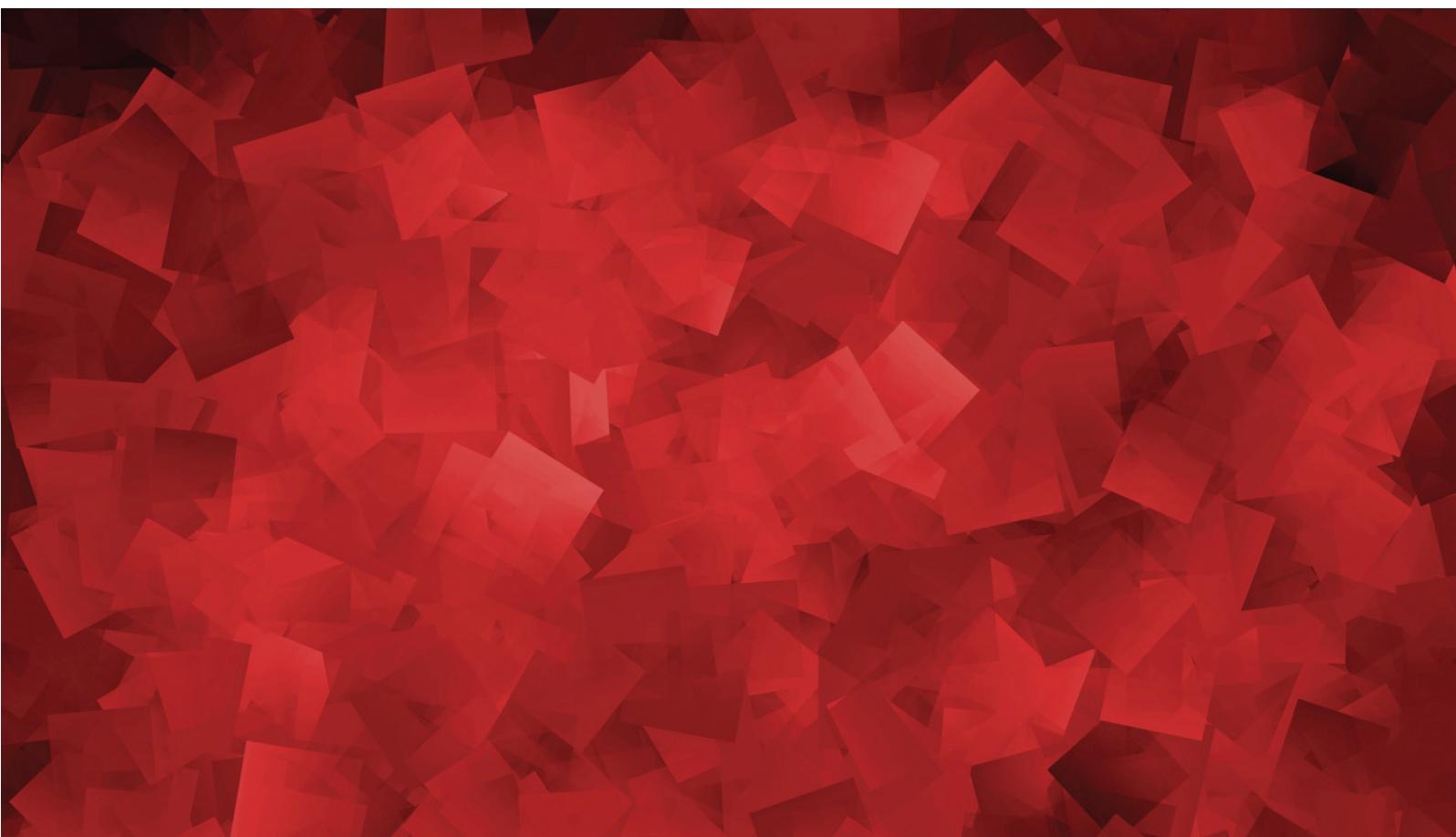


EQUALITY AND NON-DISCRIMINATION IN RUSSIA

Best Practice Guide for Service Providers



EQUAL RIGHTS TRUST

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Acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention 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
SOGI	Sexual orientation and gender identity
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHO	World Health Organization

Introduction

It has been well-documented that discrimination against lesbian, gay, bisexual or transgender persons – including by the government and its agents – is widespread and severe in Russia. 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. Where our evidence indicates that it is only one or more specific groups within the LGBT+ group who experience a particular form of discrimination, we use corresponding terminology.

LGBT+ persons in Russia experience discrimination in many different aspects of their life, ranging from housing to healthcare and from their relationships and to their employment. Discrimination occurs when LGBT+ persons are treated unfavourably due to their sexual orientation or their gender identity and where they are treated the same as others, but experience an adverse impact due to their sexual orientation or gender identity. Discrimination can take many different forms, from not being offered a promotion at work to being evicted or from harassment at school to – most troubling of all – physical assault resulting in serious injury or death.

Both domestic and international human rights organisations report high levels of discrimination and violence against LGBT+ persons in Russia. 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, and 32% had experienced discrimination in the workplace and workplace harassment. Nine percent of respondents had faced restricted access to goods and services, and eight percent had experienced restricted access to health care.

Human Rights Watch’s 2017 World Report on Russia reported the hate-motivated murder of journalist and theatre critic Dmitry Tsilikin in March 2016. Human Rights Watch also reported that Russian authorities continued to implement discriminatory policies and laws against LGBT persons. Discriminatory laws implemented by the courts continued to curtail the right of LGBT persons to freedom of expression. In January 2016, a court in Murmansk, northwestern 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 100,000 rubles (US\$1,300). In April 2016, a court in the Siberian town of Barnaul ruled to ban the website Children-404, an online support group for LGBT children. As of November 2016, Children-404’s website remained blocked. In September 2016, a court in Siberia ruled to block BlueSystem.ru, a highly popular LGBT news site. As of November 2016, the site was blocked.¹

¹ Human Rights Watch, *World Report on Russia 2017*, 2017, available at: <https://www.hrw.org/world-report/2017/country-chapters/russia>.

The purpose of this Guide

This Guide is designed to support the providers of public and private service in Russia to ensure that LGBT+ persons have equal access to their services.

It is intended to provide a user-friendly summary of the rights of LGBT+ persons in Russia, the forms of discrimination that LGBT+ persons commonly experience, and a guide to best practice in ensuring that LGBT+ persons are able to participate in life on an equal basis with others.

Who is this Guide designed for?

This Guide provides practical advice for people who work in the public and private sector in Russia, including, but not limited to:

- law enforcement agencies and officials;
- government departments and state agencies;
- employers;
- trade union officials;
- the owners and managers of those organisations who provide services to the public;
- teachers and those involved in delivering educational services;
- doctors, nurses and other health-care professionals; and
- those involved in delivering housing and other public services.

Our approach to best practice service delivery for LGBT+ service users is based on **five key areas of knowledge**:

1. The experience of LGBT+ persons in Russia;
2. Concepts of equality and discrimination;
3. Laws that protect equality and non-discrimination under domestic law, regional law and international law;
4. Key human rights issues that affect LGBT+ persons in Russia; and
5. Principles of best practice service delivery.

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

1. The experience of LGBT+ people in Russia

- The different groups who are referred to under the umbrella of “LGBT+”
- The meaning of terms such as sex, gender, sexual orientation and gender identity
- Discrimination on the basis of sexual orientation and gender identity (and “social group” under Russian law)
- Practical barriers that LGBT+ persons face in accessing legal services and services such as health care, education and housing.

2. Concepts of equality and 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 LGBT+ persons from discrimination, including weaknesses of current framework.
- Regional and international legal mechanisms that can be used to address violations of human rights of LGBT+ persons.
- Practical considerations when using regional and international law, such as scope, admissibility, and remedies.

4. Key human rights issues that affect LGBT+ persons in Russia

- Hate-motivated crime and 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 private life, including same-sex marriage, adoption and recognition of gender identity.
- Right to work.
- Right to healthcare.
- Right to education.

Part 5 of the Guide contains general principles of best practice, and we include further resources to consider.

Throughout this Guide, we will refer to the research that the Equal Rights Trust conducted in its report *Justice or Complicity? LGBT Rights and the Russian Courts*, published in September 2016. The report contains a comprehensive analysis of the jurisprudence of the Russian courts in cases relating to the Russian LGBT community, and is a valuable resource for further reference.

Part One: Experience of LGBT+ Persons in Russia

This Part will answer the questions:

- Who are we referring to when we use the term “LGBT+”?
- What is gender identity?
- What is sexual orientation?
- What do the terms gay, lesbian, bisexual and transgender mean?

As a government employee, an employer, a teacher, a medical practitioner or someone involved in the provision of services to the public, it is important that you understand the range of groups who fall within the “LGBT+” group. It is also important that you understand the concepts of gender identity and sexual orientation. We hope that knowledge of these concepts will help you to navigate through this Guide, and will help you to understand the position of people who identify as lesbian, gay, bisexual, transgender or intersex in Russia, the barriers they currently face in accessing services, and how best to ensure non-discrimination in delivery of services.

LGBT+

The term LGBT+ is an acronym that is used to refer collectively and inclusively to persons who are lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual, as well as those who “ally” themselves with this group. In your daily work, it is helpful to keep in mind the broad range of persons who fall within this broad “LGBT+” group and who may experience discrimination as a result.²

There is no single “LGBT+ community”. Rather, the term LGBT+ refers to many different groups of persons who have different perspectives and life experiences, and who face different types of discrimination. Despite these differences, there are numerous human rights issues – including the experience of discrimination – that are common to LGBT+ persons. For this reason, the term LGBT+ can be a useful collective term.

2 The definitions provided in this section are informed by the following sources: Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2008 (“Yogyakarta Principles”); Council of Europe, “SOGI Database: Glossary”, available at: <http://www.coe.int/en/web/sogidatabase/glossary>; ILGA-Europe, “ILGA-Europe Glossary”, available at: <http://old.ilga-europe.org/home/publications/glossary>; Intersex Society of North America, “What is intersex?”, available at: http://www.isna.org/faq/what_is_intersex; Organisation Internationale des Intersexués – Organization Intersex International, “What is intersex?”, available at: <http://oiiinternational.com/2533/welcome>; My LGBT Plus, “Why the Plus?”, available at: <http://www.mylgbtplus.org/why-the-plus>; Stonewall, “Glossary of Terms”, available at: <http://www.stonewall.org.uk/help-advice/glossary-terms>.

