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EUROPEAN SOCIAL CHARTER

Comments from the Russian LGBT Network
and ILGA Europe
on the
1st National Report on the implementation of
the European Social Charter

submitted by

**THE GOVERNMENT OF THE RUSSIAN
FEDERATION**

(Articles 1§2
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European Social Charter

Submission by the Russian LGBT Network and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (European Region) on the 1st National Report by the Russian Federation on the implementation of the revised European Social Charter

Article 1.2: Prohibition of discrimination in employment on the grounds of sexual orientation and gender identity

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The European Social Charter

Submission by the Russian LGBT Network and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (European Region) on the 1st National Report by the Russian Federation on the implementation of the revised European Social Charter

Article 1.2: Prohibition of discrimination in employment on the grounds of sexual orientation and gender identity

1 Executive Summary

Public attitudes towards lesbian, gay, bisexual and transgender (LGBT) persons in the Russian Federation are generally negative. Those of the institutions of government are characterised by distinct growing hostility.

In the case of *Alexeyev v. Russia*, which involved the banning of gay pride events in Moscow, the European Court of Human Rights ("the Court") noted that the Mayor of Moscow "considered it necessary to confine every mention of homosexuality to the private sphere and to force gay men and lesbians out of the public eye, implying that homosexuality was a result of a conscious, and antisocial, choice." It added that the Mayor's statements "were essentially reiterated in the Government's observations".

This desire to "force gay men and lesbians out of the public eye", and the notion that homosexuality is "antisocial", have expressed themselves through repeated violations of the rights to freedom of assembly, association and expression, but also in the refusal of the authorities to prosecute public figures for homophobic hate speech.

These violations have been justified by state authorities, including courts, on a variety of grounds: that "propaganda of non-traditional sexual orientation" undermines the security of Russian society and state, is "extremist", is incompatible with the religious doctrines and moral values of the majority, or could be harmful if seen by children or vulnerable adults; and on the basis that homosexuals do not qualify as a "social group" deserving of protection by society from hate speech.

Recent events suggest an intensification of this hostility, with the adoption by four regional assemblies, including that of St Petersburg, of legislation prohibiting "promotion of homosexuality", and with the tabling of similar legislation in the Federal Duma.

Against this background of overt official hostility and vilification, it is not surprising that employment discrimination is a significant concern for lesbian, gay, bisexual and transgender persons, illustrated most strikingly by a survey showing that a high proportion of lesbian, gay and bisexual persons conceal their sexual orientation in the workplace.

Council of Europe standards in relation to discrimination on grounds of sexual orientation and gender identity have been much clarified in recent years. The Recommendation of the Committee of Ministers on combating discrimination on grounds of sexual orientation or gender identity, adopted in 2010, emphasised the obligation of member states to take positive action to combat such discrimination. The Court, the Parliamentary Assembly, and

the Commissioner for Human Rights, have all in their different ways underlined the requirement for such action.

The European Committee on Social Rights ("the Committee") has itself stated that under Article 1 (2) of the revised Social Charter legislation should prohibit discrimination in employment on grounds of sexual orientation.

It is clear from the 1st National Report of the Russian Federation that there is no explicit reference to sexual orientation or gender identity in the Labour Code of the Russian Federation. While it mentions that the Labour Code prohibits discrimination in relation to "other circumstances unrelated to the employment qualities of the employee", there is nothing to suggest that LGBT people can rely on the courts to use this to protect them. Indeed, not only does the vilification of LGBT people by the authorities raise serious questions as to their commitment to protecting LGBT people from discrimination in employment, it must act as an encouragement to those whose prejudices predispose them to discriminate.

It must be concluded that there is no systematic legal protection from discrimination in employment on grounds of sexual orientation or gender identity. In view of this, we urge the Committee to return a finding of non-conformity in relation to the Russian Federation's obligations under Article 1 (2). We ask that such a finding make specific reference to the refusal of the authorities to recognise the need to change a transsexual person's legal gender in work record books.

