

# LGBTQ+ RIGHTS IN THE BELLIGERENT RUSSIA



## **LGBTQ+ Rights in the Belligerent Russia**

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IN THE BELLIGERENT RUSSIA**

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## GRATITUDES

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Quarteera e.V. is an organization of LGBTQ+ people living in Germany and communicating in Russian. Since our foundation in 2011, our main goal is confronting the multiple discrimination of queer people with migration experience.

The continued Russian aggression against Ukraine, the tightening legislation and hate policies against the LGBTQ+ community in Russia and neighboring countries pose new challenges for our organization.

Quarteera joins the slogan:  
Peace and Freedom to Ukraine—Slava Ukraini!

During 2023, there has been a significant increase in calls to our consultation center from LGBTQ+ people in Russia who face personal persecution and inaccessibility of the necessary help within the country. “First they came for the Communists. And I did not speak out, because I was not a Communist.” When the Russian state began systematic persecutions against LGBTQ+ people ten years ago, the Western society kept silent. It remained silent until actively westernizing Ukraine became the target of direct military aggression. Then, within less than two years, the most severe legal sanctions were introduced against queer people, violating their basic rights and creating grounds for arbitrary mass repressions against them: the law “on the complete ban of LGBT propaganda” (05.12.2022); the law banning medical and legal transgender transition (24.07.2023); the resolution of the Russian Supreme Court recognizing the so-called “international LGBT social movement” an extremist (30.11.2023).

The persecution of queer people in Russia is consistent, institutionalized, and occupies an important place in the chauvinist politics of the right-conservative populist regime.

As contemporary witnesses, we feel obliged to document and constantly report on this dramatic situation. The political and legal degradation that the Russian state has been experiencing for more than ten years now sends warning signs to other countries that are currently suffering from the right conservative turn.

The authors of this research are very grateful to their colleagues from the human right initiatives defending LGBTQ+ people which continue working both in Russia and in exile: “T-Action,” “Delo LGBT+,” “Coming Out,” “Sphere,” “Russian LGBT Network”—for the possibility to use their materials in the work on this research.

The research was prepared in the frameworks of the Rosa Luxemburg Stiftung’s Project «Die Lage von LGBTQ\*-Personen im kriegsführenden Russland».

# Introduction. Research of Discrimination against LGBTQ+ People in Russia after February 24, 2022

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## 1. The Full-Scale War and Repressions against LGBTQ+ People

**In the period of a year and a half the full-scale war against Ukraine has begun, the two new repressive laws against LGBTQ+ were enacted in Russia. At the same time homo- and transphobic rhetorics turned into the main resource of media propaganda. Human rights activists have been recording an increased number of hate crimes since February 2022, as well as a serious enhancement of feelings of danger and hopelessness while staying in their own country amongst LGBTQ+ people.**

At the end of 2023, LGBTQ+ people's position in Russia became even more vulnerable and precarious, due to the so-called "international LGBT movement" (obviously not existing) being recognized as extremist by Russia's Supreme court. This recognition means all legal conditions had been created for arbitrary repressions, based on the widest range of actions and statements which could be formally labeled as dissemination of information about this "movement". At the end of 2023, the LGBTQ+ people's position in Russia became even more vulnerable, due to a so-called the so-called "international LGBT movement" (obviously not existing) was recognized as extremist by the General Procuracy of Russia. This recognition means all legal conditions had been created for arbitrary repressions, based on the widest range of actions and statements which could be formally labeled as dissemination of information about this "movement." First and foremost, such risks influence the work of human rights defenders and NGOs dealing with discrimination and human rights violations



related to sexual orientation and gender identity (SOGI).

**In the circumstances of legal uncertainty and the impossibility to understand which actions and statements are recognized as “legitimate” and which are not, LGBTQ+ people are pushed to live as close as possible and refrain from being visible for the state and in the media.** This situation favors such a hypertrophied form of ultra-conservative populism which has developed in Russia by the current day: in order to please homo- and transphobic sentiments that have been purposefully fomented by the authorities among their audience through the hate speech in media for more than a decade, these authorities label LGBTQ+ people as internal enemies and put them demonstrably outlaw. Pursuing the goal to persuade and to stir the audience up, the authorities benefit from their connivance to discrimination against LGBTQ-people. Here they aren't interested in restricting the hate speech only with declarations: the war and its destructive impact on the civil life in Russia leaves no other ways for the authorities to maintain the sufficient level of loyalty and involvement.

Dan Healey, a historian researching the history of LGBTQ+ in the USSR and Russia, notes that **the image of LGBTQ people as “enemies” has been used by Russian authorities as one of the aggressive war’s main justification. This image is used as a clear illustration for those “non-traditional values” that Western countries are allegedly trying to “impose on Russia.”**<sup>1</sup> The transformation of LGBTQ+ people into an imaginary enemy and the main catalyst for isolationist moods has been a significant part of Russian media policy at least since 2013, when the Federal law “On the Protecting Children from Information Advocating a Denial of Traditional Family Values,” or the so-called “ban of LGBT-propaganda among minors” (135-FZ) was adopted. **This law led to a dramatic increase (more than three times) of the amount of hate crimes motivated by homo- and transphobia.**<sup>2</sup>

**Russian authorities use and reinforce homophobic moods in order to assert the relevant political language and to foster this language’s audience, as well as to separate those who do not agree with such language from this audience, via identifying them as being dangerously near the socially**

1 [Healey, Vladimirova 2022].

2 [Kondakov 2016]; [Kondakov 2021].

**discriminated position.** This is the strategy used to completely destroy the civil society in Russia, including any possibilities of self-organization and public expression, and this strategy has been chosen by the Russian authorities not accidentally. As Igor Kochetkov, a human rights defender, notes, **rights and freedoms related to gender and sexuality have been one of the most visible and successful agendas in Russian social movements. The reason is that these rights and freedoms directly affect people's personal lives.**<sup>3</sup> At the same time, questions of gender and sexuality cause active rejection among radicalized homo- and transphobic groups, which the Russian authorities rely on in the circumstances of the war and whose active support these authorities gain through connivance to homo- and transphobic violence.

**State homophobia contributes significantly to the totalitarization of Russian society, since it stimulates the radicalized groups to express actively their loyalty to the authorities and to oppress those in the society who disagree with the official politics. The members of these groups make denunciations against LGBTQ+ activists, or physically attack them.**

**In the circumstances of aggressive war, the authorities benefit from maintaining and increasing such an active loyalty based on the hate speech used in official media-campaigns. This means more new discriminatory laws against LGBTQ+ people will be emerging, whereas the demonstrative repressions against LGBTQ+ people will continue unfolding.**

## **2. New Discriminatory Laws**

**This leads lawyers and human rights defenders to a conclusion that the situation in Russia will only get worse for the LGBTQ+ people in the long term.** Even if the political regime

3 [Kochetkov, Martynov 2021].

in the Russian Federation changes, this situation will not be transformed immediately, since it would require both to abolish the repressive laws and to implement long-term institutional restructuring on such institutes as courts and police, as well as to judge and punish those who committed hate crimes motivated by homo- and trans-phobia and avoided legal responsibility.

Before the so-called “Ban of LGBT Propaganda” (479-FZ) and “On Amendments to the Federal Law “On Civil Status Acts” and to the Federal Law “On Fundamentals of Health Protection” citizens in the Russian Federation” (386-FZ), which makes legal and medical gender transition procedures *de facto* and *de jure* impossible in Russia, were adopted respectively in December 2022 and July 2023, human rights monitorings had been focused on several violations of LGBTQ+ people’s rights in Russia:

- cases of physical, sexualized and psychological violence in private (family) and public spaces, as well as from strangers (including fake dates);
- outing (disclosure of sensitive data and personal information) and blackmail;
- conversion practices against LGBTQ+ people (including cases of kidnapping, forced detentions, illegal medical practices, torture, harm to health);
- violation of LGBTQ+ people’s labor rights (unfair dismissals, hiring discrimination);
- violation of LGBTQ+ people’s family rights (refusal to register a partnership, refusal of adoptions to LGBTQ+ people, illegal removal of children from the care of LGBTQ+ parents).

After the beginning of the war, these main types of discriminations were added and enhanced with the following:

- intensified usage of hate speech about LGBTQ+ in media, its increased frequency and violence due to drawing a direct connection between the war in Ukraine and the fight against LGBTQ+ people;
- dramatic increase of homo- and transphobic moods in the Russian society, as well as of the cases of violence and discrimination against LGBTQ+ people, which were crucially influenced by the war and the hate speech;

- arbitrariness of military registration and enlistment offices after the announcement of “partial mobilization” in September 2022.

**All these crimes and offenses give a picture of the social basis on which the new discriminatory laws lay: the practices of violence and discrimination against LGBTQ+ people that are ingrained in society and intensified under the influence of war.**

**New discriminatory laws against LGBTQ+ passed since the war began have set back the work of human rights activists by many years.** “The complete ban of LGBT propaganda” is extremely vague, so any discussion on the problems of LGBTQ+ people without conviction leads not only to fines but also to attention from the state machine and homophobic radicals (*see more in Chapter 2*).

**The principally new stage in the state’s infringement to LGBTQ+ people’s rights is the ban on gender transition, and the related violation of transgender people’s family rights (namely, a forced divorce of those married couples where one of spouses changed her or his gender marker, and the prohibition for transgender people to adopt children).** This ban set a precedent for the state’s direct intervention into the work of the profile department—the Ministry of health care, which was implemented by the state via violation of the Constitutional and international norms in the field of health protection. At the same time, **this law de-monstrates the state’s pressure on LGBTQ+ people shifted from the freedom of speech restrictions to the level of per-sonal persecution. It is especially risky in the case of transgender people whose full “list” is at the disposal of the state structures (primarily, because of the personal data about changed gender markers stored in the Ministry of Internal Affairs and the medical documentating that transgender people were diagnosed)<sup>4</sup> (see more in Chapter 3).**

**When the Russia’s Supreme court banned an “international LGBT movement” as “extremist,” the state received all the possibilities to persecute LGBTQ+ people via the legal**

4 F64.0, “Transsexualism” in ICD-10, the analogue of HA60, “Gender Incongruence” in ICD-11.

**resources (including both administrative and criminal liability), whereas radical groups got a sign from the state that the crime against LGBTQ+ people have been placed into the legal gray zone.** It will additionally intensify the already widespread practices of discrimination in the social sphere (in the contexts of work, education, social services, etc.) In addition, LGBTQ+ people will be victims of denunciations, and blackmail, and abuse, based on mercenary motives or personal hostility, because of their legal vulnerability.

### **3. Purposes and Methodology of the Research**

This study aims to analyze how do the following factors influence the lives of LGBTQ+ people in Russia:

- **the full-scale war and its multilateral consequences for the social sphere;**
- **homo- and transphobic moods in the society that rised against the backdrop of the war and during the years preceding it;**
- **repressive laws designed to distract citizens from the war, which legitimize the consequences of Russia's international isolation on the lives of its citizens, and encourage radical homo- and transphobic groups to denunciate or to realize outright violence, as well as intimidate those who do not agree with the government's course or simply avoid its active support.**

**The study focuses on a legal analysis of two discriminatory laws against LGBTQ+ people enacted in the Russian Federation in 2022–2023.** Legal analysis of normative acts is conducted via such methods of legal studies as: dialectical, historical, formal legal and comparative (comparative legal) methods, methods of logical deduction and induction. This study also includes systematic approach and statistical analysis based on court decisions from the period from 2015 to 2023.

**Legal analysis is complemented by discourse analysis of the hate rhetorics used in official media campaigns supporting each particular law. The legal analysis is also complemented by an analysis of sociological data, which allows us to consider social consequences of the new legislative norms for LGBTQ+ citizens in Russia. The relevant quantitative and qualitative data was taken from the surveys of the human rights defending NGOs:**

- “T-Action,” a series of surveys on transgender people’s lives after the beginning of the full-scale war (207 and 243 survey participants), and on the impact the discriminatory laws have on these people (461 survey participants);
- “Sphere” and “Coming Out,” “LGBT people in Russia: 2022 full report” (6439 survey participants);
- “Coming Out,” “LGBT\* people who emigrated from Russia after the start of the war in Ukraine,” 2022 (128 survey participants);
- “Sphere,” “Resource Center for LGBT,” “Russian LGBT Network,” “Study of the School Environment in Russia,” 2021 (1940 survey participants);
- “Russian LGBT Network,” “The situation of LGBT\* teenagers in St. Petersburg and the Leningrad region,” 2021 (325 survey participants);
- “Transgender Legal Defense Project,” “Transgender people in the Russian society: Research 2016–2017,” 2018 (69 survey participants);
- “Transgender Legal Defense Project,” “Violations of the rights of transgender people in Russia: Research results,” 2016 (242 survey participants);
- “Russian LGBT Network,” “Monitoring of violence and discrimination based on sexual orientation and gender identity in Russia in 2016–2017,” 2017 (366 survey participants).

Relevant historical and legal researches were also used for the preparation of this study. In the analysis of judicial practice related to the rights of LGBTQ+ people in 2022–2023 we use the cases documented by the “Delo LGBT+” project as a base.<sup>5</sup>

5 [Delo LGBT+ 2023a] (A Manuscript).

The analysis of the judicial practice of changing the legal gender marker of transgender people until 2018 is based on the court decisions collected by the “Transgender Legal Defense Project” [1].

**The structure of the study is an overview of the situation of LGBTQ+ people in Russia since the beginning of the war (based on data collected by the human rights NGOs in 2022 and 2023), as well as an overview of this situation’s dynamics since 2013, when the state passed the first openly discriminatory law against LGBTQ+ people (based on earlier monitorings). These reviews are intended to complement the legal analysis of the discriminatory laws aimed at LGBTQ+ people, enacted in Russia since the beginning of the full-scale war, with an analysis of what social practices have been preparing the basis for implementation of these laws, and consequently of what social consequences these laws imply for the LGBTQ+ people. The study ends with a conclusion and recommendations.**

In addition, the study is based on several concepts aimed at reflection of several significant qualitative changes in the life of the LGBTQ+ community in Russia, in addition to those quantitative ones which are indicated by the NGOs monitorings, in order to shape analytical lenses and to put the connection between the circumstances in the belligerent Russia and the previous years context.

The first of these concepts is ***hate crime***—an unlawful act motivated by the hate towards the victim on the basis of her or his belonging to a social group. **The motive of hatred is recognized as aggravating and requires additional severity when liability occurs in the majority of contemporary legislations. However, in Russia, LGBTQ+ people are not protected from this type of crime by such measures. Accordingly, the number of such crimes is further growing.**

Since the beginning of the war, the intensity of hate speech in Russia has increased significantly (as the state actively distracts citizens from its unpopular decisions, as well as from the social and economic decline), as well as the level of violence in society (primarily due to the fact people return from the war zone having severe symptoms of the post-traumatic stress disorder—PTSD). **Thus, in the belligerent Russia, new social and institutional conditions have arisen for the growth of hate crimes against LGBTQ+ people and for**

leaving them without proper legal protection.

The second concept used in this study is ***criminalization of LGBTQ+ people in the media, that is, the transformation of hate speech about LGBTQ+ people towards a rhetorical juxtaposition of LGBTQ+ people and the criminal sphere.*** Significantly, the criminalization of LGBTQ+ people in media creates a mutual dependency between the new repressive laws and populist media campaigns (justifying these laws as conditioned by the struggle against the “inner enemies”). As a result, the state receives a resource for whipping up hysteria in the society, seeking active support from its one part (relying on its marginal layers) and fear from the other one (which means the gradual totalitarianization of society and the growth of non-systematic violence within it). ***It is not a negative image of LGBTQ+ people, but LGBTQ+ people themselves who are now put at the center of this campaign—since the state today benefits from making LGBTQ+ people not only imaginary enemies, but also real victims of repression.***

The factor of criminalization allows us to see a significant difference in the situation LGBTQ+ people in Russia from the beginning of the war to the present time (2022–2023), and the period of 2013–2022: ***if previously the state benefited from such a type of right-wing conservative populism, in which the audience remains apathetic, then today, when the popularity of the war decreases, the level of loyalty required by this populism is maintained by the mixture of media campaigns of hatred against LGBTQ+ with real repressions.***

These concepts are intended not only to characterize the current situation, but also to predict the future situation on LGBTQ+ people in Russia—through a generalization of how exactly new legislative norms impact existing social and institutional discriminatory practices.

**Considered from this point of view, the situation on LGBTQ+ people in the belligerent Russia allows us to see more general dynamics—the transformation of human rights into a new media resource of the right-wing conservative populist regime, which means, first of all, the total destruction of the institution and the very idea of law.**



# The Situation of LGBTQ+ People in Russia after February 24, 2022

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## 1.1. The Rising Hate Speech


**Since the full-scale war against Ukraine began on February 24, 2022, the legal field in Russia has significantly transformed.** After the widespread anti-war protests, two new laws were enacted: on the criminal liability for the “fakes” about the armed forces (Federal Law of March 4, 2022 No. 32 “On Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation”) and on discrediting the armed forces (Federal Law of March 25, 2022 No. 62). The forthcomings of these laws have fundamentally reduced the opportunities for public expression and advocacy. Activists and human rights defenders were being arrested under the new laws and in a short time sentenced to long prison terms (from 6 to 9 years in prison), which caused broad associations with the so-called “Stalinist sentencing.”

Against the backdrop of not only egregious war crimes in the neighboring country, but also this “cleansing” of the civil society, in the first half of 2022 less public attention was paid to the rights of LGBTQ+ people. **However, hate speech against LGBTQ+ people has been a crucial part of the propaganda campaign to justify it since the beginning of the war.**

**The legal and media identification of LGBTQ+ people in Russia as extremism at the end of 2023 made one of the specific areas of this hate speech explicit—namely, the *criminalization of LGBTQ+ people*.** Exploring how the theme of LGBTQ+ in Russian pro-government media and in legal proceedings shapes the scenarios and specific practices of the authorities, Alexander Kondakov dwells on the fact that media and litigations (for example, testimony, descriptions of crimes, motivations) revolve around common general patterns of hatred towards LGBTQ+ people

—“thieves’ language” (a criminal slang) and prison culture.<sup>6</sup> In this frame of reference, the image of LGBTQ+ is associated with a prison practice of humiliation through a passive homosexual act and treating the person who committed it (voluntarily or forcibly) as “lowered”—having no rights within the prison hierarchy.

**This pattern underlies the persecution of LGBTQ+ people—at the level of both public media campaigns and the conditions created for the narrative of “lowering” will be emulating in the widest possible range of local interactions:** from strictly hierarchical institutions (such as security services, police and armed forces)—to local official and personal relationships; from gaining active loyalty to the regime among the right-wing and fringe groups (attracted by the rhetorical criminalization of LGBTQ+ people—that is, by the signal that homophobic violence is now not prohibited)—to intimidating the widest range of dissenters with the country’s xenophobic and chauvinist course through their linguistic criminalization.