Gender identity and sexual orientation

There are two main “grounds” of discrimination against LGBT+ persons in Russia and around the world:

- Discrimination on the ground of a person’s “gender identity”.
- Discrimination on the ground of a person’s “sexual orientation”.

From the perspective of Russian law, both types of discrimination are also arguably discrimination on the grounds of “social group”.

It is important to know what is meant by these concepts as they are two distinct grounds for discrimination. Both types of discrimination are sometimes referred to by the acronym “SOGI” which stands for sexual orientation and gender identity.

What is gender identity?

In simple terms, a person’s “gender identity” refers to how a person feels about themselves. This may be influenced by their sex and gender.

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. For example, think about the different ideas of what it has meant to “be a woman” in Russia in 1900, 1950 and 2017.

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.

Discrimination on the ground of gender identity is frequently experienced by people who are **intersex** and **transgender**.

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.

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 she feels.

Transgender is 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.”³

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**.

What is sexual orientation?

Sexual orientation refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender, the same gender, or more than one gender”.⁴ 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.

Discrimination on the ground of sexual orientation is often experienced by people who are **gay, lesbian** and **bisexual**.

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.

3 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2008.

4 *Ibid.*

Part Two: Equality and Non-Discrimination

This Part will answer questions including:

- What is the right to equality?
- What is discrimination, and what is the right to non-discrimination?
- Are there different types of discrimination, and if so what are they and how are they defined?
- How can treating two different people in the same way amount to discrimination?
- What does it mean to harass someone and how can this be prevented?
- Why and how must the different needs of different people be accommodated?

As a service provider, you have legal obligations to ensure that you do not discriminate against different people in the way in which you provide services. In this Part, we introduce you to some foundational concepts that will enable you to better understand your legal obligations and best practice in service delivery to LBGT+ persons.

The **right to equality** is the right of all persons to be equal in dignity and to participate in all areas of 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 part of the right to equality. It means that all persons have a right to be protected by law from discrimination based on certain personal characteristics. These are referred to as “protected grounds”.

Discrimination against a person can be either direct or indirect.

Direct discrimination occurs when a person is treated less favourably than another person because of a protected ground 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 senior manager turns down an application for promotion. The applicant, who is a lesbian, learns that the manager did this because he believes the team that she applied to manage are homophobic. He thinks that the applicant’s sexual orientation would prevent her from gaining the team’s respect and managing them effectively. This is direct sexual orientation discrimination against the applicant and it cannot be justified.

Indirect discrimination occurs when a particular provision, criterion or practice puts a person with a protected ground at a disadvantage. The provision or practice may appear to be neutral on the face of it, but has a discriminatory effect on persons with a protected ground when applied. Indirect discrimination may be justified by a legitimate aim, if the means of achieving that aim are appropriate and necessary.

For example: A construction company adopts a policy that requires all employees to wear hard hats. One employee tells the company that as he is a Sikh, he wears a turban and will not be able to wear a hard hat. The company terminates his employment, as they refuse to make an exception for him on the ground of his religion. This is indirect discrimination, because a rule that applied to everyone discriminately effected an individual on the ground of their religion. However, this can be justified as a hard hat for the purposes of safety constitutes an occupational requirement.

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.

For example: A gay man goes into a bar to watch a football match. He is served a beer and takes a seat at an empty table. Whilst watching the match the bartender and a number of customers make remarks about some of the footballers on the pitch, implying that they are gay and using derogatory names.

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

This Part will provide answers to the following questions:

- How does Russian law protect LGBT+ persons from discrimination?
- How does international law protect LGBT+ persons from discrimination?
- What laws apply to your work as a service provider in Russia?

As a service provider, you have obligations under Russian law to ensure that you do not discriminate in providing your services. Russia as a state has obligations under regional and international law regarding the rights of LGBT+ persons. You need to be aware of the laws that protect the rights to equality and to non-discrimination as they affect your work in a wide range of areas from education and housing, to health-care and policing.

This Part will provide an overview of the legal protection for LGBT+ persons against discrimination under domestic, regional and international law.

Domestic laws

Russia does not have any comprehensive anti-discrimination law. However, there is some protection for LGBT+ people 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 the right to equality, 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**.

A person’s sexual orientation is *not* listed as a protected ground; 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.⁵

5 Judgment of the Constitutional Court of Russia, 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).

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.⁶ This is an important decision of the Constitutional Court which we will refer to throughout the Guide. However, despite this decision, we explain in this Guide that Russian law and policy does not provide protection in practice against discrimination.

Other domestic laws

Many laws prohibit discrimination in terms similar to Article 19. They do not expressly protect LGBT+ persons but they refer to protection offered to “*social groups*” or in relation to “*other circumstances*” which can be interpreted to include LGBT+ persons. For example:

- 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”.⁷
- 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”.

International law

There is **no** international human rights treaty that specifically addresses discrimination against LGBT+ persons. However, there is **important protection** for LGBT+ persons in some of the international human rights treaties.

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).

⁶ This statement is current as at September 2016. For further information, see Equal Rights Trust, *Justice or Complicity?, LGBT Rights in the Courtroom*, 2016, p. 33.

⁷ 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).

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 however.

Russia has three types of obligations when it ratifies a human rights treaty:⁸

- To **respect** rights – to refrain from interfering with or limiting the enjoyment of human rights. For example: by ensuring that laws are not discriminatory and by providing legal recognition of same-sex relationships, equal rights of same-sex couples to adopt, and legal recognition of a person's preferred gender without requiring medical procedures.
- To **protect** rights – to protect individuals and groups against human rights abuses. For example: prohibiting discrimination based on sexual orientation and gender identity in employment, education, healthcare and identification.
- 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 LGBT+ persons.

Does international law apply to me as a service provider?

If you are a government employee or official, the government can be held accountable for your actions in your official capacity.

If you own, run or work in a private business, international law does not apply to you directly, but the government should establish laws to protect the rights guaranteed in international law. As a result, where international and regional laws are in place, they will be relied upon by courts when interpreting national law and government may be instructed to bring national law into line with these standards.

⁸ See Office of the High Commissioner for Human Rights (OHCHR), *International Human Rights Law*, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.

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 of government employees. If a state fails to take positive action to ensure individuals can enjoy the human rights in an international treaty, a state may be found to be in breach of its international law obligations.⁹

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

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 rights to equality and non-discrimination are protected in the ICCPR as **stand-alone** rights in Article 26. 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 or social origin, property, birth or other status”.

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.¹⁰

9 Human Rights Committee (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.

10 See OHCHR, *Human Rights Treaty Bodies – Individual Communications*, available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#overviewprocedure>.

The Constitutional Court held that Russia is under an obligation to implement in good faith the views of the HRC regarding complaints against Russia.¹¹ 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 of the 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”.

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 work.

Other international mechanisms

In June 2016, the UN Human Rights Council created the position of UN Independent Expert on Sexual Orientation and Gender Identity.¹² The Independent Expert is responsible for assessing the implementation of existing international human rights instruments, identifying both best practices and gaps, and engaging in dialogue with states and other relevant stakeholders.¹³

Regional legal mechanisms

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

Article 14 of the ECHR protects the right to **non-discrimination in the exercise of other rights** in the ECHR. It does not protect the rights to equality and non-discrimination as free-standing rights. It provides:

The enjoyment of the rights and freedoms set forth in this Convention 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.

11 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).

12 Human Rights Council, *Resolution adopted by the Human Rights Council 30 June 2016, protection against violence and discrimination based on sexual orientation and gender identity*, UN Doc. A/HRC/RES/32/2, 15 July 2016.

13 OHCHR, *Independent Expert on sexual orientation and gender identity*, available at: <http://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/Index.aspx>.

The **protected grounds** of discrimination do not expressly include sexual orientation or gender identity. However, the European Court of Human Rights (ECtHR) has confirmed that sexual orientation,¹⁴ and gender identity¹⁵ are protected grounds of discrimination under the term “other status”.

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.¹⁶

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.

14 ECtHR, *Salgueiro da Silva Mouta v Portugal*, Application No. 33290/96, 21 December 1999.

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

16 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).

Part Four: Key Human Rights Issues That Affect LGBT+ Persons in Russia

Part Four (a) Hate-motivated Crime and Violence

This Part will tell you about:

- What is a hate-motivated crime? What is a hate-motivated crime against an LGBT+ person?
- Is the Government responsible for hate-motivated crimes if they are committed by private individuals?
- What are the police required to do if a person reports that they have been attacked due to their sexual orientation or gender identity?

The Government has special obligations to prevent hate-motivated crime and violence, including where such actions target people due to their sexual orientation or gender identity.

What is hate-motivated crime and violence?

Hate-motivated crime and violence is any illegal act which is perceived by the victim or any other person to be motivated by hostility or prejudice based on a person's identity. For LGBT+ people, this includes being exposed to homophobic, bi-phobic or transphobic abuse or physical assault because of their sexual orientation or gender identity.

How is equality relevant to this issue?

LGBT+ individuals require particular protection from hate motivated crime and violence, as it has been well documented that those with minority sexual orientations and/or gender identities experience a higher risk of being targeted.¹⁷

Hate-crime against LGBT+ persons is rarely prosecuted in Russia because:

- victims of hate-crime are reluctant to approach law enforcement because they fear embarrassment or ill-treatment; and
- when complaints are made, police and prosecutors often fail to prosecute crimes against LGBT persons or do not properly investigate the 'hate' or discriminatory element of the crime.

¹⁷ 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.

Both the HRC and the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Committee Against Torture) have reported concern about reports of discrimination, hate speech and violence against LGBT individuals and activists and a failure by Russia to investigate and prosecute.¹⁸

The Committee Against Torture also recommended that Russia:

- compile statistics on all crimes against members of vulnerable groups, including figures on the investigation and prosecution of such crimes;
- publicly condemn attacks against LGBT persons; and
- organise awareness-raising campaigns, including among the police, promoting tolerance and respect for diversity.¹⁹

How does the law protect LGBT+ people?

