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN Doc. A/RES/47/135, 1993, Article 1.

¹⁴ Office of the High Commissioner for Human Rights (OHCHR), *Minority Rights: International Standards and Guidance for Implementation*, 2010, pp. 8–10, available at: http://ohchr.org/Documents/Publications/MinorityRights_en.pdf.

pate on a non-discriminatory and equitable basis in the cultural, social, economic and political life of the country in which they live.¹⁵

According to Russian official figures, approximately 13 million persons with disabilities lived in Russia in 2011, representing 9% of the population.¹⁶ It is not known which definition was used to estimate this figure, and there are no other reliable estimates of the population of persons with disabilities in Russia. The World Health Organization estimates that approximately 15% of all people live with some form of disability.¹⁷ This disparity in figures demonstrates the divergent approach taken to assessing disability, suggesting that the definition used in Russia is too narrow and restrictive. In Russia, **disability discrimination** remains pervasive, despite the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2012. Persons with disabilities face discriminatory barriers in accessing the right to education, healthcare, employment and participation in political and public life.¹⁸ Abuse and ill-treatment of persons with disabilities, including children, in state institutions has been recorded by many organisations operating in Russia.¹⁹ Moreover, persons with mental disabilities face particular challenges in accessing a wide spectrum of rights due to discriminatory legal practices that deny their legal capacity.²⁰

What are Disabilities?

Traditionally, people have seen disability as a condition that is inherent in the person, for example a medical condition that requires a person to be in a wheelchair. However, there should be no closed definition of disability. Rather, the CRPD explains disability as including long-term physical, mental, intellectual or sensory impairments, **“which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”**.²¹

15 United Nations, Durban Declaration and Plan of Action, September 2001. The Declaration urged governments to create favourable conditions and take measures that would enable persons belonging to minorities within their jurisdiction, specifically calling for the creation and implementation of policies that promote a high-quality and diverse police force free from racism, racial discrimination, xenophobia and related intolerance.

16 Human Rights Watch, *Submission to the CRPD Committee’s Session on Russia*, July 2017, available at: https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_to_crpdpdf citing Государственная программа Российской Федерации «Доступная Среда» на 2011-2015 годы.

17 World Health Organization, *World Report on Disability: Summary*, 2011, pp. 7–8, available at: http://apps.who.int/iris/bitstream/10665/70670/1/WHO_NMH_VIP_11.01_eng.pdf

18 Human Rights Watch, “Russia: End Hurdles for People With Disabilities”, *Human Rights Watch*, September 2013, available at: <https://www.hrw.org/news/2013/09/11/russia-end-hurdles-people-disabilities>; Human Rights Watch, *Submission to the CRPD Committee’s Session on Russia*, July 2017, pp. 3-4, available at: https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_to_crpdpdf; Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*, 1 September 2015, available at: <https://www.hrw.org/report/2015/09/01/left-out/obstacles-education-people-disabilities-russia>; Mental Disability Advocacy Centre, *Analysis of the Russian legal capacity system for persons with mental disabilities: Towards implementation of Article 12 of the UN CRPD*, 2010, p. 12, available at: <http://www.mdac.info/en/resources/analysis-russian-legal-capacity-system-persons-mental-disabilities-towards-implementation>.

19 See above, note 16, Human Rights Watch, pp. 3–4.

20 *Ibid.*

21 Convention on the Rights of Persons with Disabilities (CRPD) G.A. Res. A/RES/61/106, 2006, Article 1.

Therefore, the modern concept of disability sees it as an interaction between:

- an individual's condition (such as being in a wheelchair or having a visual impairment); and
- environmental factors (such as negative attitudes, inaccessible buildings or limited services).

These variables together lead to disability and affect an individual's effective participation in society.²² Disabilities can, therefore, take many forms which result in discrimination against persons with disabilities. For example:

No disability – being in a wheelchair (the personal factor) combined with living in a location with accessible buildings (environmental factor) leads to participating in the community on an equal footing as someone not in a wheelchair, so there is little or no disability in this specific context.²³

Disability – having an intellectual impairment (personal factor) combined with a belief in the community that persons with intellectual disabilities lack the capacity to vote (environmental factor) results in exclusion from society and denial of the right to vote, so there is a disability in this context.²⁴

It has been well-documented that discrimination against lesbian, gay, bisexual or transgender persons (LGBT) – including by the government and its agents – is widespread and severe in Russia.²⁵ In this Guide, we use the term “LGBT+” as an inclusive term, referring both to those who are lesbian, gay, bisexual or transgender, and to others – intersex persons and asexual persons, for example – who may experience discrimination on the basis of their sexual orientation or gender identity. LGBT+ persons in Russia experience discrimination in many different aspects of their life, ranging from healthcare to employment.²⁶ Extreme manifestations of LGBT+ discrimination include discriminatory violence.²⁷ Furthermore, LGBT+ community in Russia have recently been targeted through discriminatory laws

22 OHCHR, *The Convention on the Rights of Persons with Disabilities Training Guide – Professional Training Series No. 19*, 2014, p. 7, available at: http://www.ohchr.org/Documents/Publications/CRPD_Training-Guide_PTS19_EN%20Accessible.pdf.

23 *Ibid.*

24 *Ibid.*

25 Danish Institute for Human Rights, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity. Sociological Report: Russian Federation*, visited February 2018, pp. 7–9, available at: https://www.coe.int/t/Commissioner/Source/LGBT/RussiaSociological_E.pdf.

26 Russian LGBT Network, “The Level of Violence Against LGBTQI+ Increased in Russia”, visited 18 January 2018, available at: <https://lgbtnet.org/en/content/level-violence-against-lgbtqi-increased-russia>; Coalition of Russian LGBT Rights Groups, *Submission to the CESCR's Session on Russia*, August 2017, p. 3, available at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28824_E.pdf.

27 The Russian LGBT Network, *LGBT Persecution in the North Caucasus: a Report*, 2017, p. 13, available at https://lgbtnet.org/sites/default/files/final_chechnya_publish_0.pdf.

which restrict their freedom of expression, assembly and association,²⁸ and in effect, their right to participation in political and public life.²⁹

What are Gender Identity and Sexual Orientation?

Below we define terms relating to gender identity and sexual orientation as they are understood in this Guide:

- **Sex** – each person is assigned a sex at the time of their birth. It is based on a person’s physical sex characteristics (genitalia) and reproductive organs.
- **Gender** – is not a physical attribute. It refers to social concepts of what it means to “be a man” or “be a woman”. This includes social concepts about dress, behaviour, work and relationships. Concepts of gender are specific to contexts and times.
- **Gender identity** – refers to a person’s individual experience or sense of their own gender, whether female, male or something else. This may or may not correspond with the sex that the person was assigned at birth and includes a person’s sense of their body and other expressions of gender such as dress, speech and mannerisms.
- **Intersex** – refers to those persons who are born with reproductive or sexual anatomy that does not fit typical binary notions of being male or female. An intersex person may have the biological attributes of both sexes or lack some of the biological attributes considered necessary to be defined as one or the other sex. The term does not include those who deliberately alter their own anatomical characteristics. For example: Magda was born with physical sex organs that have both male and female elements. Magda is intersex. Magda’s gender identity will depend on how Magda feels.
- **Transgender** – an umbrella term which describes persons whose gender identity or expression is not the same as that assigned to them at birth. “It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth.”³⁰ For example: Evgeni was born with male sex organs. Evgeni’s sex is male; however, Evgeni feels that she is a woman. Her gender identity is female. Evgeni is transgender.

“Sexual orientation” refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of

28 Human Rights Watch, *World Report on Russia 2017*, 2017, available at: <https://www.hrw.org/world-report/2017/country-chapters/russia>.

29 United Nations Human Rights Council, *Factors that impede equal political participation and steps to overcome those challenges*, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/27/29, 2014, Para 43 states that the right to participation in political and public affairs is inhibited for LGBT persons when their rights to freedom of expression, assembly and association are restricted.

30 *The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, 2007, available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

a different gender, the same gender, or more than one gender.”³¹ A person may have a sexual orientation to people of the same gender, of a different gender, or to people of more than one gender.

- **Gay** – refers to men who are emotionally and/or sexually attracted to men. The term is often used to cover both men and women who are attracted to their own sex, but in this Guide is used only to refer to men to ensure clarity.
- **Lesbian** – refers to women who are emotionally and/or sexually attracted to women.
- **Bisexual** – refers to a person who is emotionally and/or sexually attracted to persons of more than one gender.

For more practical and legal guidance on sexual orientation and gender identity, please refer to our best practice guide on equality and non-discrimination of LGBT+ persons in Russia.³²

³¹ *Ibid.*, p. 8.

³² Equal Rights Trust, *Equality and Non-Discrimination in Russia: Best Practice Guide for Lawyers*, 2016, available at: http://www.equalrightstrust.org/ertdocumentbank/lawyer%20guide_ENG_e-version.pdf.

Part Two: Equality and Non-Discrimination

This Part will provide an introduction to equality and anti-discrimination law concepts that will be used throughout this Guide.

The **right to equality** is the right of all persons to be equal in dignity and to participate in all areas of civil, political, economic, social and cultural life on an equal basis with others. Sometimes the right to equality will require persons to be treated differently according to their individual circumstances. The right to non-discrimination is one element of the right to equality – non-discrimination is necessary but not a sufficient condition for the enjoyment of the right to equality.

The **right to non-discrimination** is a free-standing fundamental right, subsumed within the right to equality. It means that all persons have a right to be protected by law from discrimination based on certain personal characteristics, which are referred to as “protected grounds”. The free-standing nature of the right to non-discrimination has two implications: the right is a *separate* right which can be violated even if a related right is not engaged or violated; and the right is an *autonomous* right, which is not related to any other right set out by law.

Discrimination against a person can be either direct or indirect.

Direct discrimination occurs when a person is treated less favourably than another person or is subjected to a detriment because of a protected ground (or grounds) that they have, they are perceived to have or someone they are associated with has. It can only be justified in very exceptional circumstances.

For example: A man from the Roma community seeks to rent an apartment from a landlord, who turns him away because “Roma people never pay the rent on time”. This is a clear example of direct discrimination based on ethnicity. The real or imagined behaviour of a racial or ethnic community can never justify the differential treatment of one of its members.

Indirect discrimination occurs when a particular provision, criterion or practice (a rule of some sort, whether formal or informal) puts a person with a protected ground at a particular disadvantage. The provision or practice may appear to be neutral on the face of it – it makes no reference to a protected ground – but has a discriminatory effect on persons with a protected ground when applied. Indirect discrimination may be objectively justified by a legitimate aim, if the means of achieving that aim are appropriate and necessary.

For example: A public school introduces a new dress code for teachers, prohibiting the wearing of any headwear under any circumstances. A female Muslim teacher continues to wear a headscarf whilst teaching at the school and is threatened with dismissal if she does not comply with the new dress code. This is indirect discrimination on the ground of religion or belief: the new dress code applies to all teachers but

puts individuals from certain religious groups at a particular disadvantage as they are prohibited from wearing headwear that is worn for religious reasons, and it does not appear to be objectively justified.

For example: A company is looking to recruit a new staff member and advertises for a highly experienced individual with “at least 10 years’ relevant experience”. This is potentially indirectly discriminatory on the grounds of age since, whilst this criterion applies to all job candidates, younger candidates are less likely to be able to meet this requirement than older candidates. This discriminatory treatment may be objectively justified if it can be shown that the requirement to have at least 10 years’ relevant experience can be justified by a legitimate aim, and is an appropriate and necessary means of achieving that aim.

For example: The law in a particular country requires all children to provide residential papers in order to enrol in school. Children belonging to a nomadic ethnic minority group do not have residential papers due to their nomadic lifestyle and are therefore denied entry to schools. This is indirect discrimination on the grounds of ethnicity as, whilst the requirement to provide residential papers applies to all children, it places children from the nomadic ethnic minority group at a particular disadvantage compared with other children. This discriminatory treatment may be justified if it can be shown that the requirement to provide residential papers is justified by a legitimate aim, and that the means of achieving that aim are appropriate and necessary. However, the Trust has never come across a situation where there is such a justification in an example of this type.

Harassment constitutes discrimination when unwanted conduct related to any “protected ground” takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment. Such conduct does not need to involve physical contact, nor does it need to be directed at a particular person.

For example: A gay couple goes out to dinner at a local restaurant. A number of the restaurant staff make anti-gay comments to each other throughout the evening, which are loud enough for everyone in the restaurant to hear, including the gay couple.

Failure to make reasonable accommodation

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Reasonable accommodation requires making the necessary and appropriate modifications and adjustments to facilitate all persons to participate in all areas of life on an equal basis with others.

However, there should not be an obligation to accommodate where it creates an unreasonable disproportionate burden for the provider of a service. Examples of reasonable accommodation may include: modification of premises, for example to accommodate persons with disabilities; re-allocation of duties; modifying procedures; altering hours of work or place of work; altering or relaxing rules about uniform or dress code.

Part Three: Laws That Protect Equality and Non-discrimination

1. Domestic Laws

Russia does not have any comprehensive anti-discrimination law. However, there is some protection against discrimination in the Constitution and in certain pieces of national legislation.

The Federal Constitution

Under Article 19 of the Constitution, the state must ensure that all people are guaranteed “equality of rights and freedoms”, regardless of their **sex, race, nationality**, language, **origin**, property, or employment status, residence, attitude to **religion**, convictions, membership of public associations or “**any other circumstance**”. These are known as **protected grounds**. Furthermore, Article 19(3) of the Constitution specifies that “man and woman shall enjoy equal rights and freedoms and have equal possibilities to exercise them.”

Disability is *not* listed as a protected ground in the Constitution; however, the non-exhaustive character of the ground “other circumstances” in Article 19 of the Constitution can be interpreted to include disability. The Constitutional Court of the Russian Federation stated in its *Shtukatarov* judgement that the discrimination of persons with mental disabilities is prohibited under the Constitution, although it did not state explicitly that disability is an “other circumstance”.³³ It can be reasonably assumed that persons with other types of disabilities are also afforded protection from discrimination under the Russian Constitution.

Similarly, **sexual orientation** is *not* listed as a protected ground in the Constitution; however, the Constitutional Court has confirmed that Article 19 protects social groups such as those of a particular sexual orientation, from discrimination. It stated:

*Article 19 [section 2] (...) guarantees protection equally to all persons, irrespective of their sexual orientation, and sexual orientation as such cannot serve as a lawful criterion for establishment of distinctions in the legal status of human and citizen.*³⁴

The Constitutional Court has not yet considered whether gender identity may also be encompassed by Article 19 as this question has not yet arisen in a case before it.³⁵ However,

33 Judgment of the Constitutional Court of the Russian Federation, 27 February 2009, No. 4-П, 2.3.

34 Judgment of the Constitutional Court of the Russian Federation, 23 September 2014, No. 24-П, regarding the “propaganda of non-traditional sexual relations” (Постановление Конституционного Суда Российской Федерации от 23 сентября 2014 года № 24-П).

35 This statement is current as at January 2018. For further information, see Equal Rights Trust, *Justice or Complicity? LGBT Rights in the Courtroom*, September 2016, p. 33, available at: http://www.equalrightstrust.org/ertdocumentbank/Justice%20or%20Complicity%20LGBT%20Rights%20and%20the%20Russian%20Courts_0.pdf.

it seems reasonable to conclude that a consistent reading of Article 19 would extend to protection on the basis of gender identity.

The Constitution also provides **specific protections** for groups with protected characteristics:

- The **freedom of conscience and religion**, including the right to profess individually or with others any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views.³⁶
- The Constitution favours no single religion; the Russian Federation is a secular state with **equality of religious associations**.³⁷
- Everyone shall be guaranteed **social security** at the expense of the state in case of an illness and **disability**, for the upbringing of children and in other cases established by law.³⁸

Other Domestic Laws

Russia does not have comprehensive anti-discrimination legislation, despite its obligations to provide effective and comprehensive protection from discrimination in its legal system.³⁹

The only law that specifically prohibits discrimination on a certain ground is Article 3.1 of the Federal Law “on the Social Protection of Disabled People in the Russian Federation” which defines and prohibits all forms of discrimination against persons with disabilities.

However, there are various laws covering specific areas of life which prohibit discrimination. These include, but are not limited to:

- Article 5 of the Federal Law “On the Fundamentals of Health Care of Citizens in the Russian Federation” states that the state will provide health care to citizens regardless of a range of protected grounds including “other circumstances”.⁴⁰

³⁶ Constitution of the Federation of Russia 1993, Article 28.

³⁷ *Ibid.*, Article 14.

³⁸ *Ibid.*, Article 39(1).

³⁹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966, Article 26 states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination”; Human Rights Committee (HRC), *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 1989, Para 12 states “[t]hat is to say, Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, Article 26 does not merely duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities”; Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 37 states that the right to non-discrimination means that “States parties are encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights. Such laws should aim at eliminating formal and substantive discrimination, attribute obligations to public and private actors and cover the prohibited grounds discussed above”.

⁴⁰ Federal Law “On the Fundamentals of Health Care of Citizens in the Russian Federation”, 21 November 2011, No. 323-FZ (Федеральный закон «Об основах охраны здоровья граждан в Российской Федерации» от 21 ноября 2011 года № 323-ФЗ).

- Article 3 of the Russian Labour Code prohibits discrimination in labour relations and contains an open-ended list of protected grounds.
- The Criminal Code of the Russian Federation makes discrimination by persons acting in their official capacity a crime, including on the ground of “social group”.
- The Code of Administrative Offences also prohibits discrimination against persons on a wider range of grounds, including on the ground of member of a “social group”.

Domestic law provisions protecting against discrimination shall be discussed where relevant in subsequent sections of this Guide.

2. Regional Law

The European Convention on Human Rights (ECHR) is the key regional human rights treaty that Russia has ratified.

Article 14 ECHR provides the right to **non-discrimination in the exercise of other rights** in the ECHR. It does not protect the right to equality, nor does it provide a right to non-discrimination as a free-standing right. It states that rights within the Convention must be secured “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The **protected grounds** of discrimination do not expressly include disability, sexual orientation or gender identity. However, the European Court of Human Rights (ECtHR) has confirmed that sexual orientation⁴¹ and gender identity⁴² are protected grounds of discrimination under the term “other status”. Furthermore, in the case of *Glor v Switzerland*, the ECtHR found that a European and international consensus has materialised that requires the protection of people with disabilities from discrimination,⁴³ and ruled that Article 14 ECHR includes disability as a protected ground within the meaning of “other status”.⁴⁴

Individuals can lodge a complaint before the ECtHR alleging violation by a state of the rights in the ECHR. The individual must meet the admissibility requirements, including a requirement that all domestic remedies have been exhausted.⁴⁵

If the ECtHR finds that there has been a violation of the rights under the ECHR, it may make a declaration to that effect and/or order that an individual is entitled to receive damages from the respondent state. The Committee of Ministers of the Council of Europe is responsible for supervising the enforcement of the ECtHR’s judgments.

41 European Court of Human Rights (ECtHR), *Salgueiro da Silva Mouta v Portugal*, Application No. 33290/96, 21 December 1999.

42 ECtHR, *Identoba and others v Georgia*, Application No. 73235/12, 12 May 2015.

43 ECtHR, *Glor v Switzerland*, Application No. 13444/04, 30 April 2009, Para 53.

44 *Ibid.*, Para 80.

45 ECtHR and Council of Europe, *Practical Guide on Admissibility Criteria*, 2014, available at: http://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis/admi_guide (in various languages).

Protocol No. 12 to the ECHR states that any “right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”⁴⁶ This includes laws regulating every aspect of life, providing, in effect, a free-standing right to non-discrimination. As of January 2018, **Russia has signed but not ratified Protocol 12 of the ECHR**. This means that Russia is not legally bound by its provisions yet.

3. International Law

Russia has ratified seven of the nine core international human rights treaties, so it is obliged to comply with them:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC); and
- Convention on the Rights of Persons with Disabilities (CRPD).

How does International Law Operate in Russia?

Article 15(4) of the Federal Constitution explains the status of international treaties in domestic law. It provides that:

- The Federal Constitution has supremacy; but
- commonly recognised principles and norms of international law and international treaties that Russia has ratified are part of domestic law; and
- if an international treaty ratified by the Russian Federation (but not a commonly recognised principle of international law) establishes rules different from those envisaged by law, the rules of the international treaty take priority.

The Constitutional Court will not consider any provisions in the Constitution to be contrary to international law.

Russia has three types of obligations when it ratifies a human rights treaty:⁴⁷

⁴⁶ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. No. 177, 2000, Article 1.

⁴⁷ See Office of the High Commissioner for Human Rights (OHCHR), *International Human Rights Law*, visited February 2018, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.

- To **respect** rights – to refrain from interfering with or limiting the enjoyment of human rights. For example: ensuring that laws are not discriminatory and providing groups under discussion in this Guide equal protection under the law.
- To **protect** rights – to protect individuals and groups against human rights abuses. For example: prohibiting discrimination based on internationally recognised protected grounds in employment, education, and healthcare.
- To **fulfil** rights – to take positive action to promote the enjoyment of basic human rights. For example: training law enforcement, healthcare, education, judiciary and other service sector personnel about equality and non-discrimination law to ensure equal treatment of groups discussed in this Guide.

As government employees and officials are representatives and employees of a state, a state party will be held accountable for the actions of such individuals acting in their capacity as government employees. If a state fails to take positive steps to ensure individuals can enjoy the human rights in an international treaty, it may be found to be in breach of its international law obligations.⁴⁸

If an individual alleges that their rights under a treaty have been breached, they may make an individual complaint to the UN body of experts that is responsible for that treaty if the state in question has permitted the lodging of individual complaints under that treaty. **However**, Russia has only permitted individuals complaints to be made under **four** of the treaties that it has ratified: the ICCPR; the ICERD; the CEDAW, and the CAT.

This means that for the other human rights treaties that Russia has ratified, there are **no international legal remedies** available. However, Russia’s treaty obligations are still relevant because they are important sources of advocacy for better rights protection.

International Covenant on Civil and Political Rights

The right to non-discrimination is protected in Article 26 ICCPR as a **stand-alone** right. It provides that:

- all persons are entitled, without discrimination, to the equal protection of the law; and
- the law must guarantee non-discrimination for persons “on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Furthermore, Article 2(1) protects the right of persons not to be discriminated against when exercising other rights in the ICCPR, such as freedom of expression, freedom of assembly and association, and the right to privacy (which we discuss in this Guide). It provides that all individuals are entitled to enjoy the rights in the ICCPR “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national

48 HRC, *General Comment No. 6: Article 6 (Right to Life)*, UN Doc. HRI/GEN/1/Rev.1, 1994; HRC, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, Para 8.

or social origin, property, birth or other status”. It is widely understood that that sexual orientation,⁴⁹ gender identity⁵⁰ and disability⁵¹ are included in the open-ended protection ground in the ICCPR.

If an individual considers that Russia has breached their rights under the ICCPR, an individual may make an **individual complaint** to the Human Rights Committee (HRC). The HRC makes legal rulings and can make a declaration that a person’s rights have been breached and/or order that the person be paid damages by the state. The procedure for making a complaint to the HRC (known as an “individual communication”) can be found on the website of the High Commissioner for Human Rights.⁵²

The Constitutional Court held that Russia is under an obligation to implement in good faith the views of the HRC regarding complaints against Russia.⁵³ However, recently the Constitutional Court has declined to follow an important decision of the HRC which found that the Russian “anti-propaganda” laws breached Articles 19 and 26 ICCPR (discussed in Part 4(b) below).

International Covenant on Economic Social and Cultural Rights

The ICESCR protects the right to **non-discrimination in the exercise of other rights** in the ICESCR, such as the rights to work, health and education (which we discuss in this Guide).

Article 2(2) requires the state must guarantee that all individuals enjoy the rights in the ICESCR “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The phrase “other status” indicates that this list is not exhaustive and other grounds may be incorporated in this category.⁵⁴ According to the Committee on Economic, Social and Cultural Rights (CESCR), due to the evolving nature of discrimination “additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization”.⁵⁵ The Committee has established in a General Comment that disability, sexual orientation and gender identity, nationality, age, marital and family status, health status, place of residence, economic and social situation are included under the “other status” ground of Article 2(2).⁵⁶ The General Comment also clarified that states

49 HRC, *Young v Australia*, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 2003.

50 Australian Human Rights Commission, *Consultation on the protection from discrimination on the basis of sexual orientation and sex and/or gender identity*, 29 November 2010, Paras 24–26, available at: https://www.humanrights.gov.au/sites/default/files/content/human_rights/lgbti/lgbticonsult/comments/Law%20Council%20of%20Australia%20-%20Comment%20132.doc.

51 OHCHR, *Human Rights and Disability - The current use and future potential of United Nations human rights instruments in the context of disability*, 2002, p. 52, available at: <http://www.ohchr.org/Documents/Publications/HRDisabilityen.pdf>.

52 See OHCHR, “Human Rights Treaty Bodies – Individual Communications”, visited February 2018, available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#overviewprocedure>.

53 Decision of the Constitutional Court of the Russian Federation, 28 June 2012, No. 1248-O (Определение Конституционного Суда Российской Федерации от 28 июня 2012 № 1248-O).

54 CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 15.

55 *Ibid.*, Para 27.

56 *Ibid.*, Paras 28–35.

must prohibit formal discrimination in law and policy in addition to addressing substantive discrimination, with the latter understood as the effects of laws, policies, attitudes and practices that have the effect of disadvantaging particular groups.⁵⁷ Furthermore, Article 2(2) prohibits direct and indirect discrimination,⁵⁸ and requires reasonable accommodation to be made for particular groups in certain circumstances.⁵⁹ The protections in Article 2(2) apply to the conduct of the state and private actors.⁶⁰ States are “encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights”, which should create obligations for public and private actors and eliminate both formal and substantive discrimination.⁶¹ It is **not possible for an individual to make an individual complaint under the ICESCR** as Russia has not ratified the Optional Protocol to the ICESCR. However, Russia’s obligations under the ICESCR are still important in terms of advocacy. Russia is obliged to report to the CESCR every five years as to its implementations of the obligations provided in the Covenant.⁶² The state report, and alternative reports submitted by other stakeholders such as NGOs, will be examined by the CESCR.

Convention on the Elimination of All Forms of Discrimination against Women

Article 1 CEDAW indicates that:

*Discrimination against women shall mean any **distinction, exclusion or restriction made on the basis of sex** which has the **effect or purpose** of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

The Committee on the Elimination of Discrimination against Discrimination (CEDAW Committee) has clarified that **CEDAW covers gender-based discrimination**, where gender is defined as “socially constructed identities, attributes and roles for men and women” establishing a hierarchical relationship between women and men resulting in rights and power distributions favouring men over women.⁶³

Furthermore, the CEDAW Committee underlines that states are required to protect against direct and indirect discrimination in the public and private sphere.⁶⁴ Moreover, in order to effectively protect against all forms of discrimination affecting women, states parties must **legally recognize and prohibit intersecting forms of discrimination**, as sex and gen-

57 *Ibid.*, Paras 8–9.

58 *Ibid.*, Para 10.

59 *Ibid.*, Paras 9 and 29.

60 *Ibid.*, Para 11.

61 *Ibid.*, Para 37.

62 OHCHR, “Monitoring the economic, social and cultural rights”, visited January 2018, available at: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx>.

63 Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010, Para 5.

64 CEDAW Committee, *General Recommendation No. 25 on Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, UN Doc. HRI/GEN/1/Rev.7, 2004, Para 7.

der are linked with other factors affecting women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.⁶⁵

The CEDAW explicitly prohibits discrimination in various areas of life, including education (Article 10), health care (Article 12), employment (Article 11), administration of property and conclusion of contracts (Article 15), participation and representation in public and political life (Articles 7 and 8).

Although the Convention does not explicitly discuss violence against women the CEDAW Committee has clarified in a General Recommendation that “**gender-based violence is a form of discrimination** that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.⁶⁶

Article 3 CEDAW calls upon states to ensure the full development and empowerment of women in all areas of life. Article 4(1) states that the adoption of temporary special measures aimed at accelerating *de facto* equality between men and women will not amount to discrimination. In fact, states are encouraged to adopt such measures within their specific national context.⁶⁷

Having ratified the Optional Protocol to the CEDAW, **Russia has given authority to the CEDAW Committee to consider individual complaints against Russia.**

International Convention on the Elimination of All Forms of Racial Discrimination

According to Article 1 ICERD “racial discrimination” means:

Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Article 5 ICERD indicates a wide range of civil, political, economic, social and cultural rights that must be guaranteed without any form of racial discrimination, including the right to participate in elections, the right to housing and the right to education. Article 6 obliges states to provide everyone within its jurisdiction with effective protection and remedies against any act of racial discrimination and the right to seek adequate reparations. Furthermore, the ICERD requires states to combat prejudices in various fields of life that can lead to racial discrimination, including by way of education and information provision.⁶⁸

⁶⁵ See above, note 63, Para 18.

⁶⁶ CEDAW Committee, *General Recommendation No. 19 on Violence against Women*, UN Doc. A/47/38, 1992, Para 1.

⁶⁷ CEDAW Committee, *General Recommendation No. 25 on Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, UN Doc. HRI/GEN/1/Rev.7, 2004, Paras 24 and 31–39.

⁶⁸ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 1965, Article 7.

Speech promoting and inciting racial discrimination (hate speech) must be prohibited by the state pursuant to Article 4 ICERD, which also requires states to declare illegal any organisation and activity which incites racial discrimination.

Russia has made the necessary declaration under Article 14 ICERD,⁶⁹ enabling **individuals to submit complaints of violations of Convention rights to the Committee on the Elimination of Racial Discrimination**.

Convention on the Rights of Persons with Disabilities

Under Article 1 CRPD, “**persons with disabilities** include those **who have long-term physical, mental, intellectual or sensory impairments** which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

Equality and non-discrimination are cornerstone principles of the CRPD. Article 2 defines “[d]iscrimination on the basis of disability” as:

*Any **distinction, exclusion or restriction on the basis of disability**, which has the **purpose or effect** of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including **denial of reasonable accommodation**; (...) “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.*

The rights to equality and non-discrimination are protected in Article 5 CRPD, which guarantees equal protection under the law and the prohibition on discrimination on the basis of disability. Furthermore, it declares that states “shall take all appropriate steps to ensure that reasonable accommodation is provided” and recognises that specific measures are necessary to achieve *de facto* equality of persons with disabilities.

Furthermore, CRPD requires states to ensure **accessibility** to facilities and services (Article 9); and underlines the special needs of women and children with disabilities (Articles 6–7).

Equality before the law, as guaranteed by Article 12 CRPD, requires states to abolish the denial or deprivation of legal capacity that is discriminatory on the basis of disability in purpose or effect.⁷⁰ The United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee) stressed in a General Comment that a person’s status as a person with a disability or impairment (including a physical or sensory impairments) can never be grounds for the denial of legal capacity or any other right provided for in Article 12.⁷¹

69 OHCHR, “Status of Ratification Interactive Dashboard”, visited 10 January 2018, available at: <http://indicators.ohchr.org>.

70 Committee on the Rights of Persons with Disabilities, *General Comment No.1, Article 12: Equal recognition before the Law*, UN Doc. CRPD/C/GC/1, 2014, Para 25.

71 *Ibid.*, Para 9.

Russia has not signed and ratified the Optional Protocol to the CRPD; therefore, **it is not possible to lodge an individual complaint alleging a violation of a CRPD right by Russia before CRPD Committee**. Since individual complaints cannot be made to the Committee, recourse for breaches of the CRPD is limited.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1 CAT defines torture as:

*[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, **or for any reason based on discrimination of any kind**, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁷² (emphasis added)*

The CAT also requires states parties to “prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment (...) when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.⁷³

The Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Committee) has emphasised that the principle of non-discrimination is “fundamental to the interpretation and application of the Convention”; for example, the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture, since individuals and social groups may have particular vulnerabilities which can impact their degree of suffering in different ways.⁷⁴ For example, a detainee with a hearing condition which makes him sensitive to loud noises is more likely to suffer from music being played in his cell than a person without that condition. The Committee has also stated that states must assure that complaints mechanisms and investigations into Convention violations take into account gender-related aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to access justice and redress.⁷⁵

Russia has accepted the competence of the CAT Committee to allow **individuals in its jurisdiction to submit individual complaints regarding the alleged violation of the Convention**.

⁷² Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 1984, Article 1.

⁷³ *Ibid.*, Article 16.

⁷⁴ CAT Committee, *General Comment No. 2: Implementation of Article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Paras 20–21.

⁷⁵ *Ibid.*, Para 33.

Convention on the Rights of the Child

Article 2(1) CRC obliges states to ensure that every right in the Convention is provided to children without discrimination of any kind, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. Furthermore, Article 2(2) states that states parties to the CRC shall take all appropriate measures to protect children against all forms of discrimination or punishment on the basis of the status, activities, opinions, or beliefs of the child’s legal guardian or relative.

As Russia has ratified the CRC it is part of domestic law. However, Russia has not ratified the Optional Protocol to the CRC which provides for a communications procedure, so **individuals may not bring complaints against Russia to the Committee on the Rights of the Child**. Nevertheless, as with ICESCR, Russia is required to submit reports to the Committee every five years,⁷⁶ and accordingly, there remains an opportunity for advocacy regarding Russia’s compliance with its obligations under the CRC.

76 Convention on the Rights of the Child, G.A. Res. 44/25, 1989, Article 44.

Part Four:

Key Human Rights Issues that Affect Persons Suffering Discrimination in Russia

As discussed in Part 2 above, the right to non-discrimination is both a free-standing right which applies in all areas of life regulated by law, as well as in relation to the exercise of other rights set out by law. In order to make this Guide as user-friendly as possible, the discussion in this Part is structured by reference to different rights and areas of life, in order to expound upon the relevant domestic, regional and international legal frameworks governing discrimination in these different areas. The Part then ends with a separate section on discrimination by state agents; whilst discrimination by state agents can occur in all of the areas of life discussed in this Part, there are additional considerations which arise where discrimination is perpetrated by state agents, hence its separate treatment at the end of this Part.

Part Four (a) Discriminatory Violence

What is Discriminatory Violence?

The term “discriminatory violence” is used in this Guide to connote violent crimes committed with a bias motive. For example:

- Gender-based violence is “violence that is directed against a woman because she is a woman or that affects women disproportionately”.⁷⁷ Examples include domestic violence, sexual assault and rape, and female genital mutilation.
- Racial or ethnic groups may experience discriminatory violence because of their actual or perceived race or ethnicity.
- Persons with disabilities can be more susceptible to violence because of their disability status when they are, for example, perceived to be vulnerable, or “easy targets”.
- For LGBT+ people, discriminatory violence includes being exposed to homophobic, biphobic or transphobic physical assault because of their sexual orientation or gender identity.

How is Equality Relevant to this Issue?

Women

A 2013 study has shown that 80% of violent crimes against women in Russia are committed by a spouse or intimate partner.⁷⁸ Surveys conducted in 2006 showed that 40% of women who were victims of domestic violence did not seek help from law enforcement agencies.⁷⁹

⁷⁷ Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 19 on Violence against Women*, UN Doc. A/47/38, 1992, Para 6.

⁷⁸ Human Rights Watch, “Russia: Bill to Decriminalize Domestic Violence”, *Human Rights Watch*, 23 January 2017, available at: <https://www.hrw.org/news/2017/01/23/russia-bill-decriminalize-domestic-violence>.

⁷⁹ Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms Yakin Ertürk, Report on Russian Federation*, UN Doc. E/CN.4/2006/61/Add.2, 26 January 2006, Para 41.

