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Date: 24/10/2018

DH-DD(2018)1047

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Meeting: 1331st meeting (December 2018) (DH)

Item reference: Action plan (22/10/2018)

Communication from the Russian Federation concerning the cases of Alekseyev and Bayev and Others v. Russian Federation (Applications No. 4916/07, 67667/09)

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Réunion : 1331^e réunion (décembre 2018) (DH)

Référence du point : Plan d'action

Communication de la Fédération de Russie concernant les affaires Alekseyev et Bayev et autres c. Fédération de Russie (Requêtes n° 4916/07, 67667/09) (**anglais uniquement**)



DGI

22 OCT. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**МИНИСТЕРСТВО ЮСТИЦИИ
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**DEPARTMENT FOR THE
EXECUTION OF THE
JUDGMENTS OF THE
EUROPEAN COURT OF
HUMAN RIGHTS**

Mr. Fredrik Sundberg

October 22, 2018 № *10-4806-18*

На № _____ от _____

Dear Sir,

Please find enclosed Action Plan of the Russian authorities on execution of the European Court of Human Rights' judgment in cases nos. 4916/07, 25924/08, 14599/09 *Alekseyev v. Russia* and 67667/09, 44092/12, 56717/12 *Bayev and Others v. Russia*.

Enclosure: on 9 pages.

Best regards,

Head of the Office of Representative
of the Russian Federation at
the European Court of Human Rights

A. Fedorov

ACTION PLAN

on the execution of the judgment of the European Court of Human Rights in cases no. 4916/07, 25924/08, 14599/09 *Alekseyev v. Russia* (judgment of 21 October 2010, final on 11 April 2011), 67667/09, 44092/12 and 56717/12 *Bayev and Others v. Russia* (judgment of 20 June 2017, final on 13 November 2017)

Violation

In its judgment on application *Alekseyev v. Russia* the European Court found a violation by the Government of the Russian Federation of Articles 14 and 13 in conjunction with Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms on account of the prohibition by the Moscow authorities to conduct a public event by A.N. Alekseyev related to the protection of rights of sexual minorities, and absence at the applicant's disposal of effective remedies with regard to the corresponding violation.

In its judgment on application *Bayev and Others v. Russia* the European Court found a violation by the Government of the Russian Federation of Articles 10 and 14 of the Convention on account of incompatibility of Russian laws on prohibition of propaganda of non-traditional sexual relations among minors with the Convention requirements and violation of the applicants' rights in application of such laws.

Individual Measures:

1. In accordance with the judgment in the case of *Alekseyev v. Russia*, N.A. Alekseyev was paid the compensation in full; the Russian Government informed the CMCE about that earlier (document DH-DD(2011)842E).

2. Just satisfaction under the judgment in the case of *Bayev and Others v. Russia*

No.	Applicant	Non-pecuniary damage	Pecuniary damage	Costs and expenses	Total	Additional information
1	N.V.Bayev	8,000	–	5,880	13,880	Compensation of non-pecuniary damage has been paid in full to N.B. Bayev' bank account in roubles at the exchange rate as of the date of payment (payment order no. 811257 of 7/03/2018 for the amount of RUB 557,853.6). Compensation of cost and expenses has been paid in full in the amount of 410,022.4 rubles to D.G. Bartenev's bank account as indicated in ECtHR's judgment (payment order no. 811256 of 7/03/2018).
2	A.A. Kiselev	15,000	45		15,045	Compensation has been paid in full to A.A. Kiselev's banking account together with the default payment for the total amount of 15,047.68 euro (payment order no. 4 of 19/02/2018).

3	N.A. Alekseyev	20,000	180	83	20,263	It was impossible to pay the compensation due to the reasons beyond the Government's control. The applicant provided the details of his foreign currency bank account, using which the Ministry of Justice of the Russian Federation sent to the bank documents for money transfer. However, the payment documents were returned by the bank, since, according to Russian laws, payment of compensation to a resident of the Russian Federation can be made only in roubles (to rouble account in any bank in the territory of the Russian Federation, or to rouble account in a foreign bank, or to a multicurrency bank account allowing to receive the compensation in roubles). N.A. Alekseyev was sent the corresponding explanations and informed that upon receipt of the appropriate details of bank account the compensation would be paid in due course.
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3. N.V. Bayev, A.A. Kiselev and N.A. Alekseyev were brought by domestic court to administrative liability for commission of administrative offences provided for by the laws of the Ryazan and Arkhangelsk Regions and the laws of Saint Petersburg, for propaganda of homosexuality among minors and the following fines were imposed on them: N.V. Bayev – 1,500 roubles, A.A. Kiselev – 1,800 roubles and N.A. Alekseyev under two judgments – 2,000 roubles and 5,000 roubles correspondingly.

