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Sex Workers, Unite! (Litigating for Sex Workers' Freedom of Association in Russia)

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Abstract

The existing legal framework in Russia makes sex work and related activities punishable offenses, leaving sex workers stigmatized, vulnerable to violence, and disproportionally affected by HIV and other sexually transmitted infections. In 2013, the Ministry of Justice, supported by the courts, refused registration and official recognition to the first all-Russia association of sex workers, referring to the fact that sex work is under administrative and criminal punitive bans and therefore the right of association for sex workers is unjustified. In light of international human rights standards, in particular the jurisprudence of the European Court of Human Rights, we examine in this paper whether the overall punitive legal ban on sex work in Russia is discriminatory. The government's positive obligations concerning discrimination against sex workers whose activities are consensual and between adults, and whose working conditions leave them among society's most vulnerable, should outweigh their punitive laws and policies around sex work. The scope of legal criminalization is narrow: it should apply only in exceptional cases where it is clearly justified.

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Introduction

In 2009, sex workers and their allies in Russia established an organization called Silver Rose. The purpose of the organization was to provide education and information for sex workers, to promote safer and healthier work practices, and to offer legal help and conflict resolution. Russia has a fast-growing HIV epidemic and sex workers are one of the most at-risk populations. While on average only 4.5% of sex workers are living with HIV, prevalence among street sex workers is as high as 50% in some cities, including St. Petersburg.[1] Surveys demonstrate that sex workers are poorly informed about the risks of HIV and other sexually transmitted infections; they are vulnerable to violence, including by law enforcement, and highly stigmatized.[2] Sex work is an offense punishable with a fine of 1500 to 2000 rubles (about US$50-70).[3] Organizing and engaging in prostitution—including living on its avails, operating brothels, and pimping—are criminal offences punishable with up to eight years in prison.[4] Hereafter, we will refer to this restrictive policy regarding prostitution as criminalization of sex work. Sex workers are those "female, male and transgender adults and young people who receive money or goods in exchange for sexual services, either regularly or occasionally, and who may or may not consciously define those activities as income-generating."[5]

The overall political climate around civil society organizations has worsened in Russia over the last several years.[6] At the same time, authorities have adopted laws that favor civil society organizations with a social service orientation, including those working on HIV prevention or other public health issues.[7] Some financial support was provided to such organizations.[8] In March 2013, Silver Rose applied to the Ministry of Justice in St. Petersburg for legal status. This would enable the organization to engage in court cases, receive financial support—including from the state—and so have a more active role in civil society. Silver Rose was already recognized by international organizations including the UN, and representatives of Silver Rose had taken part in the Regional Dialogue on Law and HIV convened by the United Nations Development Program in 2011.

The Ministry turned down the organization's application in May 2013 with reference to article 23.1(1) of the Federal Law No 7 of 12.01.1996 "on non-commercial organizations," which states: "The state's registration of a non-commercial organization can be denied if the constitutional documents (statutes) of the organization contradict the Constitution or laws of the Russian Federation."

In support of its decision, the Ministry provided two main arguments:

- The association's constitution was too vague; not only were the goals of the association unclear, so were the terms sex work and sex worker.
- The resulting vagueness prevented a ministerial assessment of whether or not the intended activities of Silver Rose and its constitution fell under federal criminal and administrative prohibitions of prostitution, of organizing prostitution, and of engaging minors in prostitution.

Regarding the first argument, the government's own catalogue classifying the different professions in the Russian Federation was of no help since the term sex worker did not appear on the list. Taken together, the arguments reveal that the punitive ban on all aspects of sex work is the underlying reason for the refusal to grant Silver Rose legal status.

In this paper, we use the case of Silver Rose to assess whether this ban on sex work in Russia amounts to a discriminatory measure in violation of the right to association as protected in Article 30 of the Russian Constitution, Article 14 of the European Convention on Human Rights ("the European Convention"), and Article 2 of the International Covenant on Civil and Political Rights ("the Covenant").