According to UN bodies, gender-based crime and domestic violence are rarely prosecuted in Russia because:

- victims are hesitant to approach law enforcement, whom they see as indifferent to their abuse.
- police and prosecutors often choose to not investigate allegations of gender-based or domestic violence, as they see these as private matters.⁸⁰

The Human Rights Committee (HRC), the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Committee), and the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) have all expressed concern about reports of domestic violence and sexual assault against women and the failure of Russia to adequately investigate and prosecute perpetrators.⁸¹ The CEDAW Committee found that victim protection services, such as crisis centres and shelters, were insufficient.⁸² Moreover, women who have reported allegations of domestic violence reportedly have been made to participate in reconciliation processes by law enforcement officers on occasions.⁸³ Part 4(g) of this Guide contains a more in depth discussion of discriminatory attitudes of law-enforcement officers with respect to women. The HRC recommended that Russia raise the awareness of the public about the impact of domestic violence and encourage the reporting of domestic violence.⁸⁴

In the North-Caucasus⁸⁵ there have been persistent reports of violence against women, including so-called “honour killings”, bride-kidnapping and other practices harmful to women and girls, such as child marriages of girls, polygamy, female genital mutilation and abduction of women and girls for forced marriage.⁸⁶ It has been reported that women in the North-Caucasus region are afraid to invoke Russian law to defend their rights for fear of retaliation.⁸⁷

80 CEDAW Committee, *Concluding Observations: Russia*, UN Doc. CEDAW/C/RUS/CO/8, 2015, Paras 21–22.

81 Human Rights Committee (HRC), *Concluding Observations: Russian Federation*, UN Doc. CCPR/C/RUS/CO/7, 28 April 2015, Para 12; See above, note 80, CEDAW Committee, Paras 21–22; Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Committee), *Concluding Observations: Russian Federation*, UN Doc. CAT/C/RUS/CO/5, 11 December 2012, Para 14.

82 See above, note 80, CEDAW Committee, Paras 21–22.

83 Ziegeweid, J., “Justice for Russian Women? Russia Begins to Face Its Domestic Violence Problem”, *Human Rights Brief*, 8 November 2014, p. 14, available at: <http://hrbrief.org/2014/11/justice-for-russian-women-russia-begins-to-face-its-domestic-violence-problem>.

84 See above, note 81, HRC, Para 12.

85 The North Caucasus region consists of the semi-autonomous republics of Chechnya, Ingushetia, North Ossetia, Dagestan, and Kabardina-Balkaria, and the breakaway regions of South Ossetia and Abkhazia. According to the 2010 government census its ethnic makeup is: Russians (30.2%), Chechens (14.1%), Avars (9.1%), Dargins (5.7%), Kabardians (5.3%), Ossetians (5.1%), Kumyks (4.9%), Ingushs 4.4%), Lezgins (4.2%), Karachais (2.4%), Armenians (2%), Laks (1.7%), Azerbaijanis (1.6%), Tabasarans (1.3%), Balkars (1.1%), Nogai (0.8%), Circassians (0.6%), and Abazines (0.4%). The population of the North Caucasus is predominantly Sunni Muslim but is home to a Christian minority as well. See Official Population Census of the Federation of Russia, 2012, available at: http://www.gks.ru/free_doc/new_site/perepis2010/croc/perepis_itogi1612.htm; Laub, Z., “Background Briefing: Why is Russia’s North Caucasus region unstable?”, *PBS*, 7 February 2014, available at: <https://www.pbs.org/newshour/world/russias-north-caucasus-region>.

86 Committee on the Rights of the Child (CRC Committee), *Concluding Observations: Russia*, UN Doc. CRC/C/RUS/CO/4-5, 25 February 2014, Para 37; See above, note 80, CEDAW Committee, Para 23.

87 Human Rights Council, *Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed, Mission to the Russian Federation*, UN Doc. A/HRC/23/34/Add.1, 11 March 2013, Para 106.

The CEDAW Committee has recommended that Russia:

- provide mandatory training for judges, prosecutors, police officers and other law enforcement officials on the strict application of the law in relation to allegations of gender-based crimes;
- ensure that women and girls who are victims of violence have access to redress and protection and rehabilitation; and
- collect statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between the victim and the perpetrator.⁸⁸

Racial, Ethnic and Religious Minorities

It has been well documented that people from racial, ethnic and religious minorities face increased risk of discriminatory violence. Discriminatory violence by groups such as neo-Nazis and “Cossack Patrols”, remain a pressing problem in Russia.⁸⁹ According to the SOVA Centre, in 2016 alone, there were 10 racist murders and more than 70 other attacks based on racial motives.⁹⁰ The victims of these attacks were mostly migrants from Central Asia.⁹¹ The Roma and persons of African descent are also vulnerable to discriminatory violence.⁹²

The CERD has consistently found that existing legislation fails to provide adequate protection for racial and ethnic minorities.⁹³ Moreover, the state does not collect data on complaints, investigations, and prosecutions relating to ethnically-motivated violence.⁹⁴ The absence of statistical data makes it difficult to establish the extent of crimes committed against ethnic minorities.

The CERD has recommended that Russia:

- respond seriously to racist attacks carried out by hate groups;
- develop training programmes on racial discrimination for law enforcement officers, including police, prosecutors and the judiciary, on matters such as investigating discriminatory violence; and
- collect data on accountability for crimes against racial and ethnic minorities.⁹⁵

The HRC has also provided recommendations to Russia including that it institute awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity.⁹⁶

⁸⁸ See above, note 80, CEDAW Committee.

⁸⁹ Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations: Russian Federation*, UN Doc. CERD/C/RUS/CO/23-24, September 2017, Paras 15–16.

⁹⁰ ADC Memorial, Crimea SOS, SOVA Center and Federation for International Human Rights (FIDH) *Submission to the CERD’s Session on Russia, 2017*, p. 5, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fRUS%2f28206&Lang=en.

⁹¹ *Ibid.*, p. 7.

⁹² See above, note 81, HRC, Paras 8–9.

⁹³ See above, note 89, CERD, Paras 9, 11 and 21.

⁹⁴ *Ibid.*, Para 7.

⁹⁵ *Ibid.*, Paras 9–16.

⁹⁶ See above, note 81, HRC, Paras 8–9.

Persons with Disabilities

The CAT Committee has noted reports of frequent involuntary placement of persons in psychiatric institutions in Russia, and the absence of investigations into the reported ill-treatment and deaths of persons in such facilities.⁹⁷ Of particular concern is the institutionalisation of children with disabilities, as disabilities are often considered a source of shame for families. In its 2017 submission to the Committee on the Rights of Persons with Disabilities (CRPD Committee), Human Rights Watch drew attention to the physical and psychological violence against children with disabilities that are institutionalised, including beatings, the use of physical restraints, the use of sedatives for punishment, forced isolation, denial of contact with family members, death threats and humiliation.⁹⁸ It was concluded that such treatment may rise to the level of torture.⁹⁹

The European Court of Human Rights (ECtHR) has found Russia in violation of Article 3 (the prohibition of inhuman or degrading treatment) of the European Convention on Human Rights (ECHR) due to treatment suffered by persons with disabilities in prisons, institutions and police custody.¹⁰⁰

LGBT+

LGBT+ persons require particular protection from discriminatory violence, as it has been well documented that those with minority sexual orientations and/or gender identities are at a higher risk of being targeted.¹⁰¹

In 2015, the Russian LGBT Network surveyed 1,346 LGBT persons regarding their experience of discrimination and violence in the past 12 months. The survey found that 17% of respondents had experienced physical violence.¹⁰²

Both the HRC and the CAT Committee have reported concern about reports of discrimination and violence against LGBT individuals and activists and a failure by Russia to investigate and prosecute alleged perpetrators.¹⁰³ Part 4(g) of this Guide contains information on the state's failure to protect the LGBT+ community from violence and other crimes.

The CAT Committee has recommended that Russia:

- compile statistics on all crimes against members of vulnerable groups, including figures on the investigation and prosecution of such crimes;

⁹⁷ See above, note 81, CAT Committee, Para 22.

⁹⁸ Human Rights Watch, *Submission to the CRPD Committee's Session on Russia*, July 2017, p. 1, available at: https://www.hrw.org/sites/default/files/supporting_resources/hrw_submission_to_crpdc.pdf.

⁹⁹ *Ibid.*, p. 2.

¹⁰⁰ European Court of Human Rights (ECtHR), *Semikhvostov v Russia*, Application No. 2689/12, 6 February 2014; ECtHR, *Arutyunyan v Russia*, Application No. 48977/09, 10 January 2012; ECtHR, *Topekhin v Russia*, Application No. 78774/13, 10 May 2016.

¹⁰¹ Human Rights Council, *Report submitted by the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, UN Doc. A/HRC/29/23, 4 May 2015.

¹⁰² Russian LGBT Network, "The Level of Violence Against LGBTQI+ Increased in Russia", visited 18 January 2018, available at: <https://lgbtnet.org/en/content/level-violence-against-lgbtqi-increased-russia>.

¹⁰³ See above, note 81, HRC, Para 10; CAT Committee, Para 15.

- publicly condemn attacks against LGBT persons; and
- organise awareness-raising campaigns, including among the police, promoting tolerance and respect for diversity.¹⁰⁴

What Protection is there under Domestic Law?

Domestic Law

The Criminal Code of the Russian Federation contains certain provisions for tackling discriminatory violence.

Article 63(1)(e) of the Code contains a list of aggravating factors for crimes which will result in harsher punishment. The provision explicitly lists criminal activity targeting groups on the basis of political, ideological, racial, national or religious hatred or enmity. The list also refers to crimes motivated by hatred or enmity of “social groups”. As indicated in Part 3 above, the Constitutional Court has confirmed that LGBT+ individuals and persons with disabilities are “social groups” that are afforded protection from discrimination under Article 19 of the Constitution.¹⁰⁵ However, in 2015, the HRC noted however, that Article 63(1)(e) has not been applied to cases involving violence against LGBT+ individuals.¹⁰⁶ In addition, committing a crime against a pregnant woman is an aggravated circumstance under the Criminal Code.¹⁰⁷

Under the Code, the prescribed minimum sentence (or penalty) for certain crimes is also increased where it is committed by reason of hatred or enmity with respect to a social group. The crimes in question include murder (Article 105); deliberate infliction of bodily harm (Articles 111, 112 and 115); battery (Article 116); torture (Article 117); and threat of murder or infliction of grave bodily harm (Article 119).

Before July 2016, protection from domestic violence was provided through Article 116 of the Criminal Code, which prohibits “battery or similar violent actions, which have caused physical pain but have not amounted to light injury” targeting “close persons”; the explanatory notes to the legislation explained that “close persons” meant spouses, parents, children, adoptive parents, adopted children, siblings, grandparents, and grandchildren, guardians, in-laws, and household members.¹⁰⁸ This offense has since been decriminalised and incorporated into the Code of Administrative Offenses, carrying a punishment of a fine of RUB 5,000 to 30,000 (approximately EUR 7 to 420), an administrative detention period of

¹⁰⁴ *Ibid.*, CAT Committee.

¹⁰⁵ Judgment of the Constitutional Court of the Russian Federation, 23 September 2014, No. 24-P, regarding the “propaganda of non-traditional sexual relations” (Постановление Конституционного Суда Российской Федерации от 23 сентября 2014 года № 24-П).

¹⁰⁶ See above, note 81, HRC, Para C.6(c).

¹⁰⁷ Criminal Code of the Russian Federation 1996, Article 63 1(h); Equal Rights Trust, *Justice or Complicity? LGBT Rights and the Russian Courts*, 2016, p. 35, available at: http://www.equalrightstrust.org/ertdocumentbank/Justice%20or%20Complicity%20LGBT%20Rights%20and%20the%20Russian%20Courts_0.pdf.

¹⁰⁸ Federal Law “On Amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation on the improvement of the grounds and procedure for exemption from criminal liability”, (Федеральный закон О внесении изменений в Уголовный кодекс Российской Федерации и Уголовно-процессуальный кодекс Российской Федерации по вопросам совершенствования оснований и порядка освобождения от уголовной ответственности).

10 to 15 days, or compulsory work for 60 to 120 hours.¹⁰⁹ Repeated non-aggravated battery remains a criminal offense. In February 2017, domestic violence law was weakened yet again. Battery of close persons resulting in bruising and/or bleeding but not broken bones is now punishable by 15 days in prison or a fine, if it does not happen more than once per 12 months.¹¹⁰

Regional Law

Article 3 ECHR provides that, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

Discriminatory violence can breach Article 3 ECHR in conjunction with Article 14 ECHR, the prohibition on discrimination. Conduct committed by either private individuals or state officials falls within the scope of state’s obligations under Article 3.¹¹¹ The ECtHR has found violations of these two Articles in cases of discriminatory violence committed by private actors, including domestic violence against women,¹¹² and violence against LGBT activists.¹¹³

Conduct must attain a **minimum level of severity** which will depend on: the nature and context of the ill-treatment; its duration; its physical and mental effects; and in some instances, the sex, age and state of health of the victim.

Russia has an **obligation** to protect citizens against conduct that meets the definition of Article 3.¹¹⁴ It also has an obligation to conduct **an effective investigation** into conduct that is alleged to breach Article 3 ECHR. This requires:

- An independent and impartial investigation;
- Investigation conducted within a reasonable period of time; and
- Reasonable steps are taken to examine the role played by bias motives behind the attack.

The ECtHR has held that if the police or state prosecutors fail to appropriately identify hate motivated violence, the state may violate not only Article 3 ECHR but also Article 14 ECHR on the basis that the failure to adequately investigate the “hate motive” is discriminatory.¹¹⁵

¹⁰⁹ *Ibid.*

¹¹⁰ Library of Congress, *Russian Federation: Decriminalization of Domestic Violence*, June 2017, pp. 3–4, available at: <https://www.loc.gov/law/help/domestic-violence/russia-decriminalization-domestic-violence.pdf>.

¹¹¹ See, for example, ECtHR, *A v United Kingdom*, Application No. 25599/94, 23 September 1998; ECtHR, *Ahmed v Austria*, Application No. 25964/94, 17 December 1996. Note that this is a broader scope than the Convention against Torture which requires a connection between the act committed and a public official, see Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 1984, Article 1, which defines torture in terms of having been “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

¹¹² ECtHR, *Opuz v Turkey*, Application No. 33401/02, 9 January 2009.

¹¹³ ECtHR, *Identoba v Georgia*, Application No. 73235/12, 12 May 2015.

¹¹⁴ ECtHR, *MC v Bulgaria*, Application No. 39272/98, 4 December 2003.

¹¹⁵ ECtHR, *MC and AC v Romania*, Application No. 12060/12, 12 April 2016, Para 113.

Examples of conduct that breaches Articles 3 and 14 ECHR

ECtHR, *M.C. and A.C. v Romania* (2016)

The victims had attended the annual gay pride march in Bucharest, Romania. They were returning home on public transport when they were attacked by a group of people who had identified them at the march. The attackers kicked and punched the victims and shouted homophobic abuse at them, causing physical injuries and psychological trauma. The victims reported the attack to the police on the night of the attack. However, it took the police almost 12 months to commence work and the entire investigation lasted six years. Throughout, the police failed to investigate the homophobic elements of the attack.

The ECtHR found that the attack constituted a violation of Article 3 taken with Article 14 because the attack was “directed at their identity and must necessarily have aroused in them feelings of fear, anguish and insecurity (...) [that] was not compatible with respect for their human dignity”. The Court found that the failure to adequately investigate the attack also violated Article 3 in combination with Article 14. The Court found that there were major failings in the investigation. The police interviewed only one witness, did not consider the evidence provided by the victims, and did not take reasonable steps to examine “the role played by possible homophobic motives behind the attack”.

ECtHR, *Opuz v Turkey* (2009)

The claimant’s ex-husband had repeatedly threatened and physically abused her throughout their marriage. Turkish authorities detained the man several times, including for running the claimant down with his car and beating her, but he was released on each occasion after a relatively short time. At one point, the claimant was brutally stabbed with a knife several times by him. Despite the fact that the claimant had reported her ex-husband’s continuous threats to her and her mother to Turkish police, no significant measures were taken to investigate the attacker. The police viewed the crimes as “private matters”. In 2002, the ex-husband shot and killed the claimant’s mother. Although the perpetrator received a life sentence for the murder of the mother, he was released from custody pending an appeal. Shortly after the release, the Turkish police had withdrawn the protection order the claimant had against her attacker.

The ECtHR found that the state had violated Articles 2 and 3 in conjunction with Article 14 because Turkey, despite being given numerous warnings, had failed to effectively protect the claimant’s mother from death, and herself from torture and cruel, inhuman and degrading treatment. The Court found that there was a tendency of Turkish

authorities to not take allegations of domestic abuse by women seriously. This disproportionately affected women and amounted to discrimination. Furthermore, perpetrators of domestic violence generally did not receive appropriate punishment, which was found to constitute a “general and discriminatory judicial passivity in Turkey” denying women equal protection under the law.

As a member of the Organization for Security and Co-operation in Europe (OSCE), Russia has made commitments to addressing discrimination and discriminatory violence within its jurisdiction.¹¹⁶ The OSCE Office for Democratic Institutions and Human Rights assists its members in identifying, understanding and addressing discriminatory violence,¹¹⁷ and to this end has produced several best practice guides.¹¹⁸ Although these guides are non-binding, they are derived from Russia’s regional and international legal obligations and are thus relevant to their implementation.

International Law

International Covenant on Civil and Political Rights

Under the International Covenant on Civil and Political Rights (ICCPR), discriminatory violence may constitute a breach of the state’s duties to protect the right to life (Article 6), freedom from torture and other ill-treatment (Article 7), or security of the person (Article 9) in connection with Article 2.

States have an obligation under Article 6 to protect life,¹¹⁹ including by preventing, punishing, investigating and redressing deprivations of life and other acts of violence. Bias-motivated violence committed by a public official may violate the right to freedom from torture or other forms of ill-treatment, as protected by Article 7; in some circumstances, failure to prevent such violence by private actors may also violate this right.¹²⁰

The right to security of the person – protected as an element of Article 9 – concerns freedom from injury to the body and the mind, or bodily and mental integrity.¹²¹ States have an obligation to “protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors”.¹²² This includes: taking “measures to prevent future injury

116 Organization for Security and Co-operation in Europe (OSCE), *Statement by the Delegation of the Russian Federation at the OSCE High-level Conference on Tolerance and Non-Discrimination*, 22 May 2013, available at: <http://www.osce.org/cio/102120?download=true>.

117 OSCE, *OSCE Office for Democratic Institutions and Human Rights: Hate Crimes*, visited 10 January 2018, available at: <http://hatecrime.osce.org>.

118 OSCE, *OSCE Guides on Hate Crime*, visited 10 January 2018, available at: <http://www.osce.org/odihr/guides-related-to-hate-crime>.

119 HRC, *General Comment No. 6: Article 6 (Right to Life)*, UN Doc. HRI/GEN/1/Rev.1, 1994, Para 5.

120 HRC, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, Para 8.

121 HRC, *General Comment No. 35: Article 9 (Liberty and security of person)*, UN Doc. CCPR/C/GC/35, 2014, Para 3.

122 *Ibid.*, Para 9.

and retrospective measures, such as enforcement of criminal laws, in response to past injury”; and “respond[ing] appropriately to patterns of violence against categories of victims such as (...) violence against persons on the basis of their sexual orientation or gender identity”.¹²³

Convention on the Elimination of All Forms of Discrimination against Women

Although the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not explicitly mention violence against women in its main text, the CEDAW Committee has clarified in a General Recommendation that “**gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men**”.¹²⁴ Thus, the Committee has found that gender-based violence is a violation of Article 1 CEDAW.

Gender-based violence includes:

- inflicting or threatening physical harm or suffering;
- inflicting or threatening mental harm or suffering;
- inflicting or threatening sexual harm or suffering;
- coercion; and
- deprivations of liberty.¹²⁵

Furthermore, states are under a duty to investigate allegations of gender-based violence and may also “be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence”.¹²⁶

International Convention on the Elimination of All Forms of Racial Discrimination

Article 4(a) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) obliges states to take “immediate and positive measures” in relation to prohibiting, “all **acts of violence** or incitement to such acts against any race or group of persons of another colour or ethnic origin”. The CERD has called on states to define offences with bias motives as specific offences and to enact law that enables prosecutors to take the bias motives of perpetrators into account.¹²⁷

Convention on the Rights of Persons with Disabilities

Article 16(5) Convention on the Rights of Persons with Disabilities (CRPD) requires states to “ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted”. The CRPD Committee has stated in a Draft General Comment that **discriminatory torture or ill-treatment** of persons with disabilities is a pressing global problem both inside and outside mental health institutions.¹²⁸

¹²³ *Ibid.*

¹²⁴ *Ibid.*, Para 1.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*, Para 9.

¹²⁷ CERD, *Concluding Observation: Ireland*, UN Doc. CERD/C/IRL/CO/3-4, 2011, Para 19; CERD, *Concluding Observations: Germany*, UN Doc. CERD/C/DEU/CO/19-22, 2015, Para 10.

¹²⁸ Committee on the Convention on the Rights of Persons with Disabilities (CRPD Committee), *Draft General Comment No. 6: on Equality and Non-discrimination*, First draft as at 31 August 2017, Paras 63–64.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

If hate-motivated violence is committed by a public official, such as a prison officer or police officer, this may constitute torture or other ill-treatment, as prohibited by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In addition, the failure to investigate, prosecute and punish such acts by public or private actors can also violate Russia's obligations under the CAT.¹²⁹

Part Four (b) “Hate Speech”

Women, religious minorities, racial and ethnic minorities, persons with disabilities and LGBT+ persons can be the targets of hate speech.

What is Hate Speech?

Whilst the ICCPR does not explicitly refer to the term “hate speech”, Article 20(2) states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. The threshold of prohibited speech under this Article is high. The Camden Principles on Equality and Freedom of Expression refer to prohibited speech under Article 20(2) ICCPR as “hate speech” and provide useful guidance on how the Article should be interpreted:

- “Advocacy” should be understood as an intention to promote hatred publicly towards the target group.¹³⁰
- “Hatred” and “hostility” should be understood as referring to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.¹³¹
- “Incitement” should be understood as statements “which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups”.¹³²

Speech that amounts to criticism or debate directed at particular ideas, beliefs or ideologies, or religions or religious institutions, is **not** hate speech, unless it meets the above criteria.¹³³

129 CAT Committee, *General Comment No.2: Implementation of Article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Paras 15–19.

130 Article 19, *The Camden Principles on Freedom of Expression and Equality*, April 2009, Principle 12.1(i).

131 *Ibid.*, Principle 12.1(ii).

132 *Ibid.*, Principle 12.1(iii).

133 *Ibid.*, Principle 12.3.

How is Equality Relevant to this Issue?

The state must refrain from using hate speech against protected social groups and investigate allegations of hate speech by others.

For example, the CERD has noted documentation of hate speeches in Russia targeting racial, ethnic and religious minorities by the media and party officials. It also noted that alleged perpetrators enjoyed impunity.¹³⁴

Domestic Law

Article 29 of the Russian Constitution provides that “propaganda or campaigning inciting social, racial, national or religious hatred and strife is impermissible”.

Furthermore, Article 282 of the Criminal Code prohibits and makes punishable the incitement to hatred or enmity and the humiliation of the dignity of a person on the grounds of sex, race, nationality, language, attitude to religion and social group.

Regional Law

The ECHR does not contain an explicit prohibition on hate speech. However, the ECtHR has approached the issue of hate speech in two ways:

- Hate speech may be lawfully prohibited on the basis of Article 17 ECHR. Article 17 provides that the Convention cannot be interpreted as giving any “group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms” provided for in the Convention.
- Hate speech may be lawfully prohibited under Article 10(2) ECHR, which provides the right to freedom of expressions (discussed further under Part 4(c) below), if the restriction on hate speech is provided by law, achieves a legitimate aim (such as protecting the rights of LGBT+ persons) and is necessary in a democratic society.

*Vejdeland and others v Sweden (2012)*¹³⁵

The applicants had distributed 100 leaflets in a school (without permission), calling homosexuality a “deviant sexual proclivity” with a “morally destructive effect on the substance of society”. The applicants were convicted in national courts for “agitation against a group” and were fined between EUR 200 to EUR 2,000. The applicants brought their case to the ECtHR claiming that the prosecution breached their rights to freedom of expression. The ECtHR rejected the applicants’ case. The Court held that although the leaflets “did not directly recommend individuals to commit hateful acts”, the leaflets contained “serious and prejudicial allegations”.¹³⁶ The Court held that the appli-

¹³⁴ See above, note 89, CERD, Para 15.

¹³⁵ ECtHR, *Vejdeland and Others v Sweden*, Application No. 1813/07, 9 February 2012.

¹³⁶ *Ibid.*, Para 54.

cants' conviction pursued the legitimate aim of protecting "the reputation and rights of others", namely the rights LGBT+ persons, under Article 10(2) ECHR.¹³⁷ In considering whether the prosecution was a proportionate measure, the Court held that the fines imposed were not a severe sanction and the material had been distributed to children who were impressionable. The Court held that the limitation of the applicants' right to freedom of expression was necessary in a democratic society.¹³⁸ In reaching this conclusion, the Court stressed that "discrimination based on sexual orientation is as serious as discrimination based on "race, origin or colour".¹³⁹ Accordingly, the ECtHR held that Sweden had lawfully prohibited hate speech under Article 10(2) when it prosecuted individuals who had distributed homophobic materials.

International Law

International Covenant on Civil and Political Rights

As noted above, Article 20(2) ICCPR prohibits "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence"; this does not encompass remarks that are generally unpleasant or insulting, but rather must advocate hatred to the extent that it can provoke discrimination, hostility or violence. In considering whether certain speech falls within the ambit of Article 20(2) ICCPR, it is important to balance this provision against the protection of the right to freedom of expression under Article 19(2) ICCPR (which includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice"). The HRC has clarified that, whilst freedom of expression under Article 19(2) is subject to the limitations set out in Article 20(2), it encompasses "expression that may be regarded as deeply offensive".¹⁴⁰

Article 20(2) explicitly requires the prohibition of hate speech on the grounds of race, religion and nationality. The HRC has not discussed whether the prohibition should be interpreted to include other grounds, such as gender, disability and sexual orientation. However, it is possible that hate speech falling outside the scope of Article 20(2) ICCPR might nonetheless be restricted on the grounds of "respect of the rights or reputation of others" under Article 19(3) ICCPR (see Part 4(c) for an in depth discussion), analogous to the approach taken by the ECtHR with respect to "the reputation and rights of others" under the ECHR (see the Regional Law section in this Part).

The following jurisprudence provides guidance on the application of Article 20(2) ICCPR.

¹³⁷ *Ibid.*, Para 49.

¹³⁸ *Ibid.*, Para 59.

¹³⁹ *Ibid.*, Para 55.

¹⁴⁰ HRC, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 2011, Para 11.

Ross v Canada (2000)¹⁴¹

In the case of *Ross v Canada*,¹⁴² the HRC considered the case of a teacher who had made various public statements against the Jewish faith in books and television interviews, including statements suggesting that the Christian way of life was under attack by an international Jewish conspiracy. He was dismissed from his post for his statements. In finding that the teacher's right to free speech had not been violated, the HRC drew some of their reasoning from Article 20(2) ICCPR. The Committee held that there was a causal link between the statements of the teacher and the "poisoned school environment" experienced by Jewish children in the school district. The removal of the teacher could be considered a necessary restriction on free speech which protects "the right of Jewish children to have a school system free from bias, prejudice and intolerance".¹⁴³ The teacher's statements were discriminatory against persons of the Jewish faith and denigrated the faith and beliefs of Jews. This **went beyond a mere critical discussion** of questioning the validity of Jewish beliefs and teachings. Restrictions to freedom of speech could be permitted in relation to statements which are of a nature as to raise or strengthen anti-Jewish feeling, in order to uphold the Jewish community's right to be protected from religious hatred.

Convention on the Elimination of All Forms of Discrimination against Women

Hate speech on the ground of sex has not been explicitly prohibited by any binding international legal instrument, but the Human Rights Commissioner of the Council of Europe has stated in 2014 that the list of protected grounds developed in ECHR jurisprudence¹⁴⁴ is open ended so as to allow for the inclusion of the ground of sex.¹⁴⁵ Whilst the CEDAW Committee has not addressed the issue in its General Recommendations, it has expressed concern over "hate speech against women and girls" in at least one of its Concluding Observations.¹⁴⁶

International Convention on the Elimination of All Forms of Racial Discrimination

Article 4 ICERD requires states to make "the **dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination**" and acts of violence or incitement

141 HRC, *Ross v Canada*, Communication No. 736/1997, UN Doc. CCPR/C/70/D/736/1997, 26 October 2000.

142 *Ibid.*; See also the discussion of this case in Article 19, *Prohibiting incitement to discrimination, hostility or violence, Policy Brief*, December 2012, pp. 9–12, in particular footnote 14, available at: <https://www.article19.org/data/files/medialibrary/3548/ARTICLE-19-policy-on-prohibition-to-incitement.pdf>.

143 See above, note 141, Para 11.6.

144 ECtHR, *Erbakan v Turkey*, Application No. 59405/00, 6 July 2006, Para 56.

145 Council of Europe, Commissioner for Human Rights, "Hate speech against women should be specifically tackled," *Council of Europe*, 6 March 2014, available at: <https://www.coe.int/be/web/commissioner/-/hate-speech-against-women-should-be-specifically-tackl-1>.

146 CEDAW Committee, *Concluding Observations: Finland*, UN Doc. CEDAW/C/FIN/CO/7, 10 March 2014, Paras 14–15.

thereof against any “race or group of persons of **another colour or ethnic origin**” punishable by law.

The ICERD goes further than the ICCPR by imposing the obligation to “adopt immediate and positive measures designed to eradicate all incitement to, or acts of, [racial] discrimination”.¹⁴⁷ Additionally, organisations and activities that promote and incite racial discrimination must be declared illegal, and public authorities at all levels must be prohibited from engaging in hate speech.¹⁴⁸

Although the term “racist hate speech” is not explicitly used in the ICERD, the CERD has nonetheless been prepared to identify and name hate speech phenomena, and to evaluate how far potential hate speech fits within the standards of ICERD.¹⁴⁹ The Committee has also found that the exercise of freedom of expression entails the obligation not to disseminate racist ideas.¹⁵⁰

The Convention prohibits hate speech targeting groups on grounds of **race, colour, descent, national or ethnic origin, indigenous descent, migrant or refugee status** and speech directed against **women members of vulnerable groups**.¹⁵¹

It is important to note that racist hate speech targeting particular protected groups with indirect language – which attempts to conceal its targets and objectives – may also fall within the definition of racist hate speech.¹⁵² For instance, during the Rwandan Genocide, Hutu radio transmissions coordinating the mass killings included language such as “go to work”, an instruction that meant “kill Tutsis”.¹⁵³

Convention on the Rights of Persons with Disabilities

Although international human rights treaties do not explicitly prohibit hate speech against persons with disabilities, it has been argued that Article 16 CRPD, which guarantees freedom from exploitation, violence and abuse, implicitly requires such prohibition.¹⁵⁴

147 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), G.A. Res. 2106 (XX), 1965, Article 4.

148 *Ibid.*, Article 4 (b)-(c).

149 CERD, *General Recommendation No. 35: Combating racist hate speech*, UN Doc. CERD/C/GC/35, 2013, Paras 5–7.

150 CERD, *General Recommendation No. 15: Article 4 of the Convention*, UN Doc. A/48/18, 1993, Para 4.

151 *Ibid.*, Para 6.

152 See above, note 149, Paras 5–7 and 10.

153 Gordon, G.S., *Atrocity Speech Law: Foundation, Fragmentation, Fruition*, Oxford University Press, 2017, Chapter 8.

154 Dimopoulos, A., “Balancing disability protection against freedom of speech: should an offence of incitement to disability hatred be introduced?”, *Public Law*, Vol. 79, 2015, pp. 83–92. See also: The Norwegian Equality and Anti-Discrimination Ombud, *CRPD 2015: The Ombud’s report to the UN Committee on the Rights of Persons with Disabilities – a supplement to Norway’s first periodic report*, 2015, p. 9, available at: http://www.ldo.no/globalassets/brosjyrer-handboker-rapporter/rapporter_analyser/crpd-2015/crpd-rapport-english.pdf.

Practical Exercise

To understand whether a particular hate speech law is too restrictive, consider the following:¹⁵⁵

- Does the hate speech law penalise a statement which is true? *Hate speech legislation should not penalise statements that are true or factual.*
- Does the hate speech law penalise only speech that demonstrates intention to incite discrimination, hostility or violence? *In order to avoid unnecessarily restricting freedom of expression, only speech which is said with the intention of inciting discrimination, hostility or violence constitutes hate speech.*
- Does the law respect the rights of journalists to decide how best to communicate information to the public, particularly regarding incidents of racism and intolerance? *Journalists must not express hate speech, but the law should not interfere with the right of journalists to decide how best to communicate information to the public.*
- Does the law subject anyone to prior censorship? *No one should be subject to prior censorship.*
- Are the sanctions to be imposed by courts proportionate? *Consider whether the sanctions for hate speech are reasonable and objective and demonstrate a clear link to the legitimate aim pursued.*

Part Four (c) Freedom of Expression, Freedom of Assembly and Freedom Association

In this Part we discuss three human rights that are closely-related: the rights to freedom of expression, freedom of assembly and freedom of association. All three are protected in Russian law, regional and international human rights law.

The rights are closely related in both practical terms and legal terms. In practical terms, when a state places a restriction on the freedom of assembly – such as by banning a protest – this may also restrict a participant’s rights to freedom of expression. Domestic, regional and international law provide that these three rights may be lawfully restricted under certain limited circumstances.

What is the Right to Freedom of Expression?

An individual has the right to express ideas without any censorship or interference from the state, except in narrowly defined circumstances. The right to freedom of expression covers all forms of expression, including, among other things, verbal expression such as speeches and conversations, television broadcasting and film, written expression in newspapers, books, emails, posters and social media, and artistic expression.¹⁵⁶ It has been described as

¹⁵⁵ Based on 2001 joint statement by the UN, OSCE and Organization of American States, *Special Mandates on the right to freedom of expression and hate speech laws*, available at: <https://www.osce.org/fom/40120?download=true>.

¹⁵⁶ HRC, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 2011, Para 11.

one of the “essential foundations of a democratic society”¹⁵⁷ because it enables individuals to hold public bodies to account and uncover wrongdoing.

What are the Rights to Freedom of Assembly and Association?

Freedom of assembly is the right to come together with others to express and communicate one’s ideas without interference. It includes the right to attend peaceful protests, pickets, demonstrations, meetings, marches or public events.

Freedom of association is the right to associate with others, including the right to join or leave organisations and the right to form non-governmental associations.

How is Equality Relevant to these Rights?

A state must protect each of these three rights without discrimination, including on the grounds of sex, race, ethnicity, religious belief, disability, sexual orientation or gender identity. Discriminatory denial or restriction of the rights to freedom of expression, assembly and association contravenes the fundamental tenet that human rights are universal and should be enjoyed without discrimination. In practice, such discrimination can arise in many ways, including through legislation, denial of registration of organisations, or failure to protect those rights of particular groups.¹⁵⁸

Women

In its 2017 World Report, Human Rights Watch highlighted the increasing categorisation of non-governmental organisations (NGOs) in Russia as “foreign agents”, which severely impacts the ability of NGOs to operate in Russia.¹⁵⁹ This includes women’s rights organisations,¹⁶⁰ which potentially compromises the ability of women to freely assemble or associate, thus negatively impacting the full realisation of women’s civil and political rights more generally. For example, in June 2017 Russian authorities charged Ms Valentina Cherevatenko, chair of Women of the Don, a women’s rights NGO, with “malicious evasion” of registration as a “foreign agent”.¹⁶¹

Furthermore, members of the feminist punk band “Pussy Riot” have been criminally prosecuted for the crime of “hooliganism” merely for exercising their freedom of expression.¹⁶² The three women were arrested in March 2012 after performing a “punk prayer” that was critical of Vladimir Putin inside Moscow’s Cathedral of Christ the Saviour.¹⁶³ After

157 ECtHR, *Handyside v UK*, Application No. 5493/72, 7 December 1976, Para 49.

158 Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/26/29, 2014, Paras 18, 27 and 28.

