



EQUAL RIGHTS TRUST

Shadow report submitted to the 60th session of the Committee on Economic, Social and Cultural Rights in relation to the sixth periodic report of

Russia

January 2017

Statement of Interest

1. The Equal Rights Trust makes this submission to the pre-sessional working group for the 60th session of the Committee on Economic, Social and Cultural Rights (the Committee) in advance of its consideration of a list of issues to be raised with Russia.
2. The Equal Rights Trust exists to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. We focus on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. The Trust has been actively involved in promoting equality and non-discrimination in Russia since 2013. We have undertaken a variety of activities aimed at combating discrimination, with a particular focus on discrimination on the basis of sexual orientation and gender identity. As part of these activities, the Trust recently published *Justice or Complicity? LGBT Rights and the Russian Courts*, a study of jurisprudence in cases involving the rights of lesbian, gay, bisexual and transgender (LGBT) persons in Russia.¹
4. Our study included a review of cases involving discrimination in the enjoyment of rights guaranteed by the International Covenant on Economic, Social and Cultural Rights (the Covenant). Although our research sought to identify cases relating to discrimination in the full range of economic, social and cultural rights more broadly, only a small number of cases, only involving discrimination against LGBT persons in employment and education, were identified. However, as discussed below, far from indicating a relative absence of discrimination, the small number of cases raises concerns about the ability of LGBT persons to access justice.

Article 6 and Article 2(2): Discrimination in respect of the right to work

5. Under Article 6(1) of the Covenant, Russia recognises 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 agrees to "take appropriate steps to safeguard this right". Moreover, under Article 2(2), Russia is obligated to ensure that the right to work is enjoyed without discrimination of any kind on grounds including "other status". In its General Comment 20, the Committee clarified that "other status" in Article 2(2) includes both sexual orientation and gender

¹ Equal Rights Trust, *Justice or Complicity? LGBT Rights and the Russian Courts*, 2016, available at: http://www.equalrightstrust.org/ertdocumentbank/Justice%20or%20Complicity%20LGBT%20Rights%20and%20the%20Russian%20Courts_0.pdf.

identity.² More recently, the Director-General of the International Labour Organisation has noted that all LGBT individuals are entitled to be free from discrimination at work.³

6. Article 3 of the Russian Labour Code prohibits discrimination in labour relations.⁴ The list of grounds on which discrimination is prohibited is open ended, and the Russian Constitutional Court recently explained that these grounds include sexual orientation.⁵ Article 64 of the Labour Code prohibits any direct or indirect restriction or the granting of direct or indirect advantages in the conclusion of a labour contract based on sex, race, skin colour, nationality, language, origin, property, social and official status, age, place of residence “as well as other factors not connected with the professional qualities of the employees”.⁶ If the Labour Code is interpreted consistently in line with the Constitutional Court’s 2014 judgment, and in line with the Committee’s interpretation of Article 2(2), both sexual orientation and gender identity should be considered as grounds falling within “social status” and “factors not connected with the professional qualities of an employee”.
7. Nevertheless, there have been almost no cases brought before the courts challenging discrimination on the basis of sexual orientation or gender identity in employment. Moreover, as the cases cited below demonstrate, the approach of courts to such cases may also dissuade victims from seeking a remedy, as some courts have simply disregarded allegations of discrimination on the basis of sexual orientation.
8. In St. Petersburg, a music teacher was fired from her position at a school because the school administration had been informed about her alleged lesbian identity and presented with several photos showing her hugging and kissing other women. The school claimed that this was immoral behaviour, incompatible with her work as a teacher. In its judgment, the District Court stated that it was not the plaintiff’s sexual orientation that was the basis for her dismissal, but her “immoral behaviour”.⁷ The Court went on to state that it considered the photos to be “immoral” because they demonstrated “unethically intimate relationships between persons of

² UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, and Article 2(2) of ICECSR, 2 July 2009, UN Doc. E/C.12/GC/20, Para 32.

³ International Labour Organisation, “LGBT workers entitled to equal rights and benefits at the workplace: Statement by International Labour Organization Director-General Guy Ryder on the occasion of the International Day against Homophobia and Transphobia”, 17 May 2015, available at: http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-director-general/statements-and-speeches/WCMS_368652/lang-en/index.htm.