In our assessment, we rely in particular on the practice of the European Court of Human Rights ("the European Court" or "the Court"). UN human rights bodies, such as the Human Rights Committee or the Committee on the Elimination of Discrimination Against Women, could also inform our argument against the Russian Federation. However, in our opinion the European Court is the more effective instrument, in particular with the implementation of international judgments at a national level, and through the political pressure of the Committee of Ministers of the Council of Europe that supervises the execution of the Courts' judgments.[9] There has been notable success of the European Court and the Committee of Ministers of the Council of Europe in the implementation of general measures to prevent repetitive human rights violations, including by way of the "pilot" judgments procedure.[10] The Council of Europe supports targeted initiatives in order to improve implementation of the Court's judgment at the domestic level, including on politically tense issues in Russia, such as human rights violations in the Chechen republic.[11] Individual applications to the European Court leverage Russia's membership in the Council of Europe much more effectively than individual complaints to the UN Committees do with regards to Russia's membership in the UN.

We argue that the State's refusal to register Silver Rose amounts to direct and indirect discrimination in the enjoyment of Silver Rose members' freedom of association. We also argue that since this discrimination is directly based on their occupation of sex worker, criminalization of sex work itself is an unjustified discriminatory measure. We believe the government purposefully and needlessly delayed the registration process by their denial and subsequent court case, rather than suggesting that the organization clarify its functions. We hold that the Government's limited catalog of occupations must not limit people's choice of occupation, nor can it function to the Ministry or the courts as the only source of elucidation for the occupations in question. The Government forced Silver Rose to remain an unregistered association—limiting its ability to act as a group in civil and political life—and, we argue, this discriminatory decision further stigmatized its members. In short: rejection of registration is a disproportionate measure and the Government's arguments for its decision are neither relevant nor sufficient.

The refusal to register Silver Rose as a legal entity can be viewed as a human rights concern. Namely, vulnerable groups in particular should be encouraged to access their right to association, not deterred from it. In the case of Silver Rose, we argue that the human rights violation is severe, because it causes significant disadvantages for sex workers who are vulnerable people in Russia.

Criminalization, stigma, and discrimination

Historically, sex work has been strongly stigmatized and often penalized. It has also been in constant demand. Although the term "prostitution" continues to be used in the laws of many countries, including Russia, the term "sex work" is preferred in current global public health debates.

Criminalization is a government policy whereby certain conduct that carries a stigma is found to be deserving of criminal punishment. It includes "the use of pre-existing criminal laws [not specific to this conduct] against certain individuals or communities on the basis of certain characteristics (such as sexuality or occupation)."[12] Criminalization, in other words, leads to institutionalized stigmatization.[13] On the tails of stigma comes discrimination: it is a negative response to a perceived difference in value. Private, consensual sex between adults is protected by Article 8 of the European Convention (the right to private life), as the Court decided in *Dudgeon v. the UK* and *Norris v. Ireland*.[14] All of this together means that when the State criminalizes a particular type of sexual behavior that is private, consensual, and between adults, it is important to be sure that the policy does not lead the State to fall short in its obligation to protect vulnerable people from discrimination.

Even as an administrative offense, criminalization of sex work is considered highly stigmatizing. Citing the Constitutional Court of South Africa, Anand Grover, then UN Special Rapporteur on the right to health, stated that although "criminaliza-

tion may not be the sole reason behind stigma...[it] certainly perpetuates it, through the reinforcement of existing prejudices and stereotypes."[15]

Stigma also arises when sex work itself is not criminalized, but practices around it—such as facilitating sex work through the provision of information or assistance—are criminalized practices. Grover cites Rekart to stress this has the effect that "sex workers are nonetheless treated as criminals" and that stigmatization also occurs "through the use of other pre-existing laws (not specific to sex work) to harass, intimidate or justify the use of force against sex workers."[16] Examples are public nuisance laws and prohibitions on public camping and food distribution.

Stigma is not a thing of the past, according to the former Special Rapporteur: "sex workers remain subject to stigma and marginalization, and are at significant risk of experiencing violence in the course of their work, often as a result of criminalization."[17] Stigma means not having access to the same systemic protections in public life: "basic rights afforded to other workers are also denied to sex workers because of criminalization, as illegal work does not afford the protections that legal work requires, such as occupational health and safety standards."[18]

The refusal of the Ministry of Justice to register Silver Rose was based on the prohibition of sex work. The Ministry said that organizing sex workers, informing and educating them, fundraising for them and legally representing them, fell under the prohibition of sex work, as well as under "organizing and engaging in sex work." Based on the European Court's decision in *Sidiropoulos v. Greece,* we can safely conclude that this refusal constituted an interference with their freedom of association, an interference that has "deprived the applicants of any possibility of jointly or individually pursuing the aims they had laid down in the association's memorandum of association and of thus exercising the right in question."[19]

Criminalization results in discrimination in occupational health and safety, and can and does negatively impact freedom of association.