According to the information from the Federal Bailiffs Service of Russia, one court judgment against N.A. Alekseyev imposing the fine in the amount of 2,000 roubles has been enforced. The remaining of the said judgments (against N.V. Bayev, A.A. Kiselev and one against N.A. Alekseyev) have not been actually enforced. In accordance with § 1 of Article 31.9 of the Code of Administrative Offences of the Russian Federation (“the CAO RF”) the period for bringing those applicants to administrative liability (2 years) has expired.

General Measures:

In connection with delivery of the judgment by the European Court in the case of *Alekseyev v. Russia* the Russian Government took a number of general measures aimed at elimination and prevention of the violations found by the ECtHR, and CMCE was regularly informed about that (documents of 11 October 2011 (DD(2011)842), 24 August 2012 (DD(2012)754), 25 January 2013 (DH-DD(2013)67), 10 January 2014 (DH-DD(2014)57), 15 July 2014 (DH-DD(2014)914), 8 April 2015 (DH-DD(2015)405), 3 February 2016 (DH-DD(2016)159) and 24 October 2016 (DH-DD(2016)1198). The series of the following important measures has been taken so far.

1. A number of measures on wide dissemination of the judgment in the case of *Alekseyev v. Russia* have been taken.

This judgment was sent to the Constitutional Court and to competent state authorities, which brought it to the notice of their structural subdivisions and territorial bodies together with necessary recommendations on taking into account the legal stances of the ECtHR.

The information about this judgment was published on the intranet site of the Supreme Court in "Departmental Contour" section (folder "International Law"), which is available for all Russian courts. Moreover, by a separate letter of the Deputy President of the Supreme Court of the Russian Federation the copy of the judgment was sent to the presidents of the supreme courts of the republics', territorial and regional courts, the Moscow and the St. Petersburg City courts, court of the autonomous region and courts of autonomous districts, district (fleet) military courts for information and its application in practice.

In connection with the CMCE's recommendations, the judgment, as well as the CMCE's decisions delivered after examination of the issue of its enforcement were additionally sent to the heads of the highest executive bodies of all constituent entities of the Russian Federation, which brought the legal stances of the European Court and CMCE's recommendations to the notice of local authorities of the corresponding regions.

The judgment in Russian was made publicly accessible by being published in "ConsultantPlus" and "Garant" legal reference systems.

2. Significant efforts were made to study international standards, legal stances of the ECtHR and to train judges and officials of competent state authorities.

2.1. In particular, the Supreme Court took the following measures in order to harmonize the court practice.

- The questions concerning the basic approaches elaborated in the international law as regards the protection of persons with non-traditional sexual orientation have been included into training programs for judges and employees of court apparatus within the frames of education in the Russian State University of Justice. Every year judges from various regions of Russia undergo training under these programs.

- Courts and court officials were informed of the decisions delivered by the European Court (both in respect of the Russian Federation and foreign states), of other documents, translated into Russian, which were adopted within the framework of international intergovernmental organisations and which relate to the issues of protection of the rights of persons of non-traditional sexual orientation.

- Up-to-date materials from the practice of bodies of the Council of Europe and UN were included into the courts internal database available to all judges for their usage in the course of examination of cases raising the corresponding issues¹.