The Committee has not, hitherto, laid down a position on gender identity discrimination in employment. However the Europe-wide nature of this problem is now well established. Given the adoption by the Committee of Ministers of a Recommendation to member states on combating such discrimination, and noting that some 34 member states already have an obligation to prohibit discrimination in employment either in relation to gender identity, or in relation to gender reassignment, we urge the Committee to adopt a general Conclusion that Article 1.2 should prohibit discrimination in employment on grounds of gender identity.

2 Principal sources of data used in this submission

1. The principal sources of data used in this submission are as follows:
 - The Council of Europe Commissioner for Human Rights June 2011 report entitled "Discrimination on grounds of sexual orientation and gender identity in Europe - Background Document"¹ ("the Human Rights Commissioner's Report");
 - Two associated reports commissioned by the Office of the Human Rights Commissioner specifically addressing the situation in the Russian Federation, respectively, the "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity – Legal Report: Russian Federation"² ("the Legal Report"), and the similarly titled "Sociological Report: Russian Federation"³ ("the Sociological Report").

¹ Available at: http://www.coe.int/t/Commissioner/Source/LGBT/BackgroundDocument2011_en.pdf

² Available at: http://www.coe.int/t/Commissioner/Source/LGBT/RussiaLegal_E.pdf

³ Available at: http://www.coe.int/t/Commissioner/Source/LGBT/RussiaSociological_E.pdf

3 The general situation of lesbian, gay, bisexual and transgender (LGBT) people in the Russian Federation

Public attitudes

2. Public attitudes in the Russian Federation are relatively hostile. The Sociological Report notes that:

“... several public opinion polls and NGO reports show negative attitudes towards LGBT persons in Russia. According to the Public Opinion Foundation, which conducted a large scale survey of attitudes towards LGBT persons in 2006 throughout Russia, 47 per cent of the respondents claimed to disapprove of LGBT persons and their lifestyle. In 2010, the same survey was repeated and the results showed that 43 per cent of the respondents still have the same view.”⁴

3. Major religious organisations express their hostility in outspoken terms. The Sociological Report cites a letter sent to the Council of Europe Human Rights Commissioner in 2008 by the Interreligious Council of Russia which provides some insight into these attitudes:

“The commitments of the Russian Federation under the European Convention for the Protection of Human Rights and Fundamental Freedoms give our government the opportunity to reserve for itself the right to limit human rights for the protection of morals (Articles 8, 9, 10, 11). This Convention, just as other international agreements signed by the Russian Federation, does not and cannot determine the moral conceptions of our society. This is beyond the force of international law. We reject therefore the lawless attempt to export to Russia any amoral behavior standards wrapped in legal form.”⁵

Freedom of expression

4. Regarding freedom of expression, the Legal Report comments that "it is very difficult to openly hold any event (including cultural event), which clearly aimed to support the development of tolerance towards homosexual, bisexual and transgender persons." It also draws attention to "recurrent attempts to impose criminal or administrative responsibility for the so-called “propaganda of homosexuality” ”.⁶
5. The Legal Report adds that on 24 November 2008 the Ryazan Regional Duma adopted a law establishing fines for "public actions aimed at propaganda of homosexuality (sodomy and lesbianism) among minors", and describes how a group of activists who were later found guilty of violating this law, had their appeal to the Constitutional Court of Russia rejected:

"In 2010, the Constitutional Court of the Russian Federation, refusing to consider the complaint regarding this law, noted that “the family, motherhood and childhood in the traditional interpretation, received from our ancestors, are the values that provide a continuous change of generations, and are conditions for the preservation

⁴ op. cit., paragraph 20

⁵ op. cit. paragraph 57

⁶ op. cit., paragraph 11

and development of the multinational people of the Russian Federation, and therefore require a special state protection".⁷