159 Human Rights Watch, *2017 World Report*, 2017, p. 494, available at: https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf.

160 *Ibid.*

161 *Ibid.*

162 See above note 81, HRC, Para 19.

163 Elder, M., “Pussy Riot sentenced to two years in prison colony over anti-Putin protest”, *The Guardian*, 17 August 2012, available at: <https://www.theguardian.com/music/2012/aug/17/pussy-riot-sentenced-prison-putin>.

sentencing them to two years in jail, the judge stated that the band showed a “complete lack of respect” for the Orthodox Christian faith, and that they had “crudely undermined social order”.¹⁶⁴

Religious Minorities

The Federal Law “on Combatting Extremist Activity”¹⁶⁵ is increasingly being used to curtail the freedom of expression, religion and assembly of religious groups.¹⁶⁶ If religious publications are declared “extremist” under this law, they are automatically added to the Federal List of Extremist Materials.¹⁶⁷ As of 2016, the list of extremist materials contained approximately 3,500 items; many texts were from minority religions.¹⁶⁸ Authorities continue to harass and outright ban non-traditional religious groups, such as Jehovah’s Witnesses, effectively creating barriers to their ability to exercise freedom of expression, association and assembly.¹⁶⁹

Racial and Ethnic Minorities

Racial and ethnic minorities are also affected by the Federal Law “on Combatting Extremist Activity”, with increasing crackdown on the use of freedom of expression online and a trend of prosecuting supposedly “extremist crimes”.¹⁷⁰ For example, criticism levelled at Russian policies by persons from ethnic or racial minorities has resulted in convictions and been construed as “hate for Russians.”¹⁷¹ Freedom of expression is a particular concern in the Crimea,¹⁷² with Human Rights Watch describing Russian authorities’ silencing of dissent by aggressively targeting critics, in particular the Crimean Tatars, with persecution and intimidation for openly opposing the Russian occupation.¹⁷³

164 BBC, “Pussy Riot members jailed for two years for hooliganism”, *BBC*, 17 August 2017, available at: <http://www.bbc.com/news/world-europe-19297373>.

165 Federal Law “On Combatting Extremist Activity” 2002, (Федеральный закон от 25 июля 2002 г. № 114-ФЗ “О борьбе с экстремистской деятельностью”).

166 See above note 81, HRC, Para 20.

167 Arnold, V., “Russia: Jehovah’s Witness Bible to be ‘extremist?’”, *Forum 18*, 5 May 2016, available at: http://www.forum18.org/archive.php?article_id=2174.

168 *Ibid.*

169 Arnold, V., “Russia: Property sell-offs, alternative service denials follow Jehovah’s Witness ban”, 19 December 2017, *Forum 18*, available at: http://www.forum18.org/archive.php?article_id=2344.

170 Human Rights Watch, *Online and On All Fronts: Russia’s Assault on Freedom of Expression*, July 2017, available at: <https://www.hrw.org/report/2017/07/18/online-and-all-fronts/russias-assault-freedom-expression>.

171 See above, note 90.

172 Following the annexation of the Crimean Peninsula by Russia, the status of this territory continues to be contested. However, Russia considers the Republic of Crimea and Sevastopol to be the 84th and the 85th subjects of the Russian Federation (*Federal Constitutional Law of 21 March 2014, No. 6-FKZ, on admission to the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new entities – the Republic of Crimea and the federal city of Sevastopol*) (Федеральный конституционный закон от 21.03.2014 № 6-ФКЗ (ред. от 29.12.2015) “О принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов – Республики Крым и города федерального значения Севастополя”). Given that, as a matter of Russian law, the Republic of Crimea and Sevastopol are subjects of the Federation, this report treats them as such. However, the Equal Rights Trust notes that the annexation of these territories has been condemned by a United Nations General Assembly Resolution (United Nations General Assembly, Resolution No. 28/262, *Territorial Integrity of Ukraine*, UN Doc. A/RES/68/262, 1 April 2014) and that the vast majority of states do not recognise the territories as federal subjects of the Russian Federation. As such, the Equal Rights Trust considers these territories of Ukraine in all respects. The inclusion of these territories as federal subjects in this report in no way constitutes an endorsement of the Russian Federation’s claims to sovereignty.

173 See above, note 170.

Persons with Disabilities

Persons with disabilities in Russia face indirect barriers to effectively exercising the rights of freedom of expression, association and assembly through the limited physical access to meeting-places and buildings,¹⁷⁴ which impacts their ability to freely associate or assemble with others.

LGBT+

In January 2016, a court in Murmansk, North-Western Russia, found LGBT activist Sergei Alekseenko guilty of violating the discriminatory “anti-propaganda” law which prohibits allowing children access to positive information about LGBT relationships and fined him RUB 100,000 (EUR 1,400). In April 2016, a court in the Siberian town of Barnaul banned the website *Children-404*, an online support group for LGBT children. The decision to block the website has since been overturned.¹⁷⁵ In September 2016, a court in Siberia ruled to block *BlueSystem.ru*, a highly popular LGBT news site.¹⁷⁶ Russia has repeatedly rejected observations of the Human Rights Council and treaty bodies that, by legislative and other means, the Russian Federation has denied rights of freedom of association and of assembly to members of the LGBT+ community.¹⁷⁷

How Does the Law Protect These Rights?

Domestic Law

The Constitution protects all three rights:

- Article 29 protects the right to freedom of expression: “[e]veryone shall be guaranteed the freedom of ideas and speech”. It includes “the right to freely look for, receive, transmit, produce and distribute information by any legal means”.
- Article 31 protects the right to freedom of assembly: the right to “gather peacefully, without weapons and to hold meetings, rallies, demonstrations, marches and pickets”.
- Article 30(1) provides the right to “freedom of activity of public association”.

174 See above, note 98, pp. 3–4.

175 Russian LGBT Network, “Court Quashes the Decision to Block the Website Children-404”, *Russian LGBT Network*, visited January 2018, available at: <https://lgbtnet.org/en/content/court-quashes-decision-block-group-children-404>.

176 Human Rights Watch, *World Report on Russia 2017*, 2017, available at: <https://www.hrw.org/world-report/2017/country-chapters/russia>.

177 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Russian Federation, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, UN Doc. A/HRC/24/14/Add.1, 2 September 2013; HRC, *List of issues in relation to the seventh periodic report of the Russian Federation, Addendum: Replies of the Russian Federation to the list of issues*, UN Doc. CCPR/C/RUS/Q/7/Add.1, 18 December 2014, Para 157.

Freedom of Religion and Religious Association in Russian Legislation

Whilst Article 14 of the Constitution states that Russia is a secular state, the preamble of the Federal Law “on the Freedom of Conscience and Religious Associations”,¹⁷⁸ recognises a special role for the Russian Orthodox Church in the “development of spirituality and culture” and also lists Christianity, Islam, Judaism and Buddhism as an integral part of Russia’s historical heritage. Article 3(3) of the Federal Law “on the Freedom of Conscience and Religious Associations” states that establishing advantages, limitations or other forms of discrimination on the ground of religion is prohibited. Article 14 of this law also provides the state the power to dissolve religious organisations in order to protect public safety and order and to stop “extremist activities”. Article 1(1) of the Federal Law “On Combatting Extremist Activity”¹⁷⁹ defines extremist activities as those of:

[S]tirring up of social, racial, ethnic or religious discord, propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion; violation of human and civil rights and freedoms and lawful interests in connection with a person’s social, racial, ethnic, religious or linguistic affiliation or attitude to religion.

Ostensibly enacted as a tool to protect, among others, religious rights, the law in fact gives power to the state to limit them. The vague and sweeping definitions of terms such as “extremism”, “extremist activities”, “extremist organization” and “extremist materials”, give wide discretion for their interpretation to authorities, and provide scope for arbitrary application.¹⁸⁰

Regional Law

The ECHR protects all three rights:

- Article 10(1) protects the right to freedom of expression which includes “the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” Article 10(2) outlines the circumstances in which the right may be lawfully restricted.

¹⁷⁸ Federal Law “on the Freedom of Conscience and Religious Associations” 1997, (Федеральный закон от 26.09.1997 N 125-ФЗ (ред. от 06.07.2016) “О свободе совести и о религиозных объединениях”).

¹⁷⁹ Federal Law “On Combatting Extremist Activity” 2002, (Федеральный закон от 25 июля 2002 г. № 114-ФЗ “О борьбе с экстремистской деятельностью”).

¹⁸⁰ Council of Europe, Venice Commission, *Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation adopted by the Venice Commission at its 91st Plenary Session, 2012*, Para 74, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)016-e).

- Article 11(1) protects the rights to freedom of peaceful assembly and the freedom of association with others. Article 11(2) outlines the circumstances in which the right may be lawfully restricted.

International Law

International Covenant on Civil and Political Rights

The ICCPR protects all three rights:

- Article 19(2) protects the right to freedom of expression, which includes the right to *seek, receive* and *impart* information and ideas “of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media”. Article 19(3) outlines the circumstances in which the right may be lawfully restricted.
- Article 21 protects the right of peaceful assembly. It also outlines the circumstances in which the right may be lawfully restricted.
- Article 22 protects the right to freedom of association with others. Article 22(2) outlines the circumstances in which the right may be lawfully restricted.

Convention on the Elimination of All Forms of Discrimination against Women

Whilst the CEDAW does not make explicit reference to the rights to freedom of expression, assembly and association, discriminatory restrictions on the basis of sex will violate Article 1 CEDAW, which prohibits “impairing or nullifying the recognition, enjoyment or exercise by women (...) of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5(d)(viii)–(ix) ICERD require the state to ensure the enjoyment of the rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association respectively without distinctions as to race, colour, or national or ethnic origin.

Convention on the Rights of Persons with Disabilities

Article 21 CPRD requires states to ensure that persons with disabilities are able to “exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others”. This obligation includes making information intended for the general public accessible to persons with disabilities and urging private entities to do the same.¹⁸¹

¹⁸¹ ICERD, Article 21(a)-(e).

When can the Rights be Limited?

The rights to freedom of expression, assembly and association are **not absolute** rights. This means, as indicated directly above, that there are limited circumstances in which the rights may be restricted lawfully under domestic, regional and international law.

Domestic Law

As noted, Article 29(1) of the Constitution guarantees “freedom of ideas and speech”, while the rights to freedom of association and assembly are provided by Article 30 and 31 respectively.

Under Article 55(3) of the Constitution, each of these rights may be limited by federal law “only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State”.

Regional and International Law

Under both the ECHR and the ICCPR, in order to lawfully limit the rights to freedom of expression, assembly or association, the state must satisfy the following **three-stage test**:

1. Is the restriction provided by law?

The restriction must have a valid basis under domestic law and be provided in a precise, clear and generally accessible document.

2. Does the restriction pursue a legitimate aim?

Under the ICCPR, the legitimate aims for limiting the rights under Articles 19, 21 and 22 are:

- the protection of “national security or of public order (*ordre public*)” (Article 19) / “national security or public safety, public order” (Articles 21 and 22);
- the protection of “public health or morals”; and
- “respect of the rights or reputations of others” (Article 19) / protection of “the rights and freedoms of others” (Articles 21 and 22).

Under the ECHR, the legitimate aims for limiting the rights under Articles 10 and 11 are:

- the “interests of national security, territorial integrity or public safety” (Article 10)/ the “interests of national security or public safety (Article 11);
- the “prevention of disorder or crime”;
- the “protection of health or morals”;
- the “protection of the reputation or rights of others” (Article 10) / the “protection of the rights and freedoms of others” (Article 11);
- “preventing the disclosure of information received in confidence” (Article 10); and
- “for maintaining the authority and impartiality of the judiciary” (Article 10).

Restrictions on Freedom of Expression under the ICCPR

The HRC has clarified in a General Comment that the ICCPR restrictions on the right to freedom of expression are permissible only if they pursue a legitimate aim, are provided by law and are necessary and proportionate.¹⁸² **Restrictions must also not be discriminatory in purpose or effect.**¹⁸³ Furthermore, laws restricting the right must remain compatible with the aims and objectives of the ICCPR and must be directed only towards a specific need¹⁸⁴ As noted, the legitimate aims for restrictions under Article 19(3) ICCPR are the respect of the rights or reputations of others and the protection of national security or public order, or of public health or morals. Efforts to achieve these aims must be undertaken with restraint:

- The state must establish a “direct and immediate connection” between the expression and the threat itself.¹⁸⁵
- Restrictions on the operation of **websites**, blogs and other internet-based information system can only be permissible if they are content-specific and do not impose a general ban on certain sites.¹⁸⁶ It is not permissible to prohibit a website from publishing material only because it is critical of the government.¹⁸⁷
- Counter-terrorism offences such as “extremist activity”¹⁸⁸ must be **clearly defined** to avoid unnecessary or disproportionate interference with freedom of expression.¹⁸⁹ The **onus is therefore on the state** to demonstrate the legal basis for any restrictions.¹⁹⁰
- Using laws to suppress or withhold information of legitimate public interest that does not harm national security is incompatible with the ICCPR.¹⁹¹
- Requiring journalists to acquire licenses before they can operate is permissible under the ICCPR only if the relevant regulations are objective and non-discriminatory.¹⁹²
- Restrictions on “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” in the sense of Article 20(2) ICCPR (see Part 4(b) of this Guide), **must also satisfy the conditions of Article 19(3).**¹⁹³

Restrictions that prohibit displays of lack of respect for a religion, or that prevent or punish criticism of religious leaders or doctrine are incompatible with the ICCPR.¹⁹⁴

182 HRC, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 2011, Para 22.

183 *Ibid.*, Paras 26, 32, 39, 44, and 48.

184 *Ibid.*, Para 22.

185 *Ibid.*, Para 35.

186 *Ibid.*, Para 43.

187 *Ibid.*

188 *Ibid.*, Para 46.

189 *Ibid.*

190 HRC, *Korneenko et al v Belarus*, Communication No. 1553/2007, UN Doc. CCPR/C/95/D/1553/2007, 24 April 2009.

191 See above, note 182, Para 28.

192 *Ibid.*, Para 44.

193 *Ibid.*, Paras 50–52.

194 *Ibid.*, Para 48.

3. Is the restriction necessary in a democratic society to pursue the legitimate aim?

The reference to “necessary in a democratic society” under the ECHR has been interpreted to mean necessary to address a pressing social need.¹⁹⁵ The requirement of proportionality means that a restriction “must not be overbroad”.¹⁹⁶ Laws imposing a restriction “must be the least intrusive instrument amongst those which might achieve their protective function” and must be “proportionate to the interest to be protected”.¹⁹⁷

Below we will consider several scenarios in which Russia has claimed it has a “legitimate aim” when restricting the rights of protected social groups.

Case Study 1: Protection of “Health and Morals” and Russia’s Anti-Propaganda Law

States have sometimes attempted to justify restrictions on the right to freedom of expression of LGBT+ persons by arguing that such restrictions serve a “legitimate aim” of protecting “public health or morals”.

The HRC has indicated that the concept of “morals” as a legitimate aim must not be defined narrowly, but rather, “[t]he concept of morals derives from many social, philosophical and religious traditions; consequently, limitations (...) for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”.¹⁹⁸ The HRC has insisted that limitations on the right to freedom of expression on the ground of protecting morals “must be understood in the light of universality of human rights and the principle of non-discrimination”.¹⁹⁹

In short, restrictions on the freedom of expression of LGBT+ persons which do not also affect those of other sexual orientation, will certainly be unlawful and unjustified as a matter of international and regional law.

Decisions of the UN Human Rights Committee and the ECtHR on Russia’s Anti-Propaganda Laws

Since 2006, 13 regions of the Russian Federation have adopted laws that ban “propaganda of homosexuality” or “propaganda of non-traditional sexual relationships”. In 2006, Ryazan Oblast was the first Russian region to introduce a ban on “propaganda of homosexuality” among minors under section 3.10 of the Ryazan Oblast Law on Administrative Offences. The law provided that “public actions aimed at propaganda of homosexuality (sexual acts between men or lesbianism) among minors” was punishable by a fine ranging from 1,500

¹⁹⁵ ECtHR, *Sunday Times v UK (no. 2)*, Application No. 13166/87, 24 October 1991.

¹⁹⁶ See above, note 182, Para 34.

¹⁹⁷ *Ibid.*, citing HRC, *General Comment No. 27, Freedom of Movement (Article 12)*, UN Doc. CCPR/C/21/Rev.1/Add.9, 1999, Para 14.

¹⁹⁸ See above, note 182, Para 32, citing HRC, *General Comment No. 22, Freedom of Thought, Consciences and Religion (Art. 18)*, UN Doc. HRI/GEN/1/Rev.1, 1994, Para 8.

¹⁹⁹ HRC, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 2011, Para 32.

to 2,000 roubles.²⁰⁰ In 2013, a ban was introduced into the federal law. LGBT+ activists have sought remedy from the courts both in Russia and at the international level.

*Irina Fedotova v Russian Federation (2012)*²⁰¹

In 2009, Irina Fedotova and Nikolay Bayev, two LGBT rights activists, displayed posters that declared “homosexuality is normal” (“Гомосексуализм – это нормально”) and “I am proud of my homosexuality” (“Я горжусь своей гомосексуальностью”) near a secondary school building in Ryazan. Both were convicted and fined under section 3.10 of the Ryazan Oblast Law on Administrative Offences. The applicants unsuccessfully appealed to the Oktyabrsky District Court²⁰² and the Constitutional Court²⁰³ on the basis that their conviction breached their rights under Articles 29 (freedom of expression) and 19 (equality) of the Federal Constitution.

The Constitutional Court found that the law was designed to protect family, childhood and motherhood “in their traditional understanding”, specifically by protecting children from propaganda which would harm their “health or moral and spiritual development”.²⁰⁴ It concluded that the prohibition was justified and did not violate the Article 29 rights to freedom of thought and freedom to freely disseminate information. Nor, in the Court’s view, did section 3.10 of the Ryazan Oblast Law have any discriminatory characteristics as it did not set forth any measures aimed at the prohibition of “homosexuality” or at its official condemnation.²⁰⁵

Ms Fedotova lodged a communication with the HRC arguing that her rights to freedom of expression and freedom from discrimination under the ICCPR (Articles 19(2) and 26 respectively) had been violated by the decisions of the justice of the peace and the Constitutional Court, and also alleged that the provisions of the Ryazan law were discriminatory.

On 31 October 2012, the HRC adopted its views, finding a violation of Ms Fedotova’s rights under Article 19(2) and 26 ICCPR. The HRC noted that section 3.10 was aimed only at the “propaganda of homosexuality” and not at the propaganda of heterosexuality or sexuality more broadly, later referring to it as “ambiguous and discriminatory”.²⁰⁶ It found that the Russian Federation advanced no reasonable and objective criteria to

200 Ryazan Oblast Law on Administrative Offences, section 3.10 (статья 3.10, Закона Рязанской области “Об административных правонарушениях”).

201 HRC, *Irina Fedotova v Russian Federation*, Communication No. 1932/2010, UN Doc. CCPR/C/106/D/1932/2010, 19 November 2012.

202 Oktyabrskiy District Court of Ryazan, Judgment of 14 May 2009, No. 12-46/2009 (Решение Октябрьского районного суда Рязани от 14 мая 2009 года по делу, № 12-46/2009).

203 Decision of the Constitutional Court of the Russian Federation, 19 January 2010, No. 151-O-O (Определение Конституционного Суда Российской Федерации от 19 января 2011 года, № 151-O-O).

204 *Ibid.*

205 *Ibid.*

206 See above, note 201, Paras 10.5 and 10.8.

justify imposing a ban on “propaganda of homosexuality” but not a ban on promotion of sexuality more broadly.²⁰⁷ It noted that the Russian Federation had not demonstrated why it was necessary, in order to achieve one of the legitimate aims in Article 19(3), to restrict freedom of expression in this case, even if Fedotova had intended to engage children in a discussion about “homosexuality”.

*Bayev and Others v Russia (2017)*²⁰⁸

In *Bayev and Others v Russia*, the claimants were found guilty of “promoting homosexuality among minors” for holding up pro-gay banners in front of a secondary school. The Russian government argued that its legislative provisions condemning “the promotion of homosexuality” had the legitimate aims of protecting public health and protecting children from “converting” to a “homosexual lifestyle” which would make them vulnerable to abuse.²⁰⁹ The ECtHR built on its existing jurisprudence, including the previous ruling of *Alekseyev v Russia*,²¹⁰ by concluding that the legal provisions in question did not advance the legitimate aim of protection of morals, and were likely to adversely affect the protection of health and the rights of others by stigmatising homosexuality and encouraging homophobia.²¹¹ This was held to be incompatible with the aims of the ECHR and Russia was found to have violated Article 10 (freedom of expression) and 14 (the right to non-discrimination) of the Convention.²¹²

Case Study 2: Protection of “Public Order” and Bans on Gay Pride Marches

A state must balance its obligation to maintain public order with its obligations to protect and facilitate lawful protests and a person’s freedom of association. In striking that balance, states are not permitted to impose restrictions on freedom of assembly or association on the basis of public order lightly.

As at September 2016, the Equal Rights Trust had identified over 70 court cases in Russia challenging refusals to permit public assemblies organised by LGBT persons.²¹³ The Trust concluded that “public order” is often used as a pretext to ban such assemblies, when in fact the real motive is a discriminatory one. Accordingly, such claims by the state authorities must be strictly scrutinised.

²⁰⁷ *Ibid.*, Para 10.6.

²⁰⁸ ECtHR, *Bayev and Two Others v Russia*, Application Nos. 67667/09, 20 June 2017.

²⁰⁹ *Ibid.*

²¹⁰ ECtHR, *Alekseyev v Russia*, Application Nos. 4916/07, 25924/08 and 14599/09, 21 October 2010.

²¹¹ See above, note 208, Paras 72–83.

²¹² *Ibid.*, Paras 80–83.

²¹³ See above, note 107, Equal Rights Trust, Part 2.3.4.

Decision of the ECtHR on Ban of Gay Pride Marches

*Alekseyev v Russia (2010)*²¹⁴

Mr Alekseyev is a gay rights activist and had applied to the Mayor of Moscow for permission to hold a gay pride march in Moscow in 2006, 2007 and 2008. Each year, the Mayor rejected the application on the basis that the marches posed a threat to the safety of the participants, given anticipated numbers of counter-protests. The Mayor also expressed the view that such events were “inappropriate”.²¹⁵

The applicant challenged the bans before the ECtHR. The Russian Federation submitted that the bans were necessary to achieve two legitimate aims. First, to preserve public order and the safety of participants due to anticipated violence against the participants. Secondly, to protect public morals because, as summarised by the ECtHR, “propaganda promoting homosexuality was incompatible with religious doctrines and the moral values of the majority and could be harmful if seen by children or vulnerable adults”.

The ECtHR rejected the state’s submissions regarding public order and public morals. It held that Russia had not adequately assessed the security risks to the participants and measures to reduce the risk, but instead had taken the “drastic measure” of banning the marches three years in a row.²¹⁶ With regard to the “protection of public morals”, the Court emphasised that the right of minority groups to lawfully exercise their right to freedom of assembly is not “conditional on its being accepted by the majority”.²¹⁷ Furthermore, the Court found that there was no suggestion that the marches would “involve any graphic demonstration of obscenity”, but rather, were designed “to promote respect for human rights and freedoms and to call for tolerance towards sexual minorities”.²¹⁸

Accordingly, the ECtHR found that the repeated refusal by authorities to allow LGBT pride marches to take place in Moscow violated the right to peaceful assembly (Article 11), the right to non-discrimination (Article 14) taken in conjunction with Article 11 and the right to an effective remedy (Article 13).

²¹⁴ See above, note 210.

²¹⁵ *Ibid.*, Para 78.

²¹⁶ *Ibid.*, Para 77.

²¹⁷ *Ibid.*, Para 81.

²¹⁸ *Ibid.*, Para 82.

Case Study 3: Protection of “the Rights of Others” and “Public Health” and Dissolving the Church of Jehovah’s Witnesses

*Jehovah’s Witnesses of Moscow v Russia (2010)*²¹⁹

In *Jehovah’s Witnesses of Moscow v Russia*, the applicants complained of a breach of the freedom of thought, conscience and religion (Article 9 ECHR), the freedom of assembly and association (Article 11 ECHR) and the right to non-discrimination (Article 14 ECHR) because their religious community was dissolved and its activities were permanently banned.²²⁰ The Russian government argued that the ban was pursuant to the legitimate aim of protecting the rights of others and protecting public health, claiming, *inter alia*, that the church lured children into their organisation without the consent of their parents, encouraged suicide and incited civilians not to fulfil their civil duties.²²¹ The Court found that this permanent dissolution of the community was disproportionate and amounted to a violation of Articles 9 and 11 ECHR.

The claimants also argued that the dissolution of their community was based only on the religious beliefs of Jehovah’s Witnesses. They noted that the Russian government’s assessment of their religious practices and publications, which led to the dissolution, had not been duly compared to that of other religious organisations in the country, most notably the Russian Orthodox Church. The ECtHR noted that “the **inequality of treatment** of which the applicants claimed to be victims” had been considered in its assessment of the violation of Articles 9 and 11.²²²

Case Study 4: Complaints in the Context of the “Foreign Agents” Law to be heard by the ECtHR

The complaints filed to the ECtHR in *Ecodefence and Others v Russia* are particularly significant. It concerns a large group of NGOs working in Russia registering complaints under Articles 10 and 11 of the Convention regarding the so-called Federal Law “on Foreign Agents” (“Foreign Agents” Law), their persecution for failing to register as foreign agents and excessive state control.²²³ The “Foreign Agents” Law of 2012 requires organisations to register as “foreign agents” if they receive any foreign funding and engage in, very broadly defined, “political activity”; those that do not are subject to significant fines and labelled as “foreign agents”.²²⁴ The Russian government has argued that the “Foreign Agents” law is pursuant to

219 ECtHR, *Jehovah’s Witnesses of Moscow and others v Russia*, Application No. 302/02, 10 June 2010.

220 *Ibid.*

221 *Ibid.*, Para 106.

222 *Ibid.*, Para 118.

223 ECtHR, *Ecodefence and 48 others v Russia*, Application No. 9988/13, 22 March 2017.

224 Human Rights Watch, “Russia: Government vs. Rights Groups”, *Human Rights Watch*, 8 September 2017, available at: <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>.

the legitimate aim of national security.²²⁵ Many claims include allegations of the violation of Article 14 ECHR in conjunction with Articles 10 and 11 ECHR, including claims of discriminatory denial of rights on the grounds of religion, ethnicity and sexual orientation. The claimant group has since been joined by third party interveners including the Council of Europe Commissioner for Human Rights on 16 May 2017, the International Commission of Jurists and Amnesty International on 2 October 2017.

The above interveners have stated that NGOs play an essential role in fostering debate on matters of public importance, and that the “Foreign Agents” law significantly impacts on the ability of NGOs to engage in public debate and participate effectively in civil society.²²⁶ In turn, this creates a chilling effect on the exercise of freedom of expression and association on all NGOs and their members.²²⁷ The wider ramifications for protected groups is of particular concern because of the need for NGOs to address discriminatory law, policy and practice.

Part Four (d) Right to Respect for Private and Family Life

In this Part, we outline the legal human rights standards that apply in the area of private and family life, including with respect to same-sex marriage and equal rights to parental leave for men and women.

What is the Right to Respect for Private and Family Life?

The right to respect for private and family life gives individuals the ability to live with autonomy and personal dignity. It includes:

- the right to respect for “personal life”, which necessitates respect for a person’s identity, including their sexual orientation and gender identity;
- the right to personal autonomy;
- the right to physical and psychological integrity, including gender identity; and
- the right to respect to “family life”, including legal recognition of relationships and adoption rights.

How is Equality Relevant to this Right?

The right to respect for private and family life concerns fundamental and intimate elements of a person’s life, including, but not limited to, one’s personal identity, recognition of sexual and other relationships and having children. The right to equality ensures that all people can enjoy this right regardless of their identity and that of members of their family.

²²⁵ Skibo, D., “Five years of Russia’s Foreign Agent law”, *Open Democracy*, 14 August 2017, available at: <https://www.opendemocracy.net/od-russia/daria-skibo/five-years-of-russia-s-foreign-agent-law>.

²²⁶ International Commission of Jurists, *Amicus Brief in the Case of Ecodefence and 48 Others v Russia, 2017*, Paras 2, 5 and 9, available at: <https://www.icj.org/wp-content/uploads/2017/10/Russia-ECtHR-Amicus-Brief-Ecodefence-legalsubmissions-2017-ENG.pdf>.

²²⁷ *Ibid.*

Women

The CEDAW Committee has commented on the way in which women are disadvantaged in relation to family law issues such as parental rights and child-custody.²²⁸ In child-custody and visitation proceedings, gender-based violence is not taken into account by courts; the CEDAW Committee recommended Russia to enact legislation that mandates judges to do so.²²⁹ Female sex workers are especially vulnerable in child-custody proceedings, with NGOs reporting that some sex workers have lost custody over their child because of their work.²³⁰ In the North-Caucasus Region, the traditional practice where the father has “ownership” over children in the family discriminates against women, as it often means that the mother loses all contact with her child after divorce.²³¹ Although this is prohibited by the Constitution and Federal Legislation,²³² the CEDAW Committee has noted its persistence in the region in 2015.²³³

Persons with Disabilities

Persons with mental disabilities are often subject to measures that partially or completely deprive them of their personal autonomy.²³⁴ Reports have shown that persons with mental disabilities in Russia have lost their legal capacity in court proceedings, wherein they were not allowed to participate.²³⁵ Decisions over all, or key aspects of life have been transferred to a “guardian”, which has meant in some cases that the person deprived of legal capacity could not challenge the decision in court.²³⁶ Russia was recently found to have violated the right to private and family life of a couple with mental disabilities by involuntarily placing their new-born baby in an orphanage.²³⁷ An in depth discussion on this case is provided in Part 4(g).

LGBT+

Russian courts have discriminated against same-sex couples by refusing to consider long-term same-sex relationships as falling “within the sphere of family life”.²³⁸ In 2014, Kazakhstani national who had lived with his Russian same-sex partner in Russia for several years

²²⁸ See above, note 80, CEDAW Committee, Para 45.

²²⁹ *Ibid.*

²³⁰ Silver Rose, *Submission to the CEDAW’s Session on the Russian Federation*, October 2015, pp. 3–4, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_21839_E.pdf.

²³¹ See above, note 80, CEDAW Committee, Paras 45–46.

²³² Russian Justice Initiative and Chechnya Advocacy Network, *Joint Submission to the CEDAW’s Session on Russia*, 2015, p. 3, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_21961_E.pdf.

²³³ See above, note 80, CEDAW Committee, Paras 45–46.

²³⁴ Mental Disability Advocacy Centre, *Analysis of the Russian legal capacity system for persons with mental disabilities: Towards implementation of Article 12 of the UN CRPD*, 2010, pp. 5–11, available at: <http://www.mdac.info/en/resources/analysis-russian-legal-capacity-system-persons-mental-disabilities-towards-implementation>.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ ECtHR, *Kocherov and Sergeeva v Russia*, Application No. 16899/13, 29 March 2016; Validity, “Russia: landmark judgment on parenting rights for persons with disabilities”, *Validity*, 29 March 2016, available at: <http://validity.ngo/russia-landmark-judgment-on-parenting-rights-for-persons-with-disabilities>.

²³⁸ See above, note 107, Equal Rights Trust, p. 113–115.

was denied a residence permit, because of his HIV-status,²³⁹ and when he sought to return to his partner in Russia following a trip he was denied entry to the country altogether on the ground that he did not have a family relationship with the Russian national.²⁴⁰

Although Russian law allows transgender persons to change their legal gender if they present the civil registry with a medical sex-change certificate, not all civil registry offices abide by the law.²⁴¹ Reports show that transgender persons wishing to change their gender often have to produce documents not mandated by the law, and frequently have to rely on court orders to register their gender change.²⁴²

Studies show that that lesbian, bisexual and transgender women face restrictions on parental rights. Although the restrictions apply to the whole LGBT+ community, they disproportionately affect women in comparison to gay and bisexual men; according to a survey by the Russian LGBT Network, 80% of LGBT individuals who have suffered violations of their parental rights in 2014–2015 were female.²⁴³ Examples of this include former spouses or relatives threatening and attempting to restrict women’s parental rights in court, arguing that they can transfer “malicious information to the child” owing to their “non-traditional lifestyle”.²⁴⁴

How does the Law Protect this Right?

Domestic Law

Article 23 of the Constitution protects the inviolability of private life, personal and family secrets, and the right to privacy and correspondence.

According to Article 10(1) of the Federal Law “on Personal Data”,²⁴⁵ collecting and processing personal data regarding race, nationality, political opinions, religious or philosophical commitments, health condition and sexual life is prohibited. Exceptions to this rule include: (i) for the protection of life, health or other vital interests of the subject of personal data or of others when obtaining consent is impossible; and (ii) processing personal data about members of public associations and religious organisations in accordance with Russian legislation. Whilst the first exception is, in principle, justified as it seeks to achieve a legitimate aim (the protection of life, health or vital interests of persons) and is not arbitrary, the second exception arguably violates the right to private life, because it (i) arbitrarily targets

239 Although the European Convention of Human Rights (ECHR) does not guarantee a foreign national the right to settle in the territory of a member state of the Council of Europe, refusing to allow such entrance violates the ECHR when it prevents an individual from enjoying his or her family life or the right to be free from discrimination. See ECtHR, *Kiyutin v Russia*, Application No. 2700/10, 10 March 2011.

240 See above, note 107, p. 113–116.

241 *Ibid.*, p. 121–122.

242 *Ibid.*

243 Union of Independent LGBT Activists of Russia, *Submission to the CEDAW’s Session on the Russian Federation*, October 2015, p. 9, citing a quantitative survey by the Russian LGBT Network, September 2015, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_22002_E.pdf.

244 *Ibid.*

245 Federal Law “on the Personal Data” 2006, (Федеральный закон от 27.07.2006 N 152-ФЗ (ред. от 29.07.2017) “О персональных данных”).

certain types of organisations; (ii) does not appear to be in pursuit of a legitimate aim; and (iii) fails to establish conditions for its application (see the discussion on regional and international law below).

The Family Code regulates a wide range of matters connected with private and family life, such as marriage, adoption and gender; relevant provisions will be discussed below.

Regional Law

Article 8(1) ECHR provides that “everyone has the right to respect for his private and family life, his home and his correspondence”. Article 8(2) indicates that the right to respect for private and family life is *not* absolute, and can be limited by the state if the restriction is (i) in accordance with the law; and (ii) necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the for the protection of the rights and freedoms of others.

Article 12 ECHR provides that “men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right”.

International Law

International Covenant on Civil and Political Rights

Article 17 ICCPR protects against the arbitrary or unlawful interference with privacy, family and correspondence, and prohibits unlawful attacks on a person’s honour and reputation. This Article provides that it *is* possible to limit the right to privacy and family if the measure is “lawful” and “not arbitrary”. Article 23(1) ICCPR provides that the family is entitled to protection by society and the state, whilst Article 23(2) recognises the right of men and women of marriageable age to marry and start a family.