⁴ Labour Code of the Russian Federation, 30 December 2001, No. 197-FZ, Article 3 (Трудовой кодекс Российской Федерации, от 30 декабря 2001 года, № 197-ФЗ).

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).

⁶ The Article allows exceptions to be made to this prohibition by federal law.

⁷ Judgment of the Kirovskiy District Court of St. Petersburg, 21 April 2015, No. 2-1890/2015 (Решение Кировского районного суда Санкт-Петербурга от 21 апреля 2015 года по делу № 2-1890/2015).

the same sex and published on a social network on the internet”.⁸ On appeal, the applicant argued that her dismissal amounted to discrimination under Article 3 of the Labour Code, and also pursuant to Article 2(2) and 6 of the Covenant because the photos were only considered “immoral” because they showed a same-sex relationship, whereas similar photos of a heterosexual couple would not be considered as contravening public morals. The appellate court did not consider this argument and rejected the appeal.⁹

9. In a case brought before the Nagatinskiy District Court of Moscow, a young man alleged that he was rejected for a position as a coach in the “Captains of Russia” professional development programme for young leaders, on the basis of his sexual orientation. The man was contacted by the programme director after submitting his CV. Following interview, he was notified that he had been selected for the post. However, when the programme director looked at his personal page on a social network, she enquired about his sexual orientation. When the applicant stated that he was gay, the programme director sent him a message to say that they would not be able to hire him because the programme was based on a “traditional viewpoint on certain matters”. The Court dismissed the man’s claim that he had been discriminated against in violation of Articles 3 and 64 of the Labour Code, Article 19 of the Federal Constitution, Article 2(2) of the ICESCR and the prohibition of discrimination with regard to work found in the European Social Charter (Revised).¹⁰ The Court held that there was not sufficient evidence that the plaintiff applied for the post and was officially rejected.¹¹ Accordingly, the Court did not analyse the allegation of discrimination.

Article 13 and Article 2(2): Discrimination in respect of the right to education

10. Article 13(1) of the Covenant provides that Russia and other states party “recognize the right of everyone to education”. The Committee has stated that Article 13(2) requires education to be made accessible to all persons without discrimination, acceptable in terms of its substance, and adaptable to meet the needs of changing societies.¹² States must closely monitor education systems to identify and address any discrimination in educational institutions, programmes, spending patterns and other practices.¹³

⁸ *Ibid.*

⁹ Appellate decision of the St. Petersburg City Court, 3 September 2015, No. 33-12750/2015 (Апелляционное определение Санкт-Петербургского городского суда от 3 сентября 2015 года по делу № 33-12750/2015).

¹⁰ The applicant did not specify which articles were referred to, but presumably this is Article 1 and Article E.

¹¹ Judgment of the Nagatinskiy District Court of Moscow, 27 November 2015, No. 2-11405/2015 (Решение Нагатинского районного суда Москвы от 27 ноября 2015 года по делу 2-11405/2015).

¹² Committee on Economic, Social and Cultural Rights *General Comment 13: The Right to Education*, 8 December 1999, E/C.12/1999/10, Para 6.

¹³ *Ibid.*, Para 36.

11. Research for our report identified evidence that in Russia LGBT individuals are at risk of discrimination which impacts their equality of access to educational institutions and programmes. For example, in 2003, a resident of St. Petersburg filed a lawsuit against the Oktyabrskaya Railroad Company (ORR) in the Frunzensky District Court of St. Petersburg because the company did not allow him to enrol on the training courses necessary to become a train conductor. ORR's rejection was based on an earlier decision in 2003 by the Oktyabrskaya Railroad Clinic, which deemed the plaintiff unfit to work as a conductor due to a note in his military record regarding his "homosexuality".¹⁴ This note, made during a medical examination that the plaintiff underwent in 1992 as part of his military service, stated that he suffered from a mental disorder because he was "homosexual". At the time, homosexuality was classified as "perverse psychopathy" under a 1987 USSR Ministry of Defence regulation, which limited access to certain professions and the ability to perform military service.¹⁵ In 1997, the national Health Ministry removed "homosexuality" from the list of mental and behavioural disorders.¹⁶ On 27 January 2003, the plaintiff's name was deleted from the registry at the local psychiatric clinic. However, the military continued to classify homosexuality as a disorder and refused to withdraw the note from his military record. On 10 August 2005, the Frunzensky District Court of St. Petersburg ruled that ORR's rejection of the plaintiff's application was illegal. The Court also confirmed that the diagnosis of the plaintiff's "perverse psychopathy" was unlawfully based exclusively on his homosexuality, and that homosexuality is not a mental disorder but a variant of the normal.¹⁷ The plaintiff did not make any allegation of discrimination and the Court did not make any finding in this regard.