- In order to harmonize the judicial practice, on 27 June 2013, the Plenum of the Supreme Court of the Russian Federation adopted the resolution "On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols by the Courts of General Jurisdiction", which

¹ CMCE recommendation of 31 March 2010 CM/Rec(2010)5 to its member states on measures for combating discrimination based on sexual orientation or gender identity; CMCE recommendation of 30 October 1997 no. R(97)20E to its member states on "hate speech" issues; report of the UN High Commissioner for Human Rights "Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity"; report of the Office of the UN High Commissioner for Human Rights "Minority Rights: International Standards and Guidance for Implementation", etc.

focused the Russian courts on the fact that any limitation of rights shall be based on the law and pursue a legitimate aim, as well as be proportionate to the legitimate aim pursued. At the same time, the resolution focuses on the necessity of thorough examination of all the circumstances of any case and delivery of reasoned judgments, as well as compliance with the legal positions of the Court in the court practice. Such explanations to the fullest extent relate to public events in the sphere of relations in question.

2.2. Regional courts thoroughly studied ECtHR judgments, CMCE decisions and documents of the Council of Europe and the UN disseminated by the Supreme Court.

Additionally, for the purpose of awareness raising, meetings and workshops for judges were held at the local levels; the participants discussed the issues concerning prohibition of groundless impairment of rights to freedom of assembly, including the rights of persons falling within the category in question.

The questions relating to the European Court's case-law as regards compliance with the Convention rights in the course of holding of public events, including by persons of non-traditional sexual orientation, have been included into the training programs for judges of district (city) courts.

2.3. Currently, the system of the Ministry of Internal affairs of the Russian Federation contains a legal mechanism determining the rules of conduct for employees of bodies of internal affairs in the course of discharge of their duties in view of recommendations of the ECtHR and international standards relating to securing of citizens' rights in the course of public events, including those related to protection of rights of persons of non-traditional sexual orientation.

The corresponding regulatory framework is formed by the Model Code of Ethics and Official Conduct of Public Employees of the Russian Federation and Municipal Officials and by the Procedure of Arrangement of Staff Training for Substitution of Officials in Bodies of Internal Affairs of the Russian Federation approved by Decree of the Ministry of Internal affairs of the Russian Federation no. 395 of 31 March 2015.

In accordance with that Procedure the bodies of internal affairs organized training and retraining of staff for the purpose of improvement of their knowledge and skills required for performance of their duties. At the same time, the corresponding professional education provides for studying the generally accepted principles and rules of international law; therefore, it includes regular studying of legal stances of the European Court and other bodies of the Council of Europe in that sphere of legal relations.

2.4. For the purpose of prosecutors' awareness raising about the legal stances of the Constitutional Court, the European Court and recommendations of the CMCE, technical equipment has been provided for the prosecutors' offices in the constituent entities of the Russian Federation and an electronic database of legal information in the sphere of relations under consideration is maintained in controlled state; the officials of the prosecutors' offices are also informed on the adopted laws and regulations and amendments to the current laws as well as on their interpretation by the Russian higher courts and the ECtHR.

2.5. Government authorities and local authorities in the constituent entities of the Russian Federation have conducted and continue to conduct regular events aimed at improvement of law-enforcement practice in the light of legal stances of the European Court.

As it was noted above, in accordance with the CMCE's recommendations, a copy of the judgment in the case of *Alekseyev v. Russia* was sent to the heads of the highest executive bodies of all constituent entities of the Russian Federation so that local authorities and their officials take into account the legal stances of the European Court in their practice. That allowed taking a number of efficient measures at the regional level, including workshops, meetings, trainings, etc. for studying the ECtHR's case-law and CMCE's recommendations and discussion of topical issues connected with examination of notifications about holding public events.

Currently, the corresponding events with participation of state employees engaged in examination of notifications about holding public events are regularly held in regions.

As reported by regional authorities (the information about this regions has been provided to the CMCE earlier (Moscow and Saint Petersburg cities, the Arkhangelsk, Murmansk, Tyumen and Kostroma Regions), in the course of examination of each notification about holding of public events devoted to the topic in question, the authorities take into account the legal stances of the Constitutional Court, the European Court and the CMCE. Moreover, as reported, the corresponding authorities and officials are intended to strictly observe the laws and Convention requirements and to strike the necessary balance between the interests of organizers and participants of public events and the necessity to ensure safety and protection of morals, health, rights and legitimate interests of others.

3. The Constitutional Court delivered judgment of 23 September 2014 no. 24-P² and ruling of 27 October 2015 no. 2534-O-P³, in which it gave the following important clarifications.