**This trend not only shows a principally new context of violence against LGBTQ+ people. It is a clear indicator of a turning point in the Russian media sphere and society influenced by media: an indicator of a turn towards the total abolition of the rule of law.**

## **1.2. The Legislative Oppression**

**As a consequence of this process, two discriminatory laws were adopted in the Russian Federation in less than a year:** the Federal Law from December 5, 2022 No. 479-FZ “On Amendments to the Code of the Russian Federation on Administrative Offenses” (the so-called “Full ban of LGBT propaganda”) and the Federal Law from July 24, 2023 No. 386-FZ “On Amendments to Certain Legislative Acts of the Russian Federation” (prohibiting the gender marker change and medical gender affirmation for transgender

6 [Kondakov 2022, p. 1–22; 77–100; 101–124].

people). These laws were widely presented in the media, and their adoption was acclaimed to be the main result of the work of the Parliament (the State Duma) over a certain working period. **The demonstrative nature of these laws is evident by their vague wording, which creates legal chaos, which results only in the expansion of opportunities for arbitrary persecutions of undesirable persons or as carrying out exemplary judicial reprisals against LGBTQ+ people.**

**Based on this, we have reasons to assume that the authorities in the Russian Federation will continue this policy of oppressing the LGBTQ+ people:** via issuing new discriminatory laws, making specific people victims of exemplary reprisals, for the sake of maintaining homo- and transphobic panic in the society. **The political practice which has been developing in Russia since the beginning of the full-scale war shows that the authorities benefit if they gradually transform their hate speech against LGBTQ+ people into the relevant legislative acts.**

**We also have reasons to be afraid of exemplary reprisals against LGBTQ+ people in trumped-up cases.** In 2023, at the height of the media campaign around the “gender transition ban,” some media reported about detentions of transgender persons suspected in committing crimes related to the context of the war. In September 2023, large pro-government media (“*Gazeta.ru*,” “*Arguments and Facts*”) actively disseminated news about the arrest of a young man attempting to set fire to a military registration and enlistment office (“*voenkomat*”) in Rostov-on-Don; it was reported that a contract with the Ukrainian Armed Forces was found in the detainee’s backpack, as well as a “sex toy”; in the (allegedly real not staged) video of detention accompanying the news, the young man explains this by saying that he is a “transgender” and wants to “transition into a girl” [2]. Another topic for the media was the detention of two transgender girls in Novosibirsk for allegedly distributing “fakes about the Russian armed forces.” The text dehumanizes and exoticizes them, calling them “*two transgenders*”(“*dva transgendera*,” “*два трансгендера*”) and “*the guys [who] changed their names on their passports*.” The text is accompanied by an operational video in which police officers break into the girls’ apartment and then force them to apologize on camera. The text directly establishes the temporal and logical connection between gender transition and committing a crime:

*“They turned from Pasha and Vanya into Mira and Mia, and then created a channel on Telegram, where they published unverified information about the Russian armed forces. Police officers found out about this and raided the guys’ apartment” [3].*

**The material simultaneously shows transgender people in a sharply negative, derogatory light, and justifies their social danger.** Thus, the material legitimizes state pressure on the LGBTQ+ people and rhetorically proves the validity of this violence, earning its approval from the audience. **Such media messages update the image of LGBTQ+ people and further demonize them through establishing their direct connection with the war, which the wide audience in Russia today associate with fear rather than with chauvinistic inspiration.**

This trend was expressed in the clearest way by the series of odious publications by Russian pro-government media took place at the same time (for example, *Vesti.ru*) about Sarah Ashton-Cirillo, a journalist and a spokesperson of the Armed Forces of Ukraine, who is an open transgender woman. One of the publications contains the following generalization, combining the fear of the war with the transphobic panic in the one sentence:

*“A video with threats against Russian reporters appeared on September 8 on the official page of the transgender person [“transgendera”/“трансгендера”] who speaks on behalf of the Ukrainian territorial defense forces” [4].*

**Thus, the fear and repulsion to LGBTQ+ people amongst homo- and transphobic audiences serve as a way to “update” the image of the war in Ukraine—through their rhetorical juxtaposition with the war, as the battle against the “West” and it’s “destruction of spiritual values.”** The audience’s fears of the war become projected onto LGBTQ+ people, establishing a clear association between LGBTQ+ and “extremism,” “discrediting the army,” and the criminal sphere as a whole.

Experts from the “Delo LGBT+” project, who analyzed hate speech in homo- and transphobic online public pages, came to similar conclusions.<sup>7</sup> Before the war and the beginning of media campaigns around the new discriminatory laws, negative assessments of LGBTQ+ people in online publications were associated with obscene

7 [Delo LGBT+ 2023a] (A Manuscript).

sexual images or ideas about the “sinfulness” of LGBTQ+ people from the Christian point of view. **During the war, this source of insults was replaced by chauvinistic insults of Ukrainians combined with homo- and transphobic insults of LGBTQ+ people: “faggotry” and “Ukrainery” (“geistvo”/“зейство,” “ukrainstvo”/“украинство”); “ukroreich”, “saloreich” and “gomoreich”<sup>8</sup>. As a result, hate speech against LGBTQ+ people enters a completely new synonymous range, which results not just in insults, but in considerations of LGBTQ+ people as enemies—those who pose a danger. As a result, hate speech in online publications increasingly contains direct calls for the acts of violence, including murder and harm to the physical health of LGBTQ+ people.**

Putin’s propaganda machine cannot create a convincing and attractive image of the so-called “traditional spiritual values,” (“*traditsionnyie duchovnyie tsennosti*”/“*традиционные духовные ценности*”) especially against the backdrop of the growing economical problems and oppressions caused by the war in the Russian society.

**The only way to conduct the politics of right-wing conservative populism in the circumstances of this war is to criminalize LGBTQ+ people. The demonstrative judicial reprisals, pursuing the goal to demonstrate the threat and the authorities’ success in confronting it, are the parts of this process.**

**Because of this situation, the LGBTQ+ people in Russia stay in grave danger right now. Although the legal norms already existing in the Russian Federation are sufficient to recognize their rights as being essentially significantly discriminated against, both further tightening of legislation and deliberate fabrication of legal cases against LGBTQ+ people are possible and predictable.**

8 This pun is based on the pattern of Putin’s propaganda about the linkages between contemporary Ukraine and nazism.—Transl.

### 1.3. Increasing Violence and LGBTQ+ People’s Distrust of the Law Enforcement

**The preparation and adoption of repressive laws serve as a reason for the media circulation of hate speech. The latter, in its turn, contribute to increased violence in the society based on homo- and transphobia.**

The researches of discrimination against LGBTQ+ people, conducted from 2016 to 2023 by the NGOs and human right defenders, confirm it. According to “The Russian LGBT Network,” the percentage of LGBTQ+ people in Russia who faced with violence due to their SOGI increased by 14% in just a year—from 64.4% to 78.4%.<sup>9</sup>

In 2022, 8% of LGBTQ+ people who participated in the survey claimed that they had experienced physical violence, 8%—sexualized violence, 14%—domestic violence, and 18%—threats of violence.<sup>10</sup>

**The human right defense project “Delo LGBT+” indicates that in 2023, the number of requests by LGBTQ+ people for legal assistance increased by 3.4 times in comparison with 2022, and among the reasons for the request, 10.9% were cases of violence.**

According to “Delo LGBT+,” **many episodes of violence are linked and committed by organized groups. These cases are clear examples of hate crimes, since no additional motives (for example, domestic conflicts) can be established behind them. Most of these episodes consisted of sexualized violence and abuse of LGBTQ+ people (pouring with urine, shaving their heads, tearing earrings out of their ears with pliers) and filming these humiliations of the victim. One of the episodes almost ended in murder (“due to [the victim’s] refusal to cooperate, the organizer of the [criminal] group decided to execute the victim through a shot in his head, but other members of the group prevented him”).** Lawyers of the “Delo LGBT+” established

9 [Russian LGBT Network 2018].

10 [Sphere, Coming Out 2023, p. 27–30].

15 episodes of violence against LGBTQ+ in Moscow and 4 in Krasnodar. In both cases, the leader of the criminal groups “presented himself as a fighter for morality and even as religious messiah.”<sup>11</sup>

**At the same time, LGBTQ+ people regularly face the refusal to prevent violent acts or to carry out investigations from the police.**

**The research done by “Coming Out” and “Sphere” shows that more than a half of respondents who encountered violence in 2022 refused to contact the police.** 75% explained this by the conviction that the appeal was ineffective, as well as by fear of arbitrariness on the part of police officers. Another 25% motivated their refusal to contact the police by fear of being outed. All of these discriminatory actions by law enforcement agencies are deeply rooted in their practices. In 2017, human right defenders summarized this situation as the following:

*“The motive of hatred is systematically not taken into account when investigating crimes against LGBT people... communication with the police contains another threat to victims: outing... at the workplace or in the victim’s family due to the deliberate mishandling of personal data by the police.”<sup>12</sup>*

The fact that queer persons distrust the police is largely explained by the experience of those queer people who decided to interact with policemen, as it follows from the survey by “Sphere” and “Coming Out.” **Among the LGBTQ+ people who contacted the police, only 59% had their report accepted. At the same time, 47% faced pressure from police officers, and 7% received their direct refusal to initiate a proceeding.** Only 13% of the respondents who had referred to police reported that an investigation on their case had been carried out, and only 9% reported that the perpetrator had been found and brought to justice.<sup>13</sup> Lawyers of “Delo LGBT+” who accompanied LGBTQ+ trustees, confirm the widespread biased attitude towards LGBTQ+ people and moral pressure on them in the law enforcement institutions.<sup>14</sup>

**An additional factor for the rise in anti-LGBTQ violence is the new social phenomenon of the belligerent Russia—namely, the return of psychologically traumatized**

11 [Delo LGBT+ 2023a] (A Manuscript).

12 [Russian LGBT Network 2017, p. 29].

13 [Sphere, Coming Out 2023, p. 34–35]

14 [Delo LGBT+ 2023a] (A Manuscript).

**people from the war zone.** In 2023, more and more new cases of domestic violence (physical or sexualized) committed by such people were recorded [5, 6, 7, 8]. **The transformation of LGBTQ+ people into “internal enemies” done by the state propaganda via associating them rhetorically with criminal sphere and military threat and conniving homo- and transphobic hate (based, for instance, on gender non-conforming appearance or clothing, or non-heteromormative behavior), puts LGBTQ+ people in Russia under the direct risks of violence.**

**39% of respondents indicated an increase in homo- and transphobic attitudes among their closest circles since the beginning of the full-scale war.** This percentage was significantly higher among those living in the North Caucasus Federal District—it amounted to 49%.<sup>15</sup> **In the North Caucasus region, the increase in violence against LGBTQ+ people can become especially acute due to practices of personal persecution that have taken root there and are being approved by local authorities: LGBTQ+ people are massively subjected to torture, sexualized violence, blackmail, and regularly become victims of so-called “honor killings.”**<sup>16</sup>

**According to human rights defenders, the vast majority of respondents agreed that the war had a personal impact on them. This influence was expressed primarily in the growth of homo- and transphobic sentiments, in a significant increase in the risks to risks of encountering aggression in everyday situations:**

*“82% of the participants have responded that the 2022 war in Ukraine has affected them personally. [...] 78% of the queer participants reported feeling more vulnerable and unsafe after the invasion on February 24th, 2022. This was especially true for transgender participants, 85% of whom noted a high level of distress.”*<sup>17</sup>

15 [Sphere, Coming Out 2023, p. 36].

16 [Russian LGBT Network 2017].

17 [Sphere, Coming Out 2023, p. 35].



One of the respondents of the monitoring conducted by the trans-initiative group “T-Action” in the fall 2023 (that is, not only after a year and a half had passed since the start of a full-scale war, but also after the adoption of two discriminatory laws), summarizes his situation as follows:

*“I am worried about the risks of increased -phobic moods in the society and open aggression from compatriots, the persecution for activist activities and open status, the deterioration of the political situation in the country, the possibility of civil war, the deterioration of the crime situation due to the return of people with PTSD from the front... I’m afraid of the deterioration of my physical and mental condition, the lack of medications and medical care I need in, the emergence of problems for my children and other people dear to me and the inability to solve them due to lack of funds and capacities [...]”<sup>18</sup>*

#### 1.4. Pressure on the Human Rights NGOs

**The recognition of the “international LGBT movement” as extremist is currently the culmination of government pressure on organizations and activists defending the rights of LGBTQ+ people in Russia.** On November 30 2023, the Supreme Court of Russia, in the closed trial, despite several LGBTQ+ activists trying to enter this trial as the interested party, satisfied the Ministry of Justice’s demand. With reference to Art. 1 of the Federal Law “On the Counteracting to Extremist Activities” (114-FZ), the Ministry of Justice considers “various signs and manifestations of an extremist orientation, including the incitement of social and religious discord” in the activities of this non-existent “movement”. **Satisfaction of the Ministry of Justice’s demand means that the cultural or educational activities and human right defense led by LGBTQ+ activists can be qualified under the Articles 282.1 and 282.2 of the Criminal Code of the Russian Federation, as “Organization of an extremist community” and “Organization of the activities of an extremist organization”** (providing for a punishment of 6 to 10 years imprisonment in the case of “organizing an extremist activity”, and from 2 to 6 years of

18 [T-Action 2023c].

imprisonment in the case of “participating in an extremist activity”).

Experts note that the regulating application of these articles, Resolution of the Plenum of the Supreme Court of the Russian Federation from June 28, 2011 No. 11 (as amended on October 28, 2021) “On judicial practice in criminal cases of extremist crimes” presupposes extremely broad criteria for incriminated actions—“conducting conversations for the purpose of propaganda of the banned organization’s activities, direct participation in ongoing events, etc.”<sup>19</sup> **Thus, the opportunity is open for cruel and arbitrary reprisals against any LGBTQ+ activists, against lawyers who support LGBTQ+ people, as well as against any activists on a flimsy pretext.**

**It is important that in the current circumstances of cleared public and informational spheres, the widest range of needs of LGBTQ+ people as a discriminated group is conditioned by civil activism—so that those involved in it are now under the direct risks of reprisals under the Supreme Court’s decision.** As a result of the consistent discriminatory policy, LGBTQ+ people in contemporary Russia have no access to professional assistance and services (informational, psychological, cultural, legal, medical, etc.) in the governmental agencies or even in officially registered companies (sometimes such appeals are directly dangerous for LGBTQ+ people). Therefore, any practice of LGBTQ+ people’s self-organization of LGBTQ+ people can be classified as an “extremist activity.”

**In fact, it is the LGBTQ+ people whose situation in Russia at the end of 2023 directly reveals totalitarian logic of this state. The reason is that in case of LGBTQ+ people the private sphere’s autonomy and integrity are destroyed by the state, which considers it not as private life, but as a potential threat of “inciting social and religious discord” and the need to “confront extremist activities” in its field.**

**Such a *criminalization* of LGBTQ+ people (via rhetorical identification of these people with extremist activities) confirms the state’s signal to radical groups (given to them by**

19 [Delo LGBTQ+ 2023a] (A Manuscript).

**media campaigns around the new laws and court decisions)—that reprisals against LGBTQ+ people, and especially LGBTQ+ activists, will remain unpunished and even approved.** The most striking example of how radical groups read such a signal is the attack on the lawyers and experts participating in the “T-Center’s” (an organization providing informational and resource assistance for transgender people) judicial appeal against blocking of their website. The attack took place right in front of the courthouse, on the day another law discriminating against LGBTQ+ people was adopted (ban of gender transition, July 24). The attackers used pepper spray and were also planning to use hammers and fire extinguishers. At the same time, the police refused motives of hatred in the attackers’ actions, and released them with a report on disorderly conduct.

At the same time, restrictions on the freedom of speech and information increased the danger for all LGBTQ+ people. Because the Internet-resources created by human rights defenders have been blocked, a number of LGBTQ+ people in Russia sufficiently lack opportunities to learn of how to protect themselves from illegal prosecution (among others, through the “information hygiene” and personal data security measures). Since the beginning of the war, the state has been unprecedentedly breaking into the work of the Internet via blocking certain resources or entire platforms. In 2022, The Federal Service for Supervision of Communications, Information Technology and Mass Media, or *Roskomnadzor*, reported blocking 306 resources containing “information about LGBTQ+.” Although this report was rather populist than informational<sup>20</sup>, such populist statements are combined with targeted blocking of human rights resources—as usual, before enlisting them on the “register of foreign agents” (for example, “T-Action”), or at the height of media campaigns around the next discriminatory law (“T-Center,” “Delo LGBTQ+”). At the beginning of September 2023, *Roskomnadzor* reported that another 23 resources were blocked.

**As a result, many LGBTQ+ people have lost access to the information about human rights organizations and qualified lawyers,**

20 Most of the blocked resources belonged to the same domain name directly copying the wording of the “ban of LGBT propaganda” (“smena-pola-i-gay-sex-etokruto.rashka.net” [“gender transition and gay sex are cool”])—and this coincidence suggests on the idea of artificially creating these resources.

**which means their cutoff from legal protection in the situation of the new legislation and law enforcement realities in Russia.**

**It is significant that the possibilities of judicial appeal against the blocking of human right defenders' resources are limited due to the new laws.** As the lawyers from “Delo LGBT+” note,

*“If the court decides in favor of government agencies, such a decision will create an undeniable administrative prejudice, which will subsequently allow the police and prosecutor’s office to bring the plaintiffs to administrative liability under Art. 6.21 of the Code of Administrative Offenses of the Russian Federation, which provides for significant fines.”<sup>21</sup>*

**Since the beginning of the war, LGBTQ+ activists and organizations are massively in the so-called “register of foreign agents.” The ensuing restrictions and obligatory verifications (such as financial reports) forced a large number of them to cease their activism or leave the country, which complicates the opportunities for both advocacy (for example, accompanying LGBTQ+ persons to law enforcement agencies and representing their interests in court) and recording cases of offenses and discrimination on the basis of SOGI.**

## **1.5. Forced Emigration**

Since the beginning of the war, according to demographic estimates, about 1 million people have left Russia, and among this number two “waves” stand out—those who left the country from February to September, and those who did it after the announcement of the so-called “partial mobilization” at the end of September 2022. **Regarding the emigration patterns of LGBTQ+ people, such factors as disagreement with the war, the expectation of reprisals, fear of the closure of state borders and the risk of being forcibly sent to a war zone are not only extremely**

21 [Delo LGBT+ 2023a] (A Manuscript).

significant—but also lead to the fore such a related factor as the consistent homo- and transphobic politics of the Russian authorities.

**Human rights reports show that the media campaign around the “LGBT propaganda ban” (which began in the Summer 2022) played an equally important role for LGBTQ+ people’s decision to leave Russia and emigrate. The answers of many LGBTQ+ people indicate their complete distrust the government agencies and the constant fear which their stay in Russia is associated with.**

According to the empirical data collected by “Sphere” and “Coming Out,” 16% of LGBTQ+ people surveyed (that is, more than 1 thousand of people) left Russia in 2022, with more than 60% of this percentage who left the country after the so-called “partial mobilization” was announced. At the same time, only 4% of respondents received summons to the military registration and enlistment office (“*povestka*”)—which means that they had a direct risk of being forcibly sent to the combat zone. **Among the reasons for leaving, the risk of being mobilized was mentioned almost half as often (19%) as fear of repression (38%), a general threat to security (31%), tightening of censorship (30%), and an increase in homo- and transphobic sentiments in the society (28%), reluctance to stay in the country that initiated the aggressive war and to have anything in common with it (28%), preparation of the “LGBT propaganda ban” (27%).**<sup>22</sup>

A similar picture emerges from the research conducted by “Coming Out.”<sup>23</sup> **According to its results, more than 70% of LGBTQ+ people who have left Russia indicated that it was their SOGI that influenced their decision to leave.** Some respondents made the final decision to leave the country after a conflict with their closest circle and relatives, who, under the influence of the state propaganda, supported both the war against Ukraine and the discrimination against LGBTQ+ people. Fear of persecution for queer activism, and especially of increased repression against LGBTQ+ people as a group,

22 [Sphere, Coming Out 2023, p. 39].

23 [Coming Out 2022].

was frequently mentioned as the main reason to emigrate. Some respondents compared the political regime in Russia with a fascist one, and inferred the perspective of new and increasingly violent homo- and transphobic actions of the state from this fact. Moreover, among the respondents of “Coming Out,” the part of those who had left Russia in the period from February to September 2022, was higher than the part of those who emigrated right after the mobilization was announced (55.4% and 43.8%, respectively).<sup>24</sup>

**We can conclude that the reason for LGBTQ+ people to emigrate during the first year of the full-scale aggressive war was primarily not the mobilization itself, but the unpredictability of the Russian government’s actions, as well as a strong disbelief in the reality of their legal guarantees, and fears of further intensification of discrimination and repression based on the SOGI principle in the war circumstances.**

A similar picture is shown by the surveys conducted by “T-Action” among transgender people from the beginning of the war (Spring 2022) to Autumn 2023. In the first survey, more than 90% of respondents rated their psychological condition as “*very bad*”; in the second (Summer 2022) this percentage decreased to 69%.<sup>25</sup> Interpreting this data, one can see a weakening of both the general shock reaction to the outbreak of the war—and LGBTQ+ people’s fear that any increase in chauvinism and isolationism in the government policy will directly lead to homo- and transphobic repression:

*“What worries me in the most grade is the pessimistic forecast for the future of Russia as a whole, the uncertainty of my own future: will I be left without a livelihood and an ability to continue HRT [hormone-replacement therapy.—Ed.], will they pass laws restricting the rights of transgender people, will they have to go abroad, leaving their loved ones, etc.”<sup>26</sup>*

**In both the surveys, many open-ended responses related to the fear that once the war began, the state would begin to implement repressive policies against transgender people:**

24 [Coming Out 2022].