Some compromise between rights and restrictions is inherent to the system of human rights.[20] Discrimination may be found to be 'necessary in a democratic society': the second paragraph of Article 11 of the European Convention allows for restrictions based on, for example, 'protection of morals' or to safeguard the 'rights and freedoms of others.' The Member States have some room to choose their own approach when it comes to the enforcement and interpretation of laws. This is called the margin of appreciation. The term 'margin of appreciation' refers to the space for maneuver that the Strasbourg organs are willing to grant national authorities in fulfilling their obligations under the European Convention on Human Rights (the Convention).[21] The case of Silver Rose is about regulation of consensual adult sexual relations and the regulation of political parties and social organizations. These regulations may fall under 'protection of morals' or safeguarding 'the rights and freedoms of others.'

Freedom of association and democracy

Because freedom of association is critical to democracy, the European Court carefully scrutinizes any restrictions to this right. The Court has stated, "the way in which national legislation enshrines this freedom and its practical application by the authorities reveals the state of democracy in the country concerned."[22] The former UN Special Rapporteur on the right to health links criminalization and freedom of association: "criminalization represents a barrier to participation and collective action, through the suppression of activities of civil society and individual advocates."[23] In other words, social and political organizations are important cogs that keep the wheels of democracy turning.

Having official recognition through registration enables a group of people to act as a group in civil and political life. Registered organizations have distinct advantages over non-registered ones. Article 3 of the Russian Federal Law of January 12, 1996 N 7-FZ "On Non-commercial organizations" states that only registered organizations can acquire legal status, open bank accounts in their name, own property, and enter legal relations with other legal entities, including the authorities. Registration entitles an organization to file lawsuits and obtain

intervener status in civil procedures, institute legal proceedings, including criminal and administrative, apply for and receive national and international subsidies, and ask for donations.

As we argued above, the authority's refusal to register Silver Rose constituted an interference with the sex workers' rights under Article 11. This leaves us to settle the question whether the interference was also a violation of that article. The State may invoke limitations to the freedom of association if they satisfy the following criteria under Article 11 section 2: the interference was "prescribed by law," it pursued one or more of the legitimate aims and the interference was "necessary in a democratic society" to achieve those legitimate aims.

The decision by the Russian government was based on Article 23.1(1) of the Federal Law No 7 of 12.01.1996, which allowed the government to deny registration of an organization if the constitutional documents (statutes) of the organization contradicted the Constitution or laws of the Russian Federation. The refusal was thus prescribed by law.

The government has not specified the "legitimate aims" to which they referred in their decision, but it is likely they are the prevention of disorder and the protection of health or morals. The government generally has a broad margin of appreciation as to what administrative rules and regulations are needed to make registration of associations run smoothly. The margin of appreciation, as we mentioned above, is the government's room to choose their own approach when it comes to the enforcement and interpretation of laws. The aim of this particular rule would be considered 'the prevention of disorder.'

The government implied that advocacy for sex workers' rights and health falls under "engaging in prostitution", and that the nature of sex work would make registration of an association run by and for sex workers problematic. This consideration appears to be based on moral values that regard sex work as unacceptable behavior by society and the aim pursued is 'the protection of health and morals.'

We will accept that the Russian government pursued one or the other of these legitimate aims in the case of Silver Rose.

According to the European Court, in order to be in line with the European Convention the interference must be "necessary in a democratic society," a condition that requires the government must demonstrate that there is a "pressing social need" to refuse to register Silver Rose as a political association.[24] This is especially important because Silver Rose is an association that aims to promote public health, facilitate information sharing, assist in conflict resolution, provide legal council and organize charitable activities. If this organisation plays a great role in Russian democracy or has the potential to, then the government will have only a narrow margin of appreciation to determine whether there was a pressing social need. The social need will have had to have been severe. This margin of appreciation of the government is as narrow as when the Court determines that a policy is discriminatory and the extent of the vulnerability of a group and their history of discrimination becomes decisive. We separate these two topics because when the "clear inequality of treatment" of sex workers is "a fundamental aspect of the case", as we will argue below, it deserves a distinct examination according to the European Court in *Dudgeon v. UK* and in *Airey v. Ireland*.[25]

Case law and the right to association

There is a significant amount of case law regarding the right to association, most of which addresses issues concerning political parties or unions. Some of the case law is directly applicable to Silver Rose, for example, in *Vona v. Hungary.* Vona was a grassroots social movement.