Convention on the Elimination of All Forms of Discrimination against Women

Article 16 CEDAW requires states to take measures to eliminate discrimination in all matters relating to marriage and family relations. Furthermore, it lists particular rights which must be ensured on the basis of equality between men and women, including the right to freely choose a partner, equal rights and responsibilities during marriage and its dissolution, the same rights relating to their children and the same rights for spouses in relation to property.

Convention on the Rights of Persons with Disabilities

Article 22 CRPD states that a person with a disability “regardless of place of residence or living arrangements” shall not be subjected to arbitrary or unlawful interference with his or her privacy, family or correspondence. Respect for the home and family is provided for in Article 23(1) CRPD, which requires states to take measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships. States must ensure the rights and responsibilities of persons with disabilities

with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions pursuant to Article 23(2). Article 23(3) requires states to take measures to prevent the “concealment, abandonment, neglect and segregation of children with disabilities”, whilst Article 23(4) specifically prohibits the separation of children from parents on the basis of a disability of either the child or one or both of the parents.

Case Study 1: Legal Recognition of Same-Sex Relationships

Domestic Law

The Russian Federal Constitution does not refer to any right to marry. Article 12(1) of the Family Code provides that marriage requires the voluntary consent of a man and woman. Thus, the Family Code implicitly prevents same-sex couples from legally marrying. The Constitutional Court has confirmed that civil marriage is the only legally recognised form of marriage in Russia.²⁴⁶ No alternative forms of legal recognition of relationships – such as civil partnership – are available in Russia.

In addition to the discriminatory nature of a legal system in which LGBT+ persons cannot marry on an equal basis with others, the lack of legal recognition for same-sex relationships means that LGBT+ couples cannot access the significant rights and benefits with which married couples are provided by the state. These rights and benefits include access to state housing and financing programmes, the right to be considered as an heir under inheritance laws²⁴⁷ and to benefit from certain tax privileges.²⁴⁸ People in same-sex relationships cannot obtain medical information about their partner²⁴⁹ or attend as next-of-kin in an emergency room in hospital.²⁵⁰ In addition, they cannot access assisted reproductive technologies as a couple, an option open only to different-sex couples.²⁵¹

246 Decision of the Constitutional Court of the Russian Federation, 17 May 1995, No. 26-O; Decision of the Constitutional Court of the Russian Federation, 16 November 2006, No. 496-O.

247 In accordance with Article 1142 of the Civil Code, rightful heirs include children, spouse and parents. Civil Code of the Russian Federation (Part III), 26 November 2001, No. 146-FZ (Гражданский кодекс Российской Федерации (часть третья) от 26 ноября 2001 года № 146-ФЗ).

248 Spouses pay half the state fee for obtaining a certificate of inheritance in accordance with Article 333.24 of the Tax Code of the Russian Federation (Part 1), 31 July 1998, No. 146-FZ (“Налоговый кодекс Российской Федерации (часть первая)” от 31 июля 1998 года № 146-ФЗ). They are also exempt from gift tax in accordance with Article 217 of the same code.

249 In accordance with Article 22(3) of the Federal Law “On the Fundamentals of Health Care of Citizens in the Russian Federation”, 21 November 2011, No. 323-FZ, (Федеральный закон «Об основах охраны здоровья граждан в Российской Федерации» от 21 ноября 2011 года № 323-ФЗ), in case of an unfavourable prognosis health information shall be provided to the patient or his or her spouse.

250 See Letter of the Ministry of Health Care of Russia of 30 May 2016 no. 15-1/10/1-2853 “On the rules of visiting the relatives of patients in intensive care unit” (Письмо Минздрава России от 30 мая 2016 года № 15-1/10/1-2853 “О правилах посещения родственниками пациентов в отделениях реанимации и интенсивной терапии”).

251 It should be noted that this is one of the few benefits that also applies to unmarried different-sex couples. In accordance with Article 55(3) of the Federal Law “On the Fundamentals of Health Care of Citizens in the Russian Federation”, 21 November 2011, No. 323-FZ, (Федеральный закон «Об основах охраны здоровья граждан в Российской Федерации» от 21 ноября 2011 года № 323-ФЗ), “a man and a woman, both married and unmarried, have the right to the use of assisted reproductive technology on the basis of their mutual informed consent to medical intervention. A single woman is also entitled to the use of assisted reproductive technology on the basis of her informed consent to medical intervention.”

Regional Law

The right to marry is not currently guaranteed for same-sex couples under the ECHR. However, the ECtHR has held that states are required to offer a form of legal recognition of same-sex relationships, such as a civil union or a registered partnership.²⁵²

In *Oliari and Others v Italy*, the Court held that, in order to comply with Article 8 ECHR, states must ensure that there is some form of legal recognition for same-sex relationships available, which provides “for the core needs relevant to a couple in a stable committed relationship”.²⁵³ If a state refuses to provide such legal recognition, the state must show evidence of a “prevailing community interest” which can then be weighed against the importance of the relationships being legally recognised.²⁵⁴ The Court did not venture a view on whether such an interest could ever outweigh the importance of relationship recognition, and it is difficult to imagine an interest which the Court would accept outweighed the importance of relationship recognition.

There has been gradual progress amongst member states of the Council of Europe in recognising marriage for same-sex couples, indicating that the margin of appreciation for states in this area may be shifting. As of February 2018, 15 member states of the Council of Europe had recognised same-sex marriage.²⁵⁵

International Law

There is no express provision for the legal recognition of same-sex relationships under the ICCPR. The HRC has only considered the recognition of same-sex relationships once. It found that Article 23 ICCPR neither prevents nor requires states to legislate for same-sex marriage.²⁵⁶ The Committee on Economic, Social and Cultural Rights (CESCR) has called on states to provide legal recognition of same-sex relationships,²⁵⁷ but it has not advocated for the recognition of same-sex marriage.

More broadly however, the international human rights community is increasingly demonstrating support for same-sex marriage. In 2015, for example, the UN Secretary-General Ban Ki-moon referred to a 2015 US Supreme Court decision to legalise gay marriage nationwide as “a great step forward for human rights”.²⁵⁸

For further information about this topic, including legal recognition of same-sex relationships as “family relationships”, please refer to Part 2.5.1 of *Justice or Complicity*.

²⁵² ECtHR, *Oliari and others v Italy*, Application Nos. 18766/11 and 36030/11, 21 July 2015.

²⁵³ *Ibid.*, Para 172.

²⁵⁴ *Ibid.*, Para 185.

²⁵⁵ Pew Research Center, “Gay Marriage Around the World”, *Pew Research Center*, 8 August 2017, available at: <http://www.pewforum.org/2017/08/08/gay-marriage-around-the-world-2013>.

²⁵⁶ HRC, *Joslin v New Zealand*, Communication No. 902/1999, UN Doc. A/57/40, 17 July 2002, Para 8.2.

²⁵⁷ See, for example: Human Rights Council, *Report submitted by the United Nations High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity*, UN Doc. A/HRC/29/23, 2015, Para 67.

²⁵⁸ Nichols, M., “U.N. chief calls U.S. gay marriage ruling ‘great step forward’ for rights”, *Reuters*, 26 June 2015, available at: <https://www.reuters.com/article/us-usa-court-gaymarriage-un/u-n-chief-calls-u-s-gay-marriage-ruling-great-step-forward-for-rights-idUSKBN0P627120150626>.

Case Study 2: Right to Parental Leave

Domestic Law

The Russian Labour Code provides that women are entitled to maternity leave for 70 days before the childbirth and 70 days afterwards.²⁵⁹ Furthermore, the mother, the father or another guardian or carer of the child, such as a grandparent or a relative, are entitled to three-years of paid parental leave.²⁶⁰

Female military personnel are entitled to maternity leave and to parental leave in accordance with the Labour Code, which means they have three years of parental leave with all related social benefits.²⁶¹ There is no similar provision for male military personnel. Providing mothers with parental leave whilst not extending the same right to fathers poses a challenge for the right to equality and non-discrimination; it reinforces stereotypical gender roles of women as mothers who stay at home and men as workers.

Regional Law

In *Konstantin Markin v Russia*, the Grand Chamber of the ECtHR held that discrimination based on sex in the matters of parental leave constitutes a violation of Article 8 in conjunction with Article 14.²⁶² The applicant, a Russian military serviceman was divorced from his wife, who had recently given birth to their third child. They made an agreement that their three children would live with him. The applicant subsequently asked his military unit for three years of parental leave, which was rejected because the unit maintained that male military personnel were not in entitled to parental leave under any circumstance. The Grand Chamber of the ECtHR did not concur with the Russian Constitutional Court's argument that disparate treatment of military servicemen and military servicewomen in the provision of parental leave was justified by the traditional parental task allocation of women as the main responsibility-bearers for children. It held that men and women are "similarly placed" when it comes to taking care of a child during the period of parental leave and considered that European society had evolved towards a more equal division of responsibilities for the upbringing of children between men and women. It is important to note that this ruling did not create the right to parental leave; rather, it only reiterated the principle that when a state does establish a parental leave scheme, it must do so in a non-discriminatory manner.

International Law

The CEDAW Committee has clarified that Article 16(d) CEDAW means that states "should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children".²⁶³

259 Labour Code of the Russian Federation 2002, Article 255.

260 *Ibid.*, Article 256.

261 Federal Law "on the Status of Military Personnel" 1998, (Федеральный закон О статусе военного персонала» 1998 года (№ 76-ФЗ от 27 мая 1998 года «Закон о военной службе).

262 ECtHR, *Konstantin Markin v Russia*, Application No. 30078/06, 22 March 2012.

263 CEDAW Committee, *General Recommendation No. 21, Article 16: Equality in marriage and family relations*, UN Doc. A/49/38, May 1994, Para 20.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) does not explicitly require states to provide paternal, or wider parental leave; Article 10(2) ICESCR only calls for paid maternity leave to be provided for working mothers. However, Article 9 ICESCR states that “[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.” The CESCR has clarified that this provision requires states to take measures “guaranteeing adequate maternity leave for women, paternity leave for men, and parental leave for both men and women”.²⁶⁴

Part Four (e) Employment, Healthcare and Education

Russian, regional and international law provide protections from discrimination in the areas of employment, healthcare and education in the form of (i) the free-standing right to non-discrimination which applies in all areas of life regulated by law, including in these areas, and (ii) guarantees of non-discrimination in the enjoyment of the rights to work, healthcare and education.

Domestic Law

As noted in Part 3 above, Article 19 of the Russian Constitution provides protection from discrimination on a wide range of grounds, including sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations and an open-ended protection from discrimination on “any other circumstance”, which has been interpreted as including disability and sexual orientation.

The right to work, free from discrimination, is protected by Article 37 of the Constitution. The right of “everyone” to “health protection and medical aid” is provided in Article 41(1) of the Constitution, which also states that “[m]edical aid in state and municipal health establishments shall be rendered to individuals gratis, at the expense of the corresponding budget, insurance contributions and other proceeds”. Article 41(2) states that the Russian Federation shall establish federal programmes for protecting and strengthening the health of the population. The right to education is guaranteed to “everyone” according to Article 43 of the Constitution.

While Russia does not have comprehensive anti-discrimination law, many laws that regulate specific activities such as employment, healthcare and education prohibit discrimination in terms similar to Article 19. They do not expressly protect persons with disabilities and LGBT+ persons but they refer to protection offered to “social groups” or in relation to “other circumstances” which can be interpreted to include them. Thus, the broad guarantee of equal treatment in Article 19 of the Constitution is complemented by some specific equality guarantees in laws such as the Labour Code, the Federal Healthcare Law and provisions of the Criminal Code. Furthermore, as will be demonstrated, persons with disabilities are protected from discrimination through a law dedicated to them.

²⁶⁴ CESCR, *General Comment No. 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights*, UN Doc. E/C.12/2005/3, 2005, Para 26.

Regional Law

As previously outlined, Article 14 ECHR guarantees the right to non-discrimination only in respect of the enjoyment of other Convention rights. This means that there is a guarantee of non-discrimination in education (which is a Convention right recognised by Protocol No.1 to the ECHR, which Russia has ratified) but not in the field of employment and healthcare since these are not Convention rights.

In an effort to remedy the problem of the limited scope of Article 14, Protocol 12 of the ECHR (signed but not ratified by Russia) was enacted to provide a free-standing right to non-discrimination which guarantees non-discrimination in the enjoyment of “any right set forth by law”, which extends protection from discrimination into areas including health and employment.²⁶⁵

International Law

International Covenant on Civil and Political Rights

As noted above, Article 26 ICCPR requires states to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, which includes the ground of disability, sexual orientation or any other ground.²⁶⁶ Article 26 provides a free-standing autonomous right to non-discrimination which does not depend on another right.²⁶⁷ So, for example, it requires that people are protected from discriminatory treatment by healthcare professionals – such as being served a poorer quality of food – which might not violate the right to the highest attainable standard of health itself. The HRC has also confirmed that the non-discrimination guarantee in the ICCPR covers treatment which has both the purpose and effect of discriminating.²⁶⁸

International Covenant on Economic, Social and Cultural Rights

The ICESCR guarantees the right to work in Article 6. The right to the highest attainable standard of health is provided in Article 12 ICESCR, and the right to education in Article 13. Under Article 2(2) ICESCR, state parties commit to guarantee the enjoyment of all of Covenant rights without any discrimination.

The CESCR has confirmed that “race and colour”, sex, language, religion, national or social origin, disability, age, nationality, sexual orientation and gender identity, among others, are protected grounds of discrimination in respect of Article 2(2) ICESCR.²⁶⁹ In addition, the CESCR has confirmed that Article 2(2) entails protection from both direct and indirect dis-

²⁶⁵ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. No. 177, 2000, Article 1.

²⁶⁶ See, for example, HRC, *Toonen v Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 1994; HRC, *Young v Australia*, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 2003.

²⁶⁷ HRC, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 1989, Para 2.

²⁶⁸ *Ibid.*, Para 7.

²⁶⁹ CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 32.

crimination²⁷⁰ and harassment.²⁷¹ The CESCR has further clarified that the denial of reasonable accommodation on the basis of disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights amounts to discrimination.²⁷²

Convention on the Elimination of All Forms of Discrimination against Women

Article 11 CEDAW provides a set of guarantees for women in the field of employment including equality of opportunity and equality of remuneration, the right to free choice of profession, the right to social security, the right to protection from dismissal on the grounds of pregnancy and the right maternity leave. Articles 10 and 12 provide a range of rights related to education and health respectively.

International Convention on the Elimination of All Forms of Racial Discrimination

The ICERD prohibits racial discrimination in any form. Article 5(e)(i) guarantees the right to work and to “just and favourable conditions of work” for all persons. Articles 5(e)(v) and (iv) provide for equality in relation to health and education respectively.

Convention on the Rights of Persons with Disabilities

Article 27 CRPD protects the right to work and to “gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities”. Furthermore, comprehensive obligations to ensure accessibility and accommodation with respect to education and healthcare are enshrined in Articles 24 and 25.

Summary

In the sub-sections below, we will review the protections which Russian and international law provide from discrimination in respect to the rights to work, to the highest attainable standard of health and to education. In so doing, it is important to remember that the right to non-discrimination goes beyond guaranteeing equal enjoyment of these rights and includes a right to non-discrimination in the areas of employment, healthcare and education. It is also important to remember that the law provides protection not just from **direct discrimination** – that is, unfavourable treatment – but also from **indirect discrimination** – treatment which is the same, but which has an unfavourable impact on a protected group.

²⁷⁰ *Ibid.*, Para 10.

²⁷¹ *Ibid.*, Para 7.

²⁷² CESCR, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/C.12/GC/20, 2009, Para 15.

Part Four (e)(i) Right to Work

What is the Right to Work?

The right to work guarantees the opportunity of all people to earn a living, through work that they freely choose or accept. The right to work obligates states to take positive measures to support individuals in accessing work, through measures such as technical and vocational guidance and training and requires protective measures to prevent people from being deprived of opportunities to work.

How is Equality Relevant to this Right?

Employers should not make discriminatory decisions at any stage in the **recruitment process**. Discrimination can occur at any point in this process. For example, eligibility requirements might specify a particular characteristic possessed only by members of a certain group which might result in indirect discrimination against members which do not possess that characteristic. Alternatively, direct discrimination can occur when making hiring decisions, for example if choices are made on the basis of prejudices.

Employers must also make sure that direct and indirect discrimination does not occur in relation to **pay and other working conditions**. Employees have a right to receive equal pay for work of equal value. This includes the recognition that work of equal value may be completed in different ways. One employee may, for example, need to work part-time because they have a particular protected characteristic.

Equally, employers must not discriminate against their employees in relation to decisions on **employment promotion**. Refusing to promote a member of staff on the grounds of a protected characteristic or a perception of such characteristic amounts to direct discrimination. Promotion connected to specified conditions which are particularly onerous or impossible for members of a protected characteristic to attain – such as a number of years of service, for example – can be indirectly discriminatory unless it is justified as a necessary and proportionate means of achieving a legitimate aim.

As outlined in Part 2 of this Guide, harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.²⁷³ **Harassment in the workplace** may take many forms, including, for example, the use of language which is degrading to or objectifies women, which may have the effect of creating an environment in which women feel degraded or humiliated. Such conduct does not need to involve physical contact, nor does it need to be directed at a particular person.

The right to non-discrimination in employment extends to **employment benefits**, such as parental leave. Employers should ensure that their policies and practices in relation to employment benefits are not directly or indirectly discriminatory.

²⁷³ *Declaration of Principles of Equality*, Equal Rights Trust, London, 2008, Principle 5.

The right to non-discrimination in employment also extends to decisions to **terminate employment**. An employer may not terminate an employment contract on the grounds of any protected characteristic, as this would be direct discrimination. Employment conditions, responsibilities or policies (such as a dress code) which make it impossible for a person with a protected characteristic to conduct their job may amount to indirect discrimination if they cannot be shown to be a necessary and proportionate means of achieving a legitimate aim.

Employment policies or practices that **discriminate against people because of their sex, religious origin, racial or ethnic origin, disability, sexual orientation or gender identity will interfere with the right to work**. Examples of such discrimination include not only refusing to hire – or dismissing – an individual on the basis of a protected ground, but also maintaining employment conditions which treat them differently or put them at a disadvantage when compared to others. For example, refusing appropriate parental leave and employment benefits to women on the basis of a pregnancy places women at an unfair disadvantage and amounts to discrimination. Arrangements may also be required for flexibility with regard to religious convictions including flexible working-hours, which may enable prayer, and sufficient accessibility or other additional needs for persons with disabilities. Discrimination can manifest itself in many ways in the employment sphere. The section below demonstrates how different groups may face discrimination in Russia.

Women

Harmful stereotypes with respect to traditional family values manifest in ways that can result in discrimination and disadvantage for women in the labour market.²⁷⁴ Women are prevented by law from accessing more than 450 occupations on the labour market.²⁷⁵ Women's participation is concentrated in low-paid jobs.²⁷⁶ In 2012, Ms Svetlana Medvedeva, who graduated as a navigation officer, was denied employment at the helm of a boat because the job she had applied for was listed as one of the occupations and industries banned for women.²⁷⁷ An in-depth case study of this form of discrimination is provided in Part 5 of this Guide.

Religious Minorities

Whilst data on religious discrimination in the labour market sphere in Russia is scarce, Anti-Discrimination Centre Memorial (ADC Memorial) has reported instances of Muslim Tatars in Crimea not being hired because they wore the hijab or displayed other visible manifestations of their religious conviction.²⁷⁸ In 2016, teachers in a public school in the Republic of Mordovia were threatened with dismissal by the Ministry of Education of Mor-

²⁷⁴ See above, note 80, CEDAW Committee, Para 19.

²⁷⁵ Labour Code of the Russian Federation 2002, Article 253 and Governmental Resolution N°162 of 25/02/2000.

²⁷⁶ *Ibid.*, Para 33.

²⁷⁷ Office of the High Commissioner for Human Rights (OHCHR), "Women's rights body rules on Russian banned jobs list complaint", *Office of the High Commissioner for Human Rights*, visited January 2018, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/MedvedevaVRussia.aspx>.

²⁷⁸ ADC Memorial, *The Russian Federation: Violation of the Economic and Social Rights of Vulnerable Groups*, 2016, pp. 20–21, available at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28708_E.pdf.

dovia if they did not remove their headscarves. Several teachers were forced to resign because of this.²⁷⁹

Racial and Ethnic Minorities

The CERD has noted Russia's failure to collect disaggregated data on the access to employment by ethnic and racial minorities.²⁸⁰ With respect to migrant workers, the Committee expressed concern over their poor working conditions, low salaries, long working hours, lack of access to social security and the limited coverage and information on the effectiveness of labour inspectors tasked with monitoring migrant worker abuse.²⁸¹ In addition, whilst personal registration efforts have improved in Russia, stateless persons, refugees and holders of temporary asylum and individuals belonging to some minority groups, including migrants and Roma, experience difficulty in accessing employment due to persistent problems with registration.²⁸²

Persons with Disabilities

Persons with disabilities face considerable barriers in accessing employment. There have been reports of employers refusing to provide reasonable accommodation, a general lack of public transportation accessibility to places of employment and discrimination during recruitment procedures.²⁸³ As of 2014, only 19% of Russia's population of working age persons with disabilities were employed,²⁸⁴ and an International Labour Organisation study conducted across 58 countries showed that Russia had the worst employment gap between the employment rate for people with disabilities and people without disabilities, with a difference of 52.7%.²⁸⁵ Government reduction in support and benefits for companies who employ persons with disabilities has led to a sharp decrease in the overall employment of the group.²⁸⁶ A government survey conducted among unemployed persons with disabilities of working age in 2014 showed that 63.8% of the 132,600 respondents expressed a need for recruitment assistance.²⁸⁷

LGBT+

An online survey of LGBT people carried out by the Russian LGBT Network in 2016 showed that 653 of the 3759 respondents (17.3%) suffered discrimination from employers and/or

279 *Ibid.*, p. 27.

280 See above, note 89, CERD, Paras 8–9.

281 *Ibid.*, Para 27.

282 *Ibid.*, Para 29.

283 Human Rights Watch, "Russia: End Hurdles for People With Disabilities", *Human Rights Watch*, September 2013, available at: <https://www.hrw.org/news/2013/09/11/russia-end-hurdles-people-disabilities>.

284 Kuchma, A., "Where do people with disabilities work in Russia?", *Russia Beyond*, 15 April 2016, available at: https://www.rbth.com/politics_and_society/2016/04/15/where-do-people-with-disabilities-work-in-russia_585299.

285 Banning-Lover, R., "Russia and the US have the worst employment gaps for disabled people", *The Guardian*, 23 June 2016, available at: <https://www.theguardian.com/global-development-professionals-network/2016/jun/23/russia-and-the-us-have-the-worst-employment-gaps-for-disabled-people>.

286 Gontmakher, E. et al, UN Russia, *Russia: On the Path to Equal Opportunities*, 2009, pp. 42–44 http://www.unrussia.ru/publications/russia_on_the_pat_en.pdf.

287 Committee of Experts on the Application of Conventions and Recommendations, *Direct Request on Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) – Russian Federation*, 2015.

colleagues due to their sexual orientation and/or gender identity. In addition, 521 respondents (13.9%) reported that their employment was terminated due to homophobia or transphobia, and 49 people (1.3%) were not recruited for these reasons.²⁸⁸ Furthermore, a coalition of Russian LGBT+ rights organisations has found reliable reports of at least 78 refusals of employment on the ground of sexual orientation or gender identity, and at least 33 cases of firings on these grounds in the period 2013–2016.²⁸⁹ The coalition reports that this type of discrimination primarily affects educators,²⁹⁰ which is unsurprising given the “Anti-Homosexual Propaganda” Law’s stated aim of “protecting” children from non-traditional notions of sexual relations. In 2014, a lesbian teacher was forced to resign “on her own volition” because the school received a letter of complaint calling the teacher “immoral” and requesting to “save the school staff from the lesbian teacher who is discrediting the school’s name”.²⁹¹

How does the Law Protect this Right?

Domestic Law

As noted above, Article 37 of the Russian Constitution provides for a right to work, while Article 19 provides the right to equal treatment with regards to sex, race, nationality, origin, religion and discrimination in “any other circumstance”, including on the basis of disability and sexual orientation.

Article 64 of the Labour Code prohibits discrimination in labour relations. It prohibits direct or indirect restrictions and the granting of direct or indirect advantages in the conclusion of a labour contract, if based on the grounds of sex, race, skin colour, nationality, language, origin, property, social and official status, age, place of residence and “other factors not connected with the professional qualities of employees”. Furthermore, the Labour Code prohibits discrimination in the establishment and amendment of the terms of labour compensation.²⁹²

The Federal Law “on the Social Protection of Disabled People in the Russian Federation” prohibits discrimination based on disability with respect to “all human and civil rights and freedoms guaranteed in the Russian Federation in political, economic, social, cultural, civil or any other field”.²⁹³ Article 23 makes provision for a limited form of reasonable accommodation:

Disabled persons employed at any company irrespective of their legal form of organisation and form of ownership shall be afforded with the necessary working conditions according to their individual program of rehabilitation.

²⁸⁸ Russian LGBT Network, *Monitoring of discrimination on the grounds of sexual orientation and gender identity in 2016, Quantitative study results*, 2016, p. 11, available at: https://lgbtnet.org/sites/default/files/diskriminaciya_i_nasilie_po_priznaku_sogi_2016.pdf.

²⁸⁹ Coalition of Russian LGBT Rights Groups, *Submission to the CESCR’s Session on Russia*, August 2017, p. 3, available at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28824_E.pdf.

²⁹⁰ *Ibid.*, p. 4.

²⁹¹ *Ibid.*, p. 6.

²⁹² Labour Code of the Russian Federation 2002, Article 132.

²⁹³ Federal Law “on the Social Protection of Disabled People” 1995, Article 3.1, (Федеральный закон от 24.11.1995 N 181-ФЗ (ред. от 29.12.2017) “О социальной защите инвалидов в Российской Федерации”).

Interpreted in line with international law regarding the right to non-discrimination, this provision should oblige private and public employers to make reasonable adjustments to enable equal participation in employment for persons with disabilities.²⁹⁴ The Law also mandates physical accessibility in public places;²⁹⁵ and sets quotas for persons with disabilities in the employment sphere.²⁹⁶

Other notable protections from discrimination in Russian employment law include:

- Equality between men and women in the civil service is guaranteed under the Article 4(3) of the Federal law “on the Civil Service in Russian Federation”,²⁹⁷ and Article 4(2) of the Federal Law “on Municipal Service in the Russian Federation”.²⁹⁸
- Publication of vacancy announcements with discriminatory conditions is prohibited under Federal Law “on the Employment of Population in Russian Federation”.²⁹⁹
- The Federal Law “on Alternative Civilian Service” enables military service duty holders to switch to alternative civilian service in case he/she belongs to an indigenous group; leads a “traditional” way of life, carries out traditional management and is engaged in traditional craft; or on the basis of religious conviction.³⁰⁰

International Law

International Covenant on Civil and Political Rights

As noted above, ICCPR provides a free-standing right to non-discrimination which applies “in any field regulated and protected by public authorities”, including in the area of employment.³⁰¹

International Covenant on Economic, Social and Cultural Rights

Article 6 ICESCR provides for the right to work, which includes the opportunity to gain a living by freely chosen work. Article 7 ICESCR further provides guarantees in relation to the conditions of work, including fair wages and equal remuneration for work of equal value, guaran-

294 Lyutov, N., “Russian Law on Discrimination in Employment: Can it be Compatible with International Labour Standards?”, *Russian Law Journal*, Vol. 4, No. 3, 2016, p. 43; See above, note 98, pp. 4–5; Joint Civil Society Organisations Submission of Russian Disability Rights Organisations, *Submission to the CRPD Committee’s Session on Russia*, visited February 2018, p. 1, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fICO%2fRUS%2f28600&Lang=en.

295 See above, note 293, Articles 15 and 15.1.

296 *Ibid.*, Articles 20 and 21. Companies with more than 100 employees must set a quota from 2 to 4% of the average employee headcount, while for companies with 35-100 employees, the quota may be set in the amount of not more than 3% of the average employee headcount.

297 Federal Law “on Civil Service in Russian Federation” 2004 (Федеральный закон от 27.07.2004 N 79-ФЗ (ред. от 28.12.2017) “О государственной гражданской службе Российской Федерации”).

298 Federal Law “on Municipal Service in Russian Federation” 2007, (Федеральный закон от 02.03.2007 N 25-ФЗ (ред. от 26.07.2017) “О муниципальной службе в Российской Федерации” (с изм. и доп., вступ. в силу с 01.01.2018)).

299 Federal Law “on the Employment of Population in Russian Federation” 1998, Article 25(6).

300 Federal Law “on Alternative Civilian Service” 2002, Article 2, (Федеральный закон № 113-ФЗ от 2002 года об альтернативной гражданской службе).

301 HRC, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 1989, Para 12.

tees that working conditions for women are not worse than those enjoyed by men, a decent living wage, safe working conditions and equal opportunity for workers to be promoted.³⁰²

As noted above, Article 2(2) ICESCR provides that all of the rights provided in the Covenant, including the right to work and the right to just and favourable conditions of work, must be exercised “without discrimination of any kind”. The CESCR has confirmed that this necessitates protection from direct and indirect discrimination and harassment, on grounds which include sexual orientation and gender identity.³⁰³ The CESCR also clarified that the right to “the enjoyment of just and favourable conditions of work” applies to all persons with disabilities,³⁰⁴ and that the denial of reasonable accommodation based on disability amounts to discrimination.³⁰⁵

Convention on the Elimination of All Forms of Discrimination against Women

Article 11 CEDAW provides a set of guarantees for women in the field of employment including equality of opportunity and equality of remuneration, the right to free choice of profession, the right to social security, the right to protection from dismissal on the grounds of pregnancy and the right to maternity leave. The law places special emphasis on the protection to mothers and women during pregnancy, encouraging states to provide social services that enable women to combine family obligations with work responsibilities and participation in public life.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5(e)(i) ICERD guarantees “the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration” without distinction on the basis of race, colour, or national or ethnic origin.

Convention on the Rights of Persons with Disabilities

Article 27 CRPD protects the right to work and to “gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities”. It requires states to prohibit discrimination on the basis of disability in matters related to employment, ensure reasonable accommodation is provided by all employers, enable access to technical and vocational guidance and training programmes, employ persons with disabilities in the public sector and encourage their employment in the private sector using measures which may include “affirmative action programmes, incentives and other measures”.

302 International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), 1966, Article 7(a)-(d).

303 See *inter alia*, ICESCR, Article 6; CESCR, *General Comment No. 18: the Right to Work (Art. 6)*, UN Doc. E/C.12/GC/18, 2006, Para 12; ICESCR, Article 7; CESCR, *General Comment No. 23: the Right to the Highest Attainable Standard of Health (Art. 7)*, UN Doc. E/C.12/GC/23, 2000, Para 65.

304 CESCR, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1994, Para 25.

305 *Ibid.*, Para 15.

Part Four (e)(ii) Right to Health

What is the Right to Health?

The right to health is not a right to be healthy, but a **right to the highest attainable standard of physical and mental health**; it includes the right to access those services, resources and conditions that are necessary to achieve this objective.³⁰⁶

The right to health includes, but is not limited to, such things as:

- Access to a general practitioner who understands your needs;
- Access to emergency medical care;
- Sensitive and appropriate medical care for your physical and psychological health needs;
- Affordable medication for your condition; and
- Access to information and education on health issues.

How is Equality Relevant to this Right?

All people have the right to health and must be given access to health services and resources without discrimination.³⁰⁷ Moreover, as noted above, the right to non-discrimination necessitates protection from discrimination in the area of healthcare, including in respect of services which might not themselves fall within the scope of the right to health. Further, it is unlawful to discriminate against a person because of their health status – such as their being HIV-positive.³⁰⁸ Nevertheless, there are many ways in which discrimination manifests itself in relation to the right to health.

Healthcare providers, doctors and other medical personnel must not **refuse treatment** to a patient on grounds of a protected characteristic. Moreover, any criteria which are used to determine who can and cannot receive treatment must not discriminate indirectly against persons with a protected characteristic or persons perceived as having a protected characteristic, unless it can be justified as a necessary and proportionate means of achieving a legitimate aim.

There must not be direct discrimination – unfavourable treatment on the basis of a protected characteristic – or indirect discrimination – identical treatment but with an unfavourable impact for those sharing a protected a characteristic – in the **quality and extent of treatment** patients receive. Health facilities, goods and services must be culturally appropriate, and medical personnel must be adequately trained and skilled to provide quality treatment to those with different characteristics and needs.

Harassment in relation to health care may occur when, for example, medical personnel do not have adequate knowledge of the needs of protected social groups which may result

³⁰⁶ ICESCR, Article 12; CESCR, *General Comment No. 14: the Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4, 2000.

³⁰⁷ *Ibid.*, CESCR, Para 18.

³⁰⁸ CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 33.

in unwanted conduct from medical personnel which would create a degrading, intimidating or otherwise hostile environment.

Discrimination in the health care sector may also arise due to **disclosure of personal data** of individuals with protected characteristics. For instance, disclosure of sexual orientation or gender identity may result in the individual in question facing discriminatory treatment because of the disclosure of such information.

The next section provides some examples of how different protected groups face discrimination in the area of healthcare in Russia.

Women

The CESCR has expressed its concerns regarding the obstacles in access to healthcare services for sex workers, who tend to be women, owing to the criminalisation of sex work.³⁰⁹ It also highlighted the a lack of access to effective contraceptives, particularly in rural areas and among women living in poverty.³¹⁰ The CESCR has also noted the lack of education on sexual and reproductive health in school curricula.³¹¹ Women's access to abortion is restricted by the state through measures such as pre-abortion psychological counselling and mandatory waiting periods lasting up to seven days before abortion services will be provided.³¹² Moreover, Russia insufficiently collects data on the access to the right to health for rural and other particularly disadvantaged groups of women.³¹³

Racial, Ethnic and Religious Minorities

The CERD has noted that Russia does not collect data on access to healthcare for racial, ethnic, and religious minorities.³¹⁴ Nevertheless, NGO studies show that indigenous people and the Roma community in Russia experience difficulty in accessing healthcare due to problems in acquiring identity documents and insufficient financial means.³¹⁵

Persons with Disabilities

Persons with disabilities are particularly vulnerable when it comes to access to health services.³¹⁶ A lack of physical accessibility to healthcare services in Russia has been shown to impede persons with physical disabilities in accessing their right to health.³¹⁷ A large proportion of people with disabilities interviewed by Human Rights Watch reported barriers to healthcare and rehabilitation, including: (i) inaccessible clinics and diagnostic equipment; (ii) the absence of rehabilitation services in the community and lack of trained person-

309 CESCR, *Concluding Observations: Russian Federation*, UN Doc. E/C.12/RUS/CO/6, 2016, Para 52; See above, note 80, CEDAW Committee, Para 35.

310 *Ibid.*, CESCR, Para 54.

311 *Ibid.*

312 See above, note 80, CEDAW Committee, Para 35.

313 *Ibid.*, Paras 35–40.