6. Since publication of the Legal Report, three further regional parliaments (Archangel, Kostroma⁸ and St Petersburg) have passed similar legislation. The St Petersburg law was approved by the Governor on 7 March 2012,⁹ despite widespread national and international protests, including by the Secretary-General of the Council of Europe, who expressed his concerns in an interview on the Ekho Moskvy radio station in December 2011.¹⁰ In the first test of this legislation, on 5 April 2012 the St Petersburg authorities refused LGBT human rights defenders permission to hold an "International Day of Silence" street protest. The official statement refusing permission stated: "According to [the law]... any public activity, aimed at propaganda of sodomy, lesbianism, bisexuality, transgenerence, and pedophilia with the goal of forming a contorted view of social equivalence of traditional and non-traditional conjugal relations, is forbidden".¹¹ On 7 April 2012 a series of single person pickets took place in front of a St Petersburg concert hall to mark the "Day of Silence". Two of the protesters were arrested for carrying placards with, respectively, the words "No to silencing of the hate crimes against gays and lesbians" and "The friend of our family is a lesbian. My wife and I love and respect her, her way of life is as normal as ours, and her family is socially equal to ours".¹² At the date of this report their trial is pending.
7. On Thursday, 29 March 2012 draft legislation to prohibit "propaganda of homosexuality among minors" was tabled in the Federal Duma. "Propaganda of homosexuality" was described in the accompanying explanatory note as covering anything which promotes "homosexuality as a behavioural norm", or as information which could "form misperceptions about the social equivalence of conventional and unconventional sexual relationships". "Promotion" covered dissemination "through the media and through active social actions", or "any act aimed at the promotion of homosexuality".¹³

Freedom of association

8. The Legal Report notes that until 2009 there appeared to be a policy of refusing to register LGBT organisations.¹⁴ In one of these cases, the Rainbow House, Tyumen, was refused registration on the basis that its aim of protecting the rights and freedoms of persons of "non-traditional sexual orientation", and of promoting "education of identity of these individuals as citizens of society" amounted to

⁷ op. cit., paragraphs 98 – 101

⁸ Amnesty International Urgent Action – Freedom of Expression at Risk in Russia – 9 February 2012

⁹ St. Petersburg, Russia: Governor Signed the Gay Gag Law - Statement by St. Petersburg LGBT organization Coming Out - 11 March 2012

¹⁰ Council Of Europe Sec. General Condemns Russia's Anti-Gay Propaganda Bill - *Thinkprogress LGBT website* <http://thinkprogress.org/lgbt/2011/12/05/381785/council-of-europe-sec-general-condemns-russias-anti-gay-propaganda-bill/> - accessed 22 March 2012

¹¹ "HOMOPHOBIC LAW ALIVE IN ST. PETERSBURG, RUSSIA" - Coming Out media release – 5 April 2012

¹² "Police considered a protest against state homophobia as propaganda" - Coming Out media release – 7 April 2012

¹³ "Federal Law On Introducing Amendments to the Code of the Russian Federation on Administrative Offences" - Submitted by the Legislative Assembly of the Novosibirsk Region

¹⁴ op. cit., paragraph 10

"propaganda of non-traditional sexual orientation", which would undermine the security of the Russian society and state.¹⁵

9. The Legal Report notes that during 2009 two organisations were registered,¹⁶ but that in 2010 two other organisations were refused registration.¹⁷ Moreover, in March 2012 the Sochi Pride House was refused registration on the basis that "propaganda of non-traditional sexual orientation" is a direct threat to the Russian society, while attempts to confront homophobia were deemed "extremist" because they inherently "incite social and religious hatred."¹⁸

Freedom of assembly

10. Since 2006 freedom of assembly events in support of the rights of LGBT people have been consistently prohibited.¹⁹ Appeals against these bans have, without exception, been rejected by the Russian courts, so that many have given rise to applications to the European Court of Human Rights. In 2010 the Court found a violation of Article 11 of the Convention in relation to the first three applications, relating to public events from 2006, 2007 and 2008.²⁰ One of the arguments advanced by the Russian Government in defending the prohibition of these events was that they should be banned as a matter of principle, because 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.²¹ **The Russian authorities have ignored the judgment of the Court, continuing to prohibit freedom of assembly events relating to the rights of LGBT people since the date of the judgment.** Thus, for example, demonstrations in Moscow²² and St Petersburg²³ in May and June 2011 were prohibited. When individuals subsequently demonstrated, they were arrested.