- In its judgment of 23 September 2014 no. 24-P the Constitutional Court held that § 1 of Article 6.21 of the CAO RF providing for liability for propaganda of non-traditional sexual relations among minors did not contravene the Constitution. At the same time, attention was drawn to the fact that prohibition of propaganda of non-traditional sexual relations among minors stipulated by it should not be interpreted broadly. As it was noted, the respective legal norm was neither aimed at prohibition or official censure of non-traditional sexual relations, nor was it intended to interfere into the sphere of individual autonomy, including sexual identity of a person.

The attention was drawn to the fact that the prohibition of propaganda of non-traditional sexual relations among minors did not impede impartial public discussion of issues related to the legal status of sexual minorities and did not create impediments to the expression by sexual minorities of their opinion with legal means, including organisation and conducting public events.

It was specifically noted that introduction of responsibility for propaganda of non-traditional sexual relations among minors was intended to protect such constitutionally significant values as family and childhood, as well as to prevent injury of minors' health, their moral and spiritual development. The Constitutional Court, at that, repeatedly gave interpretation of the term "propaganda of non-traditional sexual relations among minors"

² Judgment of the Constitutional Court of the Russian Federation no. 24-P of 23 September 2014 "On the Case Concerning the Verification of Constitutionality of § 1 of Article 6.21 of the Code of Administrative Offences of the Russian Federation on Account of Complaints Filed by Citizens N.A. Alekseyev, Ya.N. Yevtushenko and D.A. Isakov"

³ Ruling of the Constitutional Court of the Russian Federation no. 2534-O-P of 27 October 2015 "On Rejection of Adoption of Examination of Complaint filed by the Citizen of Alekseyev Nikolay Alexandrovich about Clarification of the Judgment of the Constitutional Court of the Russian Federation no. 24-P of 23 September 2014"

indicating that only public actions aimed at dissemination of information popularizing non-traditional sexual relations among minors or enforcing such relations on them, were found unlawful.

At the same time, the attention was brought to the fact that formal approach is unacceptable when applying the said legal norm in practice. It was noticed that the courts, by bringing persons to responsibility for commitment of the offence under consideration, were obliged to take into consideration all the circumstances of its commitment, facts ascertaining or, to the contrary, rebutting the existence of unlawful propaganda or enforcement of the indicated information. At the same time, the courts should consider time, venue and mode of dissemination of the respective information, as well as motives which actuated the person.

It was indicated that constitutional and legal meaning envisaging responsibility for propaganda of non-traditional sexual relations among minors, educed by the Constitutional Court in the said decision, was obligatory for all the public authorities, including courts.

- In its ruling of 27 October 2015 no. 2534-O-R the Constitutional Court gave additional clarifications.

In particular, it noted that the statutory prohibition of propaganda of non-traditional sexual relations among minors was intended to protect such constitutionally significant values as family and childhood, as well as to prevent harm for minors' health, their moral and spiritual development. However, it has been emphasized that such prohibition does not provide for interference with the sphere of individual autonomy, including sexual self-determination, and is not aimed at prohibition or official condemnation of non-traditional sexual relations, and does not preclude impartial public discussion of the issues of sexual minorities' legal status and using by representatives of such minorities of all legal ways of expressing their position on these issues and protection of their rights and lawful interests, including organisation and holding of public events.

It has been also indicated that only public acts aimed at dissemination of information that popularizes or imposes upon minors non-traditional sexual relations can be recognized as unlawful acts including in view of circumstances in which such acts are performed. It has been emphasized that the rule is question does not permit a broad interpretation of the prohibition.

It has also been noted that the question as to which public events can be organized and held by representatives of sexual minorities without violation of Article 6.21 § 1 of the CAO RF, requires the authorized law enforcement bodies to determine in each case the compliance of the parameters of a planned public event with statutory requirements; it also presupposes establishment, examination and assessment of factual circumstances.

At the same time, it has been emphasized that the law-enforcement authorities cannot disregard the legal stances of the Constitutional Court as to inadmissibility of broad interpretation of the prohibition imposed by that provision, as well as the legal stances as regards exercising of the freedom of peaceful assemblies by citizens.