314 See above, note 89, CERD, Paras 7–8.

315 See above, note 171, pp. 31 and 41.

316 CESCR, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 34.

317 See above, note 174, p. 3.

nel where facilities are available; (iii) a lack of awareness among persons with disabilities regarding healthcare and rehabilitation services; and (iv) a lack of respect from healthcare workers to persons with disabilities.³¹⁸ Institutionalised children with disabilities are especially vulnerable to mistreatment. Studies have shown that they frequently suffer physical and psychological violence.³¹⁹ As noted in Part 4(d), the arbitrary deprivation of legal capacity of adult persons with mental disabilities and their involuntary institutionalisation is a pressing problem in Russia. Such practices compromise the right to the highest attainable standard of physical and mental health for persons with mental disabilities.

LGBT+

There have been reports indicating that some members of the LGBT+ community have faced difficulties in accessing health care services, including facing harassment by hospital staff and the non-availability of sex reassignment services.³²⁰ In 2015, a survey conducted by the Russian LGBT Network among LGBT+ persons showed that 8% of the 1,346 respondents had faced restricted access to health care in the previous 12 months.³²¹

How does the Law Protect this Right?

Domestic Law

The right of access to health care services in Russia is a complex area of law. This Guide cannot consider the topic in detail, but it is hoped that the discussion of regional and international law which follows this brief review of domestic law will assist Russian lawyers to interpret such laws in a way to counter discrimination in respect to the right to health.

In this section, we will focus on the non-discrimination protection provided by the Federal Law “On the Fundamentals of Health Care of Citizens in the Russian Federation” (Federal Health Care Law). Article 5 of the Federal Health Care Law requires the state to “provide its citizens with health protection regardless of sex, race, age, nationality, language, the presence of diseases, conditions, origin, property and position, place of residence, attitude to religion, beliefs, belonging to public associations and other circumstances”.³²² In light of the aforementioned decisions of the Constitutional Court in relation to the protected grounds offered in the Russian Constitution, it is reasonable to assume that the term “other circumstances” should be interpreted to include protection against discrimination on the grounds of sexual orientation, gender identity and disability.³²³ However, there is no specific judicial authority with respect to the Federal Health Care Law at present.

³¹⁸ *Ibid.*, p. 4.

³¹⁹ *Ibid.*, p. 2.

³²⁰ Russian LGBT Network, *Submission to the CESCR's Session on Russia*, May 2011, pp. 16–17, available at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_NGO_RUS_46_9984_E.pdf.

³²¹ See above, note 102.

³²² Federal Law “On the Fundamentals of Health Care of Citizens in the Russian Federation”, 21 November 2011, No. 323-FZ (Федеральный закон «Об основах охраны здоровья граждан в Российской Федерации» от 21 ноября 2011 года № 323-ФЗ).

³²³ For the ground of sexual orientation, please see: Judgment of the Constitutional Court of the Russian Federation, 23 September 2014, No. 24-P; For the ground of disability, please see: Judgment of the Constitutional Court of the Russian Federation, 27 February 2009 No. 4-П, 2.3.

In addition to the Federal Health Care Law, there are two codes of professional ethics for Russian health professionals which are also relevant to consider:

The Code of Professional Ethics of a Physician of the Russian Federation (2012) states that a doctor will not allow any considerations based on number or grounds including sex, race or nationality, social status, religious belief of the patient, amongst other factors, to prevent him or her from exercising his or her duties to a patient.³²⁴ The Code does not explicitly mention sexual orientation and disability, though they can be read into the term of “social status”, for the reasons given above.

The Code of Ethics of the Russian Psychological Society (2012) states that one of the core ethical principles of psychologists is respect for individual, cultural and role differences, including those involving age, disability, education, ethnicity, gender, language, national origin, race, religion, marital or family status and socio-economic status and – notably – sexual orientation.³²⁵

Article 13 of the Federal Law “on the Social Security of Persons with Disabilities” states that the provision of qualified medical assistance to persons with disabilities must be carried out in accordance with the legislation of the Russian Federation.

International Law

International Covenant on Civil and Political Rights

As noted above, Article 26 ICCPR provides a free-standing right to non-discrimination which applies “in any field regulated and protected by public authorities”, including in the area of healthcare.

International Covenant on Economic, Social and Cultural Rights

Article 12 ICESCR protects the right to “the enjoyment of the highest attainable standard of physical and mental health”. The CESCR has interpreted Article 12 ICESCR to include the following obligations on states parties:³²⁶

- To **respect** the right to health. This means not interfering directly or indirectly with the right to health, for example by imposing directly or indirectly discriminatory requirements which limit access to services regarding sexual and reproductive health or withholding, censoring or intentionally misrepresenting health information.

³²⁴ See First National Conference of Russian Doctors, The Code of Professional Ethics of Doctor of the Russian Federation, 5 October 2012, Preamble (“Кодекс профессиональной этики врача Российской Федерации”). The Code was incorporated in normative acts in several regions, for example, Order of Health Care Department of the Vladimir Oblast, “On establishing an advisory council on medical ethics and medical deontology at the Health Care Department of the Administration of the Vladimir Oblast”, 19 June 2013, No. 1105 (“О создании Общественного совета по медицинской этике и медицинской деонтологии при департаменте здравоохранения администрации Владимирской области”).

³²⁵ Russian Psychological Society, *The Ethics Code of Psychologists*, 14 February 2012 (Российское психологическое общество, Этический кодекс психологов, принят 14 декабря 2012 года).

³²⁶ CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, UN Doc. E/C.12/2000/4, 2000, Paras 34–37.

- To **protect** the right to health. This means adopting legislation and other measures to ensure that state and private actors such as hospitals, doctors and health care services conform with human rights standards when providing health care or health-related services. States must ensure that the privatisation of healthcare services does not constitute a threat to the “availability, accessibility, acceptability and quality” of such healthcare services.
- To **fulfil** the right to health. This means ensuring that the right to health can be enjoyed in practice, by ensuring *inter alia* that it receives sufficient recognition in law and policy, as well as adopting a detailed national health policy for its realisation. It also means ensuring the provision of health care, including sexual and reproductive health services and immunisation, and promoting health education and information campaigns, particularly in relation to HIV/AIDS.

Article 2(2) ICESCR prohibits discrimination in the exercise of any of the rights protected therein on the grounds of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The CESCR has interpreted this prohibition to include discrimination on the ground of disability, nationality, sexual orientation, gender identity and health status (including HIV/AIDS), among others.³²⁷

Convention on the Elimination of All Forms of Discrimination against Women

Article 12(1) CEDAW requires states to eliminate discrimination against women in the area of health care, including with respect to family planning. Article 12(2) states that women must be provided with appropriate services related to pregnancy, for free where necessary.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5(e)(iv) provides the right to non-discrimination on the basis of race, colour, or national or ethnic origin with respect to “the right to public health, medical care, social security and social services”.

Convention on the Rights of Persons with Disabilities

Article 25 CRPD recognises the right of persons with disabilities to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. It requires states to take measures to, among others, provide persons with disabilities free or affordable health services as provided to other persons,³²⁸ provide health services that are adapted to the needs of persons with disabilities and as close as possible to their community³²⁹ and raise awareness of the human rights, dignity, autonomy and needs of persons with disabilities in the public and private health care sector.³³⁰

³²⁷ CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Paras 32–33.

³²⁸ CRPD, Article 25(a).

³²⁹ *Ibid.*, Article 25(b)-(c).

³³⁰ *Ibid.*, Article 25(d).

Part Four (e)(iii) Right to Education

What is the Right to Education?

For most people, the word “education” brings to mind children in school. However, the right to education is broadly interpreted as including the development of human personality and a sense of dignity as well as strengthening the capacity of individuals to participate effectively in society.³³¹

Education can include primary (elementary), secondary and higher education as well as specialised courses and training. The right to education can also include the right to benefit from education, for example by receiving official recognition of completed studies, such as a qualification.³³²

How is Equality Relevant to this Right?

Education must be accessible to all and should “promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”.³³³ As with the rights to work and health discussed above, the right to education must be guaranteed without discrimination, under Article 13 ICESCR, read together with Article 2. In addition, as with the other rights discussed in this section, Article 26 ICCPR gives rise to a free-standing right to non-discrimination applying in all areas of life regulated by law, including education.

Some examples of discrimination in education experienced by different groups in Russia are provided below:

Women

Whilst proportions of out-of-school children and education completion rates are approximately equal for boys and girls in Russia,³³⁴ the CEDAW Committee has said that the persistence of patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in Russia may restrict women’s educational choices.³³⁵ In addition, there is insufficient data collection on the access to education for women from disadvantaged communities, including rural and indigenous women from groups such as the Itelmen, Kamchadal, and Evenk,³³⁶ a factor that may cast doubt on the validity of the education participation numbers.

³³¹ ICESCR, Article 13(1).

³³² ECtHR, *Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v Belgium*, Application No. 1474/62, 23 July 1968, Paras 30–32.

³³³ ICESCR, Article 13(1).

³³⁴ United Nations Educational, Scientific and Cultural Organization, “Global Education Monitoring Report”, visited 18 January 2018, available at: http://www.education-inequalities.org/countries/russian-federation/indicators/comp_prim_v2#?dimension=all&group=all&age_group=|comp_prim_v2&year=|2013.

³³⁵ CEDAW Committee, note 80, Para 19.

³³⁶ *Ibid.*, Paras 37–39; Cultural Survival, *Submission to the Committee on the Elimination of Discrimination against Women’s Session on Russia*, 2015, p. 5, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_21629_E.pdf.

Religious Minorities

In the Russian semi-autonomous regions of the Republic of Mordovia and the Stavropol Territory, hijabs are banned in schools and universities.³³⁷ This has the potential of stigmatising and alienating female Muslim students who choose to display their religious faith by wearing the hijab, which may potentially lead to school drop-out and lower school performances for this group.

Racial and Ethnic Minorities

Reports show that Roma children face *de facto* segregation in education, mainly through the practice of placing Roma children in special classes or schools, and that Roma children have very low education outcomes and school completion rates, when compared to non-Roma children.³³⁸ NGO reports outline that the segregation of Roma in education is not typically condemned by state agencies.³³⁹ Monitoring by ADC Memorial has shown that the community see this segregation as a violation of their rights, humiliating treatment and racism.³⁴⁰ It is well-established that racial segregation in education amounts to discrimination.³⁴¹ In addition to the problems facing the Roma, while Russian federal law guarantees access to education for *all* children, reports have shown that regional authorities have denied access to school to children with temporary asylum residency and refugee applicants without residential registration.³⁴²

Persons with Disabilities

According to disability rights advocates in Russia, as of 2010, 45% to 60% of the estimated 540,800 school age children with disabilities did not receive any formal education.³⁴³ Although the exact proportion of children with disabilities enrolled in some type of formal education is unknown due to a scarcity of statistical data, interviews with the children with disabilities and their families show that they face obstacles in accessing and/or completing education.³⁴⁴ Obstacles include lack of transportation to schools, lack of adequately trained teachers, shortage of teaching support materials and discriminatory attitudes among teachers, school directors and co-students, which have the effect of stigmatising students with disabilities and pushing them to specialised institutions where they are *de facto* segregated.³⁴⁵ Russia has also allocated insufficient funds to real-

337 Chulkovskaya, Y., "Can you wear a hijab in Russia? And if so, where – and where not?", *Russia Beyond*, 19 October 2016, available at: https://www.rbth.com/politics_and_society/2016/10/19/can-you-wear-a-hijab-in-russia-and-if-so-where-and-where-not_640217.

338 See above, note 89, CERD, Paras 21–22.

339 See above, note 171.

340 *Ibid.*, p. 12.

341 ECtHR, *D.H. and Others v Czech Republic*, Application No. 57325/00, 13 November 2007; ECtHR, *Oršuš and Others v Croatia*, Application No. 15766/03, 16 March 2010.

342 US State Department, *Russia 2016 Human Rights Report*, 2016, p. 42, available at: <https://www.state.gov/documents/organization/265678.pdf>.

343 Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*, 1 September 2015, available at: <https://www.hrw.org/report/2015/09/01/left-out/obstacles-education-people-disabilities-russia>, citing, Perspektiva, *Education of the Disabled in Russia* [Образование инвалидов в России], 2010, available at: <http://perspektiva-inva.ru/protec-rights/articles/vw-840>.

344 *Ibid.*

345 *Ibid.*

ise inclusive education and address shortcomings with regard to the education of persons with disabilities more generally.³⁴⁶

LGBT+

Reports have found that LGBT+ children in Russia experience different forms of discrimination in the context of education, with harassment, exclusion and exposure to violence being particular problems.³⁴⁷ LGBT+ rights activists have said that the “Anti-Homosexual Propaganda” Law has encouraged harassment and aggression against LGBT+ students.³⁴⁸ Discrimination against LGBT+ young people can have three clear impacts on their right to education: it can reduce access to education; it can interfere with or reduce the quality of education; and it can result in individuals not completing their education.

How does the Law Protect this Right?

Domestic Law

Article 43 of the Russian Constitution confers the right to education to “everyone”.³⁴⁹ It guarantees free access to pre-school, secondary and secondary vocational education and access to free higher education on a competitive basis. Basic general education is compulsory and the Russian Federation shall support “various forms of education and self-education.”³⁵⁰

The Federal law “on Education” of 2012 declares that the right to education must be guaranteed irrespective of sex, race, nationality, language, origin, property, social and official status, place of residence, attitude to religion, beliefs, membership in public associations and other circumstances. According to Article 12(1) of this law, the content of education should promote understanding and cooperation between people and peoples regardless of race, nationality, ethnicity, religion and social belonging. State and municipal educational organisations can teach the state languages of the republics of the Russian Federation if it is not done at the expense of teaching and studying the Russian language.³⁵¹ This has led to several regional governments enacting provisions allowing for the teaching of ethnic minority languages including, for example, the region of Moscow,³⁵² the Republic of Kalmykia,³⁵³ the Republic of Dagestan³⁵⁴ and the Republic of Chechnya.³⁵⁵

346 See above, note 89, CERD, Paras 56–57.

347 See above, note 289, pp. 14–15; Luhn, A., “Russian anti-gay law prompts rise in homophobic violence”, *The Guardian*, 1 September 2013, available at: <https://www.theguardian.com/world/2013/sep/01/russia-rise-homophobic-violence>.

348 *Ibid.*, *The Guardian*.

349 Constitution of the Federation of Russia 1993, Article 43(1).

350 *Ibid.*, Article 43(1)-(5).

351 Federal Law “on Education” 2013, Article 14, (В редакции Федерального закона Российской Федерации от 07.05.2013 г. №99-ФЗ).

352 Law of Moscow Region on Education, Article 11, (N 94/2013-03 (ЗАКОН МОСКОВСКОЙ ОБЛАСТИ от 27 июля 2013 года N 94/2013-03 Об образовании (с изменениями на 18 июля 2017 года)).

353 Law “about state languages of the Republic of Kalmykia and other languages in the republic of Kalmykia, Article 10, (от 15 декабря 2014 года N 93-V-3).

354 Law of the Republic of Dagestan on Education, Article 10, (закон республики дагестан от 16 июня 2014 года n 48 об образовании в республике дагестан, с изменениями на: 10.04.2017).

355 Law of the Republic of Chechnya on Education, Article 10.

The Federal Law “on the Social Protection of Disabled People in the Russian Federation” obliges education institutions to make adjustments to their activities and environments to accommodate students with disabilities.³⁵⁶ It gives children with disabilities options to study in a mainstream school, a specialised school for children with disabilities, or through distance learning programmes or visits from teachers at home.³⁵⁷

Regional Law

Russia ratified the First Protocol to the ECHR in 1998. Article 2 of the First Protocol provides that “[n]o person shall be denied the right to education”. It also provides that the state “shall respect the right of parents to ensure (...) education and teaching in conformity with (...) religious and philosophical convictions”. The First Protocol frames the right to education as a negative obligation not to deny education to any person. It is framed such that states are not obligated under the ECHR to establish or subsidise education at any level at their own expense.³⁵⁸

As discussed throughout this Guide, Article 14 ECHR contains a prohibition on discrimination which operates in conjunction with other rights in the ECHR and its protocols. Since Russia is bound by the First Protocol to the ECHR, it must comply with the requirement to prohibit discrimination under Article 14 in the sphere of education.³⁵⁹

The *Belgian Linguistics* case of the ECtHR established that the right to non-discrimination in relation to the right to education does not automatically “have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice”.³⁶⁰ Determining whether the refusal to provide minority language of instruction is discriminatory will depend on whether the impact on minorities is proportionate. This means weighing the disadvantage suffered by children as a result of not being instructed in the relevant language against the state’s reasons for not providing it.³⁶¹ There is strong evidence that “the proportionate use of the language of minorities in education, combined with quality teaching of the official language” particularly in the first six to eight years of schooling, reduces drop-out rates, improves academic results and improves literacy and fluency in both the mother tongue and the official language.³⁶²

356 See above, note 294, Lyutov., p. 43; see above, note 98, pp. 4–5; Joint Civil Society Organisations Submission of Russian Disability Rights Organisations, *Submission to the CRPD Committee’s Session on Russia*, visited February 2018, p. 1, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fICO%2fRUS%2f28600&Lang=en.

357 See above, note 174, p. 5.

358 See above, note 332, p. 27; See also Council of Europe, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights – Right to education*, 2016, p. 5, available at: http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf.

359 For discussion of relevant considerations, see: *Ibid.*, Council of Europe, p. 10.

360 *Ibid.*

361 This will be central to the proportionality analysis that must take place in determining whether a state’s language policy can be justified by a legitimate aim, and whether the means of achieving that aim are appropriate and necessary: see United Nations Special Rapporteur on minority issues, *Language Rights of Linguistic Minorities: A Practical Guide for Implementation*, 2017, p. 18, available at: http://www.ohchr.org/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf.

362 *Ibid.*; Global Education Monitoring Report, *If you don’t understand, how can you learn?* Policy Paper 24, 2016, pp. 3–4, available at: <http://unesdoc.unesco.org/images/0024/002437/243713E.pdf>; See also: Equal Rights Trust, *Learning Inequality: Using Equality Law to Tackle Barriers to Primary Education for Out-Of-School Children*, 2017, available at: <http://www.equalrightstrust.org/resources/learning-inequality-using-equality-law-tackle-barriers-primary-education-out-school-children>.

International Law

International Covenant on Civil and Political Rights

Similar to the rights to employment and health, the free-standing right to non-discrimination in Article 26 ICCPR also applies in the sphere of education.

International Covenant on Economic, Social and Cultural Rights

Article 13(1) ICESCR provides the right of *everyone* to education. It states that education shall be directed to the development of human personality and dignity, should strengthen respect for human rights and should “promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”.

In contrast to the approach of the ECHR, Article 13(2) ICESCR specifies positive obligations that the state must meet in order to realise the right to education. In particular, it emphasises that education should be made available without charge at the primary school level. Secondary and higher education “shall be made generally available and accessible to all” and progressively made accessible for free.³⁶³

Convention on the Elimination of All Forms of Discrimination against Women

Article 10 CEDAW obligates states to protect the right to education and to ensure that they “eliminate discrimination against women in order to ensure them equal rights with men in the field of education”. Article 10 requires states to take expansive measures, such as ensuring the same conditions for career and vocational guidance and access to studies in rural and urban areas; access to the same standards of education; the elimination of gender stereotypes in education; equal opportunity with respect to receiving scholarships and grants; equal opportunity in accessing adult education; reducing female student drop-out rates; and providing family and health education for women, including family planning advice.³⁶⁴

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5 ICERD creates an obligation on states parties to eliminate racial discrimination in a wide range of areas of civil, political, economic, social and cultural rights including equal treatment in education and training without distinction as to race, colour, or national or ethnic origin in Article 5(e)(v).

Convention on the Rights of Persons with Disabilities

Article 24 CRPD guarantees the equal right of persons with disabilities to education “with a view to realising this right without discrimination and on the basis of equal opportunity”. In realising this right, states parties are required to ensure that persons with disabilities are not excluded from the education system on the basis of disability and that education is

³⁶³ ICESCR, Article 13(2)(a)-(c).

³⁶⁴ CEDAW, Article 10(a)-(h).

“inclusive, quality and free”. The same Article requires that reasonable accommodation is made for persons with disabilities and that requisite support is provided within the general education system. States are also required to “ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others”.³⁶⁵

Convention on the Rights of the Child

Article 28 Convention on the Rights of the Child (CRC) requires that states guarantee the right of the child to education “with a view to achieving this right progressively and on the basis of equal opportunity”; this includes ensuring that primary education is compulsory and available free to all (Article 28(1)(a)), that different forms of secondary education are available and accessible to every child (Article 28(1)(b)) and that higher education is accessible to all on the basis of capacity by every appropriate means (Article 28(1)(c)). Article 2(1) CRC obliges states to ensure that every right in the Convention – including the right to education under Article 28 – is provided to children without discrimination of any kind, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.

Part Four (f) Participation in Political and Public Life

What is the Right to Participate in Political and Public Life?

The right to participate in political and public life encompasses the rights of every citizen to **take part in the conduct of public affairs, to vote and to be elected** and the right to have **access to public service**.³⁶⁶ The right includes, but is not limited to:

- The right to participate in the conduct of public affairs, in the exercise of political power, at legislative, executive and administrative levels.³⁶⁷
- The right to vote and to stand for public office, which includes direct and indirect forms of political participation at all levels of government.³⁶⁸
- The right to have access to public service positions in the country of citizenship, with objective and reasonable criteria for appointment, promotion, suspension and dismissal.³⁶⁹

The HRC has pointed out that freedom of expression, assembly and association are essential conditions for the effective exercise of the right to participate in political and public life.³⁷⁰

365 CRPD, Article 24(2)(a)-(e).

366 HRC, *General Comment No. 25: Article 25, Participation in Public Affairs and the Right to Vote*, UN Doc. CCPR/C/21/Rev.1/Add.7, 1996, Paras 1–2.

367 *Ibid.*, Para 5.

368 United Nations Human Rights Council, *Factors that impede equal political participation and steps to overcome those challenges*, *Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/27/29, 2014, Para 10.

369 See above, note 366, Para 23.

370 *Ibid.*, Paras 12 and 25–26.

For example, freedom of association protects the creation of political parties and membership of parties, which play a significant role in the conduct of public affairs and in the election process.³⁷¹ These rights are analysed in depth in Part 4(c).

How is Equality Relevant to this Right?

The right to participate in political and public life is applicable to “every citizen” and not to “every person”, limiting the right to those who are citizens of a given state, in accordance with national law. The HRC has emphasised that no discrimination between citizens is permitted in the enjoyment of the right on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³⁷² Restrictions or conditions on the right are only permitted if they are established by law, objective, reasonable and non-discriminatory.

According to the HRC, states have obligations to ensure the participation of vulnerable groups, including, *inter alia*, in the following ways:³⁷³

- Providing electoral information in minority languages.
- Adopting positive measures to enable illiterate citizens to vote.
- Removing barriers imposed by poverty, including voter registration obstacles.
- Removing physical and other barriers for persons with disabilities.

It has been noted that even when there is “no formal discrimination in connection with political or public participation, inequalities in access to other human rights may impede the effective exercise of political participation rights”.³⁷⁴ The HRC has established that **states may need to adopt positive action measures** in order to correct for conditions in a country that prevent or impair the enjoyment of rights in the ICCPR with respect to certain groups; this may involve giving them preferential treatment in specific matters as compared to the rest of the population.³⁷⁵ As such, the creation of quotas for groups such as women, ethnic minorities or people with disabilities that are underrepresented in legislative bodies and decision making roles may be necessary in certain circumstances in order to diminish or eliminate historic disadvantage.

In Russia, the groups under discussion in the Guide are affected by discrimination and inequality with respect to the right to participate in political and public life in various ways.

Women

Women are underrepresented in political and decision-making positions.³⁷⁶ As of 2017, in Parliament, women represented only 15.8% of the members of the Lower House, and

³⁷¹ *Ibid.*, Para 26.

³⁷² *Ibid.*, Para 3.

³⁷³ *Ibid.*, Paras 10 and 12–13.

³⁷⁴ OHCHR, *Equal participation in political and public affairs*, visited 17 January 2018, available at: <http://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx>.

³⁷⁵ HRC, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 1989, Para 10.

³⁷⁶ See above, note 80, CEDAW Committee, Para 30.

17.1% of the Upper House.³⁷⁷ Additionally, NGOs that promote women's rights and participation in society have been unable to access international funding after the Federal Law "on Foreign Agents",³⁷⁸ which has the potential to halt women's progress in the area of political and public life. Finally, Russia has yet to adopt positive action measures to ensure equal participation of women in the political sphere in line with the recommendations of the CEDAW Committee.³⁷⁹

Religious, Racial and Ethnic Minorities

As discussed in Part 4(b), the use of prejudicial language against national, ethnic, religious and other minorities in public and political discourse remains a problem in Russia.³⁸⁰ Whilst this does not directly impede ethnic and religious minorities' right to participation in political and public life, it has the potential to do so indirectly, by fostering social stigmatisation and disenfranchisement of these groups, capable of leading to a decreased political and public participation. Furthermore, Russia does not collect data on minorities' participation and representation in political and public life.³⁸¹

Persons with Disabilities

Persons with disabilities face a range of significant barriers which impede their political participation, including in particular the domestic legal framework on legal capacity and the lack of physical accessibility in the public sphere. Persons with mental disabilities are frequently deprived of their legal capacity or restricted in its full exercise.³⁸² The Constitution provides that those without legal capacity are prohibited from voting in elections and standing for election.³⁸³ This restriction is solely based on the legal capacity status of the person and Russian law fails to recognise the fact that many persons with mental disabilities are capable of participating in political and public life with the proper assistance.³⁸⁴ The HRC has expressed its concern at the significant number of persons with a mental disability in Russia who are deprived of their legal capacity and the lack of adequate procedural and substantive safeguards against restrictions in their enjoyment of civil and political rights.³⁸⁵ Interviews conducted by Human Rights Watch in 2013 exposed the lack of physical accessibility to electoral voting stations and public hearings for persons with disabilities.³⁸⁶ Furthermore, public transportation is inaccessible to persons with a physical disability in many

377 Inter-Parliamentary Union, *Women in national parliaments*, 2017, available at: <http://archive.ipu.org/wmn-e/classif.htm>; See also The World Bank, *Proportion of seats held by women in national parliaments*, visited February 2018, available at: <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?view=map>.

378 Consortium of Women's Non-Governmental Associations, *Submission to the CEDAW's Session on the Russian Federation*, 2015, pp. 9–10, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_19553_E.pdf.

379 *Ibid.*, pp. 7–8.

380 See above, note 81, HRC, Para 8.

381 See above, note 89, CERD, Para 8.

382 See above, note 234, p. 12.

383 Constitution of the Federation of Russia 1993, Article 32(3).

384 See above, note 234.

385 HRC, *Concluding Observations: Russian Federation*, UN Doc. CCPR/C/RUS/CO/6, 2009, Para 19.

386 Human Rights Watch, *Barriers Everywhere. Lack of Accessibility for People with Disabilities in Russia*, 2013, available at: <https://www.hrw.org/report/2013/09/11/barriers-everywhere/lack-accessibility-people-disabilities-russia>.

places,³⁸⁷ and this may have an impact on the enjoyment of rights including the right to participate in political and public life.

LGBT+

As discussed in Part 4(c) of this Guide, the Russian Federation has limited enjoyment of the rights of freedom of expression, association and assembly for LGBT+ persons through, *inter alia*, the imposition of administrative sanctions. The Human Rights Council has noted that “sanctions that target LGBT persons, as well as discriminatory restrictions on their freedoms of peaceful assembly, association and expression result in severe limitations on their participation in political and public life”.³⁸⁸

How does the Law Protect this Right?

Domestic Law

Article 32 of the Constitution of the Russian Federation states that citizens of Russia shall have the right to participate in management of state affairs directly and indirectly, through their representatives. This provision further guarantees the right to elect and be elected to the state bodies and local self-government and ensures equal access to the state service for citizens. Article 32(3) of the Constitution prohibits persons without legal capacity from voting and running for public office.³⁸⁹

Article 9(3) of the Federal Law “on Political Parties” prohibits the creation of political parties on the grounds of professional, racial, national or religious affiliation. According to Article 23(10), membership of a political party cannot be restricted based on the grounds of professional, social, racial, national or religious affiliation, sex, origin, property status or place of residence. Article 5(10.1) of the Federal Law on “the Social Security of Persons with Disabilities” provides state authorities the right to provide assistance to persons with a disability, including physical disabilities, during elections and referendums. Voting by proxy, providing braille voting material and other modifications for persons with disabilities are mandated by the Federal law “On the basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation”.³⁹⁰

Regional Law

The Russian Federation has ratified the First Protocol to the ECHR. Article 3 of the Protocol puts an obligation on the state to “hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the electorate in the choice of the legislature”. Although it posits an obligation, rather than asserting a right, the ECtHR has derived from it the right to vote and stand for election.³⁹¹

³⁸⁷ See above, Human Rights Watch, note 98, p. 3.

³⁸⁸ See above, note 368, Para 43.

³⁸⁹ Constitution of the Federation of Russia 1993, Article 32(3).

³⁹⁰ *Ibid.*

³⁹¹ ECtHR, *Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights*, 31 August 2017, Parts II-III, available at: http://www.echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf.

*Aziz v Cyprus (2004)*³⁹²

The claimant, Mr Ibrahim Aziz, was a citizen of Cyprus. In 2001, he attempted to register on the electoral roll in order to be able to vote in an upcoming parliamentary election, but his request was denied on the basis that the Constitution prohibited Turkish-Cypriots from registering on the Greek-Cypriot electoral roll. However, the Cypriot government had failed to set up two electoral lists protecting the electoral rights of both the Turkish and Greek Cypriot communities. The claimant argued that the state had violated Article 3 of Protocol No. 1 of the ECHR, which guarantees the right to free elections, in conjunction with Article 14 ECHR - the prohibition on discrimination - because he was prevented from exercising his voting rights on the grounds of national origin and/or association with a national minority.³⁹³ The ECtHR rejected the justification of Cyprus that the Turkish-Cypriot electoral roll had not been established due to the fact that the Turkish community had withdrawn from the constitutional organs of the state following the occupation of a part of the state by the Republic of Turkey. The Constitutional provision allocating different electoral rolls *in effect* resulted in the Turkish-Cypriots being prevented from voting at *any* parliamentary election and was not justified on reasonable and objective grounds.³⁹⁴ Accordingly, the Court established a violation of Article 3 of Protocol No. 1 in conjunction with Article 14 ECHR.

International Law

International Covenant on Civil and Political Rights

Article 25 ICCPR establishes that every citizen has the right and opportunity, without discrimination and unreasonable restrictions, to (i) participate in the conduct of public affairs, directly or through representatives;³⁹⁵ (ii) vote and be elected in periodic elections characterised by universal and equal suffrage; and (iii) be given access to the public service in the country.³⁹⁶

Convention on the Elimination of All Forms of Discrimination against Women

Article 7 CEDAW requires states to take measures to “eliminate discrimination against women in the political and public life of the country”, particularly by ensuring that women have, on equal terms with men, the right to vote in all elections, to be eligible for public office, to participate in the formulation and implementation of government policy at all levels, and to participate in associations concerned with public and political life.³⁹⁷ The CEDAW Committee has noted that ensuring enjoyment of this right necessitates protection of other rights: it has noted that barriers that restrict women’s participation in the public and polit-

392 ECtHR, *Aziz v Cyprus*, Application No. 69949/01, 22 December 2004.

393 *Ibid.*, Para 31.

394 *Ibid.*, Para 37.

395 ICCPR, Article 25(a).

396 ICCPR, Article 25(b)-(c).

397 CEDAW, Article 7(a)-(c).

ical domain are strongly shaped by gender stereotypes, discrimination of women in the family and community, women's economic dependence to men and violence against women.³⁹⁸ States have a positive obligation to promote equal participation of women in all fields of public and political life, which may require the adoption of positive action measures.³⁹⁹

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5(c) ICERD obliges states to guarantee, without distinction as to race, colour, or national or ethnic origin, "political rights, in particular the right to participate in elections, to vote and to stand for election-on the basis of universal and equal suffrage".

Convention on the Rights of Persons with Disabilities

Article 29 CRPD guarantees the right to participation in political and public life to persons with disabilities on an equal basis with others. This provision requires states to, *inter alia*, ensure voting procedures and facilities are accessible and easy to use, protect the right of persons with disabilities to vote and stand for elections, including enabling them to vote by proxy.⁴⁰⁰ Furthermore, the same Article obliges states to actively promote an environment in which persons with disabilities can participate in the conduct of public affairs through involvement in political parties, NGOs, and other associations.⁴⁰¹

The CRPD Committee has stated that people with disabilities have the right to enjoy legal capacity on an equal basis with others in all aspects of life by virtue of Article 12 CRPD.⁴⁰² It has also highlighted that restrictions to legal capacity often have the effect of excluding persons with disabilities from political participation, particularly through restrictions on the right to vote.⁴⁰³

Part Four (g) Discrimination by State Agents

The Russian Federation has obligations to respect, protect and fulfil rights contained within the international human rights treaties it has ratified.⁴⁰⁴ These obligations extend to the right to non-discrimination:

- **Respecting the right:** In order to respect the right to non-discrimination, Russia must refrain from violating the right both in law and in practice. This means ensuring that laws and policies regulating various areas of life do not discriminate, either

398 CEDAW Committee, *General Recommendation No. 23: Women in political and public life*, 1997, Paras 10–12.

399 See above, note 368, Para 56; CEDAW Committee, *General Recommendation No. 25: on Article 4, paragraph 1, on temporary special measures*, UN Doc. CEDAW/C/ZWE/CO/2-5, 2004.

400 CRPD, Article 29(a)(i)–(iii).

401 *Ibid.*, Article 29(b)(i)–(ii).

402 CRPD Committee, *General Comment No. 1: Article 12: Equal recognition before the law*, UN Doc. CRPD/C/GC/1, 2014, Para 31.

403 *Ibid.*, Para 48.

404 OHCHR, "International Human Rights Law", accessed March 2018, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.

directly or indirectly. The right to non-discrimination also means that the state and its agents must refrain from discriminating in practice.

- **Protecting the right:** Protecting the right to non-discrimination requires the adoption and implementation of a legal framework providing for comprehensive and effective prohibition of discrimination and for the adoption of positive action measure. This obligation to protect the right to non-discrimination requires that Russia adopt legislation which prohibits all forms of discrimination (direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation) on all grounds recognised at international law, including those discussed in this Guide. Such legislation must apply to both private and public actors, in all areas of life regulated by law.
- **Fulfilling the rights:** Russia's obligations in respect of equality and non-discrimination – in all fields regulated by law – extend beyond refraining from discrimination and enacting and enforcing equality laws. It is obliged to ensure the enjoyment of the rights to equality and non-discrimination in practice. The state should collect data on the enjoyment of rights disaggregated on the basis of protected characteristics, in order to identify which groups are excluded or disadvantaged and, having identified such groups, take measures to remove factors that have the effect of limiting their enjoyment of the relevant right.

The obligation to respect the right to non-discrimination thus creates **an obligation on Russia and its agents to refrain from discrimination in law and in practice**. Unlike in many of the other areas discussed in this Guide – such as the rights to freedom of expression or to work – this obligation arises directly under the right to non-discrimination alone.

The following section presents examples of ways in which the Russian state and its agents – including state employees such as law enforcement officers – discriminate against the groups under consideration in this guide. It should be noted that many of the issues discussed in this section are repeated from other Parts in this Guide, which discuss the rights to equality and non-discrimination with respect to various areas of life; this is because the state has an obligation to refrain from discrimination in all areas as set out above.

Discriminatory Laws

One essential element of the state's obligation to respect the right to non-discrimination is the obligation to ensure that the law itself does not discriminate, directly or indirectly. Russia maintains a significant number of discriminatory laws, including laws which affect all groups profiled in this Guide. While it is not useful, in this Guide, to provide a comprehensive summary of such laws, we highlight below some of the discriminatory laws discussed elsewhere in the Guide to illustrate how such laws limit equality of participation and equality of rights.