Hate speech and crimes

11. The Sociological Report comments that "The Russian LGBT and human rights monitoring NGOs report many incidents of hate crimes and hate speech towards LGBT persons, although no legal mechanisms for tracing and tackling those are in place in Russia. The current legislation does not provide LGBT persons with any mechanisms to report hate crimes and offences towards them. At the same time, a growing radicalised right-wing movement, formed of skinheads, neo-fascists and religious fundamentalists are a significant concern, because these groups are increasingly involved in organised and planned attacks against LGBT persons, also known as "gay hunt."²⁴

¹⁵ op. cit. paragraph 74; This case is currently pending before the European Court of Human Rights.

¹⁶ op. cit., paragraph 10

¹⁷ op. cit., paragraphs 75 and 76.

¹⁸ [Russian Court Ruling Bans LGBTI Group from 2014 Winter Olympics](#) - Human Rights First website – accessed 22 March 2012

¹⁹ see paragraphs 50 – 62 of the Sociological Report.

²⁰ *Alekseyev v. Russia* - 30 September 2010

²¹ *ibid*, paragraph 78

²² "Moscow Gay Pride Officially Banned" – GayRussia.ru media release 17 May 2011

²³ "St. Petersburg's Slavic Gay Pride March Banned by City Hall" – media release by GayRussia.ru on 23 June 2011;

"Pride ralliers arrested in St. Petersburg, Russia" – Media release by Rex Wockner – 27 June 2011;

²⁴ op. cit., paragraph 6

12. Regarding hate speech, the Legal Report comments that "acts of hate speech in relation to homosexual, bisexual and transgender persons remain virtually unpunished."²⁵ It cites the refusal of a Moscow district prosecutor's office to start a criminal case against Talgat Tadjuddin, the Chairman of the Central Muslim Spiritual Board of Russia, who had said, in a public statement opposing the proposed 2007 Gay Pride march, "if they still come out on the street, they just should be beaten. All normal people would do that Gays have no rights." The Prosecutor's Office, in its decision, referred to an expert opinion of a professor at the Family, Sociology and Demography Department of Moscow State University, to the effect that "sexual minorities are not a social group, much less a gender-defined social group, they are part of the deviant social group together with criminals, drug addicts and other individuals with deviant behaviour."²⁶
13. A request to bring a criminal case against the Governor of the Tambov Region, following his statement that "faggots must be torn apart and their pieces should be thrown in the wind" was also dismissed on the grounds that "the experts did not consider the statement abusive and gave a conclusion that homosexual persons were not a social group and could not be considered subject to incitement of hatred or enmity."²⁷

Hate crime

14. According to the Legal Report, the 1996 Russian Criminal Code included in Article 136 a closed list of prohibited grounds of discrimination, which did not include sexual orientation or gender identity.
15. In 2002, when proposals for certain amendments to the Criminal Code were under consideration in the State Duma, a proposal was made to include "sexual orientation" in the Article 136 list of prohibited grounds of discrimination, and to introduce or amend other articles to make "the commission of a crime by reason of social or sexual hatred or enmity" subject to aggravated penalties, and to provide penalties for "actions aimed at incitement of sexual enmity.... and also propaganda of the exceptionality, superiority, or inferiority of individuals by reason of their sexual orientation, if these acts have been committed in public or with the use of mass media".
16. These proposals were opposed by the Russian Government, on the basis that "sexual hatred" was ambiguous in meaning. They were also opposed by the State Duma Legal Administration, on the same ground as the Russian Government, but also because " "sexual orientation" cannot be considered as one of the fundamental criteria of equality of citizens..... There is not any statute in Russia that provides for the determination of sexual orientation on appointment, work or study." The State Duma Committee on Civil, Criminal, Arbitral and Procedural Legislation supported this argument. The amendments were not successful.
17. In 2003, the Criminal Code was amended. While Article 136 was expanded to cover "any social group", "sexual orientation" and "gender identity" were not added to the list of grounds. Although, in theory, they should be covered by the term "any social