Domestic law

The Criminal Code of the Russian Federation contains certain provisions for tackling hate motivated crime and violence: Article 63(1) (e) of the Code contains a list of aggravating factors for crimes which will attract harsher punishment. This list includes hate crimes against “social groups”. As indicated in Part Three above, the Constitutional Court has confirmed that Article 19 of the Constitution protects “social groups”, such as those of a particular sexual orientation, from discrimination.²⁰

Under the Code the prescribed minimum sentence (or penalty) for certain crimes is also increased if held to be a hate crime against a social group, such as: murder (Article 105); deliberate infliction of bodily harm (Articles 111, 112 and 115); battery (Article 116); torture (Article 117); threat of murder or infliction of grave bodily harm (Article 119); involvement of minors into commission of a crime (Article 150); and vandalism (Article 214).

Regional law

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

18 HRC, *Concluding Observations: Russian Federation*, UN Doc. CCPR/C/RUS/CO/7, 28 April 2015, Para 10; Committee Against Torture, *Concluding Observations: Russian Federation*, UN Doc. CAT/C/RUS/CO/5, 11 December 2012, Para 15.

19 *Ibid.*

20 Judgment of the Constitutional Court of Russia, 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).

The ECtHR has found that hate-motivated crime and violence against LGBT+ persons on the ground of their sexual orientation or gender identity can breach Article 3 and the protection of non-discrimination under Article 14.²¹

Conduct committed by either private individuals or state officials falls within the scope of state's obligations under Article 3.²² 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.

Conduct may amount to “degrading treatment” under Article 3 if it:

- “causes in its victim feelings of fear, anguish and inferiority”;
- “humiliates or debases an individual”;
- “breaks the person’s physical or moral resistance or drives him or her to act against his or her will or conscience”; or
- “if it shows a lack of respect for, or diminishes, human dignity”.²³

Russia has an **obligation** to protect citizens against conduct that meets the definition of Article 3.²⁴ This obligation extends to the protection of LGBT+ persons against hate-crime that targets them due to their sexual orientation or gender identity.²⁵

Russia also has an obligation to conduct **an effective investigation** into conduct that is alleged to breach Article 3 of the 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 possible homophobic motives behind the attack.

The ECtHR has held that if the police or state prosecutors fail to appropriately identify hate motivated crime, the state may violate not only Article 3 of the ECHR but also Article 14 of the ECHR on the basis that the failure to adequately investigate the ‘hate motive’ is discriminatory. The discriminatory elements of hate crimes must be recognised and treated differently from ordinary crimes.²⁶

21 ECtHR, *Factsheet – Sexual orientation issues*, February 2017, available at: http://echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf.

22 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, 1465 U.N.T.S. 85, 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”.

23 ECtHR, *M.C. and A.C. v Romania*, Application No. 12060/12, 12 April 2016, Paras 107–108.

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

25 ECtHR, *Identoba and Others v Georgia*, Application No. 73235/12, 12 May 2015.

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

Examples of conduct that breaches Articles 3 and 14 of the ECHR:

ECtHR, M.C. and A.C. v Romania, Application No. 12060/12, 12 April 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, the entire investigation lasted 6 years, and 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 in combination. 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, Identoba and Others v Georgia, Application No. 73235/12, 12 May 2015

The victims suffered physical assault, serious threats and homophobic abuse committed by the mob at the rally. The victims filed reports about the attack the day after the incident. The Court held that attack “aroused in [the victims] feelings of fear, anguish and insecurity ... which were not compatible with respect for their human dignity” and amounted to a violation of Article 3 in conjunction with Article 14 of the Convention.

The ECtHR also found that the authorities violated Article 3 and 14 in respect of the investigation. The Court found that no meaningful action had been taken with respect to the investigation within two years, and the authorities had failed to investigate the homophobic motives underpinning the attack, but rather had artificially separated the attack into separate investigations. The Court awarded between EUR 4,000 – 2,000 to the individual applicants in damages.

International law

International Covenant on Civil and Political Rights

Under the ICCPR, hate-motivated crime and violence against LGBT+ persons 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), security of the person (Article 9) and non-discrimination (Article 26).

States have an obligation under Article 6 to protect life,²⁷ including by preventing, punishing, investigating and redressing deprivations of life and other acts of violence.

As noted below in respect of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), hate-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.²⁸

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.²⁹ States have an obligation to “protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors”.³⁰ This includes: taking “measures to prevent future injury 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”.³¹

The HRC has noted that, in accordance with their obligation to provide protection from discrimination under Article 26, states should enact legislation addressing hate crimes committed on the grounds of sexual orientation and gender identity,³² ensure that such crimes are fully investigated and that LGBT+ persons have access to justice.³³

Convention against Torture

If hate-motivated crime or violence against an LGBT+ person is committed by a public official, such as a prison officer or police officer, this may constitute torture or other

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

28 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.

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

30 *Ibid.*, Para 9.

31 *Ibid.*

32 HRC, *Concluding Observations: United States of America*, UN Doc. CCPR/C/USA/CO/3, 15 September 2006, Para 25; Human Rights Committee, *Concluding Observations: Uzbekistan*, UN Doc. CCPR/C/UZB/CO/3, 7 April 2010, Para 22.

33 HRC, *Concluding Observations: Mongolia*, UN Doc. CCPR/C/MNG/CO/5, 25 March 2011, Para 9; Human Rights Committee, *Concluding Observations: Mexico*, UN Doc. CCPR/C/MEX/CO/5, 17 May 2010, Para 21.

ill-treatment, as prohibited by the 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.³⁴ However, it is important to remember that Russia has not ratified the Optional Protocol to the CAT so it is not possible to make an individual complaint about breaches of the CAT.

Part Four (b) "Hate speech" against LGBT+ Individuals

This Part will help you to understand:

- What is "hate speech"?
- What is the difference between hate speech and speech which is simply offensive or unpleasant?
- Am I free to say whatever I like about LGBT+ persons? What are the limits on freedom of speech to protect LGBT+ persons?

In Part 4(c) below, we discuss the right to freedom of expression – the right which protects our ability to say, write or express our views and opinions. There are very few circumstances in which it is permissible to limit freedom of expression, but one such circumstance is in the case of speech which puts other people at risk of violence or other rights violations.

LGBT+ persons can be the targets of speech which incites others to commit violence, other crimes or discrimination against them. Speech which intentionally incites others to commit violence or discrimination and which creates the real and imminent risk of doing so should be prohibited by law.

Domestic law

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

Regional law

The ECtHR has approached the issue of hate speech in two ways:

- Hate speech may be lawfully prohibited on the basis of Article 17 of the ECHR. Article 17 provides that the Convention cannot be interpreted as giving any "group or per-

³⁴ Committee Against Torture, *General Comment No.2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Paras 15–19.

son 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) of the ECHR, which provides the right to freedom of expressions and is discussed further under Part 4(c) below, if the restriction on hate speech is provided by law, achieves the legitimate aim of protecting the rights of LGBT+ persons (or another legitimate aim), and is necessary in a democratic society.

VEJDELAND AND OTHERS V SWEDEN³⁵

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”.³⁶ The Court held that the applicants’ conviction pursued the legitimate aim of protecting “the reputation and rights of others”, namely the rights of namely LGBT+ persons, under Article 10(2) ECHR.³⁷ 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.³⁸ In reaching this conclusion, the Court stressed that “discrimination based on sexual orientation is as serious as discrimination based on “race, origin or colour””.³⁹ 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

Unlike the ECHR, the Article 20(2) of the ICCPR expressly prohibits hate speech. It defines hate speech as “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

The **threshold for hate speech under Article 20(2) is high**: it requires incitement to discrimination, hostility or violence. To understand this threshold, it is useful to consider how the language of Article 20(2) of the ICCPR should be interpreted:

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

36 *Ibid.*, Para 54.

37 *Ibid.*, Para 49.

38 *Ibid.*, Para 59.

39 *Ibid.*, Para 55.

- “Advocacy” should be understood as an intention to promote hatred publicly towards the target group.⁴⁰
- “Hatred” and “hostility” should be understood as referring to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.⁴¹
- “Incitement” should be understood as statements “which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups”.⁴²

Thus, “hate speech” does not refer to remarks that are generally unpleasant or insulting; it must advocate hatred to the extent that it can provoke discrimination, hostility or violence.

Importantly, advocacy of hatred on the grounds of sexual orientation or gender identity is not expressly prohibited under Article 20(2). The HRC has not discussed whether the prohibition should be interpreted to include sexual orientation and gender identity. However, there is some indication that UN mechanisms are recognising the need to protect LGBT+ persons from hate speech.⁴³

Practical exercise

To understand whether a particular hate speech law is too restrictive, consider the following:⁴⁴

- Does the hate speech law penalise a statement that 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.*

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

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

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

43 Article 19, Responding to Hate Speech against LGBTI People, October 2013, p. 12 and the discussion of HRC comments therein.

44 Based on 2001 joint statement by the UN, OSCE and OAS Special Mandates on the right to freedom of expression and hate speech laws, available at: <https://www.article19.org/pages/en/hate-speech-more.html>.

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

This Part will tell you about issues such as:

- What are the rights to freedom of expression, assembly and association?
- What are the permissible limits on these rights?
- Can the Government ban a Gay Pride march on the grounds of public safety?
- Do LGBT+ persons have the right to make statements, publish articles and display posters about LGBT+ issues?
- What are the “anti-propaganda” laws?

In this part, we will outline how the rights to freedom of expression, freedom of assembly and freedom of association are protected under domestic, regional and international law, and the very limited circumstances in which the Government is permitted to restrict these rights.