When the Court laid out its principles on the right to association in *Vona v. Hungary*, citing *United Communist Party of Turkey and Others v. Turkey*, it stated that one of the objectives of this right is the protection of opinions and the freedom to express them. It also emphasized the importance of political parties as guarantors of pluralism in a democracy. In applying the rights to political parties, the Court cautioned that the exemptions in Section 2 have to be construed strictly—while the Government has a margin of appreciation, it is limited in determining whether interference was necessary. The rigorous

scrutiny from the Court concerning this "necessity" yardstick was particularly important in that case, since the political party was dissolved and its members prohibited from future political activity similar to their previous activity.[26]

In *Vona v. Hungary*, Vona, like Silver Rose, was designated a social organization. The European Court has not generally afforded social organizations the same iron-clad protections as political parties. It has been unwilling to undertake "the most rigorous scrutiny of the necessity of a restriction on the right to associate" even where the sanction of dissolution is one of "considerable gravity, because it means stripping these groups of the legal, financial and practical advantages normally available to registered associations in most jurisdictions."[27] The reason for less protection is that social organizations do not normally enjoy the same level of legal privileges to affect public policies and public opinion as political parties, and they have "fewer opportunities to influence political decision-making."[28] The Court added a caveat: since social organizations can have huge political impact, "their actual political relevance can be determined only on a case-by-case basis," and "the responsibilities originating in the particular constitutional role and legal privileges that apply to political parties in many Member States of the Council of Europe may apply in the case of social organizations only to the extent that the latter do actually have a comparable degree of political influence."[29]

These exceptions, we argue, apply to Silver Rose, despite it not being a political party. This possibility is put forth by the Court itself: "As regards associations with political aims and influence, the level of scrutiny will depend on the actual nature and functions of the association in view of the circumstances of the case."[30] Considering the importance in a democracy of a social organization that advocates for a stigmatized group vulnerable to violence and disproportionally affected by HIV and other sexually transmitted infections, and considering that the only difference between a political party and Silver Rose is that Silver Rose won't put people forth to be elected, we maintain the Government must provide convincing and compelling reasons to justify its restrictions on the organization's freedom of association.

The Government argued at first that the association's statutes were unclear and were missing the definitions of sex work and sex worker, and that sex work was not a recognized profession (and not included in the official list of occupations) around which people could build an organisation. The resulting interference (impeding or obstructing somebody's rights) was a sanction of similar gravity to the one in *Vona*: the organisers were prevented from "discharging responsibilities that come from leading an organisation."[31]

Two of the Government's arguments have been overcome by adding definitions to the association's constitution. We believe the mere absence of an occupation on a government's list so that the list cannot be used to clarify the terms sex work and sex worker, is insufficient grounds to justify the interference that the refusal to register constitutes. The absence of sex work on this list can not lead to acceptance of a measure of such gravity that it leaves a whole section of society unable to organize around their matter of interest. As a comparison, the term "graphic designer" is also absent from the out-dated list, yet the Graphic Design Unions have been registered.

The argument regarding the definition of sex work was weak to begin with: the office of the Chief Sanitary Doctor of the Russian Federation regularly uses the terms sex work and sex worker, and the Russian Federation has voted for many UN resolutions that use both terms, suggesting that there are in fact no objective and reasonable justifications for this ground of refusal.

The Government may find the issues that Silver Rose plans to raise troubling and/or disconcerting, but the European Court has ruled, for example in *Herri Batasuna and Batasuna v. Spain*, that "the possibility [democracy] offers for debate through dialogue, without recourse to violence, of issues raised by various tides of political opinion, even when they are troubling and disturbing" to be one of the principal characteristics of democracy and one that is protected by Articles 10 and 11 of the European Convention.[32]

However, almost 20 years ago, in 1995, the European Court declared inadmissable a case (*Larmela v. Finland*) where an organisation was refused registration, stating that it was not unreasonable for the Finnish court to deem the aim of the organisation in violation of public decency.[33] Not only was "the aim of the association [...] to encourage a habit detrimental to health and not yet common in Finland and [was] the use of cannabis [...] a criminal offence;" there was also to be taken into account the attitude of a committee of the Finnish Parliament that society should show its disapproval of the use of drugs. The Court added that since the applicant had not shown that the refusal to register had prevented it from any essential activity of the association, the refusal could not be considered disproportionate to the aim pursued.