²⁵ op. cit., paragraph 86

²⁶ Sociological Report, paragraph 99, and Legal Report, paragraphs 119 – 122

²⁷ Legal Report, paragraph 126

group", such a conclusion would be unsafe, given both the negative opinions expressed in the context of the State Duma debate in 2002, and because of subsequent statements relied on by the authorities which explicitly reject the proposition that "social group" includes sexual orientation. (See paragraphs 12 & 13)

4. Discriminatory application and interpretation of the law

18. The Legal Report draws attention to the role of the Constitutional Court, as set out in the Constitution of the Russian Federation. In particular, the Constitutional Court is charged with adjudicating on the compliance of Russian legislation and regulations with the Constitution, and examining citizens' complaints regarding violations of constitutional rights and freedoms. The Legal Report points out that, at the time of writing, the Constitutional Court had examined three complaints relating to failure to observe the human rights of homosexual persons. In all three cases the Constitutional Court refused to admit the complaints to examination.²⁸ The cases involved freedom of association, freedom of expression and the right to marry.

5. Council of Europe standards on sexual orientation and gender identity discrimination in employment

5.1 The Committee of Ministers

19. In March 2010 the Committee of Ministers adopted a comprehensive Recommendation on combating sexual orientation or gender identity discrimination.²⁹ Paragraph 2 recommends that member states:

"ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;"

20. The appendix to the Recommendation sets out principles and measures which member states should follow in implementing the relevant legislation, policies and practices. Paragraph 29 specifically addresses employment:

"Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation."

21. Paragraph 30 of the appendix to the Recommendation goes on to address concerns relating to transgender persons:

²⁸ Legal Report, Paragraph 48

²⁹ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (*Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies*)

"Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees."

22. The Recommendation's Explanatory Memorandum provides the following additional information:

"Discrimination in employment and occupation is a particular concern for transgender persons, who are hard hit by unemployment and social exclusion. The number of transgender persons made redundant, particularly during a gender reassignment procedure, who leave their jobs to avoid any forms of harassment or who decide against gender reassignment for the same reasons is also very high. Member states should therefore ensure that measures designed to combat discrimination in employment also apply to gender identity issues, take care to avoid unnecessary disclosure of a transgender person's gender background or previous name, both in recruitment procedures and during working life, and develop programmes focusing specifically on employment opportunities for transgender persons."³⁰

5.2 European Convention on Human Rights

23. The Explanatory Memorandum to the Committee of Ministers Recommendation on combating discrimination on grounds of sexual orientation or gender identity explains the position of the European Court of Human Rights regarding the margin of appreciation applicable in relation to these two grounds:

"The Court has furthermore held that the margin of appreciation left to the states in such cases, touching on one of the most intimate questions of private life, is narrow, and there must be particularly serious grounds to justify interference by the public authorities."³¹

24. Since the adoption of the Recommendation in March 2010, the Court has further clarified its position. In *Clift v. UK*³² the Court used sexual orientation as an example of characteristics protected under article 14 that can be said to be "personal" in the sense that they are innate or inherent. In *Kyutin v. Russia*³³, the Court furthermore stated (§ 48): "In assessing whether a difference of treatment is justified, this Court had identified a number of **particularly vulnerable groups** – for instance, Roma, **homosexuals**, persons with mental disabilities – that suffered a history of prejudice and social exclusion, in respect of which the State has a narrower margin of appreciation." (Emphasis added)

25. Regarding the treatment of employment rights in relation to sexual orientation discrimination under the Convention, the Human Rights Commissioner's Report explains that:

³⁰ Committee of Ministers Recommendation – Explanatory Memorandum – page 17

³¹ Explanatory Memorandum to the Council of Europe Committee of Ministers Recommendation on combating discrimination on the grounds of sexual orientation or gender identity – page 2

³² *Clift v. UK* (appl. 7205/07, judgment 13 July 2010)

³³ *Kyutin v. Russia* (appl. 2700/10, judgment 10 March 2011)

"While the right to work is not directly protected in the European Convention on Human Rights, in the case of *Smith & Grady v. the United Kingdom*, and in the case of *Lustig-Prean & Beckett v. the United Kingdom*, the Court recognised that the dismissal from the army of gay and lesbian personnel based solely on their sexual orientation had been unlawful and had violated Article 8 of the Convention...."

