
Janusz Jartyś, Marcin Orzechowski¹

**RESPECTING EUROPEAN STANDARDS
CONCERNING HUMAN RIGHTS OF LGBT PEOPLE
IN THE RUSSIAN FEDERATION AND UKRAINE.
A COMPARATIVE ANALYSIS**

Keywords: Russian Federation, Ukraine, bilateral relations, human rights, LGBT

ABSTRACT: The LGBT rights are lately one of the aspects of a social and political discourse both in the Russian Federation and in Ukraine. In these countries of a common historical heritage there are some analogies in the perspective on human rights and their realization. It may be also noted that the LGBT rights have become an instrument of politics. In the following article the authors present a comparative analysis of the way in which the LGBT rights are respected in the Russian Federation and in Ukraine. They will depict the similarities and differences between these two countries which result from historical conditions, and will provide an analysis of the current perception of non-heterosexual people in both countries.

The issue of human rights evokes an emotional debate. Legal solutions and practice concerning human rights and civil liberties determine particular political systems. In states where a political system is based on democratic principles, the issues of rights and civil liberties are reflected in particular legal regulations, and legal and self-governmental bodies are obliged to enforce them. The Universal Declaration of Human Rights proclaims in Article 1 that “all human beings are born free and equal in

¹ Department of Political Science and European Studies, Institute of Political Science and European Studies, Faculty of Humanities, University of Szczecin, Poland, janujar.eu@gmail.com, orzechowski.martin@gmail.com.

dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (Universal Declaration of Human Rights). Therefore, human rights are universally applicable and thus analogous to moral standards.

The issue analysed in the following article, both in the case of the Russian Federation as well as Ukraine, is of a specific character, and there are both differences and similarities evident in both states. The ongoing debate on the European aspirations of Ukraine focuses mainly on economic issues and internal stability of this state in the light of the current conflict taking place in the East of the country and the annexation of the Crimean Peninsula by the Russian Federation (Orzechowski, 2015). Generally, however, social issues are not discussed in this context, and that includes the issue of respecting European standards of human rights concerning LGBT people. Nevertheless, the European Union is a political, economic and social community where the issues concerning non-heterosexual people were discussed as early as in 1984. Ten years later the Fundamental Rights Commission and the Internal Affairs Commission of the European Parliament accepted a report on the equality of gays and lesbians in the European Union, where the examples of discrimination of LGBT people were pointed out.

In contrast, Russia is a country which preserved the appearances of a democratic state by the existence of a formal tripartite system and cyclical elections, but in reality the political power is administered in an authoritarian way (Кириченко, 2009). Therefore, in both countries there is a different perception of human rights and a different attitude to minorities, including non-heterosexual ones. Although both countries are so dissimilar in this respect, some parallels may be observed, especially when it comes to the social attitude to LGBT people and their acceptance in the public sphere. What cannot be forgotten is the fact that both states were inspired by the same ideology, which did not accept any exceptions from its soviet ideal of a human being, in social life as well as in the public sphere.

In the following article, on the basis of available materials and case studies, the authors present the social situation of LGBT people in Russia and in Ukraine, and at the same time, they analyse the perception of

European standards of human rights in the discussed aspect in the aforementioned countries. A historical method is also used to depict the development of LGBT movement and the legal status of non-heterosexual people in these countries. Certainly, both Russia and Ukraine are not among the countries where all demands of the LGBT movement in legal and social terms were realized. In both countries displays of discrimination and intolerance of LGBT people are still present to various extents. In their research on the subject, the authors are looking for answers to following questions: are the hostile attitudes to LGBT people going to lead to legal sanctions in either of the analysed states? What has the development of LGBT movement looked like in Russia and in Ukraine? Do LGBT activists take part in political life in both countries? These research questions have to be answered in order to provide a comparative analysis of the rights of non-heterosexual people in the Russian Federation and in Ukraine.

In legal practice, human rights are regulated by constitutions. This principle applies to the current Constitution of the Russian Federation from 1993 (Конституция Российской Федерации). This document reflects the fundamental political changes in Russia after the collapse of the Soviet Union. The whole Chapter Two of the Constitution of the Russian Federation is devoted to the issue of human rights and liberties, and it is the most extended part of the Constitution. This issue is regulated by 48 articles out of 133 of the whole Constitution. Article 2 already states that “man, his rights and freedoms are the supreme value”, and Article 6 clause 2 describes the most important obligations of the state, which is required to guarantee full rights and liberties to every citizen on its territory (Конституция Российской Федерации (с учетом поправок, внесенных Законами Российской Федерации о поправках к Конституции Российской Федерации от 30.12.2008)). In a general reference to the issue discussed in this article, the Constitution of the Russian Federation obliges the state authorities to ensure full equality of the rights of all people, irrespectively of their race, sex, nationality, ethnicity, language, financial situation or place of residence (Закрепление прав и свобод человека в законодательстве). Women and men have equal rights and every human being has a right to live. (Федеральный Конституционный

Закон „Об Уполномоченном по правам человека в Российской Федерации) However, the right to a non-traditional sexual orientation evokes strong emotions and polarizes the society, and thus it remains one of the most critical elements to be analysed in the light of the aforementioned European standards of human rights. This topic is research-worthy also due to the fact that it is rarely undertaken in a scholarly, social or political discourse.