There are many differences between Larmela and Silver Rose. Sex work is common to all societies; it is work that can be done safely and with regard to health standards; it is legalized in most European countries; it is not a criminal but an administrative offense in the Russian Federation indicating that the Government acknowledges the mildness of the transgression, yet Silver Rose will be prevented from carrying out many of its essential activities.

Given the essential role of debate in a democracy even if some opinions are disturbing, and the prevention of Silver Rose's essential activities, we contend the Government did not adequately demonstrate its decision regarding Silver Rose's registration corresponded to a pressing social need. The authorities did not choose the least intrusive course of action to deal with the aforementioned issues, they went for the most intrusive and far reaching option. All in all the measure was disproportionate to any legitimate aims pursued.

The restrictions by the government on the freedom of political associations have been scrutinized by the European Court. The margin of appreciation herein, the room to do what they will, to shape and implement these restrictions on the freedom of association, is small. This question of what room a government has, is our next consideration.

Discriminatory policies

Article 14 of the European Convention on Human Rights provides that "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." This Article can only be examined if the case in question falls under one of the other rights of the Convention. In this case there has been an interference with the right of association.[34] The European Court has on more than one occasion found that establishing a breach of the substantive right is enough to come to a decision on the case without having to look at a possible breach of the right to non-discrimination. In *Airey v. Ireland,* among others, the Court put forth that there should be "a clear inequality of treatment" in "a fundamental aspect of the case" in order for a separate determination of discrimination to be considered.[35]

In the case of Silver Rose these conditions of discrimination are plainly satisfied. Because of the Government's refusal to allow it to register, no one who engages in sex work can freely associate as an organisation, or pursue their aims of protecting and affirming human rights, because of their occupation. The exclusion, then, of sex workers as an occupational group from employment related activities, serves as prima facie evidence that the refusal to register Silver Rose had a discriminatory intent and effect.

Article 14 of the European Convention prohibits discrimination on many different and varied grounds, even specifying "other status", such that other grounds may be found as cases arise.[36] "Other status" has been defined to include marital status, sexual orientation, physical disability, military rank, financial or employment status, a difference in treatment between the applicants and other holders of planning permissions in the same category as theirs, and a distinction between tenants of the State on the one hand and tenants of private landlords on the other.[37] The Court's practice demonstrates that a convicted prisoner, a former KGB officer, or a father whose paternity had been established by judicial

determination could fall within the notion of "other status" in Article 14.[38]

According to the European Court, "the question whether there is a difference of treatment based on a personal or identifiable characteristic in any given case is a matter to be assessed taking into consideration all of the circumstances of the case and bearing in mind that the aim of the Convention is to guarantee not rights that are theoretical or illusory but rights that are practical and effective."[39]

We contend that the status of a sex worker in the context of an administrative punishment falls under "other status:" there is a difference of treatment based on a personal or identifiable characteristic, namely the person's occupation. Because sex work is legally prohibited, all sex workers are at high risk of experiencing legal sanctions just because of their occupation.[40] This feature distinguishes sex workers from the rest of society, especially others involved in legally recognized, freely chosen and gainful employment, and from those who engage in legal, consensual sex between adults. Transactional sex is the only type of consensual sex between adults that carries an administrative punishment.

Because of the distinct advantages that registered associations have over unregistered ones, the refusal puts sex workers at a particular disadvantage in many areas of life, including: participation in democracy; societal acceptance; accessing the best possible healthcare; access to legal protection; ensuring their own health and safety (occupational risks increase when access to information is impeded); enjoyment of a positive self-image; and pride in what they accomplish for clients.