26. The Court has not addressed discrimination on the basis of gender identity in the context of employment. However, in a recent judgment the Court made it clear that transsexualism is a ground which falls within the scope of Article 14.³⁴

5.3 Parliamentary Assembly

27. In its Resolution 1728 (2010) on Discrimination on the basis of sexual orientation and gender identity, the Parliamentary Assembly called on member states to:

"adopt and implement anti-discrimination legislation which includes sexual orientation and gender identity among the prohibited grounds for discrimination, as well as sanctions for infringements;"³⁵

5.4 Council of Europe Commissioner for Human Rights

28. The Human Rights Commissioner's Report recommends that member states

"Enact comprehensive national legislation on non-discrimination and include sexual orientation and gender identity among the prohibited grounds of discrimination".³⁶

29. It also specifically recommends that states take measures to protect the rights of transgender persons in the labour market:

"Respect the right of transgender persons to access the labour market by guaranteeing the respect of their privacy concerning the disclosure of personally sensitive data related to their gender identity and by promoting measures aimed at ending the exclusion and discrimination of transgender persons in the workplace."³⁷

30. The Human Rights Commissioner's report notes that some 38 member states regard sexual orientation as a prohibited ground of discrimination.³⁸

31. Regarding gender identity, the picture is, as the Human Rights Commissioner's report points out, more complex:

"Nine member states (Albania, Croatia, Czech Republic, Germany, Hungary, Montenegro, Serbia, Sweden and the United Kingdom) have included gender identity specifically in non-discrimination legislation. At least 11 member states treat discrimination on grounds of gender identity or gender reassignment as a form of

³⁴ In *P.V. v. Spain* (appl. 35159/09, judgment 30 November 2010), the Court indicated that allowing a parent's gender reassignment as such to negatively influence that parent's visitation rights after divorce would amount to discrimination on grounds of transsexualism with regard to family life – in breach of articles 8 and 14 of the Convention.

³⁵ *op. cit.*, paragraph 16.5

³⁶ *op. cit.*, page 11

³⁷ *op. cit.*, page 15

³⁸ *op. cit.*, page 166

sex or gender discrimination in comprehensive non-discrimination legislation (Andorra, Austria, Belgium, Denmark, Finland, France, Ireland, Netherlands, Norway, Slovakia and Switzerland), while one member state (Sweden) has chosen multiple formulations to describe the applicable grounds. However, there are significant differences as to the legal scope of these terms and the different laws, even though, as an effect of the Gender Recast Directive, EU member states should recognise discrimination in the field of employment with regard to gender reassignment of the person."³⁹

32. Thus, if obligations under EU law are taken into account, some 34 Council of Europe member states protect, or have an obligation to protect, transgender persons from discrimination in employment either on the grounds of their gender identity, or gender reassignment.

6 The obligations of Contracting Parties under Article 1.2 of the Revised European Social Charter

33. Under Article 1.2 Contracting Parties undertake "to protect effectively the right of the worker to earn his living in an occupation freely entered upon".
34. Under Article E of the Charter, Contracting Parties undertake that the enjoyment of the rights set forth in the Charter "shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status".
35. The Committee has stated that it "considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion".⁴⁰
36. Moreover, it has determined that the discriminated acts and provisions prohibited by this provision are ones that may occur in connection with recruitment or with employment conditions in general (in particular, remuneration, training, promotion, transfer and dismissal or other detrimental action).⁴¹
37. Although there is no European Social Charter case law in relation to employment discrimination on the grounds of gender identity, the serious and widespread nature of such discrimination, and the existing Council of Europe standards in this regard, leave no doubt that such discrimination should fall within the Article E ground of "other status".