Access to Justice

12. As noted, research for the report *Justice or Complicity? LGBT Rights and the Russian Courts* identified only a small number of cases involving discrimination on the basis of sexual orientation or gender identity in the enjoyment of economic, social or cultural rights. However, our analysis indicates that the relatively small number of cases brought to the Russian courts involving discrimination in the enjoyment of economic, social and cultural rights may indicate a problem regarding access to justice. This may arise for a number of reasons, including the

¹⁴ Judgment of the Frunzensky District Court of St. Petersburg, 10 August 2005, No. 1066/05 (Решение Фрунзенского районного суда Санкт-Петербурга от 10 августа 2005 года по делу 1066/05).

¹⁵ Decree of the Ministry of Defence of the Russian Federation, concerning the Implementation of the Regulations on the medical examination in the Armed Forces (in peacetime and wartime), 9 September 1987, No. 260 (Приказ Минобороны СССР от 9 сентября 1987 г. № 260 "О введении в действие Положения о медицинском освидетельствовании в Вооруженных Силах СССР (на мирное и военное время)").

¹⁶ The Russian Health Ministry implemented the World Health Organisation's International Classification of Diseases, which does not include homosexuality in its list of mental and behavioural disorders. See Order of the Health Ministry of Russia "On Adopting by the health care organisations of the Russian Federation health facilities of the International Statistical Classification of Diseases and Related Health Problems, 10th revision" of 27 May 1997, No. 170 (Приказ Минздрава России от 27 мая 1997 года № 170 "О переходе органов и учреждений здравоохранения Российской Федерации на Международную статистическую классификацию болезней и проблем, связанных со здоровьем X пересмотра").

¹⁷ Judgment of the Frunzensky District Court of St. Petersburg, 10 August 2005, No. 1066/05 (Решение Фрунзенского районного суда Санкт-Петербурга от 10 августа 2005 года по делу 1066/05).

fact that LGBT individuals are reluctant to bring legal proceedings where they experience discrimination, as this requires that they reveal their sexual orientation or gender identity and so expose themselves to violence, hostility or discrimination in other areas of life; and a perception on the part of LGBT individuals that courts are not likely to vindicate their rights.

13. Thus, in addition to documenting cases of discrimination against LGBT in many different areas of life, our research identified two further problems in respect of access to justice: (1) LGBT persons are reluctant to bring claims of discrimination on the grounds of sexual orientation and gender identity, including where such discrimination results in the denial or limitation of Covenant rights, and (2) national courts disregard claims of discrimination on the grounds of sexual orientation or gender identity, including in cases involving the denial or limitation of Covenant rights.

Suggested Questions

- What steps, if any, has the state party taken to ensure the enjoyment of the right to work without discrimination on the basis of sexual orientation or gender identity?
- Will the state party confirm that the term “social status” in Article 3 of the Labour Code should be interpreted as inclusive of sexual orientation and gender identity, in accordance with the Committee’s interpretation of “other status” in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights? In addition, will the state party confirm that for the purposes of Article 64 of the Labour Code, sexual orientation or gender identity may fall within “factors not connected with the professional qualities of an employee”?
- What steps, if any, has the state party taken to ensure the equal enjoyment of the right to education without discrimination on the basis of sexual orientation and gender identity?
- What steps, if any, has the state party taken to improve access to justice for lesbian, gay, bisexual and transgender persons who have experienced discrimination on the basis of their sexual orientation and gender identity?