According to the Court's case law "persons in analogous, or relevantly similar, situations" may not be treated differently.[41] This includes cases when similar persons are treated differently as well as cases when different persons are treated similarly.[42] In assessing whether a difference of treatment was justified, whether it was "objective and reasonable," and whether there was a "reasonable relationship of proportionality between the means employed and the aim sought to be realised," the State has a narrower margin of appreciation when the group concerned was particularly vulnerable and had "suffered a history of prejudice and social exclusion" in which case the reasons for the restrictions would have to be "very weighty."[43]

The Russian Federation has had a long history of human rights violations against sex workers both by the State and by private actors. Sex workers as a group are particularly vulnerable to human rights violations such as the violation of the right to life and the right to health, with statistics revealing violations including murder, rape, extortion and torture.[44]

Because sex work is criminalised, it has allowed various illegal and discriminatory police practices to continue. These include forcing sex workers to clean police stations, or to provide sexual services to the police in return for having their claims of assault investigated. This leaves sex workers further stigmatized and isolated, and it encourages violence against them. They live a life which makes integration into society difficult; this in turn compromises their ability to exercise their civil and human rights, including partaking in social life as a registered organisation.[45] In short, not only do they suffer from society's prejudice against sex work, and not only does prohibiting their work lead to institutionalization of the stigma they face, such prohibition is inherently discriminatory.

Where there is a history of discrimination and of other human rights' abuses, the European Court of Human Rights has ruled—in *Horvath and Kiss v. Hungary* with regards to Roma children—that the state has a positive obligation to create safeguards against discrimination.[46] In the case of Silver Rose two of those safeguards are the freedom of association and the freedom of expression.

The state needs to foster an enabling environment where sex workers can form an association to protect human rights and it must refrain from obstructing the fulfillment of rights. The state needs to avoid structural discrimination and treat sex workers as equal to other groups and the general public. According to Article 2 of the International Covenant of Economic Social and Cultural Rights (ICESCR), and the associated General Comment No. 20, 2009, the State should provide incentives such as legal, administrative, financial and other

instruments to enable sex workers to close the gap with the rest of society and become equal citizens.[47]

As we have seen above, the European Court sees freedom of association as one of the strongest ways to support and build a democracy. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, builds on this argument to claim there is a global consensus on the right to freedom of association, which leads to the determination that states have less room to choose how to regulate this issue; that States have a narrower margin of appreciation, the term that the European Court uses.[48] Kiai emphasizes in the first report on the rights to freedom of peaceful assembly and of association, that States "have a negative obligation not to unduly obstruct the exercise of the right to freedom of association" and that States have a positive obligation "to take positive measures to establish and maintain an enabling environment."[49]

Kiai has called on States to "recognize that the role of freedom of association is to a) play a decisive role in the emergence and existence of effective democratic systems as they are a channel allowing for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected;" and "(b) To ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone [...] including [...] groups at risk, [...] as well as activists advocating economic, social, and cultural rights."[50]

In *Dudgeon v. the UK* and *Norris v. Ireland*, the European Court decided that when sex is consensual, private and between adults, criminalisation thereof amounts to a breach of Article 8 of the European Convention: the right to a private life. Consensus around this approach is found in the UN conventions: the Special Rapporteur on the right to health considers "criminalization of private, consensual sexual conduct between adults infringes … the rights to privacy and equality."[51]

To paraphrase the definition in the Report of the UN Special Rapporteur on the right to health: sex work is regarded as consensual sexual relations between at least two adults who are able to give consent.[52] The European Court has found consensual sexual relations to be protected as part of the right to respect for private life. We contend the logical extension is that the State has an obligation to protect vulnerable groups, and this includes sex workers who are engaging in consensual sex.

Europe has made strides towards encouraging sex workers to become part of civil society. While in some of Europe sex work is still criminalized with laws criminalizing either the sex work itself, or activities around sex work such as operating a brothel or paying a sex worker for their services, Europe acknowledges organizations such as 'De Roode Draad' (the Red Thread) in the Netherlands and Tampeh (Europe-wide), which advocate for the human rights of sex workers.[53]

The existence of a European consensus is an additional consideration relevant for determining whether the respondent State should be afforded a narrow or a wide margin of appreciation (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 81, ECHR 2007-XIII).[54] Sex workers have banded together in organizations and unions throughout Africa, Asia, North America and Latin America, in conservative, liberal and social democracies alike and even in non-democratic States.[55]

Taking into account the little room—the narrow margin of appreciation—the State enjoys when it comes to a legal prohibition of the consensual sexual relations between adults, and the existence of the European consensus regarding the sex workers' right to freedom of association and expression, it is clear that the Russian authorities applied the article that prohibits sex work and the article that concerns registration of associations in a discriminatory manner. This conclusion provides a strong basis to view the prohibitory framework of sex work as a discriminatory policy.