25 [T-Action 2023].

26 [Ibid].

*“There are a lot of hard feelings and anxiety. These are: fear of repression and new laws in the Criminal Code for who I am. Fear that the level of violence will increase in the country, fear of not having enough money to support myself, fear of losing a job.”<sup>27</sup>*

**Immediately after the outburst of the war, many transgender people were seriously afraid that the procedure of gender transition would soon be banned in Russia:**

*“Over the past six months, I finally changed my documents, the political situation pushed me to do this, since at the first time, there was a feeling that everything could be smashed up.”<sup>28</sup>*

**This fear can be associated with Russia’s international isolation and its withdrawal from the international conventions: to be certain, with the fear that this will lead to the abolition of those legal guarantees for LGBTQ+ people which contradict the transphobic rhetorics of “*traditional values*,” but which were preserved largely due to the fact these international conventions were operated in Russia. A year later, in July 2023, the validity of this fear was confirmed.**

**At the same time, the general fears of increased violence and worsening financial conditions are felt even more acutely by many survey participants—because they are aware of their belonging to the discriminated group, which will be affected much more seriously by the general negative trend.**

**The concerns of transgender people for their safety directly correlate with the increase in emigration plans among them. What influenced the increase in the number of people who reported their intention to leave Russia in the immediate (minority) or long-term (majority) future was the real reinforcement of their fears for their rights and their safety: namely, the adoption in July 2023 of the law prohibiting the change of legal gender marker, as well as providing transgender people with medical care within the framework of gender affirmative measures (see more in the paragraph 3.7.)**

27 [T-Action 2023].

28 [Ibid].

Surveys show that the rate of leaving among transgender people remained low throughout 2022–2023 (up to 10%). The responses of those who left Russia because of their psychological state indicate the persistence of serious difficulties in emigration related to discrimination, access to medical care and uncertainty about the future. Thus, among both groups (“those who left” and “those who stay”) the answers “*very bad, I can’t cope with it*” and “*badly, but I can cope with it*” when asked about their psycho-emotional conditions were chosen the most frequently. However, among those who left, the proportion of those who defined their psychological conditions as “*badly, but I can cope with it*” was 10% higher, while among those who stayed, the choice of the answer “*very bad, I can’t cope with it*” prevailed.<sup>29</sup> It could be interpreted as a lack of understanding by transgender people in Russia, what exactly they can do, how they can manage their lives and plans under the state pressure. Despite the difficulties in another country, the majority of participants in the survey from the fall 2023 thought that their emigration had a positive impact on their psychological well-being: 46% reported that their condition had improved immediately after their emigration, and 20% admitted that it had been improving over time.<sup>30</sup>

According to empirical data collected by “Sphere” and “Coming Out,” 16% of those who emigrated face discrimination on the basis of SOGI in the host country.<sup>31</sup> According to another survey conducted by “Coming Out,” this percentage is higher and reaches 23.4%.<sup>32</sup> They met the following common difficulties: troubles in quests of housing—due to refusals to homosexual couples or to people who have gender nonconforming appearance; with access to necessary medications (including gender-affirming hormone replacement therapy); with lack of the support from the help organizations; with domestic violence motivated by homo- and transphobia.

29 [T-Action 2023].

30 [Ibid].

31 [Sphere, Coming Out 2023, p. 40].

32 [Coming Out 2022].



## 1.6. Militarization of Social Life and LGBTQ+ People in Russia

**A number of LGBTQ+ people who participated in the survey by “Sphere” and “Coming Out” noted that they were more negatively affected by the “mobilization” rather than by the war as a whole (56%). This impact was most often characterized as increased anxiety and worsening psychological state (82%).** 23% noted that one of their relatives or friends got a summon (817 people), 15% noted that one of their relatives or close people was mobilized (535 people). 14% (518 people) indicated that they did not receive a summons, but there were high risks, since they are liable for military service, and 4% (173 people) reported that they received a summon:<sup>33</sup>

*“After mobilization was announced, my employer sent me on leave so that they would not have to give me away to the authorities. We waited for the police and the military services every night, afraid to leave the house, and stayed away from our permanent address. We took a bunch of antidepressants and drank a lot of alcohol.”<sup>34</sup>*

**The mobilization had a particularly acute impact on transgender women who did not manage to change gender markers in their documents. Among this group, negative experience of interaction in Military registration and enlistment offices<sup>35</sup> (“voenkomat”) and associated psychological traumas (arising from transphobic insults, humiliation, psychological pressure, and intimidation from employees of Military registration and enlistment offices) are widespread. Amid the announcement**

33 [Sphere, Coming Out 2023, p. 39].

34 [Ibid].

35 In Russia, each citizen with male legal gender marker is obliged to register with the military at the age of 17. Because of this practice, human right defenders regularly fix cases of abuse and violence against the youth, including those motivated by homo- and transphobia which are extremely wide-spread. The violence against transgender girls motivated by their appearance in Military registration and enlistment offices was very acute before the full-scale war, and it will multiply in the belligerent Russia. One of the examples of this violence was fixed by “Transgender Legal Defence Project”: in 2016, a 17 year old transgender girl was illegally diagnosed with psychiatric disorder because of her gender-nonconform appearance and expression by the medics of the Military conscription office, and because of this unprofessional diagnosis her future career as a teacher was broken; in addition, during the examination in the Military conscription office she was forced to an oral sexual act by the other conscripts, who also tried to cut forcibly her hair [Transgender ... 2018, p. 32]. However, there is still no special research dedicated to the Russian military conscription as a factor of violence against LGBTQ+ people.

**of the so-called “partial mobilization,” some of them experienced suicidal thoughts:**

*“I thought of killing myself just to avoid mobilization.”<sup>36</sup>*

**“Partial mobilization” creates enormous opportunities for arbitrariness and abuse (the facts of which have been repeatedly covered in media and recorded by human right defenders and lawyers). This means that the stigmatized social group, which in Russia includes LGBTQ+ people, become the subject to the same arbitrariness, but has serious additional risks which aggravate the whole situation for them.**


**“Delo LGBT+” summarizes that in 2023 among more than 15% of their consultations were related to the arbitrariness of military commissariats, including 7% of judicial cases.** There were such blatant legal cases, as kidnapping of transgender men by the Military registration office, and three judicial protections of transgender girls in the cases of evasion of conscription.<sup>37</sup> **All these actions of the Military registration and enlistment offices are illegal, primarily because the diagnosis F64.0—an analogue of the diagnosis “Gender Incongruence”—influences the medical classification and requires to recognize a person with this diagnosis as unfit for military service (in accordance with the “Schedule of Diseases”—a document regulating the category of fitness for military service in the Russian Federation).**

Because of being in the direct risks from homo- and transphobic abuse in the Military registration and enlistment offices, LGBTQ+ become vulnerable to the most brutal forms of violence. Therefore, the cases of such abuse require urgent advocacy actions and constant attention of human right defenders. However, in 2022–2023, LGBTQ+ people in Russia relatively rarely faced such direct risks. As an explanation we could assume that queer people in Russia are aware of the danger posed to them by the institution of the armed forces and the conscription service system in their country. LGBTQ+ people are frequently concerned with the few legal options available to them to avoid compulsory military service and distance themselves from activities related to the military service as much as possible. **Therefore, when analyzing the emigration patterns of queer people from Russia since the beginning of the war, it is necessary to note both the motives they share with other**

<sup>36</sup> [Ibid].

<sup>37</sup> [Delo LGBT+ 2023a] (A Manuscript).

**social groups (principal rejection to participate in the aggressive war, fear of reprisals), and the idea that LGBTQ+ people could be the first victims of the dramatic social and institutional transformations taking place in the country under the influence of the full-scale war this country had begun in February 2022.**



**Surveys suggest that when “the partial mobilization” was announced, LGBTQ+ people were aware of their direct risks of being involuntarily sent to war, but had also strong and consistent fear of the state security forces’ homo- and transphobic arbitrariness and hostility to them. At the same time, “partial mobilization” (which is still not closed *de jure* and *de facto* by the end of 2023) creates enormous opportunities for the abuse and direct crimes (the facts of which have been repeatedly covered in media and recorded by human right defenders and lawyers). This means that a stigmatized group which in Russia includes LGBTQ+ people, if faced with the same abuses and crimes, have serious additional risks.**

## **2. A New Stage of Homophobic Politics. Legal Analysis of Discrimination against LGBTQ+ People in Russia during the Full-Scale War: Federal Law No. 479 of December 5, 2022**

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### **2.1. Federal Law No. 479 “On Amendments to the Code of Administrative Offences of the Russian Federation”: Legal Analysis**

Against the backdrop of the aggressive war against Ukraine launched by the Russian authorities, Federal Law No. 479 was signed on December 5, 2022, with, as it is used to be practiced in Russia, a meaningless title—“On Amendments to the Code of the Russian Federation on Administrative Offences.”

**We can surely assume that it was military failures that became the trigger for a new wave of homo- and transphobic legislation. The legislator distracts the audience from the social, economic and legal instability in the country while trying to normalize what is happening as a struggle for “traditional spiritual and moral values.”** The new discriminatory laws are a way to point out the “enemies” of these values and outlining a scenario of populist politics that offers (depending on the circumstances and the audience) either the confidence in the state’s victory over the “enemies” (through a report on the blocking of materials with “LGBT propaganda,” or punishing those who are “responsible for” distribution of these materials), or a call to independently deal with these “enemies” (for example, through denunciation).

According to this act, the Code of the Russian Federation on Administrative Offenses (hereinafter referred to as the Code of Administrative Offenses of the Russian Federation) includes, in particular, the new version of Article 6.21 “Propaganda of non-traditional sexual relations and (or) preferences, gender reassignment,” and in addition to it, with the aim of rhetorically combine LGBTQ+ and pedophilia—

Article 6.21.1 “Propaganda of pedophilia” and 6.21.2 “Distribution among minors of information that demonstrates non-traditional sexual relationships and (or) preferences or that can cause minors to want to change their gender.”

The disposition of Article 6.21 of the Code of Administrative Offenses of the Russian Federation recognizes as unlawful

*“dissemination of information and (or) commission of public actions aimed at fostering non-traditional sexual attitudes, the attractiveness of non-traditional sexual relations and (or) preferences, or gender reassignment or a distorted idea of the social equivalence of traditional and non-traditional sexual relations and (or) preferences, or the imposition of information about non-traditional sexual relationships and (or) preferences or gender change, raising interest in such relationships and (or) preferences or gender change.”*

**Let us first note the fundamentally discriminatory nature of the formulations used. The renewed legislative system in the Russian Federation directly includes now a pre-supposition about “social inequality of traditional and non-traditional sexual relationships”, which is flagrant in the 21st century.**

**The quoted passage is absolutely blatant from the legal view, because of:**

- the state’s intention expressed there to apply the criterion of “traditionality” or “non-traditionality” not to costume or calendar ritual, but to “sexual relations”;
- the state’s attempt to interfere in the sexual sphere;
- the term “social inequality“ applied to to a social group, so that it clearly refers to Nazi and other practices directly prohibited by international law.

**Moreover, this article creates the ground for arbitrariness and abuse of the law enforcement officials.**

If its previous version prohibited “propaganda among minors,” now such unclear and wide range of activities as “dissemination of information” and “public actions” among an unspecified circle of people is prohibited—that is, almost any public statements related to LGBTQ+ people.

**It is remarkable that in this innovation the Russian authorities seek to deprive the subjectivity of all its citizens: LGBTQ+ people are directly declared to be “socially unequal,” and all the others are equated with minors who are not allowed to seek, receive and disseminate information on their own.**

**It is also noteworthy that a potential damage, even imaginary, is excluded from the scope of the article.** If earlier, at least in judicial acts, the purpose of the legislative ban was defined—namely, the protection of children from information which was supposedly “harmful to their health and development,” now this feature is not taken into account at all.

**According to the new edition of the article, Propaganda is recognized as both “dissemination of information” and other “public actions”—which, in the extreme, can mean almost anything.** Whether two people live in the same apartment, run a joint household, walk down the street holding hands, or whether a person is simply dressed unconventionally in the opinion of a biased observer—all this, if desired, can be interpreted as

*“committing public actions aimed at developing non-traditional sexual attitudes, the attractiveness of non-traditional sexual relationships and (or) preferences, or gender reassignment or a distorted idea of social equality between traditional and non-traditional sexual relationships.”*

or as *“the imposition of information about non-traditional sexual relationships and (or) preferences or gender reassignment, raising interest in such relationships and (or) preferences of gender reassignment.”*

The legal practice shows that such a desire regularly arises among law enforcement officers. In the Resolution of the Basmanny District Court of Moscow in case No. 5-1881/21, the description of the objective side of the offense is literally built on the following value judgments:

*“a young man in a pantsuit (green vest, black jacket and pink trousers) with long hair and makeup, painted nails, **in an image that is culturally in Russia not corresponding to the image of a man of traditional sexual orientation.**”*

## **2.2. Latest Trends in Judicial Practice of Prosecution for “Propaganda of Non-Traditional Values”: Legal Analysis**

One of the most remarkable innovations of Article 6.21 of **The Code of Administrative Offenses of the Russian Federation** is that it actually nullifies, although does not directly cancel, the effect of previously adopted acts of the highest judicial institutions—the Constitutional Court and the Supreme Court. Being discriminatory in its essence, these acts limited the arbitrariness in some grade, just because of its legal character. It relates first and foremost to the following acts: Ruling of the Constitutional Court of the Russian Federation, from January 19, 2010 No151-O-O, and Ruling of the Judicial Collegium for Administrative Cases of the Armed Forces of the Russian Federation, from August 15, 2012 No.1-APG12-11).

Thus, in the paragraph 3 of the Determination of the Constitutional Court, it was stated that

*“the prohibition propaganda as itself—as targeted and uncontrolled dissemination of information that can harm health, moral and spiritual development, including the formation of distorted ideas about the social equivalence of traditional and non-traditional marriage relationships—among persons who are unable to evaluate independently and critically such information due to their age, cannot be considered as violating the constitutional rights of citizens.”*

This situation implied at least some theoretical opportunity to protect the rights of LGBTQ+ people and allowed attorneys to demand the proofs and evidences for each of the abovementioned traits of “LGBT propaganda.” In the same paragraph, it was also noted that

*“Such restrictions do not consolidate any measures aimed at prohibiting homosexuality or its official condemnation, do not contain signs of discrimination, and by their very nature do not allow excessive actions of public authorities.”*

It followed from the Supreme Court Ruling that not all public actions can be recognized as propaganda—and thus its prohibition *“does not interfere with the right to receive and disseminate information of general, neutral content about homosexuality, or to hold public events.”*

**Since in the renewed Article 6.21 of the Code of Administrative Offenses the ban of “LGBT propaganda” was spread over an indefinite circle of people, even these decisions of the highest courts may not be applied (since they relate to an obsolete norm)—so that the courts do not need in any justifications for why this or that information about LGBTQ+ falls specifically under the criteria of “propaganda.”** Although the courts continue citing these acts, its significance is now reduced to the minimum. The criteria for “LGBT propaganda” set out in the cited acts of the highest judicial institutions are simply ignored in the court decisions of 2023.

Moreover, the judicial acts adopted in 2023 tend towards an extreme simplification. For instance, the only information indicated in the court verdict issued by Tverskoy District Court in Moscow (№5-920/2023, August 14, 2023) were:

*“the guilty of an offense is confirmed by the following written evidence examined at the court hearing:*

■ *a resolution to initiate a case of an administrative offense, according to which on May 26, 2023, while browsing the Internet, employees of the Center for Specialized Execution of the Main Directorate of the Ministry of Internal Affairs of Russia were identified [Full Name] who <...> posted in his channel the public access informational posts containing propaganda of gender reassignment, non-traditional sexual relations and preferences,*



*calling for gender reassignment and non-traditional sexual relations and preferences, imposing the information about non-traditional sexual relations and preferences, gender reassignment, except for the cases provided for in Article 6.21.1 of the Code of Administrative Offenses of the Russian Federation;*

- *an appeal from the Safe Internet League to the General Prosecutor of the Russian Federation;*
- *a report from the investigator about the ownership of the user's page;*
- *Internet resource research act dated May 26, 2023 with screenshots of the publications by [Full name];*
- *certificate of research dated 06/07/2023."*

**At the same time, in 2023, the amount of trials on “propaganda of non-traditional sexual relations” sufficiently increased in comparison with the previous years.** If there were only 22 judicial cases considered under Article 6.21 of the Code of Administrative Offenses of the Russian Federation, and 16 indictments issued in total, whereas 73 cases were received by the courts in 2023.

### **2.3. Latest Trends in Judicial Practice of Prosecution for “Propaganda of Non-Traditional Values”: Legal Analysis**

Let us draw attention to the fact that both individuals and officials are the subjects of liability—which implies a fine in the amount of 1 million rubles (around 10 000 Euros), and with the use of the media and/or the Internet—up to 5 million rubles (around 50 000 Euros). Administrative suspension of activities is also provided for the legal entities blamed for the “LGBT propaganda.” **The introduction of such sanctions became a new stage in Russian censorship policy: it is an attempt to reshape the cultural and informational landscape.**

The first episode of this stage was the lawsuit by the Department of the Ministry of Internal Affairs for the Golyanovo district of Moscow against the publishing house “Popcorn Books”, in the case of “propaganda of non-traditional sexual relations.” The reason for the lawsuit was the

book “Summer in a Young Pioneer’s Tie” by Elena Malisova and Katerina Silvanova issued by the publishing house and describing the relationships between pioneer and his counselor in 1986. This book became one of the best-selling novels in Russia in 2022.

This was followed by a series of administrative cases regarding online cinemas. **Any appearance of an LGBTQ+ character in a film broadcasted by an online cinema, even for a few seconds, turns into grounds for administrative liability, which leads to fine and blocking of an Internet resource** (Cases 05-0835/2023, 05-0566/2023, 05-0920/ 2023, etc.) Blocking after judicial decision is directly prescribed by a new regulatory act, namely the Order of the Federal Service for Supervision of Communications, Information Technologies and Mass Communications (*Roskomnadzor*) dated February 27, 2023 No.25. This document got a completely unreadable title:

*“On approval of the Criteria for evaluating materials and (or) information necessary for the Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Communications to make decisions that are the basis for the inclusion of domain names and (or) indexes of website pages on the information and telecommunications network on the Internet, as well as network addresses that allow you to identify sites on the Internet information and telecommunications network “Internet” and network addresses that allow identifying sites on the information and telecommunications network “Internet” containing information the distribution of which is prohibited in the Russian Federation.”*

*According to this order, Roskomnadzor blocks the Internet-resources meeting at least one of the following criteria:*

- ***the availability of information aimed at persuading in the attractiveness of non-traditional sexual relationships, preferences and attitudes, including shaping a positive image of persons who practice non-traditional sexual relationships or in connection with their non-traditional sexual preferences, attitudes or expressions, and containing positive assessment or approval of non-traditional sexual relationships, preferences and attitudes;***
- ***the availability of information aimed at creating a distorted idea of the social equivalence of traditional and non-traditional sexual relationships, preferences and attitudes;***

- **availability of information justifying the rejection of traditional sexual relations, preferences and attitudes** in favor of non-traditional sexual relationships, preferences and attitudes;
- **the presence of information that arouses interest in non-traditional sexual relationships and is aimed at changing a negative attitude towards them to a positive one, by imposing information about non-traditional sexual relationships, including systematic dissemination of these materials describing and/or depicting non-traditional sexual relationships;**
- **the presence of information that proves the preferences of non-traditional sexual relationships over traditional sexual relationships;**
- **the presence of information that is aimed at shaping a positive attitude to gender transition, including justification and support of gender transition in human being and of a person’s refusal from the natural sexual belonging;**
- **the presence of information about preferences of gender transition.”**

As could be seen from the material cited, **any mention of LGBTQ+ person or relationships between LGBTQ+ people that does not include a negative assessment fits these criteria.** From September 1 to September 4, 2023 (that is, in two business days), *Roskomnadzor* sent 45 notifications demanding the removal of such content. Materials were removed from 22 resources; 23 web-pages which refused to comply with the demands and to remove “*prohibited materials*” were blocked. Additionally, in September 2023, *Roskomnadzor* blocked the popular LGBTQ+ dating app *Hornet*.