Restriction of women's access to certain professions

As noted in Part 4(e)(i), women are prohibited from accessing certain professions and industries by law. Article 253 of the Labour Code expressly prohibits women from working in “hard, dangerous and/or unhealthy trades as well as underground working”. In addition, it restricts female labour which involves manual lifting of “weights exceeding maximum

permissible standards”.⁴⁰⁵ The law provides that both banned professions – as listed in Government Regulation No.162 – and the maximum permissible weights shall be approved by the Government of the Russian Federation, taking account the views of Russian Trilateral Committee on Social and Labour Relations.

This type of restriction clearly amounts to direct discrimination on the basis of sex. In 2016, the CEDAW Committee found that Russia had discriminated against a female job applicant who had been denied employment by a private company that rejected her because the position she applied for was on the prohibited list of professions.⁴⁰⁶ The Committee rejected arguments made by Russia to the effect that the restriction was necessary to protect the health of women.⁴⁰⁷ An in-depth discussion of this case is provided in Part 5 of this Guide.

The prohibition on religious displays in schools and universities

The Republic of Mordovia and the region of Stavropol have both banned visible displays of religion, including clothing, in schools and universities for students and staff, as discussed in Part 4(e).⁴⁰⁸

Although the regional governments have argued that the restrictions are necessary to protect the neutral and secular nature of public education institutions and that the restrictions apply to the display of religious conviction by adherents of *all* religions,⁴⁰⁹ they disproportionately affect religions where the display of religion is required or encouraged as a matter of faith. For example, the female Muslim population of the Republic of Mordovia and the region of Stavropol are restricted from wearing a headscarf, which is, to many women in the region, an integral part of their religious observance.⁴¹⁰ Thus, the restriction indirectly discriminates on the basis of religion as it disproportionately disadvantages certain groups of religious followers.

The “Anti-Gay Propaganda” Law

As discussed in Part 4(c) the so-called “Anti-Gay Propaganda” Law,⁴¹¹ prohibits the dissemination of positive information regarding non-heterosexual relationships and imposes

405 Labour Code of the Russian Federation 2002, (Трудовой кодекс Российской Федерации [Trudovoi Kodeks Rossiiskoi Federatsii]).

406 CEDAW Committee, *Medvedeva v Russian Federation*, Communication No. 60/2013, UN Doc. CEDAW/C/63/D/60/2013, 21 March 2016, Paras 11.1-12.

407 *Ibid.*

408 Administration of the Republic of Mordovia, Standard Requirements for Dress-code at the State and Municipal Schools of the Republic of Mordovia No. 208, 2014, Article 9; Resolution of the Government of the Stavropol Territory of October 31, 2012 “On approval of basic requirements for school clothes and appearance of pupils”; See also: ADC Memorial, *The Russian Federation: Violation of the Economic and Social Rights of Vulnerable Groups*, 2016, p. 27, available at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/RUS/INT_CESCR_CSS_RUS_28708_E.pdf.

409 *Ibid.*, ADC Memorial.

410 *Ibid.*

411 Federal Law “On Amending Article 5 of the Federal Law “On protection of children from information harmful to their health and development” and certain legislative acts in order to protect children from the information propandasing the denial of family values”, 29 June 2013, No. 135-FZ (Федеральный закон от 29 июня 2013 года № 135-ФЗ “О внесении изменений в статью 5 Федерального закона “О защите детей от информации, причиняющей вред их здоровью и развитию” и отдельные законодательные акты Российской Федерации в целях защиты детей от информации, пропагандирующей отрицание традиционных семейных ценностей”).

administrative liability on offenders. The law has made amendments to relevant child protection legislation⁴¹² and the Code of Administrative Offences⁴¹³ for this purpose.

This law discriminates against individuals on the basis of sexual orientation or gender identity, with respect to the rights to freedom of expression, assembly and association, through *inter alia*, restricting demonstrations in favour of LGBT+ acceptance and shutting down news outlets that portray LGBT+ persons in a positive light.

The deprivation of legal capacity

Persons with mental disabilities are frequently deprived of their legal capacity, a practice which constitutes discrimination in contravention of the CRPD, and which restricts their rights in various aspects of life. Under Article 29 of the Civil Code, a person who “cannot understand or control his or her actions as a result of a mental disease” may be deprived of his or her legal capacity by a court. A person deprived of legal capacity loses almost all autonomy over his or her life to a legal guardian solely because of a (sometimes temporal) decrease in functional capacity.⁴¹⁴ This law has been applied in a way which discriminates against persons with mental disabilities. According to the Mental Disability Advocacy Centre, “[t]he existence of a diagnosis of a mental disability/disorder, no matter how serious, does not imply that a person has diminished capacity for making independent decisions about their life”.⁴¹⁵

Discrimination by the State and its Agents

Beyond refraining from discriminating in law, the other essential element of the state’s obligation to respect the right to non-discrimination is the obligation to ensure that the state and its agents do not discriminate in practice. As with discriminatory laws, there is significant evidence that the Russian state and its agents discriminate directly and indirectly against the groups profiled in this Guide. Again, while it is not useful to provide an exhaustive account of such practices, the section below provides select examples to illustrate how such practices limit equality of participation and equality of rights.

Women

Russian officials in the legal and law enforcement systems have prejudiced ideas regarding the sexual assault and rape of women. For example, in 2006, a survey of male Rus-

412 Federal Law, “On Basic Guarantees of the Rights of the Child in the Russian Federation”, 24 July 1998, No. 124-FZ, Article 14(1) (Федеральный закон от 24 июля 1998 года, № 124-ФЗ, “Об основных гарантиях прав ребенка в Российской Федерации”); Federal Law, “On protection of children from information harmful to their health and development”, 29 December 2010, No. 436-FZ, Article 5(2) (4) (Федеральный закон от 29 декабря 2010 года, № 436-ФЗ “О защите детей от информации, причиняющей вред их здоровью и развитию”).

413 Russian Federation Code of Administrative Offences (Кодекс Российской Федерации об административных правонарушениях), Article 6.21.

414 MDAC, *Analysis of the Russian legal capacity system for persons with mental disabilities: Towards implementation of Article 12 of the UN CRPD*, 2010, p. 7, available at: <http://www.mdac.info/en/resources/analysis-russian-legal-capacity-system-persons-mental-disabilities-towards-implementation>.

415 *Ibid.*

sian prosecutors conducted by the American Bar Association indicated that 81% agreed with the statement “women often voluntarily enter into sex and then falsely accuse their partner of rape”.⁴¹⁶ As discussed in Part 4(a), there is a tendency in Russian society to see domestic violence as a private matter. This is demonstrated by law enforcement officers’ response to women filing complaints against their abuser, with reports indicating that police often delay, and sometimes even obstruct completely, the filing process.⁴¹⁷ Police also reportedly blame victims, discriminate against them, or treat them in a degrading manner.⁴¹⁸ Furthermore, it has been reported that authorities often do not investigate female trafficking and instead focus on deporting the victim if she does not possess legal residency.⁴¹⁹

Obstacles to access to justice remain in place for women facing discrimination in various aspects of life in Russia. In 2015, the CEDAW Committee noted that between 2010 and 2015, the Office of the Ombudsman of the Russian Federation received no complaints of gender-based discrimination and concluded that there was no effective complaint mechanism for women to claim their rights.⁴²⁰

Roma women face discrimination in their own communities, where they traditionally have a lower status than men, as well as from Russian authorities based on their membership of the Roma community.⁴²¹ There is evidence that three Roma women in the village of Dyaguilevo were detained by policemen, severely beaten, and had their hair cut as a way to humiliate them; the police officers were never criminally prosecuted.⁴²² Moreover, there have been reliable reports of discrimination, harassment and hate speech, based on negative stereotypes, against lesbian, bisexual and transgender women by Russian police.⁴²³

Religious Minorities

As discussed in Part 4(c) of this Guide, the Federal Law “On Combatting Extremism” of 2002,⁴²⁴ is increasingly used to target religious minorities under the pretext of “religious extremism”. The Law has given state authorities significant discretion, which has been used to persecute minorities in various ways. Members of some religious minority groups have

⁴¹⁶ American Bar Association, *CEDAW Assessment Tool Report for the Russian Federation*, 2006, p. 105, available at: <https://www.americanbar.org/content/dam/aba/directories/roli/russia/russia-cedaw-eng.authcheckdam.pdf>.

⁴¹⁷ Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms Yakin Ertürk, Report on Russian Federation*, UN Doc. E/CN.4/2006/61/Add.2, 26 January 2006, Paras 38 and 60; See above, note 81, Committee Against Torture, Para 14.

⁴¹⁸ *Ibid.*, Commission on Human Rights, Para 39; ANNA National Centre for the Prevention of Violence, *Submission to the CEDAW’s 46th session on the Russian Federation*, 2010, p. 18, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/INT_CEDAW_NGO_RUS_46_9974_E.pdf.

⁴¹⁹ *Ibid.*, pp. 31–35.

⁴²⁰ See above, note 80, CEDAW Committee, Para 11.

⁴²¹ See above, note 90, p. 3.

⁴²² *Ibid.*, p. 4.

⁴²³ See above, note 80, CEDAW Committee Para 41.

⁴²⁴ Federal Law “On Combatting Extremist Activity” 2002, (Федеральный закон от 25 июля 2002 г. № 114-ФЗ “О борьбе с экстремистской деятельностью”).

been sentenced to pre-trial imprisonment without due cause under the new law.⁴²⁵ NGO reports show an increase in religion and belief-related prosecutions in recent years under the umbrella of “counter-extremism”, with people who share their beliefs in public being particularly vulnerable.⁴²⁶ According to available court records, the number of belief-related prosecutions rose between 2014 and 2015, affecting primarily Jehovah’s Witnesses and non-Orthodox Christian minorities.⁴²⁷

There have been numerous issues relating to the use of buildings for religious activities. These have included local officials preventing religious organisations from obtaining land, denying construction permits and confiscating or demolishing places of worship.⁴²⁸ Such acts have affected groups from a range of religious backgrounds, including Islamic groups, Jehovah’s Witnesses, and Christians – particularly those churches not under the jurisdiction of the ROC.⁴²⁹ The ROC is widely reported to benefit from better treatment at the hands of agents of the state than other religious groups.⁴³⁰ It has been reported that the ROC has received a large number of government grants and benefits from formal and informal agreements with government bodies which give it greater access than other groups to resources such as schools and places of worship.⁴³¹

Discrimination and violations of freedom of religion against religious minorities in the annexed Crimea⁴³² have been reported by rights groups, with reports strongly indicating that Russian state officials have been involved.⁴³³ The Ukrainian Orthodox Church of the Kyiv Patriarchate and the Islamic community have been the main targets of persecution.⁴³⁴ The Ukrainian Orthodox Church in the village of Perevalnoe was stormed on 1 June 2014 by men, armed with knives and other weapons, thought to have been affiliated with the Russian state.⁴³⁵ Religious groups reportedly have difficulty registering under Russian law: of the 2,083 officially registered religious groups prior to the Russian annexation of Crimea,

425 Council of Europe Parliamentary Assembly, *Religious Freedom in Russia, Written Declaration No. 647*, Doc. 14430, October 2017.

426 Arnold, V., “Russia: Religious Freedom Survey, January 2017”, *Forum 18*, 13 January 2017, available at: http://www.forum18.org/archive.php?article_id=2246.

427 *Ibid.*

428 Arnold, V., “Russia: Building, retaining places of worship obstructed”, *Forum 18*, 26 October 2017, available at: http://www.forum18.org/archive.php?article_id=2328; Corley, F. & Fagan, G., “RUSSIA: Shock at Moscow church demolition”, *Forum 18*, 6 September 2012, available at: http://www.forum18.org/archive.php?article_id=1738.

429 See above, note 426.

430 SOVA Center for Information and Analysis, *Freedom of conscience in Russia: Restrictions and challenges in 2012, 2013*, available at: <http://www.sova-center.ru/en/religion/publications/2013/05/d27087>.

431 *Ibid.*

432 Given that, as a matter of Russian law, the Republic of Crimea and Sevastopol are subjects of the federation, this report treats them as such. However, the Equal Rights Trust notes that the annexation of these territories has been condemned by a United Nations General Assembly Resolution, therefore the Equal Rights Trust considers these territories of Ukraine in all respects. The inclusion of these territories as federal subjects in this report in no way constitutes an endorsement of the Russian Federation’s claims to sovereignty. Please see above, note 172.

433 Joint submission of CSOs, *Submission to the Human Rights Committee’s Session on Russia*, 2015, pp. 4–8, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fRUS%2f19663&Lang=en.

434 *Ibid.*, pp. 4–9.

435 Amnesty International, *One year on: violations of the rights to freedom of expression, assembly and association in Crimea*, 2015, p. 22, available at: <https://www.amnesty.org/en/documents/EUR50/1129/2015/en>.

only 722 had been registered as of 2017.⁴³⁶ Discrimination against religious minorities in Crimea reportedly takes a variety of forms, including intimidation of clergy, harassment of religious communities and destruction of religious properties.⁴³⁷ It has been reported that Muslims are restricted in performing religious observances and searches of mosques take place regularly.⁴³⁸

Racial and Ethnic Minorities

The CERD has expressed concern that *de facto* racial profiling by the police is persistent and that racial and ethnic minorities are particularly targeted via arbitrary identity checks and arrests.⁴³⁹ Police have also reportedly subjected members of minority ethnic groups to harassment, physical violence and verbal abuse.⁴⁴⁰ Racial profiling targets the Roma community in particular, with studies showing they are disproportionately arrested in some areas and that Roma individuals are repeatedly fingerprinted, even in cases where this has been done before.⁴⁴¹ Another recent example of discrimination by state actors is the destruction of Roma houses in Tatarstan, with the support of the Russian police, in 2017.⁴⁴²

Persons with Disabilities

The continued practice of institutionalising persons with disabilities remains a pressing problem in Russia.⁴⁴³ Institutionalisation constitutes a violation of Article 14(1)(b) CRPD.⁴⁴⁴ Human Rights Watch has documented institutionalised children with disabilities being described as “vegetables” and being subjected to physical abuse by employees of state institutions.⁴⁴⁵ For example, prosecutors monitoring an institution in Ulyanovsk region in July 2017 found that an employee had punished a 13-year-old boy with an intellectual disability by burning him with an iron.⁴⁴⁶

436 Human Rights Council, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)*, UN Doc. A/HRC/36/CRP.3, 25 September 2017, Para 143.

437 See above, note 90, pp. 4–8.

438 Human Rights Watch, “Ukraine: Fear, Repression in Crimea”, *Human Rights Watch*, 18 March 2016, available at: <https://www.hrw.org/news/2016/03/18/ukraine-fear-repression-crimea>.

439 See above, note 89, Para 15(b).

440 *Ibid.*, Paras 15–16; See above, note 81, HRC, Para 8.

441 See above, note 90, p. 35.

442 ADC Memorial, “Racism and Happiness”, *ADC Memorial*, 11 August 2017, available at www.adcmemorial.org/www/13284.html?lang=en.

443 Human Rights Watch, *Submission to the CRPD Committee’s Session on Russia*, 2017, <https://www.hrw.org/news/2017/07/25/human-rights-watch-submission-russia-committee-rights-persons-disabilities-crpd>.

444 CRPD, Article 14(1)(b); OHCHR, *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities*, 2015, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Guidelines.aspx>, Para 10.

445 See above, note 98, pp. 1 and 7.

446 Human Rights Watch, *World Report*, 2017, p. 499, available at: https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf.

*Kocherov and Sergeyeva v Russia (2016)*⁴⁴⁷

In 2007, St Petersburg authorities placed Anna, a new-born baby, in an orphanage. The reasons cited were that Vitali Kocherov, the father of the baby, had previously spent time in a social care institution and the mother, Natalya, was under guardianship because she had an intellectual disability.⁴⁴⁸ When Natalya first became pregnant she was taken to a psychiatric hospital by the authorities where she was forced to have an abortion.⁴⁴⁹ After she became pregnant for the second time the couple tried to hide the child from the authorities, but the medical staff in the hospital where Natalya gave birth immediately placed the new-born child in an orphanage.

The ECtHR and the government agreed that the family had faced a restriction on the right to private and family life as protected by Article 8 ECHR. The Court held that this restriction pursued the legitimate aim of protecting children's health and safety but found that the domestic courts and authorities had provided insufficient evidence that the parents were not capable of taking care of the child, whilst simultaneously ignoring evidence suggesting they were in fact able to do so. The restriction was therefore not proportionate to the legitimate aim pursued, and the Court ruled that Article 8 ECHR, the right to respect for private and family life, had been violated.⁴⁵⁰ The Court further held that it was unnecessary to consider the allegation of the violation of the principle of non-discrimination (Article 14 ECHR). Judge Keller issued a five-page dissenting opinion on this last determination, finding that the Article 14 claim had unjustifiably been left unconsidered by the Court. She found that the conclusions of state authorities which led to the separation of the child and parents were based on generalised negative stereotypes about parents with disabilities, which made them blind to evidence suggesting the parents were able to take care of the new-born baby. Furthermore, Russian law does not normally require parents without disabilities to prove their ability to raise children. Thus, in her opinion, the Court had insufficiently examined the discriminatory nature of the state's actions.⁴⁵¹

LGBT+

The Russian state maintains a number of discriminatory practices against LGBT+ persons. Laws such as the so-called "anti-gay propaganda" law stigmatises LGBT+ persons, legitimating discrimination by state officials. Rights groups suspect that many crimes against LGBT+ persons are not effectively investigated or prosecuted by the police. Abduction, torture and

⁴⁴⁷ See above, note 237.

⁴⁴⁸ Human Rights Watch, *Russia: Events of 2016*, 2016, p. 11, available at <https://www.hrw.org/world-report/2017/country-chapters/russia>.

⁴⁴⁹ Sparks, J., "Living with Mental Health Problems in Russia", *Sky News*, 10 December 2016, available at <https://news.sky.com/story/living-with-mental-health-problems-in-russia-10289759>.

⁴⁵⁰ See above, note 237, Para 120.

⁴⁵¹ *Ibid.*

killing of LGBT+ persons by the police has also been reported in some parts of the country: in 2017, the Russian LGBT Network reported that authorities have used “torture by electric current, lack of water, malnutrition, and a lack of sleep” against LGBT+ persons in the North Caucasus.⁴⁵² The report contains over 30 testimonies of victims who have been persecuted because of their sexual orientation, with many strongly suggesting that government officials directly participate in the torture of LGBT persons.”⁴⁵³ There are also examples of discrimination by state agents in other areas of life: for example, there have been cases where the government removed children from their parents because of their sexual orientation or gender identity.⁴⁵⁴

Challenging Discriminatory Laws and Discrimination by the State

This section discusses the way in which domestic and international law restrain the state and state actors from discrimination and the ways in which these laws can be utilised to protect individuals and groups from discrimination against the state. The state’s obligation to refrain from discrimination in law and practice emanates from both domestic and international law.

Domestic Law

Russia’s main domestic obligation to refrain from discrimination arises directly from the right to non-discrimination, as protected under Article 19(2) of the Constitution, which provides that the state must ensure that all people are guaranteed “equality of rights and freedoms”, regardless of their sex, race, nationzzality, language, origin, property, or employment status, residence, attitude to religion, convictions, membership of public associations or “any other circumstance”. This Article obliges the state and its agents – as well as private actors – to refrain from discrimination and provides a basis for individuals to challenge discriminatory laws or discrimination in practice by the state and its agents.

The Criminal Code contains numerous other provisions protecting against abuse and over-reach by state actors, including notably a prohibition on discrimination on the basis of sex, race, nationality, origin, religion or other social affiliation in an official capacity.⁴⁵⁵

Other domestic laws may be also be relevant and useful in challenging discrimination by state actors. For example, Article 285 of the Criminal Code of Russia prohibits “abuse of official power”, which means the use of power by an official contrary to the interest of the civil service which involves the violation of rights and interests of individuals and organisations. Furthermore, Article 286 of the Criminal Code prohibits “exceeding offi-

452 The Russian LGBT Network, *LGBT Persecution in the North Caucasus: a Report*, 2017, p. 13, available at https://lgbtnet.org/sites/default/files/final_chechnya_publish_0.pdf.

453 *Ibid.*, p. 11.

454 See, for example, Human Rights Watch, “Russian Government Takes Children from Foster Mother Because of Breast Surgery”, *Human Rights Watch*, 2017, available at <https://www.hrw.org/news/2017/11/17/russian-government-takes-children-foster-mother-because-breast-surgery>.

455 Criminal Code of the Russian Federation 1996, Article 136.

cial power”, meaning the transcending of the limits of power of an official which involves a substantial violation of an individual or organisation’s rights. If the transgression in power involves the use of violence or the threat thereof, it attracts a higher punishment. This Article has been used to prosecute authority figures who have tortured victims.⁴⁵⁶ Both Article 285 and 286 list the commission of the relevant acts in government positions as an aggravating circumstance.

Article 7 of the Federal Law “on Police” states that police shall protect the rights, freedoms and legitimate interests of a person and citizen regardless of “race, nationality, language, origin.”⁴⁵⁷ It also imposes an obligation on police officers to respect race and ethnic origin of citizens, taking cultural and other characteristics of various social, ethnic, and religious groups into account. This federal law places restrictions on the exercise of police authority, including with respect to the deprivation of liberty,⁴⁵⁸ forced entry into property,⁴⁵⁹ and the necessary and proportionate use of force.⁴⁶⁰

International Law

Russia’s international law obligations to refrain from discrimination in law and practice arise from several sources.

International Covenant on Civil and Political Rights

Article 26 ICCPR declares that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law” and states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁴⁶¹ According to the HRC this applies to discrimination in law or in fact in any field regulated and protected by law; the Committee has noted that Article 26 is “concerned with the obligations imposed on States parties in regard to their legislation and the application thereof”.⁴⁶²

Convention on the Elimination of All Forms of Discrimination against Women

Under Article 2 CEDAW states must “pursue by all appropriate means and without delay a policy of eliminating discrimination against women” and under Article 2(d) undertake to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”.

456 Memorial-European Human Rights Advocacy Centre, *Bulletin: Russian law amended to include a definition of “Torture”*, 2004, available at: <http://repository.londonmet.ac.uk/500/1/EHRAC%20bulletin%20issue1%200.%20Shepeleva.pdf>.

457 Federal Law “on Police” 2011, (Федеральный закон от 07.02.2011 N 3-ФЗ (ред. от 05.12.2017) “О полиции”).

458 *Ibid.*, Article 14.

459 *Ibid.*, Article 15.

460 *Ibid.*, Articles 18–24.

461 HRC, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 1989, Para 12.

462 *Ibid.*

International Convention on the Elimination of All Forms of Racial Discrimination

Article 2 ICERD requires states to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races” and to this end every state, according to Article 2(a) “undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation”.

Convention on the Rights of Persons with Disabilities

Under Article 4 CRPD Russia is required to “undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability”. Under Article 4(d) the state must undertake “[t]o refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention”.

Part Five: Legal Strategies for Ensuring Access to Justice for Victims of Discrimination

There are several important **practical considerations** to bear in mind if you plan to advance your client's rights to equality and non-discrimination through litigation. This applies to the domestic, regional and international mechanisms that were outlined in Part 3.

This Part will discuss legal strategies for ensuring access to justice for victims of discrimination and will consider strategic litigation best practices that may assist lawyers or non-governmental organisations (NGOs) in strengthening the rights to equality and non-discrimination. We recommend that you consider the following matters when deciding on the appropriate course of action.

A. Setting Your Goal(s)

The goal can be as simple as **direct relief for your client or clients** in the form of:

- damages;
- an injunction (for example: court order to release the client from detention);
or
- the reversal of a government decision.

However, litigation goals could incorporate more than an individual client's interests. Strategic litigation, also referred to as social change litigation or public interest litigation, may be differentiated from other legal services in that it seeks **broader social and legal change**. A strategic case seeks to utilise the power of the courts to influence change in law and policy in order to promote and establish human rights protections. Litigation goals within these parameters can include:

- ensuring that laws are interpreted in accordance with international human rights standards;
- changing laws or policies that violate constitutional protections or human rights;
- ensuring that Russian courts or government agencies understand and apply a favourable but underutilised domestic law or ruling; and
- raising awareness of the mistreatment of the discriminated group in Russia.

Is Strategic Litigation Appropriate?

If your goal is to achieve broader transformative social change through strategic litigation, it is important to recognise that:

- Strategic litigation alone is unlikely to lead to the desired change and **needs to be accompanied by advocacy and other activities**.

- While no one commences a case aiming to lose, the goal of strategic litigation will not always be **“winning the case”**, as negative rulings can, for example, create outrage and publicity in society, which could lead to the desired effect in the long-run.
- It might be necessary to consider if the **social and political context** in the state is conducive to success.

On this last point, Anton Burkov, an expert on strategic litigation in the Russian courts and the European Court of Human Rights (ECtHR), has stated that too much consideration for the “right” social/political context could be misplaced: “in Russia, when pursuing strategic litigation, there is rarely a good political or social context, *you have to create those conditions yourself*.”⁴⁶³ He explains that in a strategic case that he and his organisation initiated in 2004 regarding restrictions on conjugal meetings for those imprisoned on life sentences, the conditions for change were completely absent in Russia. However, because the action was pursued at the Constitutional Court level, numerous other claimants independently started filing actions to domestic courts and the ECtHR. The ECtHR made a positive ruling with regard to one of these cases,⁴⁶⁴ which, in part, contributed to the Constitutional Court reversing its position on the issue of conjugal visits 12 years later in 2016.⁴⁶⁵

B. Claimant(s)

Clients traditionally approach lawyers or civil society organisations seeking some form of direct relief, giving the latter the opportunity to determine whether the case is strategic or not. However, litigators may also need to identify and select a suitable claimant to test a particular case. Often, the success of a case challenging a particular discriminatory law or practice rests on the identification of an “ideal” claimant whose case clearly highlights a failure in human rights protection.

Expert Opinion: The “Ideal Claimant” in Strategic Cases

Dmitri Bartenev, a St. Petersburg based human rights lawyer with considerable domestic, regional, and international litigation experience in the field of anti-discrimination and equality law, considers that finding the ideal claimant requires an understanding of the discrimination experienced by the beneficiary group and the ability to reach out to members of that group. Lawyers are not always well placed to investigate human rights abuses in an affected community. Reaching out to NGOs, grassroots organisa-

⁴⁶³ Equal Rights Trust interview with Anton Burkov, 25 January 2018.

⁴⁶⁴ European Court of Human Rights (ECtHR), *Khoroshenko v Russia*, Application No. 41418/04, 30 June 2015.

⁴⁶⁵ Judgment of the Constitutional Court of the Russian Federation, 15 November 2016, No. 24-П/2016.

tions, and advocacy organisations with the appropriate experience and networks with the beneficiary group is therefore advised according to Mr Bartenev.⁴⁶⁶ Mr Bartenev also warns lawyers not to pursue “artificial” strategic litigation cases where the claimant has no actual stake in the proceedings: “you have to have a client who actually seeks to benefit from a ruling, a person with a real problem and a real story. From what I have seen those [artificial] cases never succeed”.⁴⁶⁷

According to Anton Burkov, the tendency of claimants to withdraw their claim is a large obstacle for strategic litigation; an ideal claimant will be prepared to see the litigation through to the end.⁴⁶⁸ He submits: “it is good to consider filing several separate actions relating to a specific issue, so that you can keep going if one drops out somewhere down the road”.⁴⁶⁹ According to Mr Burkov, bringing a strategic case to the Constitutional Court benefits from an earlier filing of multiple separate actions across the country because such a strategy draws attention to the problem and can convince the Court that the issue affects numerous people across the state.⁴⁷⁰

When litigating discrimination cases, whether they are strategic or not, certain issues which face many of your clients may be exacerbated or particularly severe as a result of the discrimination they face/have faced:

- victims of discrimination are often subjected to additional abuse, harassment, and/or social stigma as result of being a litigant;
- your client may experience stress and psychological distress, including potentially re-living traumatic experiences; and
- your client may experience disappointment as a result of not obtaining the desired remedy.

Litigation is an inherently stressful process and the stress is protracted as litigation often takes a long time. It is important to consider that your client might want to withdraw his/her application at a certain point due to the abovementioned factors. In the landmark case of *M.C. v Bulgaria*, the applicant was raped by two men right before her 15th birthday. By the time the judgment of the ECtHR was pronounced she was 23 years old.⁴⁷¹ The importance of being honest with your client about the risks and rewards of litigation must be stressed:

Lawyers should first understand the risks they are potentially putting their clients in, and for stigmatised and discriminated groups, there are many. In my experience, when you are frank with your client, explain the risks, the possibilities of failure in the courts, but demonstrate that their treatment is essentially unlawful, the client

466 Equal Rights Trust interview with Dmitri Bartenev, 17 January 2018.

467 *Ibid.*

468 Equal Rights Trust interview with Anton Burkov, 25 January 2018.

469 *Ibid.*

470 *Ibid.*

471 Coomber, A., “Strategically litigating equality – reflections on a changing jurisprudence”, *European Discrimination Law Review*, Vol. 15, May 2012, pp. 12–13.

*is much more likely to pursue a case to the end. They will more likely appreciate that their case may help other people in their discriminated community as well.*⁴⁷²

C. Claims: Case Examples

In determining whether or not the client who you are supporting has suffered actionable discrimination or inequality, please refer to Part 2 of this Guide and analyse the facts against the potential causes of action. Of course, your ability to bring equality or discrimination claims on behalf of your client depends on the type of claim and forum.

What follows are some illustrative case studies from successful litigation efforts challenging different types of discrimination.

Direct Discrimination: Rejection of Job Application on the Ground of Sexual Orientation in the Cases of *Anna Balash v Sib-Alliance* (2016), and *Edward Zavialov v Hardcore LLC* (2017)

Anna Balash v Sib-Alliance⁴⁷³

Facts: In Novosibirsk, Russia, a woman challenged a refusal by a private company to hire her as sales manager on the basis of her sexual orientation. She claimed that her treatment amounted to discrimination in the sense of Article 64 of the Labour Code. In its defence, the company argued that a “non-traditional sexual orientation does not comply with the job requirements, it can negatively affect the company’s reputation and will prevent [the applicant] from performing her duties”. The company maintained that the majority of its clients support traditional values and the position required customer contact, which meant that employing a lesbian person could have led to financial losses.⁴⁷⁴

Outcome: In July 2016, the Zheleznodorozhnyi District Court of Novosibirsk ruled that the refusal to employ the applicant because of her “non-traditional sexual orientation” was unlawful because it was not based on relevant grounds for employment. The Court did not consider the allegation of discrimination in much detail, and instead simply noted that the defendant had failed to rebut the claim. The judgment requires the company to employ the applicant and pay her compensation for non-pecuniary damage of RUB 1000 (EUR 14). The company has appealed the decision and, as at January 2018, the appeal is still pending.

⁴⁷² Equal Rights Trust interview with Dmitri Bartenev, 17 January 2018.

⁴⁷³ Judgment of the Zheleznodorozhnyi District Court of Novosibirsk, 29 July 2016, case no. 2-3186/2016 (Решение Железнодорожного районного суда Новосибирска от 29 июля 2016 года по делу № 2-3186/2016).

⁴⁷⁴ *Ibid.*; Equal Rights Trust, *Justice or Complicity? LGBT Rights in the Courtroom*, 2016, pp. 129–130, available at: http://www.equalrightstrust.org/ertdocumentbank/Justice%20or%20Complicity%20LGBT%20Rights%20and%20the%20Russian%20Courts_0.pdf.

Edward Zavialov v Hardcore LLC⁴⁷⁵

Facts: In a similar but separate case, in May 2017, Edward Zavialov was denied the position of sales assistant after he sent his job application to the company Hardcore LLC in Omsk. The company provided the applicant an official response explaining that his application was rejected because he displayed “feminine behaviour, tone of voice and gestures” which “suggested that he belonged to the LGBT community”.⁴⁷⁶ The response also accused the claimant of promoting non-traditional sexual relations, a reference to the “gay propaganda” law.⁴⁷⁷

Outcome: In August 2017, the Pervomaiskii Court District of Omsk ruled that the claimant had suffered unfair treatment and discrimination in the workplace and ordered the company to pay RUB 30,000 (EUR 420) in compensation.⁴⁷⁸ The LGBT Network, a Russian NGO, considers that the amount of compensation ordered is much larger than what is usually awarded in LGBT discrimination cases and cited the *Anna Balash v Sib-Alliance* ruling as a frame of reference.⁴⁷⁹

Failure to Make Reasonable Accommodation for a Student with a Visual Disability: *Andrey Sosnov v “Bekhterev” Scientific and Research Psycho-Neurological Institute (2014)*⁴⁸⁰

Facts: Andrey Sosnov, a psychiatry graduate with a vision impairment applied for admission to an educational internship at the St. Petersburg based “Bekhterev” Scientific and Research Psycho-Neurological Institute. He was denied admission because the institution claimed that the lighting related adjustments required to make the work-study environment accessible to Mr Sosnov were too costly, and in any case, it was not under the obligation to make the adjustments since they went beyond what is required under the Federal Law “On Social Protection of Disabled Persons in the Russian Federation”.

Outcome: In December 2014, the Nevsky district court of St. Petersburg ruled that the “Bekhterev” Institute relied on a misunderstanding of the law and had unlawfully

475 Russian LGBT Network, “LGBT Activists will Receive Compensation for Discrimination at the Labor Market”, *Russian LGBT Network*, visited 24 January 2018, available at: <https://lgbtnet.org/en/content/lgbt-activists-will-receive-compensation-discrimination-labor-market>.

476 *Ibid.*

477 *Ibid.*

478 *Ibid.*

479 *Ibid.*

480 Judgment of the Nevsky District Court of the City of St. Petersburg, Sasnov A.N. v Saint-Petersburg Bekhterev Psychoneurological Research Institute, case № 2-6495/2014 ~ М-5730/2014, 22.12.2014 (Невский районный суд Санкт-Петербурга, ИСТЕЦ: Соснов А. Н., ОТВЕТЧИК: ФГКУ “Санкт-Петербургский научно-исследовательский психоневрологический институт им. В.М. Бехтерева”, ДЕЛЮ № 2-6495/2014 ~ М-5730/2014, 22.12.2014); Anti-Discrimination Centre Memorial (ADC Memorial), “Two-year long fight for the right to education: disabled person gets compensation for moral damages”, *ADC Memorial*, 16 May 2016, available at: <https://adcmemorial.org/www/11677.html?lang=en>.

denied the claimant admission into the educational internship. Under Articles 5 and 11 of the Law “On Social Protection of Disabled Persons in the Russian Federation”, the institute was required to make the necessary adjustments. Mr Sosnov was awarded RUB 30,000 (EUR 420) in non-pecuniary damages.⁴⁸¹

D. Choosing a Forum

There must be a forum, *i.e.* a court or tribunal, available to bring a discrimination case. In some instances, there is one clear forum to which you must bring your claim. However, in other cases you will have a choice.⁴⁸²

You should first consider whether the forum is **legally** available:

- Does the claimant have standing to bring a claim in this forum?
- Do the rules governing the forum enable an equality and/or non-discrimination claim of the nature you have identified on the facts to be brought? This will include a consideration of the substantive legal provisions as well as admissibility requirements. For example, please note that the regional and international mechanisms have different admissibility requirements which must be considered.⁴⁸³

There are also many **practical** considerations relevant to determining whether to bring a claim before a forum:

- If you have a choice of more than one forum: does one take a more expansive interpretation of the relevant rights? Does one have a stronger record of applying the rights?
- What is the efficacy of a judgment of the forum in question. Would the ruling or decision be **legally enforceable** and what is the state’s record of **compliance** with rulings of the forum?
- Can you bring a claim against **the person who is alleged to have committed the conduct**?
 - Consider who committed the act: the Federal or State Government; a state official; a state employee; a private sector employee or an individual in their private capacity. For further discussion of respondents see section E below).