When it comes to Ukraine, the Constitution guarantees equality in the light of the law to all citizens and it prohibits discrimination for whatever reason (Конституція України). It does not mention sexual orientation straightforwardly as one of the protected elements, but a relevant legal interpretation of the Constitution would result in a protection of sexual minorities. However, such a legal interpretation has never been provided by a court of law. In 2003 an amendment to the current labour law was proposed that would, among other things, prohibit discrimination due to sexual orientation (Закон України „Про виконання рішень та застосування практики Європейського суду з прав людини”).

A common denominator connecting the issue of respecting the rights of LGBT communities is the common history of both these countries, which functioned as parts of unified state during the period of the Soviet Union. It is the dominating social conservatism of the communist era, concerned with “proper morality” of its citizens and evident in the social unification that led to a construction of a new “type” of a person, the so-called *homo sovieticus*. The name refers to a certain type of civilization, a part of which was isolating the society from global processes in the name of consolidating communist society and reinforcing “uniformity and unity” of the communist state (Orzechowski, 2015).

In both countries there was no political nor social approval to expose minorities, especially sexual ones. In spite of the fight with religion and the Church, a conservative model of a family was preferred, as much as it corresponded to the premises of the Orthodox Church. What is more, in both countries a particular model of masculinity was propagated: a man strong, hard-working, who avoids

using too many cosmetics and does not attach importance to personal hygiene and fashion, or at least shuns extravagant behaviour.

It is difficult to find any aspects of Nobles' Democracy in the history of Russia. First elections to State Duma took place in 1906, and the previous authority of the tsars was almost absolute. Tsars owned land, and nobility was practically dependent on their will. For the most of the twentieth century Russia was a part of the Soviet Union (USSR), whose law until 1930s provided for five years' imprisonment for homosexual acts, and in the latter period of the Soviet Union's existence it included enforced medical treatment of homosexuality as it was perceived to be an illness. Penalizing homosexuality was abandoned in the Russian Federation in 1993 in all the republics that were part of the federation except in Chechnya, and in 1997 a unification of the age of consent (which is sixteen) was introduced (Кириченко, 2009). In the Russian Federation gays are not conscripted to obligatory military service due to their sexual orientation. However, abandoning criminal responsibility for homosexual acts did not significantly change the attitude of the society to homosexuality. The Russians are currently held as an example of one of the most homophobic societies in Europe, and this is the consequence of the attitude to homosexuality in the times of the Soviet Union. Homosexuality is not accepted by the majority of society, as it stands in opposition to the socially constructed stereotype of a strong man who does not show his weakness and plays the role of a head of the family (Кириченко, 2010). This long-lasting perspective on masculinity in Russian society is definitely influenced by the position of the army in social consciousness, and its myth is very significant in Russia irrespectively of the political reality; what is more, the army is an influential political power. Incidentally, in the military power of the Russian Federation there is no place for an image of masculinity that would undermine the stereotype of a heterosexual man (Кириченко, 2010).

While analysing the social changes after the collapse of the Soviet Union in the post-soviet territory one may conclude that both in Russia as well as Ukraine there are no organizations of a nationwide scope that would fight for LGBT rights. Unlike Ukraine, the Russian

Federation did not aspire to become a member of the European Union, and therefore did not have to fulfil the requirements of its anti-discrimination directives that result from the European standards of human rights. Due to these factors Russian authorities gave their society *carte blanche* when it comes to the treatment of non-heterosexual people. Certainly, the ubiquitous lack of tolerance towards LGBT people in Russian society takes verbal and physical forms. Although Russian authorities deny it, in 2009 lack of respect for the right of non-heterosexual people caused concern of the United Nations. The Human Rights Committee of the UN advised Russia to protect LGBT people from violence and hate crime caused by prejudice against sexual orientation and gender identity.

At the same time, the development of LGBT movements in Ukraine was much slower. The activism of the Ukrainian non-heterosexual community did not coincide with postulates of any larger political party, especially one that would be in power. The first Ukrainian LGBT organisations began their work already in the latter part of the Soviet period (*Historia ruchów LGBT na Ukrainie*). In 1990 in Luhansk the Regional Information and Protection Centre of Gays and Lesbians “Nash Mir” was created. Moreover, in 1993 in Mykolaiv the Association of Gays, Lesbians and Bisexuals “Liga” was established. Also at the beginning of the 21st century two social organisations in Kiev were founded: “Gay Alliance Ukraine” and “Gay Forum Ukraine” (Jartyś, 2016).

As it is the case in Russia, the most important centre of activity for organizations of non-heterosexual communities is the capital of Ukraine – Kiev. In both countries this situation is the result of a number of factors. First, both cities, Moscow and Kiev, are important academic centres, where representatives of the young generation meet, therefore the capitals are much more open to social changes. Secondly, it is important to note that in this case the most educated class who has access to new information and generally uses foreign languages also lives in these cities. Thirdly, the demographic aspects of Kiev and Moscow give LGBT activists an impression of anonymity, and in comparison to smaller places in the province, they are not at risk of social ostracism (Jartyś, 2016). These determinants concern both Russia and Ukraine, and it is difficult to find any dissimilarities between them in this respect.