***In these circumstances, Russian publishing houses and other independent cultural organizations are faced with a difficult choice—to engage constantly in self-censorship, or to cease their activities in the territory of the Russian Federation.***

**It is significant that in judicial practice the requirement to meet the “criteria of LGBT propaganda” by *Roskomnadzor* can be applied not only to publications, but also to personal statements made in everyday situations.**

Lawyers of the project “Delo LGBT+” draw attention to the court decision, which qualified as “*LGBT propaganda*” a neutral-positive personal opinion about LGBTQ+ people, expressed in a private conversation, which contained no calling for any action, but included no condemnation of queer people.<sup>38</sup> The administrative sentence was imposed for the following statements made in an everyday situation—during a break between classes at the university:

*“LGBT should not be prohibited in Russia;”*

*“LGBTQ+ is the norm, based on research and science;”*

*“Gender reassignment is good if you feel like you don’t belong to your gender.”<sup>39</sup>*

**This example indicates not only the fact that the culture of denunciation has grown in Russia, but also that even private expression of opinion is now a subject of state control.**

**This circumstance is especially dangerous for LGBTQ+ people themselves, since it means the normalization of control over all spheres of their lives. In other words, it is impossible to find a sphere autonomous from publicity in which queer people would be guaranteed to remain safe from accusations—in disseminating “LGBT propaganda,” and then—the information about “extremist movement.”**

## **2.4. Murders on the Ground of Homo- and Transphobia: Normalization of Hate Crimes against LGBTQ+ People in the Russian Federation**

Since LGBTQ+ people in Russia are less likely to report crimes against them to the police, whereas the police officers ubiquitously refuse to help LGBTQ+ people, it cannot be said that we fully understand the scale of crimes against LGBTQ+ people in Russia.

38 (Resolution on case No. 5-287/2023 on administrative offense by the magistrate judge of judicial district No. 8 of the Nizhny Novgorod dated 05/12/2023).

39 [Delo LGBT+ 2023a] (A Manuscript)

**However, even the available data is sufficient to conclude that the rhetoric of hatred used in state media campaigns and the discriminatory laws is being integrated into the practice of courts and legal enforcement.**

**The number of violent crimes against LGBTQ+ people because of homo- and transphobia, including serious crimes, in particular murders, is constantly growing. Such crimes are much worse investigated and classified, as it is required by law in case of the crimes committed under the hate motives of a social group.** In addition, it is already possible to trace cases when the jury acquits the killer of the queer person (as was the case, in particular, in the Basmany Court of Moscow, in case No. 01-0042/2020 on charges of A.B. for the murder of R.E.) In other cases, courts directly indicate in their sentences that the victim's statement about his sexual orientation or gender identity is a mitigating circumstance, and it results in a less severe punishment to the culprit.

As Evgeniy Shtorn points out, heterosexuality as a system of power relations requires special cruelty from criminals in order to maintain their status as normative sexuality.<sup>40</sup> Therefore, some of the analyzed cases demonstrate a high degree of violence. In several cases, murder was not enough to “punish” the victim for violating the boundaries of sexuality – and the culprit had to demonstrate that the sanctions relate specifically to the sphere of sexuality through the outrage:

*“He decided that [Full Name] because of his behavior did not deserve to be a man and cut off his scrotum and penis, then placed the scrotum and penis on his face.”*

**At the same time, the culprit often does not consider his action as a problem: he believes in his task to protect the already existing order of heterosexuality, and he does not consider his actions as a crime.** In accordance with this logic, the criminal rushes to notify his close friends or relatives about what he has done, seeking for their support or for some kind of symbolic justification, which is based for him on the heteronormative system of power relations and a necessity to implement it.

40 [Shtorn 2018].

**The accused are trying to justify their actions by pointing to the victim’s homosexuality, insisting on the “immorality,” “depravity,” and “danger” of the very fact of this person’s belonging to LGBTQ+. And the court in some cases takes this into account, mitigating the punishment.** Evgeny Shtorn cites a completely egregious case when the appeal ruling of the judicial panel for criminal cases of the Supreme Court of the Republic of Mordovia dated July 19, 2016 in case 1-75/2016 was recognized as mitigating the punishment of E.D.K. (provided for in the paragraph “h” of the part 1 of Article 61 of the Criminal Code of the Russian Federation) such a circumstance as the *“immorality of the behavior of the victim, which was the reason for the crime.”* Appointed E.D.K. under Part 1 of Article 105 of the Criminal Code of the Russian Federation, the punishment was reduced to 8 years and 3 months of imprisonment; the rest of the sentence was left unchanged.<sup>41</sup>

**This means that the institution of justice in Russia recognizes the right of the criminal to determine the norms of sexuality. The degradation of the judicial system and of the principle of the rule of law which manifest itself in these cases lack real legal guarantees for LGBTQ+ people living in the Russian Federation. It is significant that such a practice has been existing in Russian legal proceedings for years, which contributes to its rooting.**

Since 2013, after the adoption of Federal Law No. 135-FZ (the so-called “ban of LGBT propaganda among minors”), human right defenders and scholars have been exploring its impact on the number of hate crimes and the quality of legal responses to them. Alexander Kondakov in his study on hate crimes against LGBTQ+ people proves in several ways that **the discriminatory law, via assigning a role of “undesirable” members of society to LGBTQ+ people, played a fundamental role in the rise in hate crimes against this group.**<sup>42</sup>

This is evidenced, first of all, by the sheer number of court decisions made on hate crimes against LGBTQ+ people. In 2010, there were only 18 decisions. However, the more official rhetoric ignited homo- and transphobic panics, the more this number increased. In 2011 and 2012 there were 32 and 33 court decisions respectively.

41 [Ibid].

42 [Kondakov 2017].

Adoption of the law prohibiting “LGBT+ propaganda” in 2013 increased this number more than a third—up to 50. As a result, in 2015 there were 65 court decisions.<sup>43</sup> **Consequently, during the period of active homo- and transphobic rhetoric in official media, the amount of hate crimes against LGBTQ+ has tripled.**

One of the crimes demonstrating that the hate speech used on the government media directly results in violence against LGBTQ+ people. In 2012, TV-presenter Dmitry Kiselev on the TV-channel “Russia” spread the call to “burn the hearts of gays.” In 2014, the following verdict was passed on the fact of committing murder:

*“On February 16, 2014, at night, being at <address>, [Full name] waited for K.A.S. to leave [the] household, where they previously drank alcohol together, and due to personal hostility towards the [K.A.S.] which raised as a result of his proposal to commit an act of sodomy, [Full name] caused to [K.A.S.] about 4 blows to the head with a nail puller, **then with a knife cut out and took out the heart of the [K.A.S.], and then fried and ate it, recording this process on his phone’s video camera and commenting [...]**” (Sentence in case 2–4/2015, 38, Volgograd)<sup>44</sup>*

It is significant that even in this monstrous case, the court qualified the act as committed on the basis of “personal hostility.” This qualification of a murder committed with special cruelty, shows the tendency of Russian courts to avoid condemning hate crimes against LGBTQ+ people. **The courts create a situation when the hatred towards LGBTQ+ people ignited by the legislative power is supplemented by the judicial power’s connivance to the hate crimes against LGBTQ+ people.**

This trend is confirmed by the cases when gender and sexuality of the victim are recognized as a mitigating circumstance for the culprit: it is designated in the protocols as the victim’s “immoral behavior.” In the court interpretation of the act, it reduces the degree of responsibility: the murder is interpreted as unintentional, committed on the grounds of personal hostility, provoked by immoral behavior, and in a state of passion. For instance, there are the following implementation of this logics:

43 [Ibid, p. 65–66].

44 [Ibid, p. 72].

*“Biryukov caused serious harm to health being affected by sudden strong emotional disturbance (“affection”) caused by immoral actions of the victim. [...] Biryukov, being ... under the influence of alcohol, due to sudden personal hostile attitude towards [Full Name 1], caused by the latter’s intention to commit an act of sodomy with Biryukov, his confirmed immoral behavior and his active actions, (when [Full Name 1] touched the genitals and the lower limb of Biryukov), and due to a sudden strong emotional disturbance caused by such inappropriate behavior, Biryukov, acting in a state of strong emotional excitement, without remembering himself, having an aim to cause harm to health, in the process of struggle, knocked [Full Name 1] to the floor in the living room of the apartment and, sitting on him, inflicted no less than 18 blows with fists of both hands to various parts of the body of [Full Name 1]. The court considers it proved that the defendant’s actions arose suddenly as a result of a response to the unlawful, immoral behavior of the victim, who, while intoxicated, expressed intentions to commit an act of sodomy against Biryukov, which he perceived as real” (Verdict). on case 1–2/2015, Vilyuchinsk, Kamchatka Territory).<sup>45</sup>*

Moreover, in some cases, when a crime against an LGBTQ+ person sentenced more severely, the aggravating circumstances were not recognized as the motive of hatred on the basis of SOGI, but vice versa—as the evidence that the victim was not an LGBTQ+ person. For instance in the following case:

*“The court also considers the defense’s version that AA threatened to kill and commit a sexual act against O.B. Balzhinimaev as unfounded, due to the fact that, according to the testimonies of MP, BB, AA, AA **demonstrated no traits of non-traditional sexual orientation, he characterized positively, was respected among his colleagues, went in for sports, was married, had children, and behaved calmly when intoxicated**” (Sentence in case 1–27/2015, PGT Zabaikalsk, Transbaikal Territory).<sup>46</sup>*

**These precedents suggest that since 2013, the judicial system in Russia has been ignoring its task to protect LGBTQ+ people from the acts of violence and, in particular, from the hate crimes. At the same time, the amount of these crimes grows rapidly, according to statistics.**

45 [Ibid, p. 55].

46 [Ibid, p. 52].



It is essential for qualifying a crime as motivated by hatred towards LGBTQ+ as a group, to exclude various kinds of complementary motives, such as personal hostility, domestic quarrels or thefts. Statistics of crimes against queer people in Russia allow us to establish that the most dramatic increase occurred precisely among those crimes for which it was not possible to establish complementary motives, besides the hatred towards LGBTQ+ because of their SOGI. Two years after the “ban of LGBT propaganda among minors” had been enacted, the number of proven murders of LGBTQ+ people for which no motive other than hatred was established tripled. If by 2012 there were only 4 such cases, in 2015 there were already 12 cases.<sup>47</sup> Comparative analysis allows us to follow the transforming legal system in Russia, in comparison with other countries. The author of the study compared the crime index in California (the largest state in the USA) and Russia in the period from 2010 to 2015, and the sample included only such crimes that require an unambiguous interpretation, such as hate crimes that resulted in death. The researcher state:

*“These data demonstrate that in 2010, Russia and the United States recorded approximately the same level of LGBT murders, but since 2013 the LGBT Murder Index in Russia has been steadily growing and being ahead of the American figures. In 2015 the Murder Index of LGBT people in Russia is 2.5 times higher than in the United States (the USA median value for all years is 54% of the Russian one). Actually, Russia begins to absolutely overtake the United States in 2013, when a law on “propaganda of non-traditional sexual relations” was adopted.”<sup>48</sup>*

**Thus, by 2016–2017. Discriminatory legislation in the Russian Federation has led to an exponential increase in hate crimes against LGBTQ+ people. Lawyers of the “Delo LGBT” confirm the unlawful disregard of the motive of hatred by law enforcement agencies in 2022–2023: among 48 cases of hate crime against LGBTQ+ people only 7 were accepted by the police and the Investigative Committee of the Russian Federation.<sup>49</sup>**

**These observations allow us to conclude that LGBTQ+ people in the Russian Federation are facing increasing legal insecurity, which is directly fueled by homo- and transphobic panic deeply rooted in social and institutional practices.**

47 [Ibid, p. 69–70].

48 [Ibid, p. 87].

49 [Delo LGBT+ 2023a] (A Manuscript).

## 2.5. Hate Crimes and Normalization of the Multiple discrimination: LGBTQ+ People Involved in Sex Work and Having Migration Experience

**Discriminatory legislation both contributes to the social marginalization of its victims and derives its legitimacy from their marginalization. In its turn, it is possible to strengthen and expand this scheme in prosecution of those LGBTQ+ people who are involved in additionally marginalized groups—so that, who are already in a gray zone of law. Thus, LGBTQ+ people involved in sex work, and especially those of them who are migrants, face additional risks due to the new law.**

The sphere of sex work is criminalized in Russia (it may be sentenced under the Article 6.11 of the Code of Administrative Offenses as “Getting income from prostitution,” or Article 242 of the Criminal Code as “Illegal production and circulation of pornographic materials or objects”). Circles of sex workers are usually extremely closed, especially in the case of LGBTQ+ people (primarily, transgender women), and especially of the LGBTQ+ people who have a migrant background. As a result, it is very difficult to follow and fix discriminatory cases and cases of right violation. **These circumstances make LGBTQ+ people involved in sex work a group undergone a *multiple discrimination*—and therefore exposes them to additional risks of violence, including from the law enforcement.**

According to the research of “Sphere” and “Coming Out,” in 2022 5% of respondents (339 people) at least once agreed to sex work (such as engagement in sexual intercourse for payment, escort, work as a webcam model). 25% of this number are transgender people. Many respondents indicated such troubles as financial problems or inability to find a job as the reasons which pushed them to involve in the sex work.<sup>50</sup> **Thus, the circle of LGBTQ+ people who can fall under norms of Article 6.21 turns out to be very wide, albeit hidden.**

**For the LGBTQ+ people involved in sex work, there are denunciation which become the most likely way to be persecuted under the new provisions of Article 6.21.**

50 [Sphere, Coming Out 2023, p. 18].

One of such cases occurred at the very first time after the new law was adopted, as it describes Eva Khatess, an independent lawyer:

*“In the Moscow region, a transgender woman [involved in sex work] invited her clients to her home and argued with the concierge because of it. Each time he noticed them, he said: “Ah, perverts!” In the very first days when the new law was adopted, the concierge called the police and complained about this transgender woman” [9].*

**One of the most vulnerable group among the LGBTQ+ people in Russia involved in sex work are transgender women who have immigrated from the Post-Soviet countries of the Central Asian region** (primarily from Kyrgyzstan, Tajikistan, and Uzbekistan). In addition, in some of these countries, the criminal prosecution for homosexual acts exists, and/or the procedure for changing the legal gender marker de facto or de jure absent (in Azerbaijan, Tajikistan, Turkmenistan, Uzbekistan).<sup>51</sup>

**The cross-influence of the various factors of oppression, such as social, economic and legal discrimination, determines these persons’ involvement into sex work.**

According to the study by “Kyrgyz Indigo,” 83% of transgender women involved in sex work and having migration experience, who took part in the survey, were subjected to blackmail in Russia, and 74% although have been illegally detained at least once [10]. **Moreover, transgender women having a migrant experience and involved in sex work, often become victims of murders motivated by transphobic and xenophobic hatred [11]. This situation is conditioned not only in the intersectional discrimination, but also in the culprits’ confidence in their impunity, due to their awareness of the victims’ legal vulnerability.**

**It is significant that the first judicial cases under the new norms of Article 6.21 were initiated by the police against transgender sex workers (who were also immigrants).** Their offerings of sex services published in the open Internet sources were interpreted by the police and the court as “publicly expressing the interest to the attractiveness of non-traditional sexual relationships,” because they,

51 [Quarteera e.V. 2021].

*“being a male person, ... post their photos on the feminine image, namely wearing women’s clothing (skirt), with a female breasts, with long blond hair, make-up, and naked male genitalia (penis)” [12].*

**This situation demonstrates that the first victims of the new discriminatory law was LGBTQ+ people with multiple and intersecting factors of stigmatization (such as transgender women who have not their legal gender marker changed, and who are additionally migrants involved in sex work). In the described case, this new law was applied in the most perverted form, because it happened not on the ground of action, but on the ground of personality:**

If the suspects weren’t transgender women with male legal gender marker, their action (offering sex services and publishing photographs “on the feminine image”) would not fall under the formulation of “public expression of the interest in the attractiveness of non-traditional relationships.”

**During the first month after the adoption of the law the police in the large cities (primarily in Moscow and St. Petersburg) deployed mass prosecution of transgender women involved in sex work.** This fact was reported by an anonymous insider to the Trans\*Coalition group [13]. The prosecution took place in such a form of police violence as identification of sex workers by operational officers under the guise of clients (received the offensive name of “test purchase”). **In these cases transgender women involved in sex work were blamed for the “propaganda of non-traditional sexual practices and (or) preferences, gender reassignment”, because for the enforcement agencies and courts they were “men” openly offering a homosexual act.**

In April 2023, another judicial case against transgender women involved in sex work was initiated in Krasnodar. Five transgender women, two of whom were not citizens of the Russian Federation, were sentenced under the administrative responsibility for “propaganda of non-traditional sexual practices and (or) preferences, gender reassignment” and for “receiving income from prostitution.” The court decided not only to bring them to justice according to Article 6.21, but also to expel those of them who were foreigners.

The police report confirms the same logic for applying Article 6.21 as in the previous cases: the actions of the suspects are interpreted specifically based on their personality (or rather, on their legal gender markers—which were identified as “male”)—as a result it turns out to be possible to qualify as an offense the fact that they “performed surgical operations” to “*change appearance and become similar with women*” and “*suggested sexual services for a money remuneration.*”

This incident also demonstrates the tight collaboration between hate speeches in law enforcement practices and in the media. The police detention and the court trial became a media occasion, and the quoted excerpts from the protocol served as its main part, which created an obscene, simultaneously reduced and criminalized, image of LGBTQ+ people. The publication in media frames and confirms the media effects that create this pejorative wording when describing the detained and sentenced transgender women as “*men who have changed their sex and promote non-traditional relationship*” and “*two 30-year-old visitors from the neighboring countries*” [14].

**The Implementation of the new discriminatory law against LGBTQ+ turns the law into a collaborator of the media.** And if a media publication achieves the populist effect via connivance not only to homo- and transphobia, but also to xenophobia towards migrants, the practice of law enforcement and courts directly implements this type of connivance into civil relationships, where this connivance works as the *criminalization of LGBTQ+ people* and the normalization of infringement to their rights. **The normalized discrimination against LGBTQ+ people is spreading rapidly, not only as rhetoric, but also as a practical norm.** It becomes an everyday practice for such institutions as police and courts, and then—the media occasion, which broadcasts marginalized and criminalized images of LGBTQ+ people (which establish an associative connection between LGBTQ+ people and the criminal sphere). **The direct consequence of this logic is the massive infringement in the rights of those LGBTQ+ people who have additional factors of marginalization (involvement in sex work and migration experience).**

**The increased attention to transgender women because of Article 6.21’s norms exhibits this degradation of the legal system in Russia—since it fixes its institutional impasse and the impossibility to formulate in judicial language what action is “LGBT propaganda.” It witnesses such a destruction of the rule of law principle that a person can be blamed for her or his personality not for her or his action.**

## **2.6. Normalization of Hate and its Consequences: Economic Marginalization of LGBTQ+ People**

**Continuing discrimination at the legislative level has a fatal impact on the social and economic situation of LGBTQ+ people. The perpetrators are aware of among 48 cases of hate crime against LGBTQ+ people’s only 7 were accepted by the police belonging to a discriminated group and therefore are not afraid of liability for illegal actions and acts of discrimination. At the same time, LGBTQ+ people are taking fewer steps to protect their rights because of their distrust of the institutions of law enforcement or a fear of retaliation from violators.**

**According to the data collected by “Sphere” and “Coming Out”, in 2022 the quarter of the surveyed LGBTQ+ people were on the verge of a plight: they could afford only basic necessities—alimentation and medicine. At the same time, there were 5% among LGBTQ+ people on average, including 9% of transgender people, below the poverty line.<sup>52</sup> Only 72% of the surveyed LGBTQ+ people had a permanent income, and among transgender people—only 58%.<sup>53</sup>**

According to the same research, 15% of LGBTQ+ people believe that their SOGI negatively affects their financial situation. This percent is

52 [Sphere, Coming Out 2023, p. 14].