⁴⁸¹ *Ibid.*

⁴⁸² What follows is an adaptation of the methodology outlined first by The Equal Rights Trust in; Equal Rights Trust, *Economic and Social Rights in the Courtroom: A Litigator’s Guide to Using Equality and Non-Discrimination Strategies to Advance Economic and Social Rights*, 2014, available at: http://www.equalrightstrust.org/ertdocumentbank/ESR_Guide.pdf, pp. 24–25.

⁴⁸³ For further information on the European Court of Human Rights (ECtHR), see: ECtHR, *Practical Guide on Admissibility Criteria*, 2014, available at: http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf. For the UN treaty bodies, see: Office of the High Commissioner of Human Rights (OHCHR), *Human Rights Treaty Bodies – Individual Complaints Mechanisms*, visited 23 January 2018, available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#overviewprocedure>.

- What are the **costs** of litigation in the particular forum?
 - The Public Interest Law Network has published a guide with comprehensive analysis of the **available subsidised legal aid programs in Russia**, including strategies on ensuring access to justice through legal aid in the Russian language.⁴⁸⁴
- What is the usual **time** involved in such proceedings?
- Does the mechanism provide the **remedies** that your client wants?
 - For example: damages; quashing of a government decision; amendment of legislation; or an apology.
- What is the likelihood of **success**?
 - Does the mechanism have a strong record of applying the rights in question?
 - Do the rules of evidence accommodate your claim?
 - What are the opportunities for appeal?

Domestic Courts

The Russian judicial system includes courts of general jurisdiction, the highest of which is the Supreme Court of the Russian Federation, state arbitration courts, the Constitutional Court of the Russian Federation, and the constitutional courts of the regions.⁴⁸⁵

Although there is no system of binding legal precedent in Russia, the legal findings of the Russian Supreme Court are considered by lower courts to provide *de facto* binding interpretations of existing law.⁴⁸⁶ Decisions of the Constitutional Court are binding and may be considered sources of law.⁴⁸⁷ It is competent to hear individual petitions regarding the constitutional validity of laws.⁴⁸⁸

It is worth recalling that regional and international human rights treaties are **directly applicable in the Russian legal system** and have supremacy over national law in case of a conflict between them.⁴⁸⁹ According to Russian federal law and the Russian Supreme Court, final judgments of the ECtHR with respect to Russia must be implemented domestically,⁴⁹⁰ and judgments with respect to other member states of the European Convention on Human Rights (ECHR) as well “if the circumstances of the case under examination are similar” to the relevant case at the domestic level.⁴⁹¹

484 Public Interest Law Network, *Access to Justice and Subsidised Legal Aid (in Russian)*, 2010, available at: <http://www.pilnet.org/public-interest-law-resources/18-access-to-justice-and-subsidized-legal-aid-in-russian.html>.

485 See above, note 474, p. 16.

486 *Ibid.*, p. 19.

487 *Ibid.*, p. 20.

488 *Ibid.*

489 Constitution of the Federation of Russia 1993, Article 15(4); See above, note 474, pp. 25–28.

490 Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto”, 30 March 1998, No. 54-FZ, (“Федеральный закон О ратификации Конвенции о защите прав человека и основных свобод и протоколов к ней, 30 марта 1998 г., № 54-ФЗ”).

491 Decision of the Plenary Session of the Supreme Court of the Russian Federation, “On the Application by Courts of General Jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto”, 27 June 2013, No. 21 (Постановление Пленума Верховного Суда № 21 от 27 июня 2013 года “О применении судами общей юрисдикции Конвенции о защите прав человека и основных свобод от 4 ноября 1950 года и Протоколов к ней”), Para 2.

Expert Opinion: Discrimination Claims in Domestic Courts

With respect to Russian courts and tribunals, national judges have a relatively weak track record of accepting discrimination claims. According to Dmitri Bartenev, Russian judges generally have a poor understanding of discrimination and legal claims or arguments based on discrimination:

When provided with valid arguments for discrimination in a given case, they often do not see or understand the relevance of the discrimination element of the claim. Instead they focus on other allegations of violations of “substantive rights” within the overall claim. This is especially true when the claimant belongs to a stigmatised group of people, for example, persons with HIV or disabilities, and members of the LGBT+ community. In disability discrimination cases, judges often do not properly consider discrimination allegations as there are other “substantive” provisions usually at play [for example: the right to legal capacity and the right to liberty in detention cases].⁴⁹²

However, Mr Bartenev goes on to stress the importance of bringing discrimination arguments before the domestic courts in any case. If a discrimination claim fails at the national level, it can still, if the conditions are met, be considered at the regional or international level where judges are more receptive to discrimination claims. He stresses the importance of substantiating the discrimination claim as clearly as possible.⁴⁹³

Indirect Discrimination in the Indefinite Detention of a Stateless Person: The Individual Petition of Noé Mskhiladze Before the Constitutional Court of the Russian Federation (2017)⁴⁹⁴

Facts: Noé Mskhiladze is a Georgian born stateless person who lost his citizenship during the breakup of the Soviet Union. He was placed in a temporary detention facility for foreign nationals in 2015 for not having any type of legal residency and was ordered to be deported. Since he lacked any other passport, this was not possible, resulting in his indefinite detention. Furthermore, according to the Administrative Code he was not able to appeal his pre-expulsion detention.⁴⁹⁵ Stateless persons without legal residency in Russia are, as a matter of national law, wrongly seen as foreign nationals that violate national migration laws. National law thus fails to recognise their statelessness and provide the protection required under international law. Anti-Discrimination Centre

⁴⁹² Equal Rights Trust interview with Dmitri Bartenev, 17 January 2018.

⁴⁹³ *Ibid.*

⁴⁹⁴ по делу о проверке конституционности положений статей 31.7 и 31.9 Кодекса Российской Федерации об административных правонарушениях в связи с жалобой лица без гражданства Н.Г.Мсхиладзе.

⁴⁹⁵ Kulaeva, S., European Network on Statelessness, “Victory in the Constitutional Court: #LockedInLimbo and the Pointless Detention of Stateless Persons in Russia”, *European Network on Statelessness*, 6 June 2017, available at: <https://www.statelessness.eu/blog/victory-constitutional-court-lockedinlimbo-and-pointless-detention-stateless-persons-russia>.

Memorial (ADC Memorial) has reported that Russia has consistently failed to protect the human rights of stateless persons in its territory, by *inter alia*, subjecting them to rigid formal requirements that discriminate against them.⁴⁹⁶

Outcome: The Constitutional Court, making reference to the case law of the ECtHR,⁴⁹⁷ ruled that the provisions in the Administrative Code that deny stateless persons the possibility to appeal the grounds for their detention are unconstitutional. In addition, it ruled that amendments to the Code must obligate courts to define specific timeframes for deportation, whilst persons already in detention must be allowed to challenge the legality of their detention after three months.⁴⁹⁸ This decision has led to the creation of a new legal mechanism that allows for the release of stateless persons in detention if the court makes a finding that the person lacks the citizenship of any other country. As a result, Mr Mskhiladze was released in June 2017 after 17 months in detention.⁴⁹⁹ Although the Court did not establish (indirect) discrimination, the ruling is nevertheless an important development in the recognition of the rights of stateless persons in Russia.

496 ADC Memorial, *Violations of the Rights of Stateless Persons and Foreign Citizens*, 2016, available at: https://adcmemorial.org/wp-content/uploads/kim1_bigENG_www.pdf, p. 38.

497 ECtHR, *Kim v Russia*, Application No. 44260/13, 17 July 2014.

498 See above, note 495.

499 ADC Memorial, "Russian court rules to release stateless person from detention following Constitutional Court's resolution", *ADC Memorial*, 29 June 2017, available at: <https://adcmemorial.org/www/13146.html?lang=en>.

Regional and International Fora

Russian claimants have access to the following individual complaints procedures at the regional and international level:

Forum	Scope of jurisdiction?	Who can bring a claim?	Time limit?	Nature of pronouncement?
ECtHR ⁵⁰⁰	The ECtHR has jurisdiction to decide complaints concerning violations of the ECHR and its Additional Protocols.	The ECtHR may receive applications from any individual, NGO or group of individuals claiming to be the victim of a violation by a party to the ECHR of the rights set out in the Convention or its Additional Protocols (subject to admissibility requirements ⁵⁰¹). Complaints must concern violations of the ECHR that directly and significantly affected the applicant. Third party interventions are permitted under Article 36 ECHR and Rule 44 of the Rules of Court.	Article 35(1) ECHR states that the ECtHR may only deal with the matter within a period of six months from the date on which the final decision was made, in the process of exhaustion of domestic remedies.	States are bound by the decisions of the ECtHR and must execute them accordingly. In 2013, the Russian Supreme Court stated that, in accordance with Article 46(1) ECHR and Article 1 of the Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto” (Law on Ratification) final judgments of the ECtHR in respect of Russia must be applied by the courts. ⁵⁰² However, in July 2015, the Constitutional Court ruled that in the event of a conflict between a finding of the ECtHR and a finding of the Constitutional Court, the ultimate jurisdiction to decide which of the decisions prevails lies with the Constitutional Court. ⁵⁰³ Following this, in December 2015, an amendment to the Law “On the Constitutional Court of the Russian Federation” was made, allowing the Constitutional Court to find that a decision of an international human rights body cannot be implemented on the basis that it conflicts with the Federal Constitution. ⁵⁰⁴

⁵⁰⁰ A copy of the ECtHR Rules of Court, as updated on 14 November 2016, are available here: ECtHR and Council of Europe, *Rules of Court*, 2016, available at: http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf.

⁵⁰¹ The Council of Europe and the ECtHR has published a “Practical Guide on Admissibility Criteria”, which sets out the rules and case-law concerning admissibility: ECtHR and Council of Europe, *Practical Guide on Admissibility Criteria*, 2014, available at: http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf.

⁵⁰² Decision of the Plenary Session of the Supreme Court of the Russian Federation, “On the Application by Courts of General Jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto”, 27 June 2013, No. 21 (Постановление Пленума Верховного Суда № 21 от 27 июня 2013 года “О применении судами общей юрисдикции Конвенции о защите прав человека и основных свобод от 4 ноября 1950 года и Протоколов к ней”), Para 2.

⁵⁰³ Judgment of the Constitutional Court of the Russian Federation, 14 July 2015, No. 21-П (Постановление Конституционного Суда Российской Федерации от 14 июля 2015 № 21-П).

⁵⁰⁴ Federal Constitutional Law “On amending the Federal Constitutional Law on the Constitutional Court of the Russian Federation”, 14 December 2015, No. 7-FKZ (Федеральный конституционный закон от 14 декабря 2015 года № 7-ФКЗ “О внесении изменений в Федеральный конституционный закон “О Конституционном Суде Российской Федерации”).

Forum	Scope of jurisdiction?	Who can bring a claim?	Time limit?	Nature of pronouncement?
Human Rights Committee (HRC) ⁵⁰⁵	The HRC considers complaints pertaining only to the International Covenant on Civil and Political Rights (ICCPR).	<p>An individual who claims that any of their ICCPR rights have been violated (subject to admissibility requirements).</p> <p>The alleged victim must be personally and directly affected by the act or omission of the State which constitutes the object of the complaint.</p> <p>An NGO or other organisation may bring a claim <i>on behalf of</i> a victim where written consent is obtained, unless such consent cannot be provided (e.g. if the victim is in prison).</p>	There is no time limit to submit complaints to the HRC. However, a delay in submission may constitute an abuse of the right of submission in certain circumstances: see Rule 96 of the Rules of Procedure.	<p>The HRC's decision represents an authoritative interpretation of the ICCPR and will contain recommendations to the State party, although these are not legally binding.</p> <p>However, the Russian Constitutional Court has held that Russia is under an obligation to implement in good faith the views of the HRC in relation to individual complaints brought against the Russian Federation.⁵⁰⁶</p>

505 Protocol I to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1996, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>; Human Rights Committee (HRC), *Rules of procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev.10, 11 January 2012, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRi-CAqhKb7yhspSfzoplnqcaRnZEWmkfe1ubLHaoTy0k7tsLSWnKAGjsCg1MkVMje6aixvXokQy1mDwc7KnS2vGcBWMYPsRkuxDO5rq%2b9oTzVidsOYM7Vmk9>.

506 Decision of the Constitutional Court of the Russian Federation, 28 June 2012, No. 1248-O (Определение Конституционного Суда Российской Федерации от 28 июня 2012 № 1248-О). See also a similar finding in regard to the opinions of the UN Working Group on Arbitrary Detention, Decision of the Constitutional Court of the Russian Federation, 9 June 2015, No. 1276-O (Определение Конституционного Суда Российской Федерации от 9 июня 2015 № 1276-О).

Forum	Scope of jurisdiction?	Who can bring a claim?	Time limit?	Nature of pronouncement?
Committee on the Elimination of Discrimination against Women (CEDAW Committee) ⁵⁰⁷	The CEDAW Committee considers complaints pertaining only to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).	<p>The CEDAW Committee may receive complaints submitted by, or on behalf of, an individual or group of individuals claiming to be victims of a violation of any of the rights set out in the treaty (subject to admissibility requirements).</p> <p>The alleged victim must be personally and directly affected by the act or omission of the State which constitutes the object of the complaint.</p> <p>NGOs may submit a complaint on behalf of individuals or a group of individuals with their consent (unless the author can justify action on their behalf without such consent).</p>	<p>There is no time limit to submit complaints to the CEDAW Committee. However, following the exhaustion of domestic remedies it is best to file expeditiously.</p> <p>Further, the violations in question must have occurred after 28 July 2004 (the date of Russia's accession to the Optional Protocol).</p>	<p>The CEDAW Committee's decision represents an authoritative interpretation of the treaty, and will contain recommendations to the State party, although these are not legally binding.</p> <p>However, the Russian Supreme Court has indicated that the courts should take into consideration the CEDAW Committee's position.⁵⁰⁸</p>

⁵⁰⁷ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, 1999, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/54/4; guidance on individual complaints available at; OHCHR, *How to submit individual complaints under the Optional Protocol to CEDAW*, accessed March 2018, available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#procedureOPCEDAW>.

⁵⁰⁸ See the discussion of *Svetlana Medvedeva v Samara River Passenger Enterprise* (2017) above.

Forum	Scope of jurisdiction?	Who can bring a claim?	Time limit?	Nature of pronouncement?
Committee on the Elimination of Racial Discrimination (CERD) ⁵⁰⁹	The CERD Committee considers complaints pertaining only to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).	<p>The CERD Committee may receive complaints from individuals claiming to be the victim of a violation under the ICERD (subject to admissibility requirements).</p> <p>The victim must be personally and directly affected by the act or omission of the State which constitutes the subject of the complaint.</p> <p>Complaints may be brought by third parties (such as NGOs) on behalf of individuals, provided they have given their written consent, unless such consent cannot be provided.</p>	A complaint must be submitted within six months of the final decision by a national authority.	The CERD Committee's decision represents an authoritative interpretation of the treaty, and will contain recommendations to the State party, although these are not legally binding.
Committee against Torture (CAT Committee) ⁵¹⁰	The CAT Committee considers complaints pertaining to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).	<p>The CAT Committee may consider individual complaints made by victims of violations by a State party of the CAT.</p> <p>The victim must be personally and directly affected by the act or omission of the State which constitutes the subject of the complaint.</p> <p>The complaint can be submitted by the victim's relatives or designated representatives, or by others on behalf of the victim (such as an NGO) when it appears that the victim is unable to submit the complaint personally, and where appropriate authorisation is submitted (unless the victim is unable to provide such authorisation).</p>	<p>Whilst there is no strict time limit to make a complaint, a considerable delay may constitute an abuse of the right of submission.</p> <p>The complaint must relate to an incident that took place after 1 October 1991 (when Russia made the Article 22 declaration).</p>	The CAT Committee's decision represents an authoritative interpretation of the treaty, and will contain recommendations to the State party, although these are not legally binding.

509 International Convention on the Elimination of All Forms of Discrimination; Committee on the Elimination of Racial Discrimination (CERD), *Rules of Procedure*, UN Doc CERD/SP/2/Rev.1, 10 November 1987; guidance on individual complaints is available at: CERD, *Fact Sheet No. 12*, 1991, available at: <http://www.ohchr.org/Documents/Publications/FactSheet12en.pdf>.

510 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Committee Against Torture (CAT Committee), *Rules of Procedure*, CAT/C/3/Rev.6, 1 September 2014, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=CAT/C/3/Rev.6; guidance on individual complaints available at: CAT Committee, *Fact Sheet No. 17*, 1992, available at: <http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf>.

Direct Discrimination in the Exclusion of Women from Certain Professions: *Svetlana Medvedeva v Samara River Passenger Enterprise (2017)*⁵¹¹

The Facts: Svetlana Medvedeva is from the Samara region of the Russian Federation. She studied inland waterway and coastal navigation and qualified as a navigation officer in 2005. In June 2012 she applied for the position of “helmsperson – motorist” at the private company “Samara River Passenger Enterprise”. Her application was rejected with reference to Regulation No. 162 of 25 February 2000, which contains a list of professions, with so-called harmful or dangerous working conditions, which are forbidden to women. Relying on the equal treatment provisions in the Constitution and the Labour Code,⁵¹² Ms Medvedeva sought a judicial order from the Samarskiy District Court to compel Samara River Passenger Enterprise to establish that the working conditions for the position were safe. On 20 August 2012, the Court dismissed Ms Medvedeva’s case, holding that the rejection of her job application was justified according to the law. Ms Medvedeva appealed the decision before the Samara Region Court, which dismissed her claim in November 2012, and her request for an extraordinary remedy in cassation before the Presidium of the Samara Region Court was dismissed in March 2013.

Outcome: Having exhausted all domestic remedies, Ms Medvedeva filed an individual complaint to the CEDAW Committee arguing that the law excluding her from the role of “helmsperson – motorist” discriminated her on the ground of sex. The Committee found that the state had not provided scientific evidence supporting the claim that health-risks should preclude women from working in such an environment. It held that the state had failed to protect Ms Medvedeva from discrimination.⁵¹³ The Committee also recommended the following actions to Russia:

- Review and amend the list of prohibited professions for women, and limit restrictions to strictly those required for the protection of maternity.
- Facilitate the entry of women into previously restricted or prohibited jobs.⁵¹⁴

Ms Medvedeva subsequently tried to use the CEDAW Committee decision to reverse the previous domestic court decisions, but her request was denied on the ground that the decision of the Committee is not legally binding and cannot lead to the revision of the decision of a Russian court.⁵¹⁵ The Supreme Court of the Russian Federation did not concur with the lower court, and in July 2017 overruled all previous court deci-

511 ADC Memorial, “Samara Court Finds Refusal to Hire Based on ‘Professions Banned for Women’ Discrimination”, *ADC Memorial*, 16 September 2017, available at: <https://adcmemorial.org/www/13380.html?lang=en>.

512 Labour Code of the Russian Federation 2002, Article 3.

513 Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Medvedeva v Russian Federation*, Communication No. 60/2013, UN Doc. CEDAW/C/63/D/60/2013, 21 March 2016, Paras 11.1-12.

514 *Ibid.*, Para 13.

515 ADC Memorial, “Women workers ask ombudsperson to abolish the list of professions banned for women”, *ADC Memorial*, 16 November 2017, available at: <https://adcmemorial.org/www/13647.html?lang=en>.

sions and ordered the Samara District Court to reconsider Ms Medvedeva's case in light of the CEDAW Committee decision. In September 2017, that Court ruled that the Ms Medvedeva's treatment was unjustified and amounted to direct discrimination on the ground of sex. The court did not oblige the employer to her however, since that would still compel the company to violate existing national law.⁵¹⁶ In January 2017, the Russian Ministry of Labour and Social Protection announced plans to revise the list of professions prohibited for women,⁵¹⁷ but as of February 2018 no amendments have been made.

Choice of forum: Ms Medvedeva's legal representative, Dmitri Bartenev cited two main reasons for choosing the CEDAW Committee as the forum for litigation: (1) their assessment of ECtHR jurisprudence in the field of labour at the time showed that the ECtHR was more restrained on this issue, whereas the CEDAW Committee had a more activist and progressive approach; and (2) the CEDAW procedure is quicker.⁵¹⁸ Looking back, Mr Bartenev surmises that the ECtHR would have likely ruled the same way had they chosen the regional path.⁵¹⁹ Furthermore, the judicial restraint of the ECtHR should not necessarily be a drawback for lawyers. On the contrary, Mr Bartenev believes that when the more judicially restrained body issues a progressive judgment, it could benefit from increased credibility.⁵²⁰

E. Respondent

The next step in your litigation is to identify the party which has breached its obligations to the detriment of your client.⁵²¹ This will often be a state actor, however, certain non-state actors may have responsibilities with respect to equality or non-discrimination as well.

The State

As demonstrated throughout this Guide and in particular in Part 4(g), the state is responsible for human rights violations directly linked to its own actions. It is, further, well established in regional and international human rights law that the state's obligation to protect people from human rights abuses includes an obligation to take effective measures to prevent violations.⁵²² The HRC and the Committee on Economic, Social and Cultural Rights (CESCR) have clarified that states are required to prevent discrimination not only by state but also

⁵¹⁶ *Ibid.*

⁵¹⁷ *Ibid.*

⁵¹⁸ Equal Rights Trust interview with Dmitri Bartenev, 17 January 2018.

⁵¹⁹ *Ibid.*

⁵²⁰ *Ibid.*

⁵²¹ See above, note 482, pp. 84–94. Please refer to this guide for more detailed analysis.

⁵²² See, for example, International Covenant on Civil and Political Rights (ICCPR), Article 2(3)(a); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 2(e); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 2(e); and European Convention on Human Rights (ECHR), Article 1.

by non-state actors, *inter alia*, through enacting legislation.⁵²³ If discrimination occurs due to flawed or missing regulation, state responsibility can be engaged.⁵²⁴

The state's duty to protect individuals and groups has been described by international human rights courts as including a "due diligence" obligation, which requires states to prevent, investigate, punish and remedy human rights violations committed by non-state actors.⁵²⁵ In *Alyne da Silva Pimentel v Brazil*, the CEDAW Committee stated that "the State is directly responsible for the action of private institutions when it outsources its medical services" and "the State always maintains the duty to regulate and monitor private healthcare institutions".⁵²⁶ It is important to note that the obligation to protect is not an obligation of results but of means. It requires the state to take all reasonable measures – which would not have imposed a disproportionate burden on it – that might have prevented the violation by the non-state actors.⁵²⁷

Non-State Actors

The obligations on non-state actors may arise from international, regional, constitutional or national legal sources.

Regional and international legal obligations on private actors are less developed than national ones. However, the CESCR has stated in relation to the right to health, that:

*While only state parties are parties to the Covenant and thus ultimately accountable for compliance with it, all members of the society – individuals, including health professionals, local communities, inter-governmental and non-governmental organisations, civil society organisations, as well as the private business sector – have responsibilities regarding the realization of the right to health.*⁵²⁸

You may be in a position to rely on useful provisions and statements in international and regional law, such as the one stated above, in bringing a claim against a private actor; however, the primacy of the role of the state with respect to international human rights obligations, as noted by the CESCR, should be kept in mind.

⁵²³ HRC, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 1989, Para 12; Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-Discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2008, Para 11.

⁵²⁴ See above, note 482, p. 86.

⁵²⁵ Inter-American Court of Human Rights (IACtHR), *Velasquez Rodriguez v Honduras* (Ser. C) No. 4 (1988), Paras 172–174. Although the Russian Federation is not included in the jurisdiction of the IACtHR, it is subject to the jurisdiction of the ECtHR, which in *Opuz v Turkey* has referenced this exact ruling in its determination that the state had failed to exercise its due diligence obligation with respect to preventing and investigating crimes committed by a private individual. The Court ruled that this failure amounted to violation of the right to life (Article 2 ECHR) and the prohibition of torture (Article 3 ECHR) in conjunction with the prohibition on discrimination (Article 14 ECHR). Please see: ECtHR, *Opuz v Turkey*, Application No. 33401/02, 9 January 2009, as well as our case study of this ruling in Part 4(a) of this Guide.

⁵²⁶ CEDAW Committee, *Alyne da Silva Pimentel v Brazil*, Communication No. 17/2008, UN Doc. CEDAW/C/49/D/17/2008, 25 July 2011, Para 7.5.

⁵²⁷ De Schutter, O., *International Human Rights Law*, Cambridge University Press, 2010, p. 415.

⁵²⁸ CESCR, *General Comment No. 14: The right to the highest attainable standard of health (Art 12 of Covenant)*, UN Doc. E/C.12/2000/4, 2000, Para 42.

In addition, as demonstrated throughout this guide, certain non-state actors in Russia have the obligation to refrain from discrimination according to various domestic laws covering various aspects of life, for example, private employers may not discriminate on the basis of protected characteristics in their recruitment procedure.⁵²⁹

Against Whom Should a Claim be brought?

It is important to consider whether your claim should be brought against the state or a non-state actor. In situations where a violation has been committed by a private actor, but the state is additionally responsible for a failure to: (a) regulate, (b) investigate, or (c) provide alternatives, you have the option to pursue only one claim or both. Factors including the likelihood of success and the nature of the remedy should guide your choice.

F. Remedies

When representing a client with the aim of achieving individual justice, the remedies sought should be guided by him or her, provided they can realistically be attained. Remedies of this type can include compensation, an injunction, or quashing of a previous prejudicial government decision.

Emergency Court Orders: Interim Measures of the ECtHR

Sometimes it is not possible to wait for the judgment of the ECtHR - for example, when your client is detained by the state and needs critical medical attention which is not being provided to him or her. Rules 39, 40, and 41 of the rules of procedure of the ECtHR allow the Court to implement legally binding measures to force the state to take actions or refrain from taking actions that prejudice the safety and wellbeing of the applicant during the review process. The European Human Rights Advocacy Centre has utilised interim measures in extradition cases and forced disappearance cases in efforts to release clients in state custody.⁵³⁰ While such measures are not easily granted by the Court,⁵³¹ it is a tool which may enable you to put pressure on the state to treat your client in a better way when he/she is in their custody.

If the litigation goal is to achieve broader transformative change, the choice of the remedy sought requires special consideration. In determining which remedies to pursue, you will need to be aware of the following three important overarching considerations:⁵³²

⁵²⁹ Please see Part 4(e)(i) of this Guide.

⁵³⁰ Van Der Fet, F., "Seeking Life, Finding Justice: Russian NGO litigation and Chechen Disappearances before the European Court of Human Rights", *Human Rights Review*, Vol. 13, 2012, p. 314.

⁵³¹ *Ibid.*

⁵³² See above, note 482, pp. 94–111. Please refer to this guide for more detailed analysis.

- i. The aim of not only compensating individual claimants but also achieving wider social transformation.**
 - It will not always be the case that your client’s desired outcome will correspond with the outcome that creates the widest possible social transformation. For example, your client could be satisfied with only receiving financial compensation for the discrimination he/she suffered, whilst the repeal of a discriminatory law, for example, will lead to wider change. It is wise to consider that seeking a combination of remedies will not always be possible in every forum.
- ii. The legal and political limitations on the power of the adjudicating body to award certain remedies and the remedies awarded previously by the body.**
 - It is important to consider when the decision to award a particular remedy rightly falls within the powers of the court in question and when the power belongs to the legislator or executive. The judiciary’s concern not to overstep its powers is particularly acute when it is being asked to require the state to change law or policy.
- iii. The record of the relevant respondent in complying with the remedial decisions of the body in question.**
 - The relative implementation rates by the state of specific remedies is a relevant factor in considering whether a case will achieve real social transformation.⁵³³ However, this should not stop you seeking creative remedies and pushing the boundaries of hitherto unenforced remedies.

You will therefore be seeking to attain the most transformative remedies possible whilst being realistic about what is achievable before a relevant forum and enforceable in a given context.

How to Address these Considerations at the Remedies Stage

- Wherever possible, when the claimant’s desired outcome does not fully overlap with broader social transformation, seek several remedies which would achieve both, with the claimant’s permission.
- Maximise the possibility that the adjudicators will find the issuing of a particular remedy to be within their power. For example, this may be achieved by encouraging the court to take a purposive approach to interpreting the remedies that they have been granted a statutory power to award. The purposive approach, in comparative law, means that the courts’ powers to grant remedies should be interpreted in a way as to provide full, effective, and meaningful remedies to violations of human rights.⁵³⁴
- Carefully consider past conduct of the respondent. Does it respond differently to different types of remedy? What is its past history with respect to remedies that are similar to those that you seek?
- Unless the relevant body has a particularly poor record of implementation, seek remedies which encourage the engagement of the state in matters of implementing the

⁵³³ This is not to ignore the longer term social transformation which may occur as a result of public outrage and advocacy efforts in the event of a failure by the state to enforce a court ordered remedy.

⁵³⁴ See for example: Canadian Supreme Court, *Doucet Boudreau v Nova Scotia (Minister of Education)*, [2003] SCC 62.

decision; the state body may be more likely to implement a decision where they have a say in the means of execution.

Types of Remedy

The next section identifies a range of remedies which are available in the Russian legal system and discusses their strengths and weaknesses. According to King, remedies lie on a “spectrum of coerciveness”, with the least coercive being those that enable the legislator to make the final determination of how precisely to remedy a situation.⁵³⁵ The remedies in this section are ranked in this sense from the most to least coercive. It is important to note, however, that the extent to which the remedy will be seen as coercive depends on both the type of remedy and the way in which it is utilised.

Legislative remedies: where the source of the equality or discrimination violation is a piece of legislation, legislative remedies may be considered. Legislative remedies, if properly employed, have great potential to impact a broader group of affected individuals and achieve social transformation. Legislative remedies have several modes:⁵³⁶

- **Severance:** the court decides to “sever” the part of the legislation which it has deemed unconstitutional and strikes it down, leaving the rest of the legislation in force. The Constitutional Court of Russia has the power to sever and strike down provisions of laws and normative acts in Russia that violate the Constitution, as it has shown in its *Shtukatarov* ruling.⁵³⁷
- **Reading in:** where the law wrongly excludes wording which is needed to make it constitutional, the court may decide to read wording into the legislation. There is no provision in Russian law explicitly empowering the Constitutional Court to read wording in to legal provisions, although Mr Burkov is of the view that the Court has, on occasion, made rulings in which it reads words into the Constitution.⁵³⁸
 - This is one of the most coercive possible remedies as it may be seen as the court putting words into the mouth of the legislator; accordingly, courts rarely use this

535 Paper delivered by King, J., at Expert Roundtable on Using Equality Law to Advance Socio-Economic Rights on 6 June 2013, unpublished manuscript.

536 The below summaries are based on the judgment of the majority in *Schachter v Canada* [1992] 2 SCR 679.

537 Federal Constitutional Law, “On the Constitutional Court of the Russian Federation”, 21 July 1994, No. 1-FKZ, Articles 87 and 100 (Федеральный конституционный закон от 21 июля 1994 года № 1-ФКЗ “О Конституционном Суде Российской Федерации”); Please see section H of this Part for a case study on the *Shtukatarov* ruling.

538 Constitution of the Russian Federation 1993, Article 125(1)-(4) in conjunction with Federal Constitutional Law, “On the Constitutional Court of the Russian Federation” 1994, Article 3. Although these provisions do not explicitly refer to the power of the Constitutional Court to “read in” and “read down” words in legislation, according to Anton Burkov, the Court has broad discretion to interpret legislation in accordance with the Constitution; its interpretation powers go beyond merely “reading in” and “reading down” parts of legislation. For example, in the Judgement of the Constitutional Court of 14th July, 2015 No. 21-П/2015, the Court qualified the scope of application of Article 1 of the Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto” – which stipulates that judgments of the ECHR with respect Russia must be applied in the domestic legal order – holding that judgements can only be applied *in so far* as they do not contradict the Constitution of the Russian Federation. This information was provided to the Equal Rights Trust by Anton Burkov on 12 March 2018.

remedy.⁵³⁹ The remedy is useful in cases where there is a risk of the state otherwise responding to the finding of discrimination by removing the statute's protection from all persons. For example, if the state has been found to have violated the right to non-discrimination by providing a right to men but not women, the aim will be to prevent the state from responding by taking the right away from men rather than extending it to women.

- **Reading down:** In some cases it may be possible to read a statute with an interpretation which makes it comply with the constitution where another reading would mean it was in violation. For example, the Constitutional Court of Russia can offer its own binding statutory interpretations of law.⁵⁴⁰ However, while some argue that the Court has “read down” parts of federal legislation, there is no explicit provision in the law by which the Court is mandated to do so.⁵⁴¹
- **Striking down:** where the whole statute is unconstitutional, or where it is not possible to sever a specific section or read wording in without the judiciary transgressing its powers, the statute may be struck down. This means that the law will no longer be enforceable. The Constitutional Court of Russia possess this power as explained in the section on “severance”.
 - It is important to understand the nature of a statute before requesting a court to strike it down. For example, if a statute entitles everyone except for a particular ethnic minority to a particular benefit, striking down the entire statute would result in everyone losing the benefit; a full striking down of the statute would only be beneficial if it provides only that the particular ethnic group is not entitled to the benefit.
- **Striking down with a temporary suspension of the declaration of invalidity:** In some cases, an immediate declaration that a law, or part of a law, is invalid could have consequences for the region or country as a whole, such as leaving a gap in legal protection. In such cases the court may prefer to suspend the declaration for a period of time to enable the legislator to bring the law in line with the constitution. The Constitutional Court of Russia awards this type of remedy occasionally.⁵⁴²

Injunctions: these are orders instructing private or government actors on what they must or must not do in order to comply with constitutional or statutory requirements.⁵⁴³ Injunctions are generally considered to be a useful remedy where the state has persistently failed to uphold constitutional rights and has ignored or misinterpreted judicial declarations. Some have argued that injunctions should be a remedy of “last resort”, used only where co-operation between courts and the legislator or the executive has broken down. In Russia, injunctions against state officials are not awarded as a rule.⁵⁴⁴

539 See above, note 482, p. 102.

540 Linnan, D.K., *Legitimacy, Legal Development and Change: Law and Modernization Reconsidered*, Routledge, 2012, p. 361.

541 See above, note 539.

542 Federal Constitutional Law “On the Constitutional Court of the Russian Federation” 1994, Article 75(1)-(12). See for example: Judgment of the Constitutional Court of the Russian Federation, 14 July 2005, No. 8-II.

543 Hirsch, D.E., “A Defense of Structural Injunctive Remedies in South African Law”, *Oregon Review of International Law*, Vol. 9, 2007, p. 19.

544 Anton Burkov, information provided to the Equal Rights Trust on 10 February 2018.

Damages: damages may be both pecuniary and non-pecuniary and consist of the award of financial compensation to the victims of the violation. This type of remedy has various benefits: (i) the award of damages is one of the most widely available remedies; (ii) it is one of the remedies most likely to be implemented;⁵⁴⁵ and (iii) it will often be important to individual claimants who, even if they cannot be returned to the position they were in before the violation, may seek damages as a symbolic compensation for their loss. A disadvantage to damages is the fact that they do not provide immediate reparation to individuals who are not parties to the claim but who have suffered similar discrimination or a violation of their rights. Further, damages do not necessarily lead to a change of the situation so as to prevent people from suffering the same violation in the future. It is important to note, however, that an award of damages may set an important precedent and ultimately have a knock-on effect for others or encourage additional claims.