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. It has been described as one of the “essential foundations of a democratic society”⁴⁵ 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 sexual orientation or gender identity. Discriminatory denial or restriction of the

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

rights to freedom of expression, assembly and association on the basis of sexual orientation or gender identity 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.⁴⁶

Notwithstanding Russia's obligation to afford the rights enumerated in the ICCPR, 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.⁴⁷

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity ("Yogyakarta Principles") were developed by a group of international human rights experts in 2006.⁴⁸ The Principles set out relevant international human rights law standards which must be guaranteed without discrimination on the basis of sexual orientation and gender identity, and in addition apply these standards to specific issues related to sexual orientation or gender identity. The Principles aim to provide "a universal guide to human rights which affirm binding international legal standards with which all States must comply".

Principle 20 of the Yogyakarta Principles provides that:

Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities.⁴⁹

We will consider two case-studies to consider the interaction between the right to equality and the rights to freedom of expression, assembly and association:

- **Anti-propaganda laws:** Can the state prevent LGBT+ persons from speaking about their sexual orientation on the grounds of "public health or morals"?
- **Gay pride march:** When can the right to freedom of assembly be limited on the grounds of public safety?

We will then address the issue of hate speech and consider whether the state can prevent members of the public from making homophobic or transphobic statements against LGBT+ persons.

⁴⁶ 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, 14 April 2014, Paras 18, 27 and 28.

⁴⁷ 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.

⁴⁸ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2008, available at: <http://www.yogyakartaprinciples.org>.

⁴⁹ *Ibid.*

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”.

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.
- 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

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.

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

Under Article 55(3), 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 consti-

tutional 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, 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).

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.⁵⁰ The requirement of proportionality means that a restriction “must not be overbroad”.⁵¹ The restriction “must be the least intrusive instrument amongst those which might achieve their protective function” and “proportionate to the interest to be protected”.⁵²

⁵⁰ ECtHR, *Sunday Times v UK (no. 2)*, Application No. 13166/87, 24 October 1991.

⁵¹ HRC, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 2011, Para 34.

⁵² *Ibid.*, citing HRC, *General Comment No. 27, Freedom of Movement (Art.12)*, UN Doc. CCPR/C/21/Rev.1/Add.9, 1999, Para 14.

Below we will consider three scenarios in which Russia has claimed it has a “legitimate aim” when restricting the rights of LGBT+ persons.

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.⁵³

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”.⁵⁴ Principle 19(d) of the Yogyakarta Principles expands further upon the guidance provided by the HRC and provides that:

[N]otions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities.

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.

Decision of UN Human Rights Committee on Russia’s anti-propaganda laws

Since 2006, thirteen 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 to 2,000 roubles”.⁵⁵ In 2013, a ban was introduced into the federal law. LGBT+ activists have sought remedy from the courts.

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

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

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

IRINA FEDOTOVA V RUSSIAN FEDERATION (2012)⁵⁶

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 Court⁵⁷ and the Constitutional Court⁵⁸ 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”.⁵⁹ 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.⁶⁰

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 of the 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”.⁶¹ It found that the Russian Federation advanced no reasonable and objective criteria to justify imposing a ban on “propaganda of homosexuality” but not a ban on sexuality more broadly.⁶² 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”.

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

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

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

59 *Ibid.*

60 *Ibid.*

61 HRC, *Irina Fedotova v Russian Federation*, Communication No. 1932/2010, UN Doc. CCPR/C/106/D/1932/2010, 19 November 2012, Paras 10.5 and 10.8.

62 *Ibid.*, Para 10.6.

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 challenging refusals to permit public assemblies organised by LGBT persons. For further details, please see *Justice or Complicity?*, Part 2.3.4. It recognised that “public order” is often used as an excuse when in fact the real motive for banning assemblies is a discriminatory one. Accordingly, such claims by the state authorities must be strictly scrutinised.

Decision of the European Court of Human Rights on the ban of gay pride marches

ALEKSEYEV V RUSSIA⁶³

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”.⁶⁴

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.⁶⁵

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”.⁶⁶ 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”.⁶⁷

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

64 *Ibid.*, Para 78.

65 *Ibid.*, Para 77.

66 *Ibid.*, Para 81.

67 *Ibid.*, Para 82.

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).

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

This Part will discuss questions such as:

- What is the right to privacy, and what is the right to a family life?
- What human right enables same-sex couples to have their relationships legally recognised?
- Do same-sex couples have the right to adopt children in Russia?
- Does a transgender person have the right to have their gender identity legally recognised?

For LGBT+ persons, there is little protection for the right to respect for private and family life under Russian law, but there are important protections for this right under international and regional law.

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.

How does the law protect this right?

Domestic law

There is no overarching protection of the right to private and family life in the Constitution. 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 of the ECHR provides:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Thus, Article 8(2) indicates that the right to respect for private and family life is *not* absolute, and can be limited by the state in certain circumstances.

Article 12 of the ECHR provides:

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

Article 17 of the ICCPR provides:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

Thus, Article 17(1) indicates that it is possible to limit the right to privacy and family if the measure is “lawful” and “not arbitrary”.

Article 23 of the ICCPR provides:

1. *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
2. *The right of men and women of marriageable age to marry and to found a family shall be recognized.*

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.⁶⁸ No alternative forms of legal recognition of relationships – such as civil partnership – are available in Russia.

The lack of any legal recognition of same-sex relationships means LGBT+ couples cannot access the significant rights and benefits 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 laws,⁶⁹ and to benefit from certain tax privileges.⁷⁰ People in same-sex relationships cannot obtain medical information about their partner⁷¹ or attend as next-of-kin in an emergency room in hospital.⁷² In addition, they cannot access assisted reproductive technologies as a couple, an option open only to different-sex couples.⁷³

Regional law

The right to marry is not currently guaranteed for same-sex couples under the ECHR. However, the European Court 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.⁷⁴

In *Oliari and Others v Italy*, the court held that, in order to comply with Article 8 of the ECHR, states must ensure that there is some form of legal recognition for same-sex relationships

68 Decision of the Constitutional Court, 17 May 1995, No. 26-0; Decision of the Constitutional Court of Russia, 16 November 2006, No. 496-0.

69 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).

70 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.

71 In accordance with Article 22(3) of 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.

72 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”).

73 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 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”.

74 European Court of Human Rights, *Oliari and others v Italy*, Application Nos. 18766/11 and 36030/11, 21 July 2015.

available, which provides “for the core needs relevant to a couple in a stable committed relationship”.⁷⁵ 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.⁷⁶ The Court did not venture a view on whether such an interest could ever outweigh the importance of relationship recognition. It is difficult to imagine an interest of this type 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. As of February 2017, thirteen member states of the Council of Europe had recognised same-sex marriage.⁷⁷

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 of the ICCPR neither prevents nor requires states to legislate for same-sex marriage.⁷⁸ The UN Committee on Economic, Social and Cultural Rights has called on states to provide legal recognition of same-sex relationships,⁷⁹ 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”.⁸⁰

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*.

Case study 2: Adoption

There are three different situations in which LGBT+ persons may consider adoption:

- an LGBT+ individual adopting on their own;
- an LGBT+ individual wishing to adopt their same-sex partner’s biological child (referred to as second-parent adoption); and
- a same-sex couple wishing to adopt a child together.⁸¹

75 *Ibid.*, Para 172.

76 *Ibid.*, Para 185.

77 Muižnieks, N., “Access to same-sex partnerships: it’s a question of equality”, Council of Europe, 21 February 2017, available at: <http://www.coe.int/be/web/commissioner/-/access-to-registered-same-sex-partnerships-it-s-a-question-of-equality>.

78 Human Rights Committee, *Joslin v New Zealand*, Communication No. 902/1999, UN Doc. A/57/40, 17 July 2002, Para 8.2.

79 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, 4 May 2015 Para 67.

80 M. Nichols, ‘U.N. chief calls U.S. gay marriage ruling ‘great step forward’ for rights’ *Reuters*, 26 June 2015.

81 ECtHR, *X and Others v Austria*, Application No. 19010/07, 19 February 2013, Para 100.

International best practice outlined in Principle 24 of the Yogyakarta Principles is that “everyone has the right to found a family, regardless of sexual orientation or gender identity”. For detailed discussion of this topic, we refer you to Part 2.5.3 of *Justice or Complicity*.

Domestic law

Under Russian law, adoption is aimed at providing care for children left without parental custody.

While the law does not prohibit LGBT+ individuals from adopting, the circumstances in which this is possible are highly restricted.

Article 127(4) of the Family Code explicitly prohibits joint adoption by couples who are not married. This automatically excludes same-sex couples as they cannot be legally married in Russia.

The Family Code does allow for adoptions to be made by individuals.⁸² However, again the possibilities for same-sex couples are highly restricted. Under Article 137 of the Family Code, the only way a person could adopt his or her same-sex partner’s biological child is as a single adoptive parent i.e. if their partner, the biological parent, gives up their parental rights and responsibilities.

Regional law

The ECtHR has held that, where a state provides adoption rights, those rights must be available without discrimination on the grounds of sexual orientation. So, if a state allows individuals and couples to adopt, that state must permit LGBT+ individuals and same-sex couples to do so in addition to others. However, the Court has *not* yet held that same-sex couples have an *express* right to adopt a child under Article 8 of the ECHR.

The ECtHR has made the following rulings:

- that a refusal to allow a lesbian to adopt, where the law would have allowed for this possibility except for her sexual orientation, violated Article 14 (the right to non-discrimination) taken in conjunction with Article 8.⁸³
- that a refusal to allow unmarried same-sex couples to undertake second-parent adoption, where the law *allowed* unmarried different-sex couples to do so, violated Article 14 taken in conjunction with Article 8.⁸⁴
- that a law prohibiting second-parent adoptions for all unmarried couples did not violate Article 14 as there was no difference in treatment between unmarried same-sex couples and unmarried different-sex couples.⁸⁵

⁸² The Family Code of the Russian Federation, Article 127(1).

⁸³ ECtHR, *E.B. v France*, Application No. 43546/02, 22 January 2008, Paras 94–98.

⁸⁴ ECtHR, *X and Others v Austria*, Application No. 19010/07, 19 February 2013, Paras 112, 116, 130, 195.

⁸⁵ ECtHR, *Gas and Dubois v France*, Application No. 25951/07, 15 March 2012, Paras 69.