53 [Ibid, p. 15].

A number of LGBTQ+ people reporting difficulties in searching for a new job amounted to 20%, and 27% reported they had been pressured in work or educational teams. At the same time, among transgender people this percentage was more than twice as high—43% and 40% respectively. A person's belonging to the LGBTQ+ community in Russia turns out to be a factor that significantly reduces their employment opportunities and access to material well-being.

These data are confirmed by the surveys by “T-Action.” In Autumn 2023, almost a half of the surveyed transgender people (49%) indicated that their income was only enough for their basic needs, while 15% noted that their income was barely enough for life, and 7%—that their income was extremely low or even absent. Less than a quarter of the respondents chose the answer “*financial condition is bearable, but I would like it to be better,*” and only 6% agreed that their income was “*completely enough to live on.*” There were only 12% among working transgender people staying in Russia who said that their income was stable, whereas only 53% marked that had a job or combined work and study. At the same time, only 19% of the unemployed transgender people had any stable income (for example, ongoing support from relatives), while 62% believed that their income could be significantly reduced or disappear altogether, and another 13% indicated that it was difficult for them to predict it.<sup>54</sup>

**Discriminatory practices, rooted both in the society and in the work of government agencies, create additional difficulties for transgender people in labor.** After realizing legal gender transition (changing gender marker and name on the identity documents), many of them are forced to change workplaces in order to avoid outing and bullying. Many professions (for example, those associated with manufacturing and heavy industry, or with transport) are gender specific in Russian social and economic spheres, which often means a predominantly “male” team, and an environment with a high level of homo- and transphobia. This is why gender transition frequently forces transgender people to change not only their workplaces, but also their professional specialization. As a result, **transgender people face a long period of financial instability right after their legal and medical gender transition (which also requires sufficient financial contributions).** One of the participants of the survey describes this situation as the following:

54 [T-Action 2023a].

*“My savings were spent on transition (commissions, medications, consultations with commercial doctors), psychotherapy, moving to St. Petersburg, training due to the necessity to change [a gender specific] professional field, since the previous professional career was impossible to continue due to the transition. There was a period of serious financial difficulties from the fall 2022 to the fall 2023 [...]”*<sup>55</sup>

**Another discriminatory practice is the refusal to transgender people in changing their certificates of education (from schools, colleges or universities) in accordance with their new identity documents before assigning the contract. The lawyers from “Delo LGBT+” notices that the legal assistance in cases of such refusals was one of the most demanded their practice.** According to their evidence, some applicants were persistently advised by heads of educational institutions to confirm their identity with a “certificate of name change”—that is, to be regularly outed. Meanwhile, the change of educational documents means only its updating in accordance with the changed personal data, **so that ubiquitous refusals of this action by educational institutions violate the law, demonstrating a conspicuous example of discrimination based on transphobia.**

**In 2022, when Russia began the full-scale war, the control over military registration documents sufficiently increased in the country, so that many employers started requiring these documents before assigning the contract (based on Article 65 of the Labor Code endowing employers with this right). This fact creates a serious obstacle in finding employment for transgender men of the conscription age (from 18 to 30 years).** Although their medical conditions require recognition of their unfit for military service (in accordance with the “Schedule of diseases”), there are widespread refusals from the military registration and enlistment offices to recognize it, in a row with cases of abuse and violations against LGBTQ+ people. Lawyers of “Delo LGBT+” note that the legal support for the interaction with military offices (*voenkomat*) is one of the most frequent requests from transgender men, and widely among LGBTQ+ people. Many transgender men cannot obtain the required paperwork for employers, due to their fear of illegal actions in military registration and enlistment offices during the war and “mobilization.”

55 [Ibid].



**As a result, their chances to be employed are sufficiently reduced. In addition to it, since the new discriminatory law banning legal gender transition has been enacted (July 2023), the same problem (and probably even more acutely) will be existing for those transgender women who have failed to change their legal gender marker before.**

**Human right defenders have repeatedly noted that the vulnerable economic situation of transgender people is explained primarily by their visibility:** for example, because their appearance and self-representation mismatch with the names and gender markers indicated in their papers.

**The data considered above allow us to conclude that the more noticeable a person's belonging to the LGBTQ+ community is, the more chance this person faces discrimination in social and economic spheres (in particular, in the field of labor relationships) in Russia.**

## **2.7. Normalization of Hate and its Consequences: Violation of LGBTQ+ People's Right to Education**

**A similar situation is observed in the primary education. In contrast to the situation with labor rights, in this case we are talking primarily about discrimination against the LGBTQ+ minors (adolescents).** Since 2013, this group faces the strongest lack of information about gender and sexuality in Russia. In addition, these people are in fact cut off the specialized help connected with gender and sexual expression or hate-motivated oppression—by psychologists, teachers, medical workers, lawyers, and human right defenders. The school environment (including teaching staff and collectives of apprentices) where the minors spend their time turns out to be additionally hidden from human right monitoring, and from the information about gender and sexuality.

**The discriminatory nature of Russian legislation significantly affects the implementation of LGBTQ-minors' rights and freedoms.** More than 80% of LGBTQ+ teens experience anxiety that their SOGI will become a significant obstacle for realization of their life, economic and career opportunities, and also do not feel in security in Russia. 83.7% of respondents are convinced, that there had been no legal restrictions, such as the “ban of LGBT propaganda,” their lives would have been significantly less difficult during their adolescence.<sup>56</sup>

**The researches record that from 2016 to 2020, the percentage of violence against LGBTQ+ minors in school groups has sufficiently increased.** According to “Sphere,” there were 13% of LGBTQ+ teens who took part in the survey and reported incidents of physical violence in 2016. In 2020, according to the research conducted by “Sphere,” “Coming Out” and “Resource center for LGBT,” there were already 30% of respondents who reported this type of violence.<sup>57</sup>

**Contrary to the authorities' intention to “clean” any information about LGBTQ+ away from the school environment, this information is obviously available to teenagers — including the official media campaigns of hate which shape negative and hostile image of LGBTQ+ as a group. Thus, the school environment appears to be an area hidden from specialists and human rights defenders where LGBTQ+ minors stay helpless before different kinds of violence and pressure from their peers.** In 2020, more than 50% of LGBTQ+ students surveyed felt unsafe at school because of their sexual orientation, and about 40% because of their gender identity. About 80% of the surveyed heard hate speech and insults of LGBTQ+ in schools, with 70% indicating that they heard it from their teachers, pedagogical workers, and other school administrators.<sup>58</sup>

**The research contains evidence that this situation leads to direct discrimination of LGBTQ+ people in their right to education.** Among those participants of the survey, who had been subjected to hate-motivated physical, sexualized or psychological violence in the school community, the proportion of those who did not plan to continue education after completing the lower level of education (incomplete secondary education, 9 grades of school)

56 [Coming Out 2021, p. 32].

57 [Sphere, Coming Out, Resource Center for LGBT 2021].

58 [Ibid].

was three times higher in comparison with those surveyed who did not indicate they had been suffering from acts of homo- and transphobic violence as school pupils. This level of education gives practically no possibilities to apply for a highly qualified job, to enroll in a higher education institution, to receive internationally recognized educational and scientific degrees. **In the context of increasing level of homo- and transphobic violence in the society, it means additional risks of facing labor discrimination for LGBTQ+ people, as well as with discrimination and hate crimes.**

**One of the important peculiarities of the school environment in Russia (in comparison with some other Post-Soviet countries) is the insufficiency of teaching staff's reaction in cases of or violence against LGBTQ+ students. In addition to it, in some cases, teaching staff in Russia actively takes part in this pressure:**

*“Many respondents admitted that in their schools, teachers themselves participate in bullying. They either initiate it, via using homophobic and transphobic comments, or support when other school children initiate it.”<sup>59</sup>*

In the research dedicated to LGBTQ+ adolescents in school collectives in St. Petersburg, “Sphere” records that 44.7% of the respondents were convinced by their teachers that their sexual orientation or gender identity were “wrong” and “immoral.”<sup>60</sup> 32.9% of LGBTQ+ teens met their school teachers’ refusal to discuss questions of SOGI because they had fear before the “ban of LGBT propaganda.”

**Among the reasons for this situation the new discriminatory laws should be mentioned especially, because in accordance with these laws the widest range of information about SOGI and mentions of LGBTQ+ in a “positive” way are recognized as offences. It is an extremely acute question for teachers working with minors, as it is evidenced by the cases where the teachers were fired because they were LGBTQ+ people.**

59 [Ibid].

60 [Coming Out 2021, p. 17].

For example, the research by “Russian LGBT Network” records that by 2016 there were 13 cases of the working contracts with schools having been terminated based on their SOGI. The reason all these teachers were fired was actually that *“homophobic activists... interpret the law on propaganda in a radical way, and in accordance with it they consider it necessary to eliminate any contact of LGBTQ+ people with minors.”*<sup>61</sup> **To avoid this, teachers refrain from any discussions on SOGI, and with LGBTQ+ adolescents, in particular, within the environment.**

**Hate rhetoric broadcasted by the state and the laws normalizing this state of affairs directly contribute to discrimination against LGBTQ+ minors in realizing their right to education. The school environment in Russia frequently means hardly bearable conditions for LGBTQ+ students because of intolerance, insults, bullying, and physical violence.**

**Due to the laws prohibiting dissemination of any information about SOGI, LGBTQ+ adolescents are cut off from special help. Because of all these conditions, up to a third of LGBTQ+ teens refuse to enter complete secondary and higher education, and this fact, in the context of homo- and transphobia deeply enrooted in the institutional practices within Russia, decreases their chances to maintain sufficient quality of life and to achieve social mobility, as well as increases their risks to encounter discrimination and hate crimes.**

## Summary

For at least the last 10 years, a consistent homo- and transphobic policy has been realized in the Russian Federation. Since the beginning of the full-scale war in February 2022, this policy has been seriously deployed. **After the new edition of Article 6.21 of the Code of Administrative Offences has come into a legal force,**

61 [Russian LGBT Network 2017, p. 43].

**any public statements about LGBTQ+ people or in their defence could be recognized as an offense. Not only publications and public statements are touched by it: any personal manifestation of non-heteronormativity appears to be prohibited.** Nobody can feel safe, because even a bright suit may become a reason for accusations of “propaganda of non-traditional values.”

**LGBTQ+ people are explicitly acclaimed to be “secondary-class people,” whereas their relationships—to be “socially unequal.”** At the same time, the state openly refuses to provide equal legal protection from criminal attacks and crimes for LGBTQ+ people: hate-motivated crimes against LGBTQ+ people are considered by the courts as “caused by immoral behavior of the victim,” so that for courts the victim’s non-heteronormative SOGI mitigates the culprit’s liability (including cases of murders of LGBTQ+ people).

**Under these conditions, the life and health of LGBTQ+ people in Russia are under serious and permanent threat to their lives and health, because the state does not prevent this threat but increases it. Existence of this threat gives a huge impetus to social and economic discrimination against LGBTQ+ people, because homo- and transphobic violators are aware of queer people’s legal vulnerability. It has resulted in a significant negative impact on the welfare and an overall quality of life of LGBTQ+ people in Russia.**

**This state of affairs is consolidated by effective introduction of censorship:** namely, by ubiquitous restrictions of the freedom of speech, by closure of publishing houses and by large-scale blocking of the online resources (including those dedicated to LGBTQ+ people’s human rights). As a result, it is gradually becoming impossible to obtain unbiased information about LGBTQ+ people and SOGI in the belligerent Russia.

### 3. New Stage of the State Transphobia. Legislative Support of Discrimination Against Transgender People in Russia: Federal Law No. 386-FZ of July 24, 2023

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#### 3.1. Violation of the Right to Medical Care

In the Summer 2023, a new—and completely egregious—page of the state transphobic policy was opened in the Russian Federation by the adoption of the Federal Law from July 24, 2023 No. 386-FZ “On introducing amendments to certain legislative acts of the Russian Federation”. According to the new norm, Federal law from November 21, 2011 No. 323-FZ “On the fundamentals of protecting the health of citizens given in the Russian Federation” (Collection of legislation of the Russian Federation, 2011, No. 48, Art. 6724) was supplemented by Article No. 451 with the following content:

*“Article 451. Prohibition of changing a person’s gender [sex]. It is prohibited to carry out medical interventions, including the use of medications aimed at gender reassignment, including the formation of primary and (or) secondary sexual characteristics of the opposite gender [sex].”*

**Thus, transgender people in Russia are now unable to undergo any medical gender affirmation, which they were able to get an access to before, in the frameworks of the prescriptions by diagnosis F64.0 (such as gender affirmative surgery and gender affirmative hormonal replacement therapy, hereinafter referred to as HRT).**

**This is the first time the Russian legislation has so blatantly invaded the sphere of protecting human health and life. With only one legal norm, the state brutally violates the rights of**

a social group, directly presumed by both the Constitution of the Russian Federation and by the international conventions on healthcare (which are still in force in Russia). In particular, the new law violates the right to keep the highest attainable standard of physical and mental health (paragraph 26 of the Report of the Special Rapporteur of the UN Human Rights Committee No. 55 from February 13, 2003).<sup>62</sup> Finally, this law means the state’s neglect of the recognition of transgender people’s legal personality.

**The new law’s Part 2 of Article 3 contains the following novation important from the view of transgender people’s right to healthcare:**

*“gender reassignment does not include medical interventions associated with the treatment of congenital anomalies (developmental defects), genetic and endocrine diseases associated with solving the formation of genital organs in children, if such medical interventions are permitted by the decision of medical commission of medical organization, subordinate to the authorized federal executive institution. Based on the results of such medical interventions, the specified medical commission issues a medical conclusion on the correspondence of sexual characteristics and the gender [sex] characteristics which is required to make change in civil registration. List of medical organizations subordinate to the relevant executive federal authority, the form and procedure for issuing such decisions and medical opinions are to be approved by the Government of the Russian Federation.”*

**Consequently, within the meaning of the law, it is precisely the decision of a special medical commission based on a special medical intervention which has an absolute priority in gender recognition over the rights and wishes of the patient her- or himself, which aren’t taken into account. Thus, the rights and legal personality of intersex children in relation to whom the “correcting” operations are prescribed by the new law stay absolutely disregarded.**

As it is noted by the lawyers of “Delo LGBT+,” the international conventions on public health explain that the right to achieve the highest possible level of health cannot be interpreted as an injunction to “be healthy.” The absolute priority in the issues of health is the articulated need of a patient to implement certain measures prescribed in the International Classification of Diseases (hereinafter referred as ICD).

**When the new law prioritizes a conclusion of medical commission over the free will of patients in case of intersex children, it turns out to be such a reversal of the principle of articulation which actually equates to torture and thus directly contradicts to the UN Convention:**

*“The right to health should not be understood as the right to be healthy. The right to health includes both freedoms and related new rights. Freedoms include the right to control someone’s own health and body, including sexual and reproductive freedoms, and the right to be free from any interference, for example, the right to be free from torture and to not to be subjected to medical or scientific experiments without free consent.”<sup>63</sup>*

Right after the adoption of the law, the Ministry of Health of the Russian Federation immediately canceled Order No. 850n “On approval of the form and procedure for issuing medical organization of gender re-assignment document” from October 10, 2017. Many human rights defenders admit that this order met the criteria of helping transgender people (prescribed by the diagnosis F64.0) and successfully implement their medical and legal gender transition in accordance with the requirements of the International Classification of Diseases 11th revision (ICD-11), which came into force in Russia from January 1, 2022.

**The new law directly contradicts the requirements of the ICD, thereby discriminating transgender people in their right to receive medical care and, as a result, condemning them to extremely low quality of life and significant risks for its duration.**

### **3.2. The Realization of Transgender People’s Right to Medical Care in Russia**

The recent legislative oppression against transgender people’s right to healthcare is blatant, since even during the Soviet period there were mechanisms for medical gender recognition in cases of gender incongruence. Although the transgender condition was considered in that

63 [Delo LGBT+ 2023]. The report was prepared with the participation of other relevant organizations related to human rights defence and to relevant medical expertise—Moscow Helsinki Group and Independent Psychiatric Association of Russia.



system as a kind of hidden intersex variation, since the mid 1970s there are known cases of providing medical assistance upon transgender people's requests—in the form of surgical gender correction and of changing the registration record about their legal gender. It is significant that in the USSR the development of medical support for transgender people directly correlated with the transition to the new edition of the International Classification of Diseases.<sup>64</sup> **In today's Russia, to the contrary, there is the peculiar law which norms does not only directly contradict to the country's international obligations and to its guarantees given to its citizens, but also undermine the most basic conditions for reducing the number of suicides among transgender people and their encounters with discrimination and violence.**

**The new law normalizes precisely those discriminatory practices which are admitted by human rights defenders as fatally affecting transgender people's living conditions and well-being.** Before the law was passed, transgender people constantly faced refusal from doctors in consultations and prescriptions for gender-affirmative hormone-replacement therapy (hereinafter—HRT)—that is, with these doctors' illegal disregard of the diagnosis F64.0. According to the data of "Transgender People Legal Defence Project," in 2016, there were 59% of respondents who rated the medical care of endocrinologists available in Russia as "terrible," whereas another 32% rated this care as "satisfactory."<sup>65</sup>

The researches provide some cases the medical workers refused to prescribe and conduct HRT in spite of direct medical indication for it:

*"In May of [2022] year, my endocrinologist refused to give me HRT even though I had the F64.0 diagnosis and the approval of the medical board. She said that I 'don't look trans', that my 'trousers are feminine', and that I 'need to wear male clothing and copy male behavior for a few months.' She insisted on having my uterus and ovaries removed as part of HRT. My ob-gyn tried to convince me that I was attractive as a woman: 'You need to start loving yourself, and then you won't need to transition anymore.'"*<sup>66</sup>

According to the survey by "T-Action," 15% of respondents reported that obtaining medical consultations became significantly more difficult after the law was adopted. Respondents reported problems when appointing to doctors in connection with HRT:

64 [Kirey-Sitnikova 2021].

65 [Transgender... 2018, p. 14].

66 [Sphere, Coming Out 2023, p. 21].

*“I can’t get an appointment with a doctor. The procedure has become a much more complicated prescription: not everyone who has previously consulted on hormonal therapy or at least simply prescribed drugs, are ready to do this. For specialists who continue to do it, there are now many surmountable, but quite natural barriers.”<sup>67</sup>*

**Based on such examples, we can assume that medical staff will refuse consulting HRT even for those transgender people who managed to change their gender markers assigned at birth.** Lawyers from “Delo LGBT+” have documented multiple violations of this kind, including a case of refusal carrying out gender-affirming surgery on a transgender woman after she had been given anesthesia, with the flagrant wording about “*discrepancy between the passport gender and the biological one.*” Cases of unspoken bans have also been recorded by “Delo LGBT+” and consisted in prohibition to medical staff to issue prescriptions for the HRT medicaments, so that these bans sometimes extend to entire regions (for example, in the Chelyabinsk region, whose population is 3.4 millions).<sup>68</sup>

**For those transgender people who have already started their HRT (and especially for those who have undergone some kinds of gender affirmative surgery), its interruption is dangerous, not only for mental, but also for physical health, since it means serious hormonal failure resulting in loss of sex hormones.** This health condition evokes serious problems with bone structure, general body tone, emotional and psychological state. **At the same time, independent HRT (conducted with no professional medical assistance) is recognized by medics as carrying potential risks for transgender person’s different bodily systems and life expectancy as a whole.**

The main component of hormonal therapy for transmasculine people are testosterone medications included in Russia in the list of strictly prescription medications. Due to the new law, medics cannot write a prescription for these medications to those transmasculine people who have not changed their legal gender marker. **As a result, these people will be forced to acquire testosterone medications illegally, and consequently will be constantly meeting risks of criminal liability (under Article 234 of the Criminal Code of the Russian Federation).**

67 [T-Action 2023b].