7 Sexual orientation and gender identity discrimination in employment in the Russian Federation

38. The Sociological Report quotes a 2009 report of the Moscow Helsinki Group as commenting that

³⁹ op. cit., page 167

⁴⁰ Conclusions 2006 Albania

⁴¹ Conclusions XVI-1 – Austria, p. 25

"Disclosure of sexual orientation of a person most frequently leads to their dismissal in Russian towns, after which it is practically impossible for the affected people to find a new job in the same town."⁴²

39. It also notes that, according to a survey quoted in the Moscow Helsinki Group report most LGBT people prefer to hide their sexual orientation at work (78.6% of respondents). Only 17% of respondents reported that they did not hide their sexual orientation from their employers and colleagues and did not have any problems in the workplace.⁴³
40. The Sociological Report gives details of a number of cases of employment discrimination, but ascribes their relative rarity to the level of concealment of sexual orientation.⁴⁴
41. The Legal Report cites two cases dating from 2004 and 2005 in which LGBT people were successful in contesting their dismissal in the courts.⁴⁵
42. Three other recently recorded cases are as follows:
 - In 2010, the employment contract of a university teacher was not renewed, his position being awarded to a colleague with less scientific experience and lower qualifications. Other colleagues told him that this happened because of his sexual orientation.⁴⁶
 - In 2011 in Arkhangelsk, a young lesbian was forced under threat of bodily harm by her father, who was also her employer, to sign a letter of resignation. This happened after the young woman's aunt told her father about her sexual orientation and private life. She did not challenge this in the court because she did not want to claim against her own father.⁴⁷
 - Also in 2011 in St. Petersburg, an activist of a local LGBT NGO was arrested by the police during a picket protesting against infringements of LGBT people's human rights. The activist worked as a teacher in a centre for children's creative activity. His boss learned about the incident from a newspaper and told the activist that parents and the authorities could react badly to the incident, and forced the activist to sign a letter of resignation.⁴⁸
43. A Report prepared by the Russian LGBT Network for the UN Committee on Economic, Social and Cultural Rights⁴⁹ mentions a case where a transsexual woman lost her job after sex reassignment surgery, and another case in which an employer insisted on calling a transsexual man by his previous (female) name, and spread this personal history information among staff members.⁵⁰

⁴² op. cit., paragraph 169

⁴³ op. cit., paragraph 168

⁴⁴ op. cit., paragraphs 168 – 176

⁴⁵ op. cit., paragraphs 234 – 236

⁴⁶ A case reported to the Russian LGBT Network.

⁴⁷ A case reported to the Russian LGBT Network.

⁴⁸ A case reported to the Russian LGBT Network. See also in Russian: http://www.neva24.ru/a/2011/11/29/v_Peterburge_uvolen_uchite/ (accessed: 26/04/2012).

⁴⁹ An Alternative Report – Discrimination on Grounds of Sexual Orientation and Gender Identity in Health, Education, Employment and Social Security in the Russian Federation – Interregional Social Movement "Russian LGBT Network" – May 2011

⁵⁰ Op. cit., page 9

44. This report also highlights the problems faced by transsexual people in the employment sphere when they try to have work record books updated to reflect their changed legal gender. The relevant Ministry of Labour Order does not allow for the need to change a transsexual person's legal gender. This question was tested by a transsexual woman in a court in Ryazan in 2007. The court dismissed her claims noting that they "are not in conformity with the established rules of execution of work record book".⁵¹ The failure of the Russian authorities to provide for such changes conflicts directly with paragraph 30 of the Appendix to the Committee of Ministers Recommendation on combating sexual orientation or gender identity discrimination (see paragraph 21 above).