International law

There is no express provision under international law for adoption by same-sex couples.

Article 21 of the Convention on the Rights of the Child (CRC) states that in any system of adoption the “best interests of the child” is the paramount consideration. The Committee on the Rights of the Child has indicated that the concept of the “best interests” of a child is a “complex” one, and that evaluating what is in the best interests of the child “must be determined on a case-by-case basis”.⁸⁶ Separately, the Committee has indicated that it is “hard to argue for a single notion of the family”.⁸⁷ Thus, the Committee leaves open the possibility of a range of models of adoption, implicitly including LGBT+ relationships.

In this connection, it is relevant to note that Article 2 of the CRC provides that the best interests of the child must be respected without any discrimination on the basis of a parent’s “status”, which the Committee on the Rights of the Child has interpreted to include a parent’s sexual orientation and gender identity.⁸⁸

The Equal Rights Trust considers the decision by South Africa’s Constitutional Court in the case of *Du Toit and Another v Minister of Welfare and Population Development and Others*⁸⁹ to be an example of best practice on this issue. In this case, the applicants were partners in a long-standing lesbian relationship who wanted to adopt two children, but were unable to do so jointly because the legislation limited the right of joint adoption to “a husband and his wife jointly”.⁹⁰ The Constitutional Court found that the relevant legal provisions breached the prohibition on discrimination in Article 9(3), stating:

*The unfair effect of the discrimination is squarely founded on an intersection of the grounds upon which the applicants’ complaint is based: the applicants’ status as unmarried persons which currently precludes them from joint adoption of the siblings is inextricably linked to their sexual orientation. But for their sexual orientation which precludes them from entering into a marriage, they fulfil the criteria that would otherwise make them eligible jointly to adopt children in terms of the impugned legislation.*⁹¹

The Court also held that exclusion from joint adoption of otherwise qualified same-sex partners had the effect of “depriv[ing] children of the possibility of a loving and stable family life as required by section 28(1)(b) of the Constitution”.⁹² As such, the Court held that the provisions were also inconsistent with the principle in section 28(2) of the Constitution

86 Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, UN Doc. CRC/C/GC/14, 29 May 2013, Para 32.

87 Committee on the Rights of the Child, *Conclusions and Recommendations Adopted by the Committee on the Rights of the Child*, UN Doc. CRC/C/34, 8 November 1994, Para 190-1.

88 Committee on the Rights of the Child, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, UN Doc. CRC/C/GC/15, 17 April 2013, Para 8.

89 Constitutional Court of South Africa, *Du Toit and Another v Minister of Welfare and Population Development and Others*, 2003 4 CHRLD.

90 *Ibid.*, Para 9.

91 *Ibid.*, Para 26.

92 *Ibid.*, Para 21.

that the best interests of a child are of “paramount importance” in every matter concerning the child.”⁹³

Case study 3: Legal recognition of gender identity for trans individuals

Legal recognition of gender identity means that a person has a right to have their gender identity recorded in official documents such as birth certificate. It is an aspect of the right to gender recognition, which is an aspect of the right to a private life. Legal recognition of gender identity is a crucial issue for trans individuals, as “each person’s self-defined sexual orientation and gender identity is integral to their personality”.⁹⁴ A person’s legal gender impacts on their ability to access gender specific services, to marry or to adopt children. Accordingly, ensuring that it is correct is fundamental.

International best practice requires that:

- an individual has the right to identify as a particular gender and to have that gender legally recognised;⁹⁵ and
- legal recognition must not be conditional on any form of medical intervention, but rather be based on a person’s self-identification.⁹⁶

Domestic law

The Federal Law “On Civil Status Acts” allows a person to change their legal gender following the presentation of “a medical certificate about change of sex”.⁹⁷ This is not consistent with international best practice as it does not allow legal recognition of gender identity on the basis of self-identification. However, it also does not oblige persons to undergo surgical procedures, which is to be welcomed.

That said, legal recognition of gender identity is an uncertain process. A study conducted by the Transgender Legal Defence Project in 2012 revealed that there is no uniform approach to the specific requirements for the legal recognition of gender change.⁹⁸ An individual’s

93 *Ibid.*, Para 22.

94 Principle 3 of the Yogyakarta Principles.

95 *Goodwin v the United Kingdom* [GC], Application No. 28957/95, ECHR 2002-VI; *Van Kück v Germany*, Application No. 35968/97, ECHR 2003-VII.

96 Commissioner for Human Rights of the Council of Europe, *Human Rights and Gender Identity*, 29 July 2009, available at: <https://wcd.coe.int/ViewDoc.jsp?p=&id=1476365&direct=true>; see also: the decision by the Constitutional Court in Germany which found that gender reassignment surgery is a “massive impairment of physical integrity” and ruled that the requirement that individuals undergo sex reassignment surgery to obtain legal recognition of their new gender was unconstitutional. Federal Constitutional Court (Bundesverfassungsgericht), “Prerequisites for the statutory recognition of transsexuals according to § 8.1 nos. 3 and 4 of the Transsexuals Act are unconstitutional, Order of January 11, 2011” Press release no. 7/2011, January 28, 2011, 1 BvR 3295/07 (German only), http://www.bundesverfassungsgericht.de/entscheidungen/rs20110111_1bvr329507.html; see also decision of the Austrian Administrative High Court which also ruled that mandatory surgical intervention as a condition for the legal recognition of gender identity was unlawful; Verwaltungsgerichtshof of no. 2008/17/0054, judgment of February 27, 2009, http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2008170054_20090227X00.

97 Federal Law on Civil Status Acts of 15 November 1997, No. 143-FZ.

98 Kirichenko, K., “Change of Legal Gender of Citizens in Russian Judicial Practice”, *Medical Law*, Vol. 3, 2012, pp. 24–34 (Кириченко К.А. Изменение гражданского пола граждан в российской правоприменительной практике // Медицинское право. 2012. N 3. С. 24 – 34).

application will depend on the region in which they live, and the approach of staff at local civil registry offices or the Russian courts.⁹⁹ In some regions, civil registry offices state that they require a medical certificate of “diagnosed transsexuality”, together with a medical report stating the need for a “gender marker” change,¹⁰⁰ whereas others state that proof of irreversible gender reassignment surgery is needed.¹⁰¹

Regional and international law

At the international level, this topic is only recently becoming a subject of focus. However, in 2008, the Human Rights Committee emphasised that trans persons must be afforded the right to have their birth certificates amended or reissued to show their correct gender identity.¹⁰²

At the regional level, the ECtHR has held that gender identity is a “fundamental aspect of the right to respect for private life”.¹⁰³ The Court has noted that states are required to ensure recognition and protection of transgender persons’ rights under Article 8 of the Convention.¹⁰⁴ In *L. v Lithuania* the Court explained that Article 8 of the Convention required States “to implement the recognition of the gender change in post-operative transsexuals through, *inter alia*, amendments to their civil-status data, with its ensuing consequences.”¹⁰⁵ The Court has not, to date, found that requiring individuals to undergo medical intervention to obtain legal recognition of their gender is unlawful. However, this is likely to change. As at March 2017, there are currently two pending cases before the ECtHR which concern the ability of individuals to secure recognition of their gender identity in the absence of gender reassignment surgery.¹⁰⁶ For further information on this topic, we refer you to Part 2.5.4 of *Justice or Complicity*.

Case study 4: Parental rights and gender reassignment

The parental rights of transgender persons is an important human rights issue. International best practice provides that a person’s trans status should *not* affect their right to found a family and maintain relationships with their children. This is articulated in Principle 24 of the Yogyakarta Principles:

99 *Ibid.*

100 “Gender marker” in this context connotes the identification of “male” or “female” in Russian identity documents such as passports.

101 Kirichenko, K., “Change of Legal Gender of Citizens in Russian Judicial Practice”, *Medical Law*, Vol. 3, 2012, pp.24–34 (Кириченко К.А. Изменение гражданского пола граждан в российской правоприменительной практике // Медицинское право. 2012. N 3. С. 24 – 34).

102 Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Ireland*, UN Doc CCPR/C/IRL/CO/3, 30 July 2008, Para 8.

103 *Ibid.*, *Van Kück v. Germany*, Para 75; ECtHR, *L. v Lithuania*, Application No. 27527/03, 31 March 2008.

104 *Ibid.*; see also ECtHR, *Grant v. the United Kingdom*, no. 32570/03, ECHR 2006-VII.

105 *Ibid.*; see *L. v Lithuania* above, note 34, Para 56. See also, ECtHR, *Hämäläinen v Finland*, Application No. 37359/09, 16 July 2014, Para 68.

106 ECtHR, *A.P. v France*, Application No. 79885/12 Communicated Case, 18 March 2015, available at: <http://hudoc.echr.coe.int/eng?i=001-153722>; ECtHR *Garçon v France*, Application No. 52471/13, Communicated Case, 18 March 2015, available at: <http://hudoc.echr.coe.int/eng?i=001-153718>; ECtHR, *Nicot v France* Application No. 52596/13 Communicated Case, 18 March 2015, available at: <http://hudoc.echr.coe.int/eng?i=001-153720>; and *S.V. v Italy*, Application No. 55216, Communicated Case, 20 March 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-161936>.

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

Domestic law

Russian law does not currently require children to be removed from parental custody on the basis that their parent or guardian is trans. However, the authorities and courts have considered a parent's trans status when assessing the "best interests" of the child. We refer you to the case law reviewed in Part 2.5.5 of *Justice or Complicity* for a full discussion of the relevant jurisprudence.

Regional and international law

Unfortunately, there has been little international case law on this topic to date and regional law has not yet provided clear guidance. While there is some case law of the ECtHR, the individual facts of the cases do not enable more general guidance to be easily drawn. A discussion of this case law is available in Part 2.5.5 of *Justice or Complicity*.

While the "best interests of the child" are paramount in any cases relating to parental rights, it is the Trust's view that, in order to comply with the right to non-discrimination in the area of family life, assessments about what does and does not constitute the best interests of the child must be closely scrutinised to ensure that stereotypes and prejudices about a parent's sexual orientation or gender identity are not considered.