68 [Delo LGBT+2023a] (A Manuscript).

**The adoption of the law increased manifold the risks of illegal denial of transgender people of any kind of medical assistance.** The broadest possible wording of the new law and the absence of any provision explaining its documents from the Ministry of Health warn medical staff to fear that any intervention impact on the functioning of the body of any medical intervention in the functioning can be interpreted as *“the formation of sexual characteristics of the opposite sex.”*

According to human rights defenders, transgender people had frequently faced with discrimination when visiting general medical practitioners even before the new law was adopted. In 2016, 41% of transgender people participated in the research by “Transgender Legal Defence Project” indicated that getting adequate medical care for transgender people in Russia is almost impossible. 25% of respondents encountered direct doctors’ refusal to provide medical care because of their gender identity. One of the surveyed testified:

*“I went to a public hospital to see an urologist for a paid appointment, but the urologist, having learned about my transgender status, refused to treat me and asked me to leave the office.”<sup>69</sup>*

The research by “Sphere” and “Coming Out” provides another evidences, this time — from 2022, showing that the situation worsened:

*“They refused to see me. They threatened to call the police because I was ‘propaganda’, because people like me are ‘banned in Russia’. It happened in the summer when I was trying to see an endocrinologist. I was denied medical services because supposedly ‘the healthcare...system doesn’t cater to transvestite perverts’—this is a direct quote.”<sup>70</sup>*

According to the survey by “T-Action,” due to the inability to receive medical care (in particular, connected with HRT) **in Russia, many transgender people experience severe depression and suicidal thoughts.** The respondents noted: the lack of medical care they are prescribed for (due to the F64.0 diagnosis) will be affecting all areas of their lives, turning these lives into a quests of such care:

*“Now I often cry before going to sleep, I’m often overwhelmed with the thoughts that I will never be able to fully be who I feel I am, and sometimes I return to suicidal themes because of it. I understand that I won’t be able to build a relationship with someone until I completely correspond with myself (I mean genital surgery among other things).*

69 [Ibid, p. 25].

70 [Sphere, Coming Out 2023, p. 21–22].

*Now, I don't fully understand whether it will be possible to do it in Russia, even for those who have their documents changed, or I will have to endure this life for years, just working for being able to do it somewhere abroad for a price multiply exceeding as it was in Russia..."*<sup>71</sup>

**“T-Action’s” survey indicates complete uncertainty in the realization of their basic needs, which are the new reality for the majority of transgender people in Russia.** Respondents note that they have been experiencing severe stress for more than a year and a half since the beginning of the war, so the ban of gender transition has become for them the next and the most serious strike:

*“Before the law began to be promoted, I tried to cope with, invigorated myself, played sports and two hobbies every day. After it was adopted in the first reading, it became harder for me to devote energy every day, but I still managed to get it out. After its adoption in the second reading, apathy covered all areas of my activity. Everything I do now is going to work and sleeping. I'm trying to pull myself back up to the surface, but so far it's not going well...”*

*“I constantly feel panic and anxiety, the only time when I feel quite normal are the first seconds in the morning after awakening. Then, a sharp awareness of what is happening comes. My panic attacks became more frequent and it's even more and more hard for me to stop it. I feel stuck and I don't know at all what to do next and how to live now. There was at least a hope before, but now it has also gone”*

*“I honestly wanted to kill myself, but I already promised my beloved fool that we will leave together, in six years or so. However, I recourse to alcohol and self-harm. I can't speak at all, and have become like a stone.”*<sup>72</sup>

**The adoption of the law and the media campaign supporting it led a number of transgender people to an exacerbation of mental disorders.** 53.9% of those surveyed by “T-Action” indicated that they have a diagnosed mental disease, and 80.6% of them admitted that during 2023 their mental condition worsened (including loss of strength, or extreme growth of anxiety, or panic attacks). Against this background, 26% of respondents cannot receive medical care due to the lack of available competent specialists or the inability to pay for their work.

71 [T-Action 2023c].

72 [Ibid].

**It is significant that “the complete ban of LGBT-propaganda” influenced the practice of psychological and psychotherapeutic assistance: the vague criteria indicated for “LGBT-propaganda” forces many specialists to refuse LGBTQ+ clients, and transgender people in particular (as the most visible among those included in the abbreviation), whereas other specialists just hide the information they are competent for SOGI-related queries. Thus, LGBTQ+ people are losing another type of medical support they need to stabilize their mental state.**

**In addition to the motives of hatred based on gender identity, there is an administrative reason for medical staff to refuse conducting medical care for transgender people. According to the survey, even before the new law was adopted, transgender people had been frequently failing to find medical help because their appearance had been at odds with their identity documents. For instance, 7% of respondents were refused medical care for this reason in 2017.**

**The new law encourages doctors to be ignorant about the health of transgender people. It creates an excuse for denial of medical care on the basis of hostility towards LGBTQ+ as a group. These denials mean permanent danger to transgender people’s health (in particular, in the areas connected with HRT).**

### **3.3. Changes in Legislation on the Civil Status Acts: Prohibition of Legal Gender Transition**

**The most significant and fatal outcome of the new law for the whole spectrum of transgender people’s civil rights is the recognition Paragraph 4 of Article 70 of Federal Law No. 143 “On Civil Status Acts”, from November 15, 1997, loses its legal force.**

This part of the law No. 143 was the main legal basis for making corrections to civil status acts of transgender people (i.e. to change their legal gender marker). In accordance with it, a citizen's legal gender could be corrected on the basis of *“a medical document confirming gender transition and issued by a medical organization in the form and manner established by the Ministry of healthcare of the Russian Federation.”*

It is significant that the law No. 143 was adopted several months after the Russian Federation ratified the ICD-10 (Order of the Ministry of Health of the Russian Federation dated May 27, 1997 No. 170 “On the transfer of health authorities and institutions of the Russian Federation to the International Disease Classification-10). This law which is no longer in force after July 2023 created a sufficient implementation for transgender people's right to health care (and for the measures prescribed to them in the frameworks of the diagnosis F64.0 (“Transsexualism”) according to the ICD-10). **Law enforcement practice in case of this legal norm had been frequently leading to lawsuits, because until 2017, the Ministry of healthcare did not approve the form of the official medical certificate required by the law No. 143.**

The civil registry office often rejected plaintiffs, which required them to go to court. The most common kind of refusal was motivated by the fact the certificate provided by the applicant was not in the form approved by the Ministry of Health. However, it was impossible in principle to carry out such a certificate, since the required form was not elaborated and approved by the Ministry of Health.

**This state of affairs led courts to provide legal commentaries on transgender person's right to legal gender reassignment.** Consequently, when the ruling was in favor of the applicant, the court agreed with the fact that a specific legal norm (namely, the requirement to present a “certificate of gender reassignment in the established form”—which did not exist) contradicts the norms of the Constitution.

For example, this formulation is given in the decision of the district court of Vladimir, from October 12, 2015:

*“In the opinion of the court, the impossibility of changing gender on such grounds violates the rights and freedoms of [Full name] guaranteed by The Constitution of the Russian Federation, namely the right to work, to protection of personal dignity, to honor and good name, since it deprives him of the opportunity to find a job, to freely communicate, to realize his abilities.*

*The Constitution of the Russian Federation as a law of direct effect which has the highest legal force, prohibits any restrictions on human and civil rights and freedoms. Laws and other legal acts must not contradict the Constitution of the Russian Federation” [1].*

**Thus, even before the direct abolition of the legal norm regulating the procedure for changing legal gender marker (which actually prohibits legal gender transition in the Russian Federation), it was established in judicial practice that such a prohibition contradicts the Constitution of the Russian Federation.**

It is important that the reasons for why legal gender transition belongs to the person’s realization of her or his fundamental rights and freedoms, and this judicial interpretation follows precisely from the medical diagnosis—namely, from the fact the applicant’s necessity in legal gender transition was certified by the qualified medical instance (via diagnosis “F64.0” (“Transsexualism”)). According to the courts’ conclusions, it is precisely in accordance with this medical requirement that the applicant has a right to have her or his gender marker changed in her or his civil registration.

The lawyers today are guided by the same principles in their legal assessment of 386-FZ from July 24, 2023. The lawyers of “Delo LGBT+” note that the law contradicts to Article 41 of the Constitution of the Russian Federation, establishing the right of everyone to health protection and medical assistance, which

*“corresponds to the duty and responsibility of Russia as a legal and social state for the preservation and strengthening of people’s health, as well as the content of the legal regulation of relations related to the implementation by citizens the said constitutional right.”*

**Since the law invalidates the legal framework allowing transgender people to implement their right to health, it is contrary to these obligations of the state and therefore violates the rights and freedoms of its citizens.**

Lawyers also note the contradiction between the norms of 386-FZ and the Federal Law “On the fundamental principles of protecting the health of citizens in the Russian Federation,” which establishes the inadmissibility of refusal to provide medical care (for such refusal the medical worker is liable criminal liability), and the right of citizens of the Russian Federation to

*“medical care in a guaranteed volume, provided without charging a fee in accordance with the program of state guarantees for the free provision of medical care to citizens, as well as for receiving paid medical services and other services...”*

Lawyers also dwell on the contradiction between the norms of 386-FZ to and the law “On psychiatric care and guarantees of the rights of citizens during its provision,” according to which the state guarantees to persons suffering from mental disorders (to which ICD-10 includes “Transsexualism”—that is, “Gender incongruence,” according to ICD-11) a provision of psychiatric care are carried out based on the principles of legality, humanity and respect for knowledge of human and civil rights.

Judicial practice shows that the repealed norm Part 4 Art. 70 Federal Law No. 143 “On Civil Status Acts” didn’t work perfectly. First of all, the problem consisted in a dependence of this norm on the approval by the Ministry of Health, and on its work on the single form of certificate—which appeared only in 2017, and only after a broad human rights campaign. The Ministry of Health issued the Order 850n, according to which, as the basis to change legal gender marker was established *the form 087/y* signed by special medical commission (consisting of psychiatrist, sexologist and clinical psychologist), confirming the fact of the so-called “gender reorientation” (“*polovaya pereorientatsia*” / “*половая переориентация*”). In the strict sense of the word, “sexual reorientation” is a new medical term.



Although its meaning is close to the meaning of the medical diagnosis “*Transsexualism*” (that is, a person’s stable gender identity, differing from its chromosomal, hormonal or morphological characteristics of sex), it is not a mere reference to this diagnosis. The reason this term was introduced was rooted in bureaucratic practice: to recognize that a person has “*an irreversible change of gender*” before granting that person’s request for a correction in the civil registry based on the diagnosis F64.0.

Until 2017, such “*confirmation of irreversibility*” of gender transition was almost always a medical certificate confirming that a transgender person underwent gender-affirming surgery. Thus, transgender people were actually forced to undergo serious medical invasions, which was no way followed from the prescriptions of ICD, and contradicted to the principles of care for the patient’s health. However, the legitimization of this interpretation of the norm of Part 4 of Article 70 of Federal Law No. 143 “On Civil Status Acts” was primarily the Ministry of Health’s responsibility, which sabotaged the approval of the medical form. **Consequently, the new law abolished the norm that was the most efficient way to meet the state’s obligation to protect the health of its citizens.**

At the same time, the judicial precedents show: the requirement to prove the “irreversibility of sex change” is unlawful, especially in a form of undesirable surgical interventions. **This conclusion is significant today, since the new law, contrary to the norms of ICD-10 and ICD-11, as well as to the relevant judicial practice, international treaties and the Constitution of the Russian Federation, establishes that a legally significant category of “gender” (“sex”) can only be determined on the basis of morphological characteristics (body structure and appearance of the genitals).**

**Within the framework of the same logic, the legislator prescribes correction of gender-related characteristics only in the case of “congenital anomalies.” Because of the same reasons, the indication of gender (sex) are presupposed to be changed, if**

*“before the entry into force of this Federal Law, surgical interventions aimed at changing sexual characteristics of a person and confirmed by a medical report were carried out by medical commission in organization subordinated to the federal executive body*

*for the development and implementation of state policy and legal regulation in the field of healthcare, on the conformity of sexual characteristics with the characteristics of a certain gender, issued in accordance with the Part 2 of Article 45.1 of the Federal Law of November 21, 2011 No. 323-FZ 'On the basics of protecting the health of citizens in the Russian Federation'”*

**This state of affairs does not absolutely relate to the international medical standards, and therefore it is arbitrary and leaves transgender people no legal guarantees in the field of medicine.**

History of enforcement of Part 4 of Article 70 of Federal Law No. 143 from 1997 to 2017, during the absence of specific regulations from the Ministry of Health, is characterized by the fact that the majority of transgender people issuing for have their gender marker changed were forced to perform gender-affirmative surgery. However, none of these operations was included in health insurance. As a result, many transgender people (especially transgender women) who had not the opportunity to take medical care of the proper quality for this surgery suffered from significant harm to their health. These people faced a significant deterioration in quality of life, serious psychological trauma, impossibility of personal and sexual realization, suicidal thoughts. **Thus, the history of enforcement of Part 4 of Art. 70 Federal Law No. 143 shows: if legal gender marker depends on examining the morphological structure of the genital organs or on its surgical correction, it is an artificial and arbitrary obstacle to transgender people in realizing their right to health, which causes serious harm to their health.**

**It is significant that even in cases where the court required medical evidence of the “irreversible changes” in gender (sex), the general motivation for the decision followed the wording of the diagnosis F64.0, which precisely emphasized the social significance of the gender marker.** Lawyers from the “Transgender Legal Aid Project” summarize one of the court decision from October 2014, as follows:

*“Changing the passport gender is necessary for X for medical reasons. Change of civil gender and the corresponding change of documents will allow him to act freely in those numerous situations in which presentation of an identity document is required*

*(in hiring, buying a SIM card for the mobile phone, travel by train, border crossing, etc.). Currently, performing all these actions entails difficulties, and when X presents his identification documents, it meets assumptions that he uses a counterfeit or other people's documents" [1].*

In other case, the judge arbitrarily tried to allocate medical events justifying a change in gender marker, in a separate category:

*"the judge requested all the medical records from organizations which issued medical certificates; the judge also expressed doubts due to the fact that the organizations were non-state and required a license to conduct sex reassignment operations" [1].*

However, lawyers successfully referred to the law on the protection of public health, proving that *"a citizen has the right to seek help from any medical institution; [so that,] there is no special license for gender reassignment operations."* That is, the right of a citizen who has been diagnosed with F64.0, to change her or his *"legal gender"* does not require any additional justification or examination. **However, it is precisely what the new law from July 24, 2023, illegally prescribes when associates changing gender marker with a separate "department" which must examine a morphology of genitalia.**

It should be mentioned that in another court decision a transgender person won his right to change his gender marker without undergoing surgery. There was border status long-term HRT which played its role: it was interpreted by the court as the evidence of *"irreversible gender transition."* This is about the decision of the Novosibirsk regional court (2016) which interpreted the applicant's long-term HRT as sufficient justification for making corrections into his civil registration. For the purposes of our study, it is additionally important that the judicial decision relied on the formulations presented in the medical documents, and interpreted this decision within the framework of the requirements of ICD-10. First of all, the court establishes the meaning of the applicant's requirement: that the applicant is making:

*"Changing the passport gender of persons who have been assigned with this diagnosis [F64.0.—Ed.], is a treatment and rehabilitation aimed at their personal and social adaptation, prevention of depressive disorders and suicidal behavior" [1].*

Then the court was actually guided in its decision by the diagnosis and medical recommendation (which turned out to be quite detailed—and as a result, reflecting the complexity of those medical gender characteristics that need to be taken into account when determining some knowledge of the legally significant fact of gender). The medical statement provided by the applicant claimed that he had been:

*“diagnosed with constitutional transsexualism, male social sex (F64.0), female chromosomal sex 46XX, female gonadal sex, female hormonal sex, female with pronounced masculinization morphological gender. [Full name] was recommended to have his gender marker changed, with the possibility of the following (surgical and hormonal) corrections“ [1].*

Thus, the medical document reflected the complexity of sex (gender), and indicated that under the diagnosis “Transsexualism” (F64.0) it should be recognized that the applicant’s social gender was male, and this fact led consequently to a medical recommendation to change this person’s “passport gender”, that is, or to make a correction in the registration record (from “female” gender—to “male” gender). The court that reviewed this medical document agreed that it was “social gender” that is the basis for the recognition of legal gender within the framework was of the current ICD-10:

*“The panel of judges believes that the medical certificates provided by the applicant comply with the requirements of current legislation, confirm the establishment of [Full name’s] diagnosis of ‘Transsexualism’, the implementation of hormonal gender correction from female to male, which is irreversible, regardless the current absence of the surgical correction in the applicant’s sex, which is possible in the future, as well as medical recommendations for the change passport gender of [Full name]” [1].*

The court emphasized the prerogative of medical opinion, resulting from the impossibility to normatively establish what criteria the term of “gender” has. As a result, the court decision provides the following motivation:

*“Changing the passport gender is necessary for [Full name] according to medical testimony. Since the applicant feels like a man, and has masculine social and psychological gender, the female documents create significant difficulties in her everyday life. Changing the passport gender of persons who have been assigned with the relevant diagnosis is a part of treatment and rehabilitation in these persons aimed at their personal and social adaptation, prevention of depressive disorders and suicidal behavior” [1].*

As we see, this decision is consistent with those judicial precedents, in which the recognition of the difference between “social gender” and the gender marker indicated in the passport (ID). However, this general motivation does not take into account the differences between whether a transgender person is required to commit a gender-affirmative surgery or not, although this requirement implies significant interference with human health and follows from the non-legal formulation about the “irreversible changes” in gender (sex).

**Reviewed judicial precedents indicate that a medical report about diagnosis F64.0 (“Transsexualism”) and a medical prescription for a change in legal gender marker (based on the recommendation from the ICD) are the legally significant factors that the court is obliged to take into account in its decision. In this case, the court is guided not only by the legislation regulating the right to medical care, but also by the direct law, namely Article 23 of the Constitution of the Russian Federation. Therefore, the new law not only contradicts the constitutional rights of citizens of the Russian Federation, but also completely ignores relevant judicial practice.**

The destructive nature of the new law for this judicial practice follows from the fact that the courts referred primarily to the wording of Part 4 of Article 70 Federal Law No. 143 “On Civil Status Acts”. Since the provisions of this article has been no longer in force from July 2023, the courts are forced to be guided by the new legislative norm. The reason is that, according to The Constitution of the Russian Federation, the courts are guided in their decisions not by judicial precedents, but by legislative norms.

Another significant role in the court decisions on legal gender transitions was played by references to international legal norms. In 2015, the Moscow City Court motivated its positive decision on the legal gender transition with the reference to the court’s obligation to be guided in their decisions by the decision of the Plenum of the Supreme Court of the Russian Federation dated December 19, 2003 No. 23 “On the court decision,” as well as by the norms of international legislation,

and to take into account interpretations of these norms in the judicial practice of the European Union. The court further referred to Part 2 Article 8 of the Convention, which states that interference in personal and family life from public authorities is unacceptable, as well as the meaning of this article, as well as to the interpretation of this norm by the European Court of Human Rights (ECHR):

*“...sexual (gender) identification is one of the main aspects of a person’s private life. Moreover, if there are medical indications to change documents of a transgender person, state bodies are obliged to change the documents of such a person. The European Court on Human Rights has already established that if there is no possibility in the state to change documents of transgender people, it violates her or his right to respect for private life, which is reflected in the rulings of the ECHR: in the cases of V. vs. France (application no. 13343/87, judgment from 15 March 1992), I. vs. Great Britain (application No. 25680/94, resolution of July 11, 2002), Christina Goodwins vs the UK” [1].*

**However, in 2022, after the beginning of the full-scale war in Ukraine, the Russian Federation has withdrawn such key international organizations, as the Council of Europe and the ECHR. As a result, in the belligerent Russia, the courts can no longer refer to crucial norms of international law.**

Lawyers and advocates of the “Delo LGBT+” testify that after the adoption of the law, the courts deliberately delay the work with complaints of transgender people—especially those who did not manage to change their gender markers due to illegally long (more than 1 month) consideration of their application by civil registry offices (“ZAGS”/ “ЗАГС”). There are many statements repeatedly redirected from the administrative staff (appealing the action or inaction of a specific civil registry office) to the civil staff (dispute about law) and vice versa. **According to “Delo LGBT+”, about 80% of requests meet results.<sup>73</sup> It is possible to initiate the application submission only with the support of experienced lawyers.** During the consideration of cases, courts refer first of all to the new law, insisting on proof of “medical transgender transition” as the only legal basis for changing the legal gender marker.<sup>74</sup>

73 [Delo LGBT+ 2023a] (A Manuscript).