4. These legal stances of the Constitutional Court, which are obligatory for all state authorities, have been thoroughly studied and accepted for execution by the corresponding authorities, their structural subdivisions and territorial bodies, including courts.

For instance, this year the Altay Regional Court held that the Biysk Administration's refusal to approve public events in support of rights of gays was

unlawful, since in absence of legal requirements and a reasoned proposal to change the place that refusal violated the claimants' rights.

At the same time, on 8 February 2018, the Koryazhma Town Court of Arkhangelsk Region dismissed the administrative claim filed by citizens A., I. and A., by holding that the authorities' refusals to approve the proposed public events were lawful and reasonable. In doing so, the court, having thoroughly assessed the date and place of the proposed public events, their theme and immediate vicinity of children institutions in the light of the legal stances of the European Court and the Constitutional Court, held that the refusal to approve the corresponding events and the administration's proposal to hold those events in another place were made within their competence with observance of the legal acts regulating the relations at issue. The Arkhangelsk Regional Court and the Supreme Court upheld that judgment.

Also, in other cases the domestic courts demonstrate similar weighted approaches.

5. The Code of the Administrative Procedure ("the CAP RF"), adopted in 2015, fully complies with the international standards and the case-law of the European Court. Earlier the Russian authorities repeatedly informed the CMCE in more details about the provisions of this Code.

According to the CAP RF organizers and participants of public events, including those held in support of persons of non-traditional sexual orientation, can apply to courts under new improved procedures for protection of their violated or challenged rights, freedoms and legitimate interests. In accordance with the CAP RF they can challenge in courts the authorities' refusals to approve the place and time of public events, authorities' proposals to change the place of holding public events, refusals to reply or untimely replies to notifications about holding public events or other applications, as well as unlawful acts of public officers in the course of public events, etc.

Moreover, in line with the ECtHR's case-law and legal stances of the Constitutional Court, the CAP RF contains provisions that provide for examination of complaints relating to public events prior to the date of holding of such public events. That requirement is observed in practice (except for the cases, when organizers and participants of the corresponding events file the corresponding complaints after the date of their holding, what often happens in practice).

6. In the case of *Bayev v. Russia* judgment the European Court held that the Russian laws on prohibition of propaganda of non-traditional sexual relations among minors were inconsistent with provisions of the Convention.

However, as it was noted above, the Constitutional Court declared those laws consistent with the Constitution of the Russian Federation.

In this connection serious questions regarding the execution of the ECtHR's judgment emerged; consultations with competent state authorities have been organized in respect of those questions.

7. At the same time, the authorities continue the work on implementation of the Convention provisions and the legal stances of the European Court in the legal framework of the Russian Federation, including the practice of domestic courts.

On 26 June 2018, the Plenum of the Supreme Court adopted the judgment "On certain questions that may arise in courts in the course of examination of administrative cases and cases on administrative offences connected with application of laws on public events".

That judgment is aimed at ensuring uniformity and improvement of judicial practice in cases about complaints on violation of rights, including in the sphere of relations at issue, i.e. at improvement of domestic court remedies in the corresponding sphere.

The judgment contains specific explanations for the courts with respect to almost all ECtHR's questions as regards challenging decisions, acts (omissions) of public authorities connected with conciliation procedures or refusals to approve public events, sending of proposals to change the time and place of public events, application of provisional measures in the cases about administrative offences, etc. The judgment directs the courts towards a weighted approach, thorough examination of all available materials and delivery of reasoned decisions.

The Government believe that this judgment is an important step towards improvement of the domestic judicial practice and bringing it into line with the Convention provisions.

8. The Government again draw the attention to the fact that the public has been duly informed on the equality of the rights of all citizens before the law and court, without any exceptions whatsoever. There are no laws in Russia aimed against representatives of the LGBT community, the latter are afforded the opportunity to fully exercise the rights guaranteed by the Constitution and the Convention, including by using mass events format.

- In November 2017, "Side by Side" international film festival was held. That festival is held annually and is devoted to the issues of homosexuality, bisexuality and transgender people examined in the context of cinema art. The aim of the festival is to create a cultural environment for a dialogue between LGBT representatives and the general public.