Conclusion

In Russia, sex work involving consensual relations between adults is criminalized. We have argued that given the historic and current vulnerabilities and marginalisation of sex workers, the Russian Federation must take steps to avoid and prevent ongoing and structural discrimination and must not put into place more ways by which sex workers are prevented

from participating in civil society. Using European Court discourse, the State has an extremely narrow margin of appreciation when implementing policies around sex work.

To avoid discrimination, the Russian Federation must ensure that prohibition of any conduct is done only on grounds that such prohibition is necessary in a democratic society and that the reasons for the restrictions would have to be "very weighty."[56] Accordingly, the prohibited conduct shall be tightly defined and any prohibitions must be evidence-based and consist only of the utmost essential measures/interferences proven to be necessary for the public good or health.

There can be no justification for difference in treatment based on a person's stigmatized occupation. Sex workers must, as a particularly vulnerable group, enjoy special protection under the European Convention.

We have argued that by refusing to register Silver Rose, the Government of the Russian Federation is in breach of Article 11 of the Covenant, freedom of association, in conjunction with Article 14, right to non-discrimination; in breach of article 22 of the International Covenant on Civil and Political Rights, as well as Article 30 of the Russian Constitution, both concerning the freedom of association. Taking into account special vulnerability of sex workers to HIV/AIDS and a strong interplay between vulnerability to HIV/AIDS and vulnerability to human rights violations, the refusal to register Silver Rose ultimately affects the Government's responsibility to respect, protect, and fulfill the right to health as stipulated in Article 12 of the International Covenant on Economic, Social and Cultural Rights.

In order to remedy the violation and prevent further violations, it is our belief the Russian Federation will have to either repeal the prohibition of sex work, and the sex workers' organization, or, at the very least, pass clear and precise instructions that the ban on sex work can only be enforced in exceptional cases where enforcement is strongly justified and where it clearly outweighs the Government's positive obligations concerning discrimination. International human rights mechanisms should provide clear and appropriate instructions of a similar nature, including in country reports on Russia, and when considering individual complaints from Russia.

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20. *Klass and others v. Federal Republic of Germany*, No. 5029/7, ECHR, 1978.

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24. *Handyside v. the United Kingdom*, No. 5493/72, ECHR, 1976, sec. 48.

25. *Dudgeon v. the United Kingdom* (1981, see note 14), sec. 67; *Airey v. Ireland*, No. 6289/73, ECHR, 1979, sec. 67.

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27. Ibid., sec. 58.

28. Ibid., sec. 56.

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30. Ibid.

31. *United Communist Party of Turkey v. Turkey*, No.133/1996/752/951, ECHR, 1998-I.

32. *Herri Batasuna and Batasuna v. Spain*, Nos. 25803/04 & 25817/04, ECHR, 2009, sec. 76; *Handyside v. the United Kingdom*, No. 5493/72, ECHR, 1976, sec. 49; *Jersild v. Denmark*, No. 15890/89, ECHR, 1994, sec. 37.

33. *Larmela v. Finland*, No. 26712/95, ECHR, 1997.

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41. *Kiyutin v. Russia*, No. 2700/10, ECHR, 2011; *Thlimminos v. Greece*, No. 34369/97, ECHR, 2000.

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49. Ibid., sec. 63, p. 15.

50. Ibid., sec. 84, p. 20.

51. Ibid., sec. 2, p. 4.

52. UN General Assembly (2010, see note 12), sec. 1, p. 4.

53. Ibid., sec. 29, p. 10.

54. *Kiyutin v. Russia* (2011, see note 41), sec. 65.

55. See, for example, The International Union of Sex Workers; the Asia Pacific Network of Sex Workers; Sex Workers Outreach Project USA; Feminists Advocating for Rights and Equality for Sex Workers (Canada); Rede Brasileira de Prostitutas (Brazil); Wonetha (Uganda); New Zealand Prostitutes Collective; Scarlet Alliance (Australia) and Durbar (India).

56. *Thlimminos v. Greece* (2000, see note 41), sec. 48.