74 [Ibid].

**Under the new discriminatory law, lawyers and human rights defenders can only refer to the recommendations of ICD-10 in the field of gender incongruence, and to the provisions of the Constitution of the Russian Federation.** Lawyers of “Delo LGBT+” justify the contradiction between the new law and the provisions of the Constitution with the complexity of gender (sex) as a phenomenon, mentioning that it is the obstetric sex (a gender marker attributed to a person at birth by a medical specialist based on the external structure of the genitalia) which serves as usual as the basis for the legal gender marker. As a results, if someone’s self-representation and/or appearance does not correspond with this person’s legal gender marker, such a person may be forced to answer questions about her or his gender (sex)—namely, questions that are the medical secret (obstetric gender) or the secret of personal and family life. As a result, if a person has no legal way to change her or his legal gender marker, it “prevents a person from the control over information about her or himself, over disclosure of personal, intimate information”—and contradicts Article 23 of the Constitution of the Russian Federation.<sup>75</sup> **However, the courts do not take this argument into account after July 24, 2023.**

**After the new law came into force, the courts refused to recognize the complexity of gender (sex), the meaning of “social gender” (fixed by diagnose F64.0) and the dependance of the legal opinion about gender solely on the opinion of medical specialists. Instead, the court started suggesting the anti-juries formulations that even if the court recognizes the formal new gender, a “real gender transition” will not happen. In 2022, Russia withdrew crucial international treaties, and the courts left the basis to be guided by its norms which had been previously used in promotion of transgender people’s right to legal gender transition.**

75 [Delo LGBT+ 2023].

### 3.4. Discrimination against Transgender People in Social and Economic Sphere: Restrictions and Self-Restrictions

Human rights defenders note that transgender people's additional vulnerability is a direct consequence of their visibility to different state structures. **Discrepancies between their appearance and their identification documents, as well as collection of various personal data related to gender transition, make transgender people not only potentially accessible to the targeted repressions, but also vulnerable in all the situations requiring their identity documents. Most of these situations affect transgender people's social and economic rights.**

According to the research by "Transgender Legal Defence Project," in 2016, **a half of the surveyed transgender people faced refusal of admission to work or study due to discrepancies between their gender representation or appearance and gender marker in their documents.** In addition, 31% encountered refusal to use postal services, 24%—banking services, 17%—transport services, 19% were refused by different municipal services, 8%—by notaries.<sup>76</sup> **All these restrictions are discriminatory, since they essentially limit career opportunities, social mobility and generally worsen life quality of transgender persons because of their belonging to the particular social group.**

At the same time, the authors of the research formulate a separate category of discrimination—**self-restriction, understood as transgender people's voluntary refusal to commit any actions because of the fear that the risk of unpleasant consequences of the action will exceed its possible benefits.** It's not just about heavy psychological consequences (*gender dysphoria*) of having to present themselves using documents that do not correspond to their identity, but also about **outing (involuntary disclosure of information about transgender status).**

For example, the research records a case of such outing in a medical institution. In 2015, a transgender woman, who did not change her documents, applied for medical services under the VHI policy. She was refused by the medical staff due to their doubts that the document belonged to her.

76 [Transgender... 2016, p. 10].



A woman was forced to reveal her transgender status, after which she was insulted and similarly denied medical care.<sup>77</sup> Another incident occurred while using transport, when a transgender man who had not his documents changed was travelling by train. The train officer who checked documents upon boarding, revealed information about the passport gender marker (female) of this transgender man to his neighbors in the compartment in the train. After that, they refused to speak with him during the whole travel and prohibited him to touch any thing of common usage in the compartment in order to not to “get dirty” (“замастоваться”) from him.<sup>78</sup>

Thus, in addition to the direct violation against transgender people’s rights, it is necessary to take into account the self-restrictions they consciously agree to evade direct aggression or humiliation, in order to correctly assess their discriminatory situation around them. **The awareness of these self-restrictions shows that more than a half of transgender people do not have equal opportunities to develop their career opportunities, to exercise their civil rights and to use their social guarantees.**

**Thus, in 2016, among the surveyed transgender people due to the absence of legal gender transition, 62% refused to change jobs or to respond to a desired vacancy, 34%—to apply for study;** in fields of service and transport, 33% refused to use the services of bank, 30%—using public transport, 27%—applying for an international passport, 23%—going abroad, 21%—getting a driver’s license, 19%—obtaining a visa.

Separately, it should be noted that 41% refused to visit a doctor and to receive medical care, which means the impact of discrimination experienced by transgender people affected their right to life and health.<sup>79</sup> At the same time, violation of transgender people’s rights by medical staff can also lead to discrimination against them in the labor sphere. “Transgender Legal Defence” Project documented the following case. In 2016, in St. Petersburg, a transgender woman, who had a long-term HRT and had completed her legal gender transition before being hired, underwent a routine medical examination at the enterprise. Medical officer who conducted the examination violated medical confidentiality and revealed transgender status of the woman her employer, after which she was insulted and bullied at the workplace, and was then forced to resign at her own

77 [Ibid, p. 11].

78 [Ibid, p. 69]. It is remarkable that this logic directly follows from the prison culture, and this fact reminds us the common tend on criminalization of LGBTQ+ persons in Russian society nowadays.

79 [Ibid, p. 25].

request. It is important that other employees of the enterprise who supported her were also forced to resign.<sup>80</sup>

**Unscrupulous employers, feeling no risks of legal responsibility for their actions, abuse transgender employees via mistreatment of their personal data, creating worse work conditions for them, via illegal denials of benefits or dismissals without any reason.** “Transgender Legal Defence Project” records the following violations that occurred in 2016: in Novosibirsk, the manager publicly discussed gender identity and appearance of a transgender worker (calling him “it” in front of the work team) who had not changed his documents by that time;<sup>81</sup> in Moscow a transgender woman who had not yet changed her legal gender marker has been fired from the Auchan store with an evaluative and therefore illegal formulation: *“the colleagues and management are dissatisfied with the overly feminine appearance, soft voice and behavior”*;<sup>82</sup> the transgender man who changed his legal gender marker during the course of his working contract was meeting regular and conscious outing from his colleagues, as well as regular unfounded reprimands, and has been finally forced to resign.<sup>83</sup>

The research records that in 2016 the majority (57%) of interviewed transgender people rated the employment perspectives of transgender people whose legal gender marker was not changed as “poor” or “very poor”; another 25% rated them as “average”.<sup>84</sup> **After the ban of legal gender transition, this social and economic situation of transgender people will become widespread, as well as the absence of a working legal mechanism to protect their labor rights.**

**We should expect a worsening of the situation from Summer 2023 for two different reasons. On the one hand, more and more transgender persons will be reaching adulthood whereas their appearance and self-representation will differ from their identity documents—which they, however, will have no opportunity to change. On the other hand, many transgender people were forced to change their legal gender marker in a hurry, sometimes without even starting HRT, and having no financial accumulation. As a result, they are at the high risk of colliding into harsh social and economic marginalization if being illegally dismissed.**

80 [Ibid, p. 29–30].

81 [Ibid, p. 24].

82 [Ibid, p. 26–27].

83 [Ibid, p. 31].

84 [Transgender... 2018, p. 16].

### 3.5. Changes to the Family Code of the Russian Federation: Termination of Transgender People’s Marriages and the Ban on Adoption

In addition, the new law means other significant changes for the legislative system in Russia. **Article 16 of the Family Code of the Russian Federation in the renewed edition recognizes the change of legal gender by one of the spouses as the basis for the termination of marriage without reasonable and independent of the will of the parties.** It should be noted that before the amendments were adopted in accordance with the new law, such grounds included only death of one of the spouses and the court recognition of one of the spouses deceased. The legislation also included “making changes to the civil status record change of gender by one of the spouses.”

The problem lies in another fact. **From the wording of the article it follows that the effect of this norm may be extended both to the marriages concluded before and after the change of gender marker by one of the spouses. Even in the first case the automatic termination of marriage without taking into account the will of the spouses should be considered a violation of human rights to respect family and personal life. However, in case of the marriages concluded after a change of legal gender marker by one or both persons entering into marriage, it means that the spouses fully followed the legal procedures officially produced by the competent state authorities of the Russian Federation.**

It is worth emphasizing that the termination of marriage within the meaning of Part 1 of Article 16 of the Family Code is unconditional. In fact, the current family legislation does not provide any legal mechanisms for protecting the rights of the spouses who married after realizing legal gender transition(s), despite that they married by mutual consent, following the actual norms of legislation, and unwilling the termination of their marriage. **Since the fact that there is no mention of divorce at the request of one or both spouses in Part 1 of Article 16, in order to implement the innovations no court decision or application is needed—the marriage is considered as terminated automatically, as in the case of death.**

**However, in this case the legislator does not think that in the event of the death of one of the spouses the moment of the termination of marriage is known, and in case of recognition of one of the spouses deceased—this moment is established by the court.**

It is worth emphasizing that the termination of marriage within the meaning of Part 1 of Article 16 of the Family Code is unconditional. In fact, the current family legislation does not provide any legal mechanisms for protecting the rights of the spouses who married after realizing legal gender transition(s), despite that they married by mutual consent, following the actual norms of legislation, and unwilling the termination of their marriage. **Because of the fact that there is no mention of divorce at the request of one or both spouses in Part 1 of Article 16, in order to implement the innovations no court decision or application is needed—the marriage is considered as terminated automatically, as in the case of death.**

**The consequences of ending a marriage include the right to inheritance and other property issues for which the moment of termination of the marriage is important.** The legislator, obviously, either did not understand the meaning of the text of the adopted law being adopted, or, in principle, had no intention to regulate property and associated personal non-property social relations of spouses, which are included in the subject of the Family Law according to Article 2 of the Family Code. By making changes specifically to Part 1 of Art. 16 and recognizing the marriage as automatically terminated due to legal gender transition, the legislator did not even think to define the moment of the termination of marriage, as well as the consequences of such termination on the new legal basis. **Thus the legislator created a situation of legal uncertainty when citizens acting on the basis of the law cannot count on somewhat predictable consequences of their lawful behavior.**

**In addition, there have been the amendments to Articles 127 and 146 of the Family Code, according to which the persons who have “changed their gender” are prohibited from adopting children, as well as from being guardians or trustees for children.**

**The new norms of the Family Code conditioned by the new law are directly against the norms of international law about human rights, enshrined in rights, implemented through particular in Articles 16, 17 and 23 of the International Covenant on Civil and Political Rights, and in Article 12 of the International Covenant on Economic, Social and Cultural Rights, which Russia, at least for the current time, didn't withdraw from.**

### **3.6. Violations of Transgender People's Family Rights**

The discriminatory nature of the new law follows not only from each of its individual propositions, but also from how exactly these propositions are interconnected with each other, as well as with other laws. **The legislator actually does everything to prevent transgender people from committing any measure from those provided by the ICD—that is, to limit the implementation of such people's right to health and healthcare.**

**For those transgender people who did not have time to exercise this right within the framework of the previous legislative norms, any access to legal protection is completely denied by the new law in those areas in which these people “deviate from” the gender marker indicated in their documents. This is a direct discrimination against transgender people on the basis of health.**

**Family and parental rights are the areas where such a discrimination against transgender people may become particularly acute.** The fact that transgender people are more visible than the LGB+ people for official bodies and in everyday situations makes those transgender people who did not manage to change

their gender marker dependent on the extremely vague criteria for “LGBT propaganda” and on the norms of Article 6.21 of the Code of Administrative Offenses.

In 2017, the application of this law led to the deprivation of parental rights and the removal of adopted children from the Savinovsky family, after the caregiver has undergone a mastectomy. The family was forced to leave Russia, fearing that other children would be taken away from the family as well, and seek asylum in the safe country. Being in the safe country, the guardian was finally able to report that he is a transgender man and to begin his gender transition (that is, to implement his right to health, which he did not exercise in Russia under the fear the children would be removed from the family). The research by “Russian LGBT Network” summarizes the Savinovsky case with the fact that “*some deviations from the image of a ‘real woman’ may be considered as sufficient grounds to destroy the family.*”<sup>85</sup>

The survey carried out by “Sphere” and “Coming Out” in 2022 shows the same disappointing principle. **If on average there were 7% of LGBTQ+ parents who faced discrimination because of their SOGI when interacting with educational or medical institutions visited by their children in 2022, among transgender people this percentage was almost twice as high (13%).** Discrimination against transgender people in their parental rights can occur not only at the initiative of governmental organizations, but also at the initiative of other relatives of the minor: for example, 26% of transgender parents (that is, every fourth) indicated that they were forced to enter into conflicts with them because of their SOGI in 2022.<sup>86</sup> **It is important that these data were received before the adoption of the new law and even before the beginning of the media campaign promoting it. These cases confirm that the new law will strengthen existing discriminatory practices and promote its further distribution.**

In April 2023, the removal of an adopted child from the family became one of the stages of the pressure on the LGBTQ+ activist and openly transgender person. In this case, the inquiry was initiated because of the activist’s publications on his personal web-blog.

85 [Russian LGBT Network 2017, p. 29].

86 [Sphere, Coming Out 2023, p. 25].

Consequently, the reason for removing the minor from the family was the appointment of an administrative investigation against the minor’s guardian for the latter’s publication of “*information promoting non-traditional sexual relationships and preferences of gender reassignment,*” since the minor “*may be instilled with non-traditional family values*” (these formulations are taken from the definition of inciting administrative trial).

**The court did not justify any harm directly caused to the minor (for example, there was no evidence presented to the court that the minor saw the publications). This is an example of the directly discriminatory law enforcement, since the reason for limiting the guardianship rights was not any specific act, but the fact of identity of the guardian and the author of the publication suspected in “disseminating of the LGBT propaganda”. Judicial pressure on the LGBTQ+ activist was directly deduced from his identity as an open LGBTQ+ person being close to a minor [15].**

**In the context of these judicial precedents, the limitation transgender people’s right to adopt children is both a populist measure and an implement for pressure on transgender people who are parents or guardians, as well as an additional justification for persecution LGBTQ+ people on the basis their identities not their actions.**

**It is incorrect to assume that these principles will only be applied to LGBTQ+ activists—that is, to those who are publicly visible and self-represent as LGBTQ+. Family rights are central to the propaganda narrative of “traditional values,” and therefore any implementation of these rights in a way that is unfavorable for this narrative will attract the attention of the state, leading to its direct interference in the citizens’ personal and family lives and to the restriction of their relevant rights.**

This is confirmed by the case of illegal divorce of Yana and Valeria's marriage in April 2023 (Tver, the legal case was conducted by the lawyers of "Delo LGBT+"). The girls concluded legal heterosexual marriage before one of them realized her legal gender transition. When this girl changed her gender marker from "male" to "female", so that her marriage turned out to be formally homosexual, the prosecutor's office immediately initiated an inquiry requiring to recognize the marriage fictitious, as well as concluded on the **"motives of hooliganism, with the aim of undermining the social order"**. The civil registry office was recognized as the injured party "misled" by the defendants. **The most egregious fact in this trial case is that it had been initiated before the amendments about automatic divorce if one of spouses had changed her or his gender marker were included in the Family Code of the Russian Federation.**

In addition to the trial, a campaign of public harassment was initiated against the girls, with the connivance of the police. One of the girls received numerous threatening messages and noticed that she was being followed [16]. Not having the opportunity to protect their family rights, as well as fearing for their lives and health, the girls were forced to leave Russia and request asylum in a safe country. **It is important that in this case we are not talking about pressure on activists or human rights defenders, but namely about the violation of family rights and illegal invasion of the state in the private life—which this state has considered "dangerous" for the "social order" and decided to use as a "fuel" for homo- and transphobic media campaign.**

It is also significant that the provision on the termination of marriage in case of one of the spouses' gender transition had any legal consequences only in the context of decision about the legal gender transition made by the married transgender persons. In other words, since legal gender transition was prohibited at the same time (July 24, 2023) and by the same law, the law which was not yet adopted was used as a legal norm with no legitimacy—turning into a threat and an ultimatum to the citizens who fall under its influence. **Transgender people were threatened by the project of this law with having their marriage destroyed, if they decided to realize their gender transition.** Another way the official institutions used the norms of the future law in the time when it had no legal force were the illegal requirements for applicants to consider divorce before changing your gender marker. The survey by "T-Action" fixed the case of such discrimination:



*“At the registry office they tried to persuade me not to change the certificate of birth, since I was going through a divorce trial and the registry office workers warned that if I changed the documents before the court decision made, they would not be able to obtain a divorce, citing the fact that the marriage would be the same-sex. There was also pressure from my ex and her future husband on me to get a divorce much faster, including threats. At that time I could not sleep at night, I was very anxious. I went to the registry office three times, they did not refuse [to change the legal gender], but dissuaded me. [...]*

*The registry office told me to wait until the court made a decision, and to change my passport only then. Besides, I had to agree to all the demands of my ex, to acknowledge her claim, and provide certificate 087/u, so that the court would make the decision at the same trial. After the trial on the same day I submitted documents to change my passport, and a week later I [found out] that the passport was ready, although the date of issuance was three days after my application was submitted.*

*When the court decision came into force, my ex and I went to the registry office to obtain the divorce certificate, but there we were refused, referring to the same-sex marriage. Then my ex went alone to another registry office, and in that case she got the divorce certificate. I still didn't receive it, but this was probably temporary... The most important thing was that I managed to change the main documents.”<sup>87</sup>*

**The discriminatory provisions of the new law legalize numerous ways to intrude the personal and family lives of transgender people. Judicial practice shows that parental rights of LGBTQ+ people will be regularly used in order to pressure them, both politically motivated and based on personal animosity and self-interest (for instance, from the other relatives of the minor). The practice of civil registry offices, as well as of transphobic media campaigns' needs, allow us to assume that these norms will be interpreted in the broadest way, which will lead to numerous cases of violation against transgender people's family rights.**

### 3.7. The Situation of Transgender People in Russia after February 24, 2022

**According to human rights monitoring, the beginning of the full-scale war in Ukraine led a significant number of transgender people to a decision to postpone their legal gender transition. This decision which frequently turned out to be fatal because of the new law demonstrates how the overlapping of multiple factors of discrimination of right violation in the belligerent Russia affects transgender people.**

This decision was influenced, firstly, by financial instability. Among transgender people who took part in the survey by “Sphere” and “Coming Out,” 72% indicated that their economic situation worsened due to the escalation of war. Another important factor was the announcement of “partial mobilization,” due to which many transgender men decided to protect themselves and to temporarily postpone the change of gender marker from “female” to “male” (which would mean they would automatically fall into the attention of military registration and enlistment offices).

The monitoring contains the following statements related to the end of 2022:

*“I’m afraid to have my documents changed and draw the attention of the recruitment officers because I have no way of leaving the country right now.”*

*“I had to delay my transition because of financial issues.”<sup>88</sup>*

**When the officials suggested the legislative prohibition of gender transition for the first time, in April 2023, it required an opposite strategy of behavior from transgender people. However, due to these two discriminatory factors overlapping each other, some transgender people did not have time to reorient and change documents before the new law came into the legal force.**

88 [Sphere, Coming Out 2023, p. 38–39].