Part Four (e) Employment, Healthcare and Education

This Part will tell you about:

- What are the rights to work, to health and to education?
- How does the right to non-discrimination apply in the areas of employment, healthcare and education?
- As an employer, what are my obligations not to discriminate against LGBT+ persons?
- As a teacher, what forms of discrimination affecting LGBT+ students should I be aware of and how should I act to prevent these?
- As a healthcare provider, what forms of discrimination do LGBT+ persons face when accessing health care?

As an employer or a service provider working in the fields of healthcare or education, you need to be aware of the human rights issues that LGBT+ persons face in these areas and your obligations to treat LGBT+ persons equally and fairly.

Both Russian and international law provide protections from discrimination in the areas of employment, healthcare and education in two different ways. First, as noted in Part Three of the Guide, both Russian and international law provide “freestanding” or “autonomous” rights to non-discrimination, which apply in a wide range of situations and circumstances, including in the areas of employment, healthcare and education. Second, both Russian and international law guarantee economic and social rights, such as the right to work and the right to education, and guarantee non-discrimination in the enjoyment and exercise of these rights. There is also some protection at the regional level.

Domestic law

As noted in Part Three above, Article 19 of the Russian Constitution guarantees the right to equality, providing protection from discrimination on a wide range of grounds, including an open-ended protection from discrimination on “any other circumstance”. The Constitutional Court has confirmed that Article 19 protects social groups such as those of a particular sexual orientation.¹⁰⁷ 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.¹⁰⁸

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 LGBT+ persons but they refer to protection offered to “*social groups*” or in relation to “*other circumstances*” which can be interpreted to include LGBT+ persons. 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, laws on healthcare and provisions of the Criminal Code. For a detailed summary of these laws, we refer you to Part 1.7.5.3 of *Justice or Complicity*. In addition to these guarantees of equal treatment and non-discrimination, Russian law provides specific economic and social rights, such as a right to work, which is protected by Article 37 of the Constitution. Article 19 of the Constitution guarantees equality in the enjoyment of all rights.

International and regional law

As noted above, Article 26 of the ICCPR requires states to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”. This is a right to non-discrimination which does not depend on another right.¹⁰⁹ 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.

Separately, ICESCR guarantees the rights to work, to the highest attainable standard of health and to education. Under Article 2(2) of the ICESCR, state parties commit to guarantee the enjoyment of these rights without any discrimination.

¹⁰⁷ Judgment of the Constitutional Court of Russia, 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).

¹⁰⁸ This statement is current as at September 2016. For further information, see Equal Rights Trust, *Justice or Complicity? LGBT Rights in the Courtroom*, 2016, p. 33.

¹⁰⁹ HRC, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 1989, Para. 12.

Both the HRC and the Committee on Economic, Social and Cultural Rights (CESCR) have confirmed that sexual orientation and gender identity are protected grounds of discrimination in respect of Articles 2 and 26 ICCPR and Article 2(2) ICESCR.¹¹⁰ In addition, the CESCR has confirmed that Article 2(2) entails protection from both direct and indirect discrimination, and harassment, while the HRC has confirmed that the non-discrimination guarantee in the ICCPR covers treatment which has both the purpose and effect of discriminating.

Importantly, while the Constitution provides that treaties that Russia has ratified are part of domestic law and so there is some recourse before the domestic courts in respect of the rights they contain, Russia has not ratified the Optional Protocol to the ICESCR. This means that there are no formal international legal channels for challenging breaches of the ICESCR by Russia. There are still advocacy channels for Russian lawyers to use to raise concerns about breaches of the ICESCR. Russia is obliged to report to the CESCR every five years as to its implementations of the obligations provided in the Covenant.¹¹¹ The state report, and alternative reports submitted by other stakeholders such as NGOs, will be examined by the CESCR.

As previously outlined, Article 14 of the ECHR guarantees the right to non-discrimination 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 Russia's ratification of Protocol No.1 to the ECHR) but not in the field of employment and healthcare since these are not Convention rights. Recognising the limitation of the scope of Article 14, Protocol 12 of the ECHR was enacted to provide a self-standing right to non-discrimination which guarantees non-discrimination in the enjoyment of 'any right set forth by law', which could include provisions relating to health and employment.¹¹² As of March 2017, Russia has signed but not ratified Protocol 12 of the ECHR.

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 guarantees of non-discrimination go beyond guaranteeing the same treatment in respect of health, education etc. 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 with an unfavourable impact on a protected group.

¹¹⁰HRC, *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; CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 32.

¹¹¹ OHCHR, "Monitoring the economic, social and cultural rights", available at: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx>.

¹¹² Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol 12, Article 1.

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 of being deprived from opportunities to work.

How is equality relevant to this right?

Discrimination can manifest itself in many ways in the employment sphere. Treating people differently in any of area of employment due to their sexual orientation or gender identity is discriminatory. In addition, treating LGBT+ people in the same way as others, but with an unfavourable impact on their participation in work, may also be discriminatory if it cannot be justified as a necessary and proportionate means of achieving a legitimate aim. In addition to the direct effect of discrimination in employment on a person's right to work, discrimination in employment can prevent people from accessing opportunities and benefits, such as parental leave, health care and insurance, which they are entitled to under their right to work.¹¹³

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 discriminate indirectly against members which do not possess that characteristic. Alternatively, discrimination can occur when making hiring decisions. For example, a job applicant mentions that she has a same sex partner, and despite being the most qualified person for the job, the employer decides not to offer her the job because she is gay. The employer treats the applicant less favourably because of her sexual orientation. This behaviour amounts to direct discrimination on grounds of sexual orientation, regardless of whether the person discriminated against has a protected characteristic or is perceived as having it.

Employers must also make sure that discrimination does not take place in relation to **pay and other working conditions**. Employees have a right to receive equal pay for work of equal value. This include the recognition that work of equal value may be completed in different ways. One employee may for instance need to work part-time on grounds of a protected characteristic. Receiving less money for equal work on grounds of a protected characteristic amount to direct discrimination.

Equally, employers must not discriminate against their employees in relation to decisions on **employment promotion**. Refusing to promote a member of staff on 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

¹¹³ See more at International Labour Organisation (ILO), "Equality and Discrimination", available at: <http://www.ilo.org/global/topics/equality-and-discrimination/lang-en/index.htm>.

members of a protected characteristic to attain 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, discrimination may take the form of harassment where a person engages in unwanted conduct against another person for a reason relating to a protected characteristic. **Harassment in the workplace** may take many forms, including derogatory comments by one staff member to another on the grounds of a protected characteristic, regardless of whether or not the person subjected to this conduct possesses the protected characteristic.

The right to work without discrimination 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.

The right to work without discrimination also extends to decisions to **terminate employment**. An employer may not terminate an employment contract on the grounds of any protected characteristic, including sexual orientation and gender identity. 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 amount to indirect discrimination and can only be justified if they are a necessary and proportionate means of achieving a legitimate aim.

One way that employers can demonstrate that they respect the right to work and the principle of non-discrimination is through implementing equality policies. Providing access to the implemented equality policy on the organisation's website or induction pack for new employees sends a positive signal to anyone who would like to work for the organisation. Such policies should indicate that the organisation seeks a diverse workforce and all eligible applicants are welcome.

Employment policies or practices that discriminate against people because of their 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 their sexual orientation or gender identity, but also maintaining employment conditions which treat LGBT+ persons differently or put them at a disadvantage when compared to others, and denying LGBT+ persons access to employment benefits such as parental leave, health care and insurance.

How does the law protect this right?

Domestic law

As noted above, Article 37 of the Russian Constitution provides for a right to work, and Article 19 provides a right to equal treatment which has been interpreted as providing protection from discrimination on the grounds of sexual orientation.

In addition to these constitutional protections, Article 64 of the Labour Code prohibits discrimination in labour relations. Direct or indirect restrictions and the granting of direct or

indirect advantages in the conclusion of a labour contract are prohibited, if they are 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”. Thus, the list of grounds on which discrimination is prohibited is open-ended. It may be argued for the purposes of Article 64 that sexual orientation or gender identity falls within either “social status” or “factors not connected with the professional qualities of employees”. We refer to the decision of the Constitutional Court, discussed above, which confirmed that Article 19 of the Constitution protects social groups such as those of a particular sexual orientation.¹¹⁴

International law

Article 6 of ICESCR provides for the right to work, defined as follows:

The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 7 of ICESCR further provide guarantees in relation to the conditions of work:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;**
- (b) Safe and healthy working conditions;*
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays*

As noted above, Article 2(2) of ICESCR provides that all 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

¹¹⁴ Judgment of the Constitutional Court of Russia, 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), Para 2.1.

include sexual orientation and gender identity.¹¹⁵ However, it is important to remember that Russia has not permitted individual complaints to be made to CESCR regarding its compliance with ICESCR.

In addition to these protections, as noted above, ICCPR provides a freestanding right to non-discrimination which applies “in any field regulated and protected by public authorities”, including in the area of employment.¹¹⁶

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.¹¹⁷

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.¹¹⁸ Further, it is unlawful to discriminate against a person because of their health status – such as their being HIV positive.¹¹⁹ 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. Any criteria which determines 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. Many organisations have reported that members of the LGBT+ community face a range of barriers to accessing appropriate health care services. The World Health Organisation considers

115 See *inter alia*, International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 6; Committee on Economic, Social and Cultural Rights (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.

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

117 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.

118 *Ibid.*, CESCR, Para 18.

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

that this is due to the “widespread stigma” about sexual orientation and “ignorance about gender identity, both within mainstream society and within health systems”.¹²⁰

The **quality and extent of treatment** a patient receives must not be discriminatory on grounds of a protected characteristic, which would amount to direct discrimination. Health facilities, goods and services must be culturally appropriate, and medical personnel must be adequately trained and skilled to provide quality treatment.

Harassment in relation to health care may occur when medical personnel do not have adequate knowledge of gender identities and the health needs of LGBT+ people which may result in unwanted and disrespectful conduct from medical personnel.

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.

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.