Symbolic remedies: these include for example, an order to make a public apology or erect a memorial. Such remedies may provide an element of restorative justice for the victims. Symbolic remedies do not compensate individuals for the discrimination suffered, excluding perhaps at an emotional level, and do not provide the legislative, policy or structural changes that would be required to ensure non-repetition of the discrimination. You may wish, therefore, to request this type of remedy in addition to other types. In Russia, there are occasions on which courts have ordered top government officials to issue public apologies for violating the rights of individuals.⁵⁴⁶

Declaratory orders: these are orders in which a court makes a declaration that there has been a violation of the right in question but does not require the state to take particular action. This is usually one of the least coercive remedies because they offer an opportunity for the judiciary to highlight that there is a fault without being accused of exceeding its powers in determining how best to remedy it. However, declaratory orders can take many forms and the degree of coercion exerted by it varies.

Not all cases will reach the remedies stage. The negotiated settlement option is available at the domestic level, in all UN treaty body complaints procedures⁵⁴⁷ and at the ECtHR. Settlement requires the consent of both parties. The following case study demonstrates a successful settlement of a complaint against Russia:

Friendly Settlement with regard to Involuntary Psychiatric Hospitalisation: *Usmanov v Russia (2016)*⁵⁴⁸

Facts: In 2002, Rafael Usmanov was charged with insulting a government official but was held not to be criminally responsible for his actions due to his mental health con-

⁵⁴⁵ See above, note 482, p. 107.

⁵⁴⁶ The Moscow Times, "Russian Court Orders Navalny to Apologize for Government Corruption Claims", *The Moscow Times*, 31 May 2017, available at: <https://themoscowtimes.com/news/russian-court-orders-navalny-to-apologize-for-government-corruption-claims-58124>.

⁵⁴⁷ OHCHR, "Human Rights Treaty Bodies – Individual Communications", visited 15 January 2018, available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>

⁵⁴⁸ ECtHR, *Usmanov v Russia*, Application No. 17731/11, 27 September 2016.

dition. A judge ordered his indefinite detention in a psychiatric hospital. Mr Usmanov had to share a cell with 16 other people, with each person having less than 2.5 square metres of living space. In 2010, the psychiatric hospital requested the court to extend Mr Usmanov's involuntary treatment without his participation during the proceedings without substantiating why this was necessary. The request was granted and the detention was extended for a further six months. Mr Usmanov lodged a complaint before the ECtHR with the assistance of the NGO, Validity (formerly known as Mental Disability Advocacy Centre), arguing that he had suffered inhuman and degrading treatment (Article 3 ECHR) as a result of prison overcrowding, and that he had been denied an effective remedy to challenge these conditions (Article 13 ECHR). He also complained that his right to liberty and security had been violated due to his inability to adequately have the lawfulness of his detention reviewed (Article 5 ECHR).

Outcome: In October 2016, the Russian government acknowledged the violations of all three Articles and offered to reach a friendly settlement with Mr Usmanov pursuant to Article 39 ECHR. Mr Usmanov accepted the settlement and the accompanying EUR 20,000 in compensation.⁵⁴⁹ Although individual justice has been served in this case, the lawyer who assisted Mr Usmanov has said:

We call on the Russian Government to amend Article 445(5) of the Russian Criminal Procedure Code which allows judges to decide on involuntary treatment and detention without the presence of the person concerned. There are 32,500 cases of this type in Russia each year.⁵⁵⁰

Although the claimant did not argue that his treatment was discriminatory on the ground of disability (Article 14 ECHR), the case is included both because we consider the facts to indicate that discrimination was clearly relevant to the case and because the approach to remedy in the case would be equally applicable in other cases where discrimination is alleged. Such settlements are important for increasing the protection of the beneficiary group as they bring public attention to the issue and establish an admission on the part of the state of inadequate conduct.

G. Evidence and Proof

The precise rules of evidence and procedure applicable in a case **will depend on your choice of forum**. However, there are certain considerations that are often relevant to discrimination and equality cases.

⁵⁴⁹ Validity, "Russia: For first time Russia admits overcrowding and injustice in psychiatric hospital", *Validity*, 20 October 2016, available at: <http://validity.ngo/russia-for-first-time-russia-admits-overcrowding-and-injustice-in-psychiatric-hospital/>, statement by Dmitri Bartenev.

⁵⁵⁰ *Ibid.*

Burden of proof: As a matter of international best practice, claimants are required to provide some evidence of discrimination, which the respondent(s) must then rebut. The claimant must first establish a *prima facie* case of the elements of discrimination. Subsequently, the burden of proof shifts to the respondent to prove that the treatment was not discriminatory.⁵⁵¹ It is important to note that in some discrimination cases the violation does not arise from disparate treatment, but rather due to a failure to treat an individual or group differently. In such cases, the burden will be on the respondent to prove that the identical treatment is not discriminatory. Russian law does not make any provision with respect to a shift in the burden of proof in discrimination cases nor has there been any guidance from the higher courts on this point.⁵⁵² The reversal of the burden as outlined is, however, applicable at the ECtHR and UN treaty bodies.

Standard of Proof: The standard of proof required from a claimant in order to discharge their burden of proof in discrimination cases varies across jurisdictions with some requiring proof “beyond reasonable doubt” and others looking to determine whether discrimination has been proved on the “balance of probabilities”. The following case indicates the approach that has been taken by the ECtHR:

Example:

Facts: In the case of *Timishev v Russia*,⁵⁵³ in June 1999, Ilyas Timishev, a Russian citizen of Chechen ethnic origin, was driving from Nazran in the Republic of Ingushetia to Nalchik in the Kabardino-Balkar Republic. He was stopped by a police officer of the Kabardino-Balkar State Inspectorate for Road Safety at a checkpoint on the administrative border between the two republics, who, according to Mr Timishev, refused him entry, referring to an oral instruction from the Ministry of the Interior of Kabardino-Balkaria not to admit persons of Chechen ethnic origin. On August 1999 the Nalchik City Court dismissed Mr Timishev’s allegation that the police officer had unlawfully denied his freedom of movement due to his ethnicity. The officer who refused Mr Timishev entry testified that the denial of entry was not because of his ethnicity, but because Mr Timishev attempted to jump the queue and was refused priority treatment; the City Court found this testimony to be convincing. Mr Timishev’s appeal at the Supreme Court of the Kabardino-Balkar Republic was dismissed subsequently. Following an inquiry by the local prosecutor’s office, in 2000, the prosecutor received an admission from the relevant police officer that he had indeed received oral instructions to refuse persons of Chechen origin to pass through the checkpoint. No action was taken against the border officer, however, because, according to authorities, this was not necessary since both the City Court and the Regional Supreme Court had established that the border

551 Interights, *Non-Discrimination in International Law: A Handbook for Practitioners*, 2011, p. 70, http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/08/interight_non-discrimination_in_international_law_2011.pdf.

552 Dmitri Bartenev, information provided to the Equal Rights Trust on 10 March 2018.

553 ECtHR, *Timishev v Russia*, Application Nos. 55762/00 and 55974/00, 13 December 2005.

officer had committed no wrongdoing. Having exhausted domestic remedies, Mr Timishev filed a complaint at the ECtHR, alleging a violation of Article 2 of Protocol No. 4 to the ECHR – which guarantees the right to liberty of movement - taken alone or in conjunction with Article 14 ECHR (the prohibition on discrimination), for being refused entry at the checkpoint due to his ethnicity.

Outcome: The government maintained a narrative of the events corresponding with that established by the domestic courts, which concluded that Mr Timishev simply tried to jump the queue at the border checkpoint and was refused. It further argued that the inquiry findings of the local prosecutor, which contained testimony from the relevant police officer stating that he had been given oral instructions to refuse entry to ethnic Chechens, should not be admissible because it was not considered by Russian courts. The ECtHR reiterated its previous case law, stating that “proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact”.⁵⁵⁴ With respect to the restriction on Mr Timishev’s freedom of movement, the ECtHR found that his version of events had been corroborated by the independent inquiry of the local prosecutor. The justification for the restriction on the freedom of movement, namely, an oral instruction calling for increased security at the border, could not be assessed by the ECtHR because it was not formalised or traceable in any way. Accordingly, the ECtHR established a violation of the right to liberty of movement (Article 2 of Protocol No. 4 to the ECHR). Turning to the allegation of discrimination, the ECtHR reiterated previous case law, stating that “[o]nce the applicant has shown that there has been a difference in treatment, it is then for the respondent government to show that the difference in treatment could be justified”. The government did not provide any evidence to refute the narrative confirmed by the local prosecutor that the police officer had received oral instructions to refuse entry to persons of Chechen ethnicity. Neither did it attempt to justify the differential treatment, although the ECtHR stressed “no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”⁵⁵⁵ Accordingly, the ECtHR held that Russia had violated Article 14 ECHR taken in conjunction with Article 2 of Protocol No. 4 to the ECHR.

Evidential considerations for proving your case: You will need to substantiate the discrimination claim with convincing evidence. Witness and victim statements, audio-visual evidence, reports, studies, and statistical data are relevant for discrimination and equality claims.⁵⁵⁶

⁵⁵⁴ *Ibid.*, Para 39.

⁵⁵⁵ *Ibid.*, Para 58.

⁵⁵⁶ For a more detailed discussion of different evidential considerations, see above, note 482, pp. 114–116.

What follows is a brief consideration of one potential type of evidence which is currently underused – statistical data:

For claims of indirect-discrimination, the case of *Horváth and Kiss v Hungary* at the ECtHR demonstrated that statistical evidence can be crucial in establishing a disproportionate prejudicial effect of a seemingly neutral law on a group with a protected characteristic, capable of shifting the burden to the state to prove that no indirect discrimination had occurred.⁵⁵⁷

The Russian Freedom of Information Law of 2009⁵⁵⁸ provides citizens the right to request information held by government agencies, including information that does not relate to the applicant personally.⁵⁵⁹ Although the Global Integrity Index of 2010 found that exemptions and arbitrary refusal of requests limit the practical utility of the right,⁵⁶⁰ attempts to acquire data relevant for discrimination claims through this mechanism should not be discouraged. Alternative sources of information and statistical data include UN agencies, NGOs, and third-party researchers.

According to Dmitri Bartenev and the research conducted for this Guide, statistical data has not been successfully applied in a discrimination case in Russia. However, according to Mr Bartenev, in principle, such evidence is more likely to be accepted by the Constitutional Court than the Courts of General Jurisdiction.⁵⁶¹

H. Implementation Strategies

Enforcement of a court judgment is often as time consuming as reaching the point of judgment itself. Whether the particular judgment requires compensation, legislative change, or an apology, it is important to consider the measure required to enforce the judgment. According to Bill Bowring, an expert on litigation at the ECtHR, like other Council of Europe member states, Russia has in almost every case paid the compensation (“just satisfaction”) ordered by the ECtHR and on time.⁵⁶² Enforcement of “general measures”, changing law and practice so that the violations will not be repeated, and “individual measures”, for example carrying out necessary investigations, has been much more problematic.⁵⁶³ Looking beyond ECtHR judgments, the structural legal changes implicitly or explicitly necessitated by the

557 ECtHR, *Horváth and Kiss v Hungary*, Application No. 11146/11, 29 January 2013.

558 The Federal Law “On providing access to information on the activities of government bodies and bodies of local self-government”, 9 February 2009, No. 8-FZ, (“Федеральный закон Об обеспечении доступа к информации о деятельности государственных органов и органов местного самоуправления, 9 февраля 2009 г., № 8-ФЗ”).

559 University College London, “Russian Federation”, visited 13 January 2018, available at: <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/russia>.

560 Global Integrity, *Global Integrity Report 2010: Russian Federation*, 2010, available at: <http://www.globalintegrity.org/report/Russian-Federation/2010>.

561 Equal Rights Trust interview with Dmitri Bartenev, 17 January 2018.

562 Equal Rights Trust interview with Bill Bowring, 24 January 2018; Professor Bill Bowring is a practising barrister specialising in human rights law who has experience in taking cases to the ECtHR since 1994, including cases against the Russian Federation.

563 *Ibid*; For further guidance on individual and general measures of ECtHR judgments, see: Abdelgawad, E.L., Council of Europe, *The execution of judgments of the European Court of Human Rights*, 2008, available at: <http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-19%282008%29.pdf>.

determination of a violation of a Constitutional or international law obligation are more likely to be neglected than compensation obligations.⁵⁶⁴

Further, in December 2015, Russia introduced legislation allowing the Constitutional Court of Russia to refuse to execute judgments of international courts and tribunals where Russia is the respondent, if they conflict with the fundamental principles and norms of the Russian Constitution.⁵⁶⁵ Lower courts must request a review of constitutionality when presented with inconsistencies between such decisions and a Constitutional provision.⁵⁶⁶ The Constitutional Court will then be required to give preference to the Constitution, as it did in 2016, when it decided not to ensure prisoners' electoral rights, as required by the *Anchugov and Gladkov v Russia* ruling of the ECtHR.⁵⁶⁷ The Constitutional Court stated that the Constitution precluded allowing *all* types of prisoners to vote, but that the legislator was free to enact law allowing *some* of them to vote – until that time, the judgment cannot be executed.⁵⁶⁸

The following case study is a strategic litigation success story that has led to a significant change in Russia's legal structure with respect to the protection of persons with disabilities. This case demonstrates (i) how the judgment of the ECtHR may interact with the considerations of the Constitutional Court of Russia; (ii) that challenging the constitutionality of domestic legal provisions may lead to the Constitutional Court severing and striking them down;⁵⁶⁹ and (iii) that this in turn may lead to the legislator amending the relevant provisions, a crucial step in attaining transformative social change.

The Deprivation of Legal Capacity of Persons with Mental Disabilities: *Shtukatarov v Russia* (2008)⁵⁷⁰

Facts: Pavel Shtukatarov has a mental disorder. As an adult, he lived with his mother in St. Petersburg who cared for him. In 2004, Mr Shtukatarov's mother applied to a District Court, seeking a declaration of incapacity. He was not notified or present during the proceedings. The judge declared Mr Shtukatarov legally incapable, basing his conclusion primarily on the opinion of a representative from a psychiatric hospital where Mr Shtukatarov was resident from August 2002 to April 2003. His mother was appointed as his guardian, which meant she was authorised to act on his behalf in all

⁵⁶⁴ Equal Rights Trust interview with Dmitri Bartenev, 17 January 2018.

⁵⁶⁵ Reuters, "Putin signs law allowing Russia to overturn rulings of international rights courts", *Reuters*, 15 December 2015, available at: <https://www.reuters.com/article/uk-russia-court-putin/putin-signs-law-allowing-russia-to-overturn-rulings-of-international-rights-courts-idUKKBN0TY0JQ20151215>.

⁵⁶⁶ Roudik, P., "Russian Federation: Constitutional Court Allows Country to Ignore ECHR Rulings", *Library of Congress*, 18 May 2016, available at: <http://www.loc.gov/law/foreign-news/article/russian-federation-constitutional-court-allows-country-to-ignore-echr-rulings>.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ *Ibid.*

⁵⁶⁹ According to Articles 87 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", provisions that have been ruled to be unconstitutional by the Constitutional Court of Russia shall be invalid from the moment of pronouncement, meaning they may not be applied by anyone or any institution. The Constitutional Court relied on this power in the *Shtukatarov* case. Source: Dmitri Bartenev, information provided to the Equal Rights Trust on 10 March 2018.

⁵⁷⁰ ECtHR, *Shtukatarov v Russia*, Application No. 44009/05, 27 March 2008.

matters. In November 2005, Mr Shtukatarov's mother placed him in a psychiatric hospital against his will. While in the hospital, he was treated with strong medicines, and prevented from having contact with the outside world, including his lawyer. His lawyer attempted to appeal the decision to relinquish Mr Shtukatarov of his legal capacity, but the appeal was denied on the basis that persons without legal capacity could only act through their guardian. In March 2006, Mr Shtukatarov was discharged from the hospital and filed a complaint to the ECtHR alleging violations of several Convention rights, including:

- Article 6: the right to a fair hearing, as his lack of legal capacity prevented him from participating in proceedings.
- Article 8: the right to respect for private life, for being deprived of his legal capacity.
- Articles 5(1) and (4): the right to liberty and security, for being placed in the psychiatric hospital against his will and not being able to challenge the legality of his detention.
- Article 34: the right to petition the ECtHR, for being denied the right to prepare and draft a complaint to the Court with his lawyer.
- Article 14 in conjunction with Articles 6 and 8: discriminatory denial of the rights to a fair hearing and to respect for private life on the ground of his mental disability.

Mr Shtukatarov also filed a complaint to the Constitutional Court of the Russian Federation in October 2006, challenging the constitutionality of several provisions in the Russian legal system:

- Article 284 of the Civil Procedure: which stipulates that a request for a declaration of incapacity shall be considered by the court and with participation of the subject of incapacitation "if the person's state of health permits his attendance". The final part of the clause gives scope to deny persons the right to participate in incapacitation proceedings.
- Article 37 of the Civil Procedure Code: which states that the rights, freedoms and lawful interests of persons declared incapable shall be defended in proceedings by their legal representatives – guardians or other persons. This denies incapacitated persons to challenge the initial declaration of incapacity in addition to obstructing their access to courts more generally.
- Article 28 of the Law "on Psychiatric Care and Guarantees of Citizens' Rights in its Course": this provision stipulates that an incapacitated person shall be placed in an in-patient psychiatric facility at the request or with the consent of his/her guardian. It requires no consent of the incapacitated person and no court decision.

Mr Shtukatarov alleged that these provisions violated his Constitutional rights under:

- Article 19: equality under the law and the right non-discrimination.
- Article 22: the right to liberty.
- Article 23: the right to the inviolability of private life, personal and family life.

- Article 24: which states that “[t]he collection, keeping, use and dissemination of information about the private life of a person shall not be allowed without his or her consent”.
- Article 45: which states that “[s]tate protection of the rights and freedoms of man and citizen shall be guaranteed in the Russian Federation [and] [e]veryone shall be free to protect his rights and freedoms by all means not prohibited by law”.
- Article 46: which states that “[e]veryone shall be guaranteed judicial protection of his rights and freedoms”.
- Article 123(3): which states that “[j]udicial proceedings shall be held on the basis of controversy and equality of the parties”.

Outcome: In 2008, the ECtHR unanimously held that the state had violated Articles 5, 6, 8, and 34 of the Convention. It further held that it was not necessary to examine the discrimination claim. In 2010, the Court ordered the Russian Federation to pay EUR 25,000 in compensation. Then, on 27 February 2009, the Constitutional Court issued its first ruling ever on the country’s regulations and procedures on assessing legal capacity.⁵⁷¹ The Constitutional Court reiterated that discrimination based on the ground of “mental disorder (mental illness, mental retardation, mental deficiency)” is prohibited by the Constitution and international law.⁵⁷² It held that the following legal provisions violated the Constitution:

- Article 284 of the Code Civil Procedure: allowing courts to decide on a person’s legal capacity without their presence violated Articles 19(1) and (2),⁵⁷³ 45, 46, 55(3),⁵⁷⁴ 60,⁵⁷⁵ and 123(3).
- Article 37 of the Code of Civil Procedure and the interrelated provisions in that Code: denying the possibility of appeal against a declaration of incapacity and guardianship order violated Articles 19(1) and (2), 45, 46, 55(3), 60 and 123(3).
- Article 28 of the Law “on Psychiatric Care and Guarantees of Citizens’ Rights in its Course”: the involuntary detention of those deprived of legal capacity without their consent and judicial review violated Articles 19(1) and (2), 22, 46, and 55(3).

⁵⁷¹ Judgment of the Constitutional Court of the Russian Federation, 27 February 2009, No. 4-П, “on Psychiatric Care and Guarantees of Citizens’ Rights”; Mental Disability Advocacy Centre (now known as Validity), “Russia: Constitutional Court forges the way out of discrimination for persons with mental disabilities”, *Mental Disability Advocacy Centre (now known as Validity)*, 3 March 2009, available at: <http://www.mdac.info/en/content/russia-constitutional-court-forges-way-out-discrimination-people-mental-disabilities>.

⁵⁷² *Ibid.*

⁵⁷³ Article 19 of the Constitution states: “1. All people shall be equal before the law and court. 2. The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned.”

⁵⁷⁴ Article 55(3) of the Constitution states: “[t]he rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State.”

⁵⁷⁵ Article 60 of the Constitution states: “[a] citizen of the Russian Federation may exercise his or her rights and duties in full from the age of 18.”

It further ordered the lower courts to reconsider Mr Shtukatarov's claim taking account of these findings. The Constitutional Court referenced the *Shtukatarov v Russia* jurisprudence of the ECtHR several times in assessing the lack of procedural safeguards that had been afforded to Mr Shtukatarov.⁵⁷⁶ Although it did not review the extent of the domestic legal provisions' compliance with the ECHR in general or with regard to the findings of the ECtHR in *Shtukatarov v Russia* in particular, the Constitutional Court reinforced its consideration that the Russian Constitution does not permit the issuance of declarations of incapacity without the subject's involvement in the proceedings and the involuntary placement of incapacitated persons, by reference to the ECtHR ruling. In April 2011, the Russian government enacted a law that implemented the Constitutional Court's findings and subjected legal capacity deprivation measures to procedural safeguards that went even further than what the Constitutional Court had required.⁵⁷⁷

The *Shtukatarov* ruling led the adoption of legislation that filled large protection gaps for persons with mental disabilities in relation to the deprivation of legal capacity. Unfortunately, this new legislation is not, to date, being applied properly by domestic courts. According to Dmitri Bartenev, the lawyer who represented Mr Shtukatarov, the new legal protection mechanism has been disregarded by courts due to their lack of understanding of it, resulting in continuing arbitrary deprivations of legal capacity.⁵⁷⁸ Moreover, lawyers are not aware of the new mechanism.⁵⁷⁹ According to Mr Bartenev, the next step in the path to transformative change should be to focus on educating judges and lawyers alike through the courts – by continuously filing actions on the basis of the new law – and otherwise, through information sharing activities. He states, “lawyers think they do not have the power to challenge these injustices, the *Shtukatarov* case and the resulting legislation are tools that will teach lawyers that *they do* have that power”.⁵⁸⁰

The following section discusses strategies that may assist you in realising the implementation of a judgment:

- **Grassroots engagement and collaboration:** mobilising the affected community and cooperating with advocacy groups to monitor judgment compliance and putting the issue back on the agenda if it is forgotten.
 - Dmitri Bartenev sees disability rights as the biggest opportunity for strategic litigation and transformative change because, among other reasons, there is a growing pro-disability civil society community in Russia and it cooperates with

576 See above, note 571.

577 Mental Disability Advocacy Centre (now known as Validity), “Russia: strategic litigation leads to law reform,” Mental Disability Advocacy Centre (now known as Validity), 22 April 2011, available at: <http://www.mdac.org/en/news/russia-strategic-litigation-leads-law-reform>.

578 Equal Rights Trust interview with Dmitri Bartenev, 17 January 2018.

579 *Ibid.*

580 *Ibid.*

international partners: “their pressure is really important and can sway matters in courts”.⁵⁸¹

- **Attracting media coverage:** local and international media can put necessary pressure on the state to implement the ruling.
 - Anton Burkov stresses the importance of putting your case in the spotlight where appropriate: “you need to make ‘dry’ cases interesting in order to get press attention – even if they are not ‘really’ dry. Focus on interesting and provocative elements within the case and enlarge them”.⁵⁸² The needs and wishes of the claimants in the case should have primacy when developing your media strategy.
- **Engagement with parliamentarians and legislators:** policymakers have lobbying power and access to crucial networks which a lawyer or NGO might not have.
- **Engagement with the National (or regional) Ombudsperson:** Much like a policy-maker, the Ombudsperson may be able to pressure relevant actors in ways that you cannot.
 - The current Ombudsperson of Russia has said that the list of prohibited professions for women should be reconsidered.⁵⁸³
- **International stakeholders:** Litigators should consider which international stakeholders, including international donors and organisations, can best influence implementation.
- For ECtHR cases:
 - **The Committee of Ministers of the Council of Europe:** The Committee of Ministers oversees the executions of ECtHR rulings among member states of the ECHR. The claimant and interested NGOs can send memoranda and communications to this body to alert it of the state’s non-compliance and recommend courses of action for their proper implementation.⁵⁸⁴

I. Third-Party Interventions or Amicus Curiae Briefs

Third-party interventions (sometimes known as acting amicus curiae) which aim to assist the court with the analysis of a case and/or draw attention to arguments or information that may not have been presented already can be a useful tool to adopt in a strategic case. The Constitutional Court of the Russian Federation, the ECtHR and the UN treaty bodies allow such submissions. The first consideration will be whether the party seeking to intervene in the case has standing to do so under the relevant mechanism. The rules relating to third party interventions vary according to the forum. Please refer to section D of this Part for guidance on the availability of this type of intervention at regional and international human rights fora.

⁵⁸¹ Equal Rights Trust interview with Dmitri Bartenev, 17 January 2018.

⁵⁸² Equal Rights Trust interview with Anton Burkov, 25 January 2018.

⁵⁸³ ADC Memorial, “TASS: Russian ombudsperson: the list of professions prohibited for women could be reconsidered”, *ADC Memorial*, 1 December 2017, available at: <https://adcmemorial.org/www/13700.html?lang=en>.

⁵⁸⁴ Cali, B. et al, *Monitoring the Implementation of Judgments of the European Court of Human Rights*, 2011, available at: https://ecthrproject.files.wordpress.com/2011/07/monitoringhandbook_calibruch1.pdf, p. 16.

Although it is possible to submit amicus briefs to the Constitutional Court, opportunities for their submission are not made public, so it is important to discover opportunities through your legal and/or human rights networks.⁵⁸⁵ Anton Burkov is of the view that lawyers and organisations must use amicus briefs with caution and only with the permission of the applicant and lawyer, so as to ensure that the effort is neither unnecessary nor likely to jeopardise the applicant's case.⁵⁸⁶

⁵⁸⁵ Equal Rights Trust interview with Anton Burkov, 25 January 2018.

⁵⁸⁶ *Ibid.*

Part Six:

Best Practice in Information and Legal Advice to victims of discrimination

There are two international frameworks which outline the principles that lawyers should follow when providing information to and advising individuals. These are the United Nations Basic Principles on the Role of Lawyers⁵⁸⁷ and the International Bar Association (IBA) International Principles on Conduct for the Legal Profession.⁵⁸⁸ They will be summarised below.

United Nations Basic Principles on the Role of Lawyers

The Basic Principles define the essential duties and responsibilities that lawyers must maintain in order to maintain the honour and dignity of their profession as agents of the administration of justice. These are:

- a. *[To assist] clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;*
- b. *[To assist] clients in every appropriate way, and taking legal action to protect their interests;*
- c. *[To assist] clients before courts, tribunals or administrative authorities, where appropriate.*

14. *Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.*

15. *Lawyers shall always loyally respect the interests of their clients.*

In addition, the Basic Principles outline requirements that states must comply with to ensure that lawyers are able to perform their professional duties. According to the principles, governments should respect the confidentiality of communications between lawyers and their clients; ensure that lawyers can act without intimidation and harassment, that lawyers will not be persecuted for acting in accordance with their professional duties, standards and ethics; and that lawyers shall not be identified with their clients or their clients' causes as a result of undertaking their work.

⁵⁸⁷ United Nations Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

⁵⁸⁸ International Bar Association, *International Principles on Conduct for the Legal Profession*, 2011, available at: <http://www.ibanet.org/Document/Default.aspx?DocumentUid=1730FC33-6D70-4469-9B9D-8A12C319468C>.

These obligations on states are particularly important in circumstances where lawyers are representing a sensitive or unpopular cause in a country. Lawyers working with LGBT+ clients in Russia should be aware of the protections that the government owes them as legal practitioners to ensure a safe and confidential working environment.

IBA International Principles on Conduct for the Legal Profession

The IBA Principles act as a code of conduct for lawyers in any jurisdiction. The principles are more specific than those contained within the UN Basic Principles. They are summarised as follows:

1. Lawyers must maintain independence so that they are able to give clients unbiased advice.
2. Lawyers must maintain the highest standards of honesty, integrity and fairness towards their clients, the court, colleagues and others with whom they come into professional contact.
3. Lawyers must not assume a position that causes their interests to conflict with those of their client, another lawyer in the same firm or another client.
4. Lawyers shall maintain the confidentiality and professional secrecy of their clients' affairs.
5. Lawyers must act in the best interests of their clients, so long as there is no conflict of interest with their duties to the court and the interests of justice. They must maintain ethical standards.
6. Lawyers shall honour any undertaking given in the course of their practice in a timely manner.
7. Clients shall have the freedom to select the lawyer of their choice.
8. Lawyers shall account for and carefully hold any property of clients or third parties that come into their possession.
9. Lawyers shall carry out their work in a competent and timely manner. They must not take on work if they do not think they can meet these standards.
10. Lawyers shall not charge unreasonable fees or generate unnecessary work.

These principles are especially important for lawyers working with LGBT+ clients. As many readers will be aware, LGBT+ clients in Russia may face persecution for bringing a case in relation to discrimination on the grounds of their sexual orientation or gender identity. These best practice legal principles ensure that LGBT+ clients can trust lawyers to handle their cases impartially and to high standards.

Resources for Lawyers Working with Victims of Discrimination

In this section we provide you with a list of resources to assist you in advising victims of discrimination on their rights and promoting access to justice. Please note that this list does not include Russian laws referred to in this Guide, given that we anticipate readers will be familiar with these sources.

1. Laws that protect equality and non-discrimination

Regional Law

- The text of the European Convention on Human Rights can be found here: http://www.echr.coe.int/Documents/Convention_rus.pdf.
- The website of the European Court of Human Rights which has useful resources for lawyers and members of the public can be found here: <http://www.echr.coe.int/Pages/home.aspx?p=home>.
- Decisions of the European Court of the Human Rights can be found here: <https://hudoc.echr.coe.int/rus#>.

International Conventions

International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966, available at: http://www.ohchr.org/Documents/ProfessionalInterest/ICCPR_ru.pdf.

International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 1966, http://www.ohchr.org/Documents/ProfessionalInterest/ICESCR_ru.pdf.

Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 1979, available at: http://www.ohchr.org/Documents/ProfessionalInterest/CEDAW_ru.pdf.

International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 1965, available at: http://www.ohchr.org/Documents/ProfessionalInterest/ICERD_ru.pdf.

Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 2006, available at: <http://www.un.org/disabilities/documents/convention/convoptprot-r.pdf>.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 1984, available at: http://www.ohchr.org/Documents/ProfessionalInterest/CAT_ru.pdf.

Convention on the Rights of the Child, G.A. Res. 44/25, 1989, available at: http://www.ohchr.org/Documents/ProfessionalInterest/CRC_ru.pdf.

2. Equality law best practice

General Comments and Recommendations on Equality Law

United Nations Human Rights Committee, *General Comment No. 18: Non-Discrimination*, 1989, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6622&Lang=ru.

Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/GC/20, 2009, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=E/C.12/GC/20&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Elimination of Discrimination Against Women, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/GC/28, 2010, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=CEDAW/C/GC/28&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Rights of Persons with Disabilities, *General Comment No. 6: Article 5: Equality and non-discrimination* (forthcoming), to be available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=4&DocTypeID=11.

General Comments and Recommendations on specific equality issues

Committee on the Elimination of Discrimination Against Women, *General recommendation No. 23: Political and public life*, 1997, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fGEC%2f4736&Lang=ru.

Committee on the Elimination of Discrimination Against Women, *General recommendation No. 33 on women's access to justice*, UN Doc CEDAW/C/GC/33, 2015, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=CEDAW/C/GC/33&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Elimination of Discrimination Against Women, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc CEDAW/C/GC/35, 2017, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=CEDAW/C/GC/35&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Elimination of Racial Discrimination, *General recommendation No. 25 on gender-related dimensions of racial discrimination*, 2000, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7497&Lang=ru.

Committee on the Elimination of Racial Discrimination, *General recommendation No. 27 on discrimination against Roma*, 2000, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7499&Lang=ru.

Committee on the Elimination of Racial Discrimination, *General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, UN Doc CERD/C/GC/32, 2009, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=CERD/C/GC/32&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Elimination of Racial Discrimination, *General recommendation No. 35: Combatting racist hate speech*, UN Doc CERD/C/GC/35, 2013, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=CERD/C/GC/35&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Rights of Persons with Disabilities, *General Comment No. 1: Article 12: Equal recognition before the law*, UN Doc CRPD/C/GC/1, 2014, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=%20CRPD/C/GC/1&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Rights of Persons with Disabilities, *General Comment No. 2: Article 9: Accessibility*, UN Doc CRPD/C/GC/2, 2014, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=CRPD/C/GC/2&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Rights of Persons with Disabilities, *General Comment No. 3 on women and girls with disabilities*, UN Doc CRPD/C/GC/3, 2016, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=CRPD/C/GC/3&referer=http://www.un.org/en/documents/index.html&Lang=R.

Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education*, UN Doc CRPD/C/GC/4, 2016, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=CRPD/C/GC/4&referer=http://www.un.org/en/documents/index.html&Lang=R.

3. Practical resources for lawyers advising on equality law issues

Equality law best practice: general resources

Declaration of Principles on Equality, Equal Rights Trust, London, 2008, adopted by human rights and equality experts, available at: http://www.equalrightstrust.org/sites/www.equalrightstrust.org/files/ertdocs/Declaration%20of%20Principles%20on%20Equality%20%28Russian%29_0.pdf.

Interights, *Non-Discrimination in International Law: A Handbook for Practitioners*, 2011, available at: <http://adapt.it/adapt-indice-a-z/interights-nondiscrimination-international-law-handbook-practitioners-2011>.

Sex discrimination

International Commission of Jurists, *Women's Access to Justice for Gender-Based Violence: A Practitioner's Guide*, 2016, available at: <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>.

Council of Europe, *Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice*, 2017, available at: http://www.ohchr.org/Documents/Issues/Women/WRGS/TrainingManualAccessJustice_RU.pdf.

Disability discrimination

United Nations Office of the High Commissioner for Human Rights, *The Convention on the Rights of Persons with Disabilities: Training Guide*, 2014, available at: http://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf.

Religious, racial and ethnic discrimination

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

www.equalrightstrust.org

- *My client has been banned from wearing religious clothing in her place of employment. Can she challenge this?*
- *A boy with a visual impairment has been denied admission to secondary school on the grounds that it is too costly for the school to make the study environment accessible to him. What are his rights?*
- *What are the obligations of the state in preventing and protecting women from domestic violence?*
- *An NGO has been prevented from holding a Gay Pride march. Can they challenge this ban?*

This Guide aims to support Russian lawyers to answer these and many other questions about how best to provide legal advice to victims of discrimination on the grounds of sex and gender, religion or belief, race and ethnicity, disability and sexual orientation and gender identity. It provides a summary of domestic, regional and international laws relating to the rights to equality and non-discrimination, and outlines practical considerations when providing legal advice and considering litigation.

The Guide aims to ensure that Russian lawyers have access to relevant laws and recognised best practice in respect of the rights to equality and non-discrimination. It provides information in five key areas:

1. The experience of persons experiencing discrimination in Russia;
2. The rights to equality and non-discrimination;
3. Laws that protect the rights to equality and non-discrimination;
4. Key human rights issues that affect persons suffering discrimination in Russia; and
5. Effective legal strategies for ensuring access to justice for victims of discrimination.

The Guide also contains a list of resources for lawyers working with victims of discrimination in Russia.