**The other part of transgender people was forced to change legal gender markers without any planning** (related to financial support in case of dismissal or conflicts with relatives based on transphobia). **This necessity put them in a vulnerable and unstable situation, which time limits are unknown:**

*“I waited a long time after receiving the certificate because I had a very scant income. I wanted to conduct HRT longer and to change my documents only when my appearance would be more masculine [...] I constantly hoped that the next salary would be more ... but my income hasn’t grown. However, there were news about the new law. I thought I wouldn’t be on time but I ended up changing my documents very quickly. It became easy, although now I’m afraid because of the mobilization. I really want to leave the country, but there is no money at all, and I’m afraid ... they’ll close the borders and cut off any path to leave. I don’t know where to run.”<sup>89</sup>*

**At the same time, 39% of those surveyed by “T-Action” indicated that they were planning to change their gender marker, but didn’t manage to do it before the new law was adopted.** There were indicated the two main factors influenced it: financial situation and concerns due to the insufficient “pass” (that is, a fear of transgender person that her or his appearance is not enough cisheteronormative, so that it can cause conflicts, increase risks of facing violence and discrimination). **In fact, both these factors are in its turn the direct consequences of the long-term and consistent discrimination which LGBTQ+ people face in Russia.**

**At the current moment, a significant number of transgender people are in a limbo, because they were refused to change their documents due to negligence of the civil registry offices which unlawfully delayed the consideration of their applications, so that their applications met refusals after the adoption of the law, with reference to the changed norms.** According to “Delo LGBT+,” more than a hundred people from different regions of Russia suffered from this violation.<sup>90</sup>

**Some transgender people were unable to find out promptly where they could obtain the required medical assistance, and to have their gender marker before the law came into the legal force.** As a result, they applied for changing their legal gender marker too late regarding the new law.

89 [T-Action 2023c].

90 [Delo LGBT+ 2023a] (A Manuscript).

**This situation is a direct consequence of discrimination against transgender people in medical institutions (whose actions or inaction deprived their patients from the information about the required medical care), as well as of the restrictions on the access to information on the rights of LGBTQ+ people (since the specialized resources, primarily by the NGOs, were blocked).** The survey by „T-Action“ provides the following case:

*“<...> After the first reading of the law, I finally decided to speed up my health examinations. I tried to contact a public clinic, but they kicked me out from one specialist to another, without having an exact idea of what to do with me. Quote from a psychiatrist: ‘We treat people, but why do you come to me? [...]’ She referred me to a psychologist. At this point, the law has already been adopted in the third reading. [...] I realized that I wouldn’t forgive myself without trying to do something... Then I applied to the commission, but it was very late. After several crazy and spontaneous trips back and forth, on weekends, I found out that the registry offices are closed till Tuesday. But the law was signed on Monday...”<sup>91</sup>*

**Those transgender people who did not have time to change their gender markers before the adoption of the law, find themselves in a particularly vulnerable position today.** The surveys by “T-Action” show that it is precisely the impossibility to implement legal and medical gender transition which is the reason for the most significant increase in the number of decisions to emigrate. In the Fall 2023, 50% of surveyed transgender people reported their desire to emigrate, because it was the only option they had to realize their gender transition. Moreover, if in Spring 2023 (right before the new law), 50% of the reported indicated that they did not want to leave the country, in Fall 2023 (right after the new law) this share decreased by almost twice, up to 30%. At the same time, only 4% indicated that they were leaving at the earliest possible time. This fact allows us to conclude that the majority of transgender people who did not manage to change their gender marker in Russia, do not understand exactly how they can act in the near future.

**A large percentage of transgender people who have not changed their legal gender markers are those who were under the age of 18 (the age of adulthood in Russia) by the moment the law was adopted.** Their plans for work or study are totally suspended because it is impossible for them to avoid outing and encounters with discrimination based on transphobia:

91 [T-Action 2023c].

*“I feel empty. My dreams to successfully pass the commission and to realize my gender transition in Russia will remain a dream forever. For my last two birthdays, I naively made a wish to make the transition safely. Fate played a cruel joke.”*

*“I have been planning my gender transition since I was 15 years old. It’s been a year and a half since I reached adulthood. I thought that there would still be time to get an education, save money and pass the commission. When it all started, I didn’t know what to do. Even theoretically I could not save up for the commission so quickly (and for the flight to where it is held, since I am not from Moscow or St. Petersburg).”*

*“I’m terribly scared that with this law I’ll get stuck in suspended state, or I won’t be able to completely change all of my documents, or I won’t be able to start HRT. If I will get the new passport, but it will be impossible to conduct HRT in Russia, it seems to me that it will be even more difficult than living with the incorrect gender marker.”<sup>92</sup>*

They also have no idea of how to continue HRT.

**The situation is aggravated by the effect of Article 6.21, because its vague formulations allow to interpret the very appearance of transgender person who no longer has the possibility of bringing it into a line with ID, as “justification for the gender change.”**

**In addition, it cannot be said that those transgender people who have managed to change their gender marker are in security. In November 2023, media reported on the requests sent by Russian deputies and ministers to the Ministry of Health and to the General prosecutor. The first request required to clarify how exactly the Ministry of Health implements a ban of “the formation of primary and (or) secondary sexual characteristics of the opposite gender [sex]” in cases of those transgender people who have changed their documents.**

**This request to the Ministry of Health indicates the risks of further arbitrariness in relation to both access to necessary medical care, and the very legal status of transgender people: in fact, the author of the request (the Minister of Legal Affairs, K. Chuychenko) does not actually recognize the**

92 [T-Action 2023c].

legal force of transgender people’s new identity documents—since, contrary to the legal gender indicated in them, speaks about *“the formation [in them] of sexual characteristics of the opposite gender [sex]”*. **These risks are confirmed by the second request made by a state deputy N. Nikolaev to the General prosecutor, requiring for the inspection of the certificates 087/u issued in 2023** (since these certificates were, in the deputy’s opinion, issued allegedly without a proper medical examination, because of the interests of *“transgender mafia”* which *“profited from youth”* [17]).

At the same time, it is known that there are regular precedents for “reverse” change of transgender people’s documents which are conducted without their consent. One of these cases happened in the Fall 2023 (in Yaroslavl) [18]. Currently, these precedents apply to transgender people sentenced to imprisonment, and it raises the conflict about which colony (“female” or “male”) they must serve their sentence in. **Obviously, these cases demonstrate not only a complete degradation of the institute of law in Russia, but also the reasons for transgender people in the belligerent country to worry about the literal depriving them of legal personality.**

## Summary

**Federal Law No. 386, adopted in July 2023, made it virtually impossible to provide medical assistance to transgender people.** This fact turns the new law into an unprecedented invasion of the state into the sphere of private life and health protection. It means another violation of the constitutional guarantees that the Russian Federation as the (nominal) rule of law gives to its citizens.

The data of surveys indicate that the transgender people’s right to health protection have been widely violated in Russia even before the new law was passed. **However, after its acceptance the discrimination against transgender people by medical specialists based on SOGI will be further increasing.**

**Transgender people who have not changed their legal gender marker can no longer conduct HRT under the doctor's guidance—which means high risks for their health and safety.** According to human rights activists, the impossibility to change legal gender markers is the factor reducing the quality of transgender person's life in the most significant grade. This impossibility is admitted by human right defenders as the most fatal factor for transgender people facing violence and discrimination, and being pushed into deep social marginalization.

This is especially acute in the context of growing practices of violence and discrimination in the society. **Transgender people in this context are doomed to be constantly outed (because their appearance and self-representation differ from their identity documents—and because of having no capability to reconcile them).** These circumstances make the current law alike forced conversion therapy.

**Significant part of transgender people in Russia today being in such a situation are young people and adolescents who were minors at the time the new law came into legal force. In the situation of gender transition's legislative prohibition, the lives of these people in Russia become almost impossible.**

## Conclusion

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**LGBTQ+ people in Russia were directly affected by the military aggression of the Russian Federation against Ukraine, and by its consequences.** The belligerent Russia's withdrawal from a significant number of international conventions, and the corresponding restructuring of the legal field within the country has been perceived as a signal that LGBTQ+ people's rights and freedoms will no longer be respected. This sign was perceived not only by LGBTQ+ people themselves but also by homo- and transphobic radicals. The validity of these fears will soon be confirmed.

**The state's pressure on the human rights NGOs helping LGBTQ+ people was intensified since the beginning of the full-scale war, and was escalating during the periods of media campaigns promoting the new discriminatory laws.** This pressure forced many organizations to cease their activities in Russia, which put LGBTQ+ people in an even more vulnerable position before violation of their rights and arbitrariness of the law enforcement against them. Not only has advocacy for the rights of LGBTQ+ people become significantly more difficult, but also the monitoring of crimes.

**In 2022 and 2023 two discriminatory anti-LGBTQ+ laws were issued. Their influence in the field of law can be generalized as legalization of judicial persecution and legal discrimination against LGBTQ+ people based on their belonging to a social group identified on the basis of SOGI.**

With the new amendments to Article 6.21 of the Code of Administrative Offenses within the framework of the Federal Law No. 479, it is not just any public statements about LGBTQ+ that are prohibited; in fact, any public manifestation of non-heteronormativity is illegal. **LGBTQ+ people are openly declared by the state to be the “second-class” people, and their relations to be “socially unequal.”** In some court trials, the establishment of fact and the qualification of the offence follows precisely from the suspect's identity as an LGBTQ+ person.



The state openly refuses to provide LGBTQ+ people with equal protection from criminal offenses. The victims of crime's belonging to LGBTQ+ people is considered by the courts as their "immoral behavior," which in its turn becomes interpreted as the "mitigating circumstance." All this is accompanied by the corresponding cultural policy and by the imposition of censorship, formally prohibited by the Constitution.

**An unprecedented example of discrimination against LGBTQ+ people was included in the legislative system by the Federal Law No. 386-FZ and by the corresponding amendments to Civil and Family Codes of the Russian Federation. This law prohibits the implementation of the complex of medical help recommended (by the international standards) for transgender people—that is, gender transition—on the territory of Russia. Thus, the state invades the healthcare sector and at the legislative level violates the right to health of citizens, thereby placing their mental, physical condition and lives under threat.** After the adoption of the law, transgender people in the Russian Federation who changed their legal gender marker during 2023 are on the verge of losing their legal personality—because politicians and officials send inquiries to relevant departments regarding the legality of corrections which were already made to their identity documents. Those transgender people who did not manage to change their gender marker before the adoption of the new law find themselves in a situation of constant risk of violence and discrimination, doomed to an extremely low quality of life and lack of life perspectives.

**On November 30, 2023, the Supreme Court of Russia satisfied a lawsuit by the Ministry of Justice and outlawed a so-called "international social movement LGBT" via recognizing it extremist. This decision directly criminalizes in Russia both any visibility of LGBTQ people and any activity to protect their rights.**

**The UN High Commissioner for Human Rights condemned this is a discriminatory decision and called Russia to its immediate cancellation:**

*"The decision exposes human rights defenders and anyone standing up for the rights of LGBT people to being labeled as 'extremist' [which means] serious social and criminal ramifications in Russia. No one should be jailed for doing human rights work or denied their*

human rights based on their sexual orientation or gender identity” [19].

**The EU has officially condemned the decision of the Russia’s Supreme Court as well, and called on Russia to immediately denounce it.** In the official statement, this decision is accessed as heiring the decade-longing practices of discrimination against LGBTQ+ people in Russia, and as aimed against the Russian civil society and independent activities of human right defenders:

*“The European Union strongly condemns the decision of the Russian Supreme Court to outlaw what it calls the ‘international LGBT public movement’ as ‘extremist’ and to ban its activity on the territory of the Russian Federation.*

*Amid the decades-long crackdown on rights of LGBTIQ persons unleashed under President Putin, this decision aims at further persecuting the LGBTIQ community in Russia and aims to stifle civil society and those courageously defending human rights. This decision will prevent LGBTIQ persons from enjoying their human rights and dignity over fears of unjustified persecution.*

*The EU firmly opposes discrimination, prejudice and hate. We stand in solidarity with Russian citizens and all others who are adversely affected by this decision” [20].*

**Persecution of LGBTQ+ people and discriminatory practices against them based on their SOGI are obviously illegal in its nature. In today's Russia, LGBTQ+ people cannot count on any legal protection. This creates not only the direct threat to implementation of their basic rights and freedoms (based on their belonging to the social group), but also a dangerous precedent when the principle of the rule of law is abolished for the sake of the current tasks of the populist policy: namely, of preserving political legitimacy via incitement of queer-phobic and xenophobic moods in the society. The infringement in the rights of LGBTQ+ people as a social group which is being realized today in the belligerent Russia normalizes the state’s unacceptable**



**usage of legislation and judicial practice for prosecution of human rights defenders and inciting social hatred.**

# Recommendations

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## **I. To the European Union Institutions and the Authorities of the EU Countries**

- 1.** Since LGBTQ+ people in Russia become one of the social groups which the mechanism of persecution based on personality not actions is tested on, the long-term consistent pressure on Russia is required from international and European structures, as well as from European governments, in order to compel the Russian authorities to respect the rights of LGBTQ+ people. This pressure has its implications not only for humanitarian reasons—in respect with the need to protect LGBTQ+ people in Russia from the real legal discrimination, but also due to the lasting devastating impact the persecution of LGBTQ+ people has on the institute of law and on the principle of the rule of law in Russia.
- 2.** Considering the fact Russia resigned the Council of Europe and denounced the European Convention on Human Rights, it is necessary to develop new strategies of this pressure, in collaboration with the civil process actors—such as human rights activists, LGBTQ+ initiatives, inside Russia and in exile.
- 3.** The decision of the Supreme Court of the Russian Federation outlawing the so-called “international LGBT social movement” means the danger of direct persecution for LGBTQ+ people in Russia. Because of this, we call on the safe countries to open special contingents for LGBTQ+ people from Russia, within the right proclaimed by the Universal Declaration of Human Rights to seek and to enjoy asylum from persecution in other countries.
- 4.** Since the persecution of LGBTQ+ people in Russia becomes an institutional practice of courts and police, and is supported by numerous radical homophobic groups within the country, the legal status of LGBTQ+ people from Russia within these special contingents should be not short-, but long-term.
- 5.** It is necessary to pay special attention to the vulnerable situation of

transgender people in Russia (who are additionally visible for the state), providing them with emergency assistance within international asylum programs and opening special contingents for them. Even if a transgender person has no case of direct personal persecution, the very fact they stay in Russia as a transgender people (one of the ways to verify it is the medical diagnosis of F64.0) implies serious current risks for health and safety of such a person.

**6.** It is necessary to call on executive and supervisory authorities to additional measures for the safety of LGBTQ+ people located in temporary accommodation points (distribution points and refugee camps) in the host countries, paying special attention to their protection from acts of violence motivated by homo- and transphobia, as well as to their timely access to necessary medical care—first of all: HRT medications for transgender people; ART for HIV-positive LGBTQ+ people; psychological treatment.

**7.** It is necessary to assist those Russian advocacy initiatives whose activities are practically impossible without the defenders' presence in Russia - for instance, in courts. For them, the procedures of obtaining long term entry visas to safe countries should be simplified. It will allow more human rights defenders to continue their practical work on site, until the emergence of direct personal persecution of them.

**8.** Political parties, human rights structures, and public organizations of the Council of Europe member states should raise the issue of protecting the rights of LGBTQ+ people within Russia and in exile with the legislative and executive authorities of their countries, as well as with the European institutions. One of the forms could be parliamentary hearings, both in national parliaments and in the European Parliament, as well as in the PACE and the OSCE Parliamentary Assembly.

**9.** We recommend that a special rapporteur on LGBTQ+ rights in Russia and in the countries of Eastern Europe be appointed in parliaments and parliamentary assemblies as soon as possible.

**10.** We also recommend raising the issue of establishing the post of commissioner for LGBTQ+ rights in Russia, and in other countries of Eastern Europe.

## **II. Representatives and Institutions of Legislative and Executive Authorities of the Federal Republic of Germany**

- 1.** Since LGBTQ+ people in Russia become one of the social groups which the mechanism of persecution based on personality not actions is tested on, the long-term consistent pressure on Russia is required from international and European structures, as well as from European governments, in order to compel the Russian authorities to respect the rights of LGBTQ+ people. This pressure has its implications not only for humanitarian reasons—in respect with the need to protect LGBTQ+ people in Russia from the real legal discrimination, but also due to the lasting devastating impact the persecution of LGBTQ+ people has on the institute of law and on the principle of the rule of law in Russia.
- 2.** Considering the fact Russia resigned the Council of Europe and denounced the European Convention on Human Rights, it is necessary to develop new strategies of this pressure, in collaboration with the civil process actors—such as human rights activists, LGBTQ+ initiatives, inside Russia and in exile.
- 3.** The decision of the Supreme Court of the Russian Federation outlawing the so-called “international LGBT social movement” means the danger of direct persecution for LGBTQ+ people in Russia. Because of this, we call on the Federal Republic of Germany, as a safe country, take into account belonging to the LGBTQ+ community as a factor which does not allow returning to Russia when considering applications for asylum under the Asylum Act (AsylG), and inadmissibility of deportation under §60, or suspension of deportation under §60a of the Law regarding Residence, Economic Activity and Integration of Foreigners in Germany (AufenthG).
- 4.** We also call for opening the special contingent for entry of LGBTQ+ people from Russia under §23 of the Law regarding Residence, Economic Activity and Integration of Foreigners in Germany, since many of them have no other opportunity to legally enter a safe country and request asylum on site in the framework of the existing procedure.
- 5.** Since the persecution of LGBTQ+ people in Russia becomes an institutional practice of courts and police, and is supported by numerous radical homophobic groups within the country, the legal status of LGBTQ+ people from Russia within these special contingents should

be not short-, but long-term.

**6.** It is necessary to pay special attention to the vulnerable situation of transgender people in Russia, providing them with emergency assistance within international asylum programs and opening special contingents on §23 of the Law regarding Residence, Economic Activity and Integration of Foreigners in Germany (AufenthG) for them—since transgender people in Russia may not have a case of direct persecution, but the very fact a person is a transgender people (one of the ways to verify this is the medical diagnosis of F64.0) staying currently in the Russian Federation implies risks for health and safety of such a person.

**7.** It is necessary to call on executive and supervisory authorities to additional measures for the safety of LGBTQ+ people located in temporary accommodation points (distribution points, refugee camps, and heims) in Germany, paying special attention to their protection from acts of violence motivated by homo- and transphobia, as well as to their timely access to necessary medical care—first of all: HRT medications for transgender people; ART for HIV-positive LGBTQ+ people; psychological treatment.

**8.** It is necessary to assist those Russian advocacy initiatives whose activities are practically impossible without the defenders' presence in Russia - for instance, in courts. For them, the procedures of obtaining long-term entry visa C type to the FRG should be simplified. It will allow more human rights defenders to continue their practical work on-site until the risk of direct personal persecution emerges.

**9.** We recommend appointing the special commissioners (Beauftragte) on the issues of LGBTQ+ people's rights in Russia, and in the countries of Eastern Europe in the Human Rights Committee (Ausschuss für Menschenrechte) and the Committee on Foreign Affairs (Auswärtiger Ausschuss), in the nearest future.

### **III. To the Representatives of the Russian Civil Society**

- 1.** We recommend integrating the protection of LGBTQ+ people's rights and freedoms, as well as the struggle against discrimination based on SOGI in the Russian Federation, in your political programs.
- 2.** We also recommend working closely with the civil society actors dealing with protection of LGBTQ+ people's rights and freedoms and on the problem of discrimination based on SOGI: with human rights activists and NGOs (within the Russian Federation and in exile), with European and international organizations.
- 3.** It is also recommended to provide consistent and timely media coverage for cases of discrimination and violation of LGBTQ+ people's rights in Russia, as well as to distribute educational materials about LGBTQ+, as well as about the rights and freedoms associated with SOGI.



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Since the beginning of the full-scale war in Ukraine on February 24 2022, the hate campaigns against LGBTQ+ people have become the most important factor of militarization, fully transforming the social life and implementing the final destruction of the civil society institutions and the rule of law. This research is based on the legal analysis of the two discriminatory laws against LGBTQ+ people which were adopted in the belligerent Russia during the period of 2022–2023: the «total ban of LGBT propaganda» and the law prohibiting medical and legal gender transition. The legal analysis is supplement by an overview of the social and institutional practices of discrimination against LGBTQ+ people in Russia since 2013 to 2023, in order to follow the ways the new laws are embedded in the long term totalitarization of the society, preparing it for the abolition of the right to privacy and for non-legal prosecutions. The research was carried out by Quarteera e. V. with the support of the Rosa Luxemburg Stiftung.



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