The next film festival will be held in Saint Petersburg from 24 October and 1 November 2018. It is planned to demonstrate 27 films and to hold debates and discussions.

- On 31 May 2018, report named "Transgender People in Russian Society" was presented. It was prepared after the monitoring study (in 2016-2017) within the frames of the Project of Legal Assistance to transgender people.

- In September 2018, the 10th "Kvirfest" festival with more than 2.8 participants was held in Saint Petersburg. In the course of that festival the issues of culture, sexuality and rights of representatives of LGBT community in Russia were discussed.

- On 6-7 October 2018, a round-table conference on topic "Problems of Provision of Medical and Legal Assistance to Persons with Gender Dysphoria" was held in Moscow. Specialists from various regions of the Russian Federation as well as the experts from the Project of Legal Assistance took part in that conference.

- In 2017-2018, events coinciding with the international day of equality of families were held in Russia (Saint Petersburg, Moscow, Samara, Yekaterinburg and Vladivostok) as well as in other countries.

- On 6 October 2018, the community center of the Krasnodar public LGBT movement "Revers" with support of the Russian LGBT network held a seminar on topic "Establishment and Development of Human Rights. New Generations of Human Rights". Discrimination, which *inter alia* examined the operation of human rights in the context of international and national acts.

- On 19 January 2017, a meeting between the head of the Krasnodar branch of the Russian LGBT network and the head of the Department on Protection of Constitutional Rights of Citizens of the Office of the Ombudsman of the Krasnodar Territory was held. In the course of that meeting the plan of actions to solve the problems of respecting of the rights of LGBT community members was developed.

- On 14 May 2017, a Rainbow flashmob associated with the International Day Against Homophobia, Biphobia and Transphobia was held in Perm. It was organised by the activists of "Rainbow World" initiative group and the Perm Department of the Russian LGBT network. More than 30 persons took part in that approved event.

- On 31 May 2017, a meeting of "Parent Club" was held in Perm. It was organized by Russian initiative group "Maximum" with the assistance of the Russian LGBT network. During that meeting parents discussed with a social work specialist their psychological difficulties and complex issues of child-rearing.

- On 10-11 June 2017, two training seminars were held in Omsk with the assistance of the Russian LGBT network: "LGBT parenthood. No to stigma, yes to equal rights!" and "Omsk Department of the Russian LGBT Network: Past, Present and Future".

- On 17 February 2018, a LGBT community center was opened in Tomsk. Informative events for persons of non-traditional sexual orientation are held in that center for the purpose of creation of a safe space for that category of persons.

- On 9-12 June 2018, an event named "Academy of Leadership of Young Female Activists" organized by the Russian LGBT network was held in Moscow. 33 female human rights activists from various regions of the Russian Federation took part in that event. As it follows from the subsequent publications, the human rights activists could discuss in a friendly environment various issues of promotion of rights of persons from that category.

- A LGBT Sports Federation⁴, with its branches located in various regions of Russia, operates in the Russian Federation.

This organisation holds regular sports events including sports and tourist rallies attracting a significant number of participants. This year, the following events took place: football festival "Football for All" (from 14 June to 15 July 2018 in Moscow, Saint Petersburg and Nizhniy Novgorod), the Second Sports and Tourism Festival "Baykaliya" (19-22 July 2018, on the shore of Baikal lake), Sports and Tourist Celebrities Rally (11-12 August 2018 in Nizhniy Novgorod), the Fourth Summer LGBT Festival "Primorskaya Raduga Sporta" (13-14 September 2018 in Vladivostok), the Seventh Badminton Tournament "Eliseus Bowl" (6-7 October 2018 in Moscow), etc.

In the course of the event named "Football Against Homophobia" held by the LGBT Sports Federation on 17 February 2018, the participants heard the opening speech of the member of the executive committee of the Russian Sports Federation, inspector of the Russian Sports Federation against discrimination in football, A. Smertin.

The members of the Russian LGBT Sports Federation also take part in foreign tournaments (for example, X anniversary Gay Games in Paris in 2018).

⁴ All-Russian non-commercial organisation created for uniting lesbians, gays, bisexuals, and transgender persons sharing the ideas of healthy lifestyle, physical culture and sports