There is no express protection against discrimination in relation to the right to health on the grounds of sexual orientation or gender identity. However, as indicated above, there are a number of laws that contain a non-discrimination clause which may be interpreted to include protection on these grounds due to the protection offered to “social groups” or in relation to “other circumstances”.

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 prohibits discrimination in the provision of health care on a number of grounds, including in relation to “other circumstances”:

The state provides citizens with health care regardless of sex, race, age, ethnicity, language, presence of disorders, conditions, origin, material or official status, place of residence, religious or other beliefs, affiliation with nongovernmental

120 World Health Organization (WHO), *Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people*, 2011 (hereinafter Prevention and Treatment Report), available at: http://www.who.int/hiv/pub/guidelines/msm_guidelines2011/en.

*organisations, or other circumstances. The State guarantees to citizens protection from all forms of discrimination based on the existence of any disorders.*¹²¹

The term “other circumstances” may be interpreted to include protection against discrimination on the grounds of sexual orientation and gender identity. However, there is no specific judicial authority with respect to the Federal Health Care Law at present.

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 sexual orientation, amongst other factors, to prevent him or her from exercising his or her duties to a patient.¹²²
- 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, sexual orientation, marital or family status and socio-economic status.¹²³

In addition, it should be noted that in 2006, the Russian Ministry of Health and Social Development issued Guidelines which stated that respecting a regime of tolerance towards MSM (men who have sex with men) should be a prerequisite for the success of prophylaxis measures aimed at preventing the spread of HIV.

International law

Article 12 of the ICESCR protects the right to health, which is set out as follows:

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
 - (a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
 - (b) *The improvement of all aspects of environmental and industrial hygiene;*

¹²¹ 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).

¹²² 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”).

¹²³ Russian Psychological Society, *The Ethics Code of Psychologists*, 14 February 2012 (Российское психологическое общество, Этический кодекс психологов, принят 14 декабря 2012 года).

- (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
- (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

As a signatory to ICESCR, Russia recognises the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.¹²⁴ The CESCR has interpreted this right to include the following obligations on states parties:¹²⁵

- To **protect** the right to health. This means adopting legislation and other measures to ensure that private actors such as private 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 **respect** the right to health. This means not interfering directly or indirectly with the right to health, for example by imposing discriminatory practices which limit access to services regarding sexual and reproductive health or withholding, censoring or intentionally misrepresenting health information.
- To **fulfil** the right to health. This means ensuring that the right to health 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) of the 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 sexual orientation, gender identity and health status (including HIV/AIDS), among others.¹²⁶

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.¹²⁷

124 ICESCR, Article 12.

125 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.

126 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.

127 ICESCR, Article 13(1).

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.¹²⁸

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”;¹²⁹ as with the rights to work and health discussed above, the right to education must be guaranteed without discrimination, under Article 13 of the ICESCR, read together with Article 2.

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.

Examples of the kinds of discrimination that LGBT+ people face in education are:

- Harassment or bullying because of an individual’s sexual orientation or gender identity by fellow students or teachers;
- Being excluded from social events at school; and
- Activities or policies that are insensitive to a person’s sexual orientation or gender identity, such as policies which do not allow a student to identify with their gender identity.

Studies from around the world have found that LGBT+ children experience a range of different forms of discrimination in the context of education, with harassment, exclusion and exposure to violence being particular problems. For example, LGBT young people in Scotland identified education as the environment in which they felt least protected, resulting in long-lasting negative impacts on their well-being.¹³⁰ A 2010 study in Brazil indicated that teachers and staff did not know how to deal with verbal, psychological and physical violence perpetrated against LGBT students.¹³¹ A report on sexual orientation and gender identity in education in Western Australia found that in schools with protective policies, LGBT+ students were 50 per cent less likely to be physically abused at school, less likely to suffer other forms of homophobic abuse, less likely to self-harm and less likely to attempt suicide.¹³²

128 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.

129 ICESCR, Article 13(1).

130 LGBT Youth Scotland, *Education Report*, 2012, p. 4, available at: https://www.lgbtyouth.org.uk/files/documents/Life_in_Scotland_for_LGBT_Young_People_-_Education_Report_NEW.pdf.

131 Reprolatina, *Estudo qualitativo sobre a homofobia no ambiente escolar em onze capitais brasileiras [Qualitative study on homophobia in the school environment in eleven Brazilian cities]*, 2011, pp. 48–56.

132 Western Australian Equal Opportunity Commission, *Discrimination and bullying on the grounds of sexual orientation and gender identity in Western Australian education*, 2012, p. 11.

How does the law protect this right?

Domestic law

Article 43 of the Russian Constitution confers the right to education as follows:

1. *Everyone shall have the right to education.*
2. *General access and free pre-school, secondary and secondary vocational education in State and municipal educational institutions and enterprises shall be guaranteed.*
3. *Everyone shall have the right to receive on a competitive basis free higher education in State and municipal educational institutions and enterprises.*
4. *Basic general education shall be compulsory. Parents or guardians shall ensure that children receive a basic general education.*
5. *The Russian Federation shall establish federal State educational standards and shall support various forms of education and self-education.*

There is no specific legislation that prohibits discrimination with respect to the right to education. However, the general equality provision in Article 19 of the Constitution, applies to the enjoyment of all rights.

Regional law

Russia ratified the First Protocol to the ECHR in 1998. Article 2 of the First Protocol provides:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own 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 deliberately so that states are not obligated under the Convention to establish or subsidise education at any level at their own expense.¹³³

As discussed throughout this Guide, Article 14 of the ECHR contains a prohibition on discrimination which operates in conjunction with other ECHR rights, and as such, any difference in treatment in the sphere of education must comply with the requirement to prohibit discrimination.¹³⁴

¹³³ 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, 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*, 2015, p. 5/17, available at: http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf.

¹³⁴ For discussion of relevant considerations, see: Council of Europe, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights*, 2015, p. 10, available at: http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf.

International law

Article 13 of ICESCR provides the right to education as follows:

1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

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:

- (a) *Primary education shall be compulsory and available free to all;*
- (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
- (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.*

Article 28 of the 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”. 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,¹³⁵ and, accordingly, there remains an opportunity for advocacy regarding Russia’s compliance with its obligations under the CRC.

¹³⁵ Convention on the Rights of the Child (CRC), Article 44.

Part Five:

Best Practice in Service Delivery to LGBT+ Persons

Professionals working in the delivery of services may be acting unlawfully where LGBT+ persons face barriers to accessing certain services, or experience discrimination by some service providers. It is important to recognise that LGBT+ persons may have specific needs in relation to some services. Below are some general principles to understand in order to create an inclusive and non-discriminatory environment for LGBT+ persons.¹³⁶ These principles are non-exhaustive.

General principles

1. Treat every person equally.
2. Take into account the needs of each individual.
3. Update any policies that are discriminatory on the grounds of sexual orientation or gender identity.
4. Take into account that LGBT+ persons may have experienced difficulties in accessing services in the past, and this may affect their confidence in approaching service providers now.
5. Do not pressure people to talk about their sexual orientation if they are uncomfortable about it.
6. Provide staff with LGBT+ awareness training and ensure that all staff are sensitised to providing services on an equal basis.
7. Display inclusive policies around your organisation which address preventing discrimination against and promoting equality of LGBT+ persons.
8. Provide gender neutral facilities where possible, or implement a policy which allows individuals to use facilities according to their gender identity.

In addition, a small number of principles which are particularly relevant to specific services are outlined below, again non-exhaustively.

Healthcare

Healthcare professionals are advised to:

- Make no assumptions relating to an individual's sexual orientation or gender identity. For example, instead of asking whether an individual has a boyfriend/husband or girlfriend/wife, ask whether they are in a relationship.

¹³⁶ This section is informed by: Gay & Lesbian Equality Network, *LGBT Service Users: Guidance for staff working in mental health services*, 2013, available at: http://www.ilga-europe.org/sites/default/files/Attachments/lgbt_service_users_guidance_for_staff_working_in_mental_health_services.pdf; Stonewall, *Working with older lesbian, gay and bisexual people: a guide for care and support services*, available at: https://www.stonewall.org.uk/sites/default/files/older_people_final_lo_res.pdf; National LGBT Health Education Center, *Providing welcoming services and care for LGBT people*, January 2015, available at: <http://www.lgbthealtheducation.org/wp-content/uploads/Learning-Guide.pdf>.

- Be supportive and non-judgemental if an individual discloses their sexual orientation or gender identity to you.
- Include messages regarding LGBT+ health and LGBT+ equality on posters and noticeboards.

Education

Teachers and other professionals working in education are advised to:

- Include LGBT+ persons in anti-bullying policies.
- Actively address behaviours that constitute bullying of persons because of their sexual orientation or gender identity.

Housing

Professionals working in the provision of housing are advised to:

- Include LGBT+ persons in advertisements and other promotional material.
- Train staff on the equal rights of same sex partners.