8 Areas of non-conformity with the provisions of the Social Charter

Sexual orientation

45. As noted, the Committee requires that legislation should prohibit discrimination in employment on the ground of sexual orientation. It is clear from the 1st National Report of the Russian Federation that there is no explicit reference to sexual orientation in the Labour Code of the Russian Federation. The 1st National Report does however mention that the Labour Code prohibits discrimination in relation to "other circumstances unrelated to the employment qualities of the employee."
46. In theory, this could cover sexual orientation. The Legal Report documents two cases some six or seven years ago where the courts have upheld the employment rights of LGBT people (see paragraph 41 above). But there is nothing to suggest that LGBT people can generally rely on the courts to use the "other circumstances unrelated to the employment qualities of the employee" ground to protect them from discrimination in employment.
47. Indeed, all the evidence from other fields of law would suggest otherwise. Thus, as has been noted above, the Constitutional Court has refused to admit the three sexual orientation cases that have come before it (see paragraph 18). And other courts or prosecution authorities have repeatedly failed to uphold rights related to sexual orientation in the areas of freedom of assembly, association and hate speech, arguing that "propaganda of non-traditional sexual orientation" undermines the security of Russian society and state (see paragraph 8), is "extremist" (see paragraph 9), is incompatible with the religious doctrines and moral values of the majority and could be harmful if seen by children or vulnerable adults (see paragraph 10), and that homosexuals do not qualify as a "social group" deserving of protection by society from hate speech (see paragraph 12 & 13).
48. This behaviour of the courts and prosecution authorities is entirely consistent with discriminatory attitudes and behaviour on the part of central government. In 2002, when the Government and State Duma had the opportunity to amend the Criminal Code to provide protection from discrimination, both found reasons to oppose this proposal (see paragraphs 16,17).
49. 10 years later, the same logic obtains. At a Council of Europe conference, "Combating discrimination on the grounds of sexual orientation or gender identity across Europe: sharing knowledge and moving forward", organised by the UK

⁵¹ *ibid*, page 10

Chairmanship of the Committee of Ministers on 27 March 2012, the Russian Foreign Ministry's Commissioner for Human Rights, Democracy and Rule of Law, Konstantin Dolgov, intervened, defending the introduction of laws prohibiting "propaganda for homosexuality". In the words of a commentary posted at the Foreign Ministry website, "After some of the attendees [at the Conference] criticized the laws passed in a number of Russian cities, imposing administrative liability for homosexual and pedophile "propaganda" among minors, the Commissioner stressed that these legal acts do not violate Russia's international commitments and fully fit into Russia's laws and efforts to duly protect the rights and interests of Russian children...". It was, he said, the Russian Federation's position that existing laws were adequate to protect homosexuals. It was opposed to "new legal instruments" protecting homosexuals, and considered that it would be damaging "to single out one group" for such protection.⁵²

Gender identity

50. The Legal Report raises concerns about workplace discrimination against transgender persons, while the report of the Russian LGBT Network for the UN Committee on Economic, Social and Cultural Rights documents a particularly serious problem relating to the refusal of authorities to recognise the need to change a transsexual person's legal gender in work record books. This position of the Russian authorities conflicts directly with a specific recommendation of the Committee of Ministers Recommendation on combating sexual orientation or gender identity discrimination (see paragraph 44).

9 Finding of non-conformity with regard to sexual orientation and gender identity discrimination

51. It is evident that there is no systematic protection from discrimination in the workplace on the grounds of sexual orientation or gender identity in Russian law. And, moreover, that it would be contrary to the general policy of the Russian authorities to introduce such protection. In view of this we urge the Committee to return a finding of non-conformity with the Russian Federation's obligations under Article 1.2 of the revised European Social Charter.
52. We further urge the Committee to recommend introduction of comprehensive anti-discrimination legislation and practical measures to combat discrimination, taking into account the relevant paragraphs of the Committee of Ministers Recommendation on combating discrimination on the grounds of sexual orientation or gender identity.
53. Paragraph 44 above highlights the specific problems faced by transgender persons in the field of employment discrimination. Given the recognition of gender identity discrimination in the aforementioned Committee of Ministers Recommendation, and in the Report of the Human Rights Commissioner, and noting that some 34 member states already have an obligation to prohibit discrimination in employment either in relation to gender identity, or in relation to gender reassignment, (see paragraph 32) we urge the Committee to adopt a general Conclusion that "under

⁵² "Gay, paedophilia propaganda bans do not run counter to Russia's commitments – Ministry" – *Interfax Religion website* - 28 March 2012 (accessed 9 April 2012); and notes taken by ILGA-Europe's representatives during the Conference.

Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation, **gender identity** and political opinion”.

30 April 2012