Summary

The key principles outlined in this Guide regarding the rights to equality and non-discrimination of lesbian, gay, bisexual, transgender persons and persons of all other sexualities and genders (LGBT+ persons) in Russia may be summarised as follows:

1. The term “LGBT+” is an inclusive term which refers to those who are lesbian, gay, bisexual or transgender, and to others such as intersex persons and asexual persons who may experience discrimination on the basis of their sexual orientation or gender identity. In your work, keep in mind the diverse groups of persons who are referred to by the term “LGBT+” and that each group may face different types of discrimination.
2. Discrimination against LGBT+ persons in Russia affects a wide range of areas of their life, including their personal safety, family relationships, access to education and health services, employment rights, and participation in public life.
3. The right to equality is the right of all persons to be equal in dignity and to participate in all areas of 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 part of the right to equality. It means that all persons have a right to be protected by law from discrimination based on certain personal characteristics, known as “protected grounds”.
4. A person’s sexual orientation and gender identity are protected grounds of discrimination in international, regional and certain domestic laws. It is important to check the scope of each law before relying upon it.
5. The following three things are all types of unlawful discrimination:
 - a. Direct discrimination;
 - b. Indirect discrimination; and
 - c. Harassment
6. Russia does not have any comprehensive anti-discrimination law. However, Article 19 of the Constitution prohibits discrimination on a large number of protected grounds, including “other circumstances” which has been interpreted by the Constitutional Court to include discrimination on the ground of sexual orientation. The Court has not yet considered whether it also extends to discrimination on the ground of gender identity. Other domestic laws in Russia may also provide protection against discrimination on the grounds of sexual orientation and gender identity on the basis of the open-ended protection they offer to “social groups” and in relation to “other circumstances”. However, there is little judicial guidance on this issue to date.
7. There is no international or regional human rights treaty that specifically addresses discrimination against LGBT+ persons. However, there is important protection for LGBT+ persons in the international and regional human rights treaties that Russia has ratified, as interpreted to date by courts and treaty bodies:

- a. Under the International Covenant on Civil and Political Rights (ICCPR), an individual may make a complaint to the United Nations Human Rights Committee (UN HRC) alleging that Russia has not complied with their right to equality and non-discrimination (Article 26 ICCPR) or that they have been discriminated against in the enjoyment of their rights in the ICCPR (contrary to Article 2(1) ICCPR).
 - b. The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that the state must not discriminate against an individual in the enjoyment of their rights under the ICESCR. While there is no international legal mechanism for challenging Russia's failure to comply with the ICESCR, the obligations contained therein provide an important basis for advocacy on stronger human rights protection.
 - c. An individual can lodge a complaint before the European Court of Human Rights (ECtHR) alleging that they have been discriminated against in the enjoyment of their rights under the European Convention on Human Rights (ECHR) (contrary to Article 14 ECHR).
8. When working with, and providing services to LGBT+ persons, keep in mind the general principles of best practice outlined in this Guide. This includes the need to provide staff with LGBT+ awareness training and ensure that all staff are sensitised to providing services on an equal basis, and to design and promote inclusive policies in your organisation which promote the rights to equality and non-discrimination of LGBT+ persons.

Resources for LGBT+ Persons and Their Lawyers or Service Providers

In this section, we provide you with a list of resources to assist you in advising LGBT+ persons on their rights and promoting access to justice. Many of the resources listed below were used to prepare this Guide.

We have selected resources in both English and Russian, and provide details of organisations that work with LGBT+ persons in Russia and globally. All hyperlinks are correct as at 1 March 2017.

Resources provided:

- a) Organisations that work with LGBT+ persons
- b) Best practice regarding LGBT+ rights and equality law
- c) The experience of LGBT+ persons in Russia
- d) Laws that protect equality and LGBT+ rights

Organisations That Work with LGBT+ Persons

Legal services: The Russian LGBT Network is the peak lobby group for the rights of LGBT persons in Russia, a non-governmental organisation founded in 2006. It provides legal support for LGBT persons. Website available in English and Russian, see <https://www.lgbtnet.org/en/content/services>

Psychological services: The Russian LGBT Network provides free psychological services for LGBT persons and a hotline telephone service. Website: <https://www.lgbtnet.org/en/content/services>

Community forum: *Children-404* is an online forum for LGBT teenagers and children in Russia. The forum is in Russian only and is available here: <http://www.deti-404.com/index.php>.

Domestic advocacy: The Russian LGBT Network monitors discrimination against LGBT persons in Russia, conducts research and undertakes domestic, regional and international advocacy. Website: <https://www.lgbtnet.org>.

International advocacy and information: International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) is the world federation of national and local organisations dedicated to achieving equal rights for lesbian, gay, bisexual, trans and intersex persons. Website: <http://ilga.org>.

International advocacy and information: Gay & Lesbian Alliance Against Defamation (GLAAD) seeks to advance positive and fair media representations of LGBT persons. Website: <http://www.glaad.org>.

International advocacy and information: Stonewall advocates for LGBT+ rights in the UK and globally, and was established in the UK in 1989. Website: <http://www.stonewall.org.uk>.

International advocacy and information: The Equal Rights Trust is an independent international organisation combating discrimination and advancing equality worldwide. Website: <http://www.equalrightstrust.org>.

Best Practice Regarding LGBT+ Rights and Equality Law

Russian Language

Best practice on equality law: Equal Rights Trust, *Declaration of Principles on Equality* (2008), London, 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.

Best practice on LGBT+ rights: The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2008), adopted by international legal experts, available at: <http://www.yogyakartaprinciples.org/principles-ru>.

Best practice on LGBT+ rights: UN High Commissioner for Human Rights, *Born Free and Equal*. Booklet on the legal obligations that States have to protect the human rights of LGBT persons. http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes_RU.pdf.

Key human rights issues affecting LGBT persons: UN High Commissioner for Human Rights, Fact-sheets, see: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTFactSheets.aspx>. Topics include: rights of intersex persons, and homophobic and transphobic violence.

UN Independent Expert on Sexual Orientation and Gender Identity: Resolution adopted by the United Nations Human Rights Council on 30 June 2016 to establish the Independent Expert on Sexual Orientation and Gender Identity. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/2.

English Language

Best practice on equality law: International Labour Organisation, “Equality and Discrimination”, available at: <http://www.ilo.org/global/topics/equality-and-discrimination/lang-en/index.htm>.

Best practice on LGBT+ rights: Commissioner for Human Rights of the Council of Europe, *Human Rights and Gender Identity*, 29 July 2009, available at: <https://wcd.coe.int/ViewDoc.jsp?p=&id=1476365&direct=true>.

See also Committee of Ministers, *Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity*, CM/Rec(2010)5, 31 March 2010, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1606669>.

See also Council of Europe fact-sheet on sexual orientation issues, available at: http://echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf.

Best practice on economic, social and cultural rights: UN High Commissioner for Human Rights, “Monitoring the economic, social and cultural rights”, available at: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx>.

LGBT employees in Russia – Stonewall (UK non-governmental organization), *Global Workplace Briefings: Russia*, available at: http://www.stonewall.org.uk/sites/default/files/gwb_russia_2016_final.pdf

Glossary of terms used regarding LGBT issues. Stonewall: <http://www.stonewall.org.uk/help-advice>. Council of Europe’s Sexual Orientation and Gender Identity Unit: <http://www.coe.int/en/web/sogidatabase/glossary>. ILGA-Europe: <http://old.ilga-europe.org/home/publications/glossary>.

The Experience of LGBT+ Persons in Russia

Russian Language

LGBT children’s rights in Russia – Documentary by Pavel Loparev and Askold Kurov, *Children-404* (2014), available at: <http://queerfilmfestival.ca/films/children-404>.

Legal protection for LGBT rights in Russia – Equal Rights Trust, *Justice or Complicity?* (2016), http://www.equalrightstrust.org/ertdocumentbank/Russia%20LGBT%20report_RUS.pdf.

English Language

Overview of the human rights situation in Russia – Human Rights Watch, Report, *2017 World Report: Russia*, available at: <https://www.hrw.org/world-report/2017/country-chapters/russia>. Amnesty International, Report, Russian Federation 2016/2017, available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/russian-federation/report-russian-federation>.

‘Anti-propaganda’ laws in Russia – Amnesty International, *Russia: Defending LGBT Rights is not “Propaganda”* (9 February 2015), available at: <http://blog.amnestyusa.org/europe/russia-defending-lgbt-rights-is-not-propaganda>.

Case studies of LGBT persons who have experienced violence and discrimination – Russian LGBT Network, *Monitoring of Discrimination and Violence Based on SOGI in Russia in 2015*, available at: https://www.lgbtnet.org/sites/default/files/monitoring_of_discrimination.pdf.

Discrimination against LGBT persons in Russia – Russian LGBT Network, List of Issues Related to the Situation of Lesbian, Gay, Bisexual and Transgender Persons and Men who have sex with men in Russia (January 2017), available at: https://lgbtnet.org/sites/default/files/list_of_issues_submitted_by_lgbt_organizations_to_the_un_0.pdf.

Laws That Protect Equality and LGBT+ Rights

Russian Law

For detailed resources on Russian law, see *Justice or Complicity*, pp. 150–169.

Regional Law

- The text of the European Convention on Human Rights can be found here: http://www.echr.coe.int/Documents/Convention_ENG.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: hudoc.echr.coe.int.

For regional jurisprudence on LGBT rights, see *Justice or Complicity*, pp. 158–160.

International law

The list of all the UN treaties that Russia has signed and ratified is here: <http://indicators.ohchr.org>.

Best Practice in Legal Advice

UN 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>.

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>.

Best Practice in Service Delivery

Gay & Lesbian Equality Network, *LGBT Service Users: Guidance for staff working in mental health services*, 2013, available at: http://www.ilga-europe.org/sites/default/files/Attachments/lgbt_service_users_guidance_for_staff_working_in_mental_health_services.pdf;

Stonewall, *Working with older lesbian, gay and bisexual people: a guide for care and support services*, available at: https://www.stonewall.org.uk/sites/default/files/older_people_final_lo_res.pdf;

National LGBT Health Education Center, *Providing welcoming services and care for LGBT people*, January 2015, available at: <http://www.lgbthealtheducation.org/wp-content/uploads/Learning-Guide.pdf>.

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

As an employer, how should I treat LGBT+ employees?

As a doctor, does my patient have the right to have her gender changed on her birth certificate?

As a teacher, what do I need to think about to ensure equality for my students?

This Guide is designed to support people who work in the public and private sectors in Russia to answer these questions and to provide best practice services to lesbian, gay, bisexual, transgender, intersex and asexual (LGBT+) persons. It is designed for employers, business people, teachers, health-care professionals and trade union officials, among others. It contains a user-friendly summary of the rights of LGBT+ persons, the discrimination that LGBT+ persons experience, and a guide to best practice in ensuring that LGBT+ persons are able to participate in life on an equal basis with others.

Our approach to best practice service delivery for LGBT+ persons is based on five key areas of knowledge:

1. The experience of LGBT+ persons in Russia;
2. Concepts of equality and discrimination;
3. Laws that protect equality and non-discrimination;
4. Key human rights issues that affect LGBT+ persons in Russia; and
5. Principles of best practice service delivery.

The Guide also contains a detailed list of resources for LGBT+ persons and service providers regarding legal rights and services available for LGBT+ persons in Russia.