The consolidation of the Ukrainian LGBT community took place in 2005. That year in Lviv during the IV Conference of organisations helping HIV-positive people and AIDS sufferers, there was a meeting of LGBT non-government organisations. During that meeting it was proclaimed that there should be a consolidation of Ukrainian LGBT organisations under the name “Coalition” (Jartyś, 2016). There was also a task force established for this purpose. As a result, a compromise was reached and the representatives of all interested parties signed a document on 18 April 2005 in Kiev about instituting a federation of LGBT organisations in Ukraine. Its co-signatories were 23 bodies, including 16 organizations and 7 task forces (The Situation of LGBT in Ukraine). The council of LGBT organisations in Ukraine was then legalised by the Ministry of Justice on 17 January 2011. The objectives of the Ukrainian LGBT movement include educational policy, health policy, LGBT rights and resistance to various forms of discrimination (Jartyś, 2016).

The LGBT rights raise a lot of emotions in Ukraine. This is evident in the case of the attempt by Verkhovna Rada of Ukraine (the Parliament) on 5 November 2015 to proclaim a law which would prohibit discrimination against LGBT people in the workplace. Even though this bill was supported by the President Petro Poroshenko, only 117 out of 450 deputies voted in favour of this law (Situation LGBT people in Ukraine).

A similar, or perhaps an even more serious situation takes place in the Russian Federation. In November 2012 the Committee Against Torture in the UN expressed their concern with discrimination and violence against LGBT people in Russia (Zakrzewicz, 2013). It urged Russia to combat sexual orientation and gender identity hate crime. The concern of the UN is legitimate, as society’s bias against sexual minorities is deeply motivated by politics. Russia is presented as a country of “pure values” and an opposition of the corrupted West which respects the LGBT rights, therefore often Russian homophobes mockingly call Europe “Gayrope” [Gejropa]. Such an opposition of European values represented by the countries of the European Union is aiming to reinforce the idea of Russian imperialism in people’s mentality, expressed also in national symbolism. The double-headed eagle – which is the heraldic badge of Russia – faces both the West and the East (Situation LGBT people in Ukraine).

The social bias against LGBT people in Russia is reflected in the actions of authorities and in social opinion polls. In 2013 the State Duma voted in favour of a bill which banned “gay propaganda”, as it is expressed informally; it is a bill which prohibits “spreading information which aims at forming a non-traditional sexual orientation among the youth or convincing them about social equality of non-traditional relationships.” As a result, these legal regulations work against LGBT people in the public sphere and sanction homophobic attitudes in society. For example, after this law was accepted, a famous Russian sportswoman Yelena Isinbayeva, said that in her country there were never such problems: “boys go out with girls and girls go out with boys” (Noch, 2013). What is more, these laws significantly restrict the possibility to formulate postulates of LGBT communities in a public sphere. This anti-LGBT law provides for sanctions such as a fine for a Russian citizen and deportation for a foreigner. What has to be also stressed is the fact that this law is rather freely interpreted and applied, which in practice means that any expression of sympathies or defence of LGBT rights might be perceived as legal offence.

According to the data included in the report of Human Rights Watch (HRW) based on several dozens of detailed reports from LGBT respondents in 16 cities of Russia, after the introduction of the aforementioned law in Russia LGBT people were beaten, kidnapped, humiliated and verbally abused (World Report 2014: Russia). Some of these incidents were actions organized by anti-gay activists, other – a spontaneous behaviour of strangers in the streets or customers of night clubs. The authors of this report point out that such attacks on people of non-traditional sexual orientation in Russia are becoming more and more common, and the police and courts often do not react to abuse and attacks on gays, because such behaviour is in agreement with opinions of most Russians.

In 2013 the aforementioned Human Rights Watch published a special report in Russian, where they explicitly stated that 2012 was the worst year since the collapse of the Soviet Union in terms of respecting human rights. It recalled that since Vladimir Putin’s return to the Kremlin, the Parliament, dominated by the members of the United Russia party, “has unleashed a crackdown on civil society unprecedented in the country’s post-Soviet history” (Prus). This statement refers to the law proclaimed in

July 2011 which restricted the rules for the operation of some NGOs (Путин подписал закон о “нежелательных в России” НПО). Those organizations which received grants from abroad and participated in political life were given the status of organizations operating as “foreign agents.” They were to be strictly controlled by the authorities (Путин подписал закон о “нежелательных в России” НПО). The definition of treason was also vastly expanded, to include offering financial and technical support to those who aim at jeopardize the safety of the citizens of the Russian Federation, its constitutional order, sovereignty, and its national and territorial integrity. The regulations concerning demonstrations were also reinforced. The amendments to the aforementioned bills were prepared as a separate law and signed by President Putin in May 2015 (Федеральный закон от 23 мая 2015 г.)

Moreover, in the Russian Federation the social opinion polls concerning LGBT community are somewhat manipulated. Questions concerning this community are posed in a negative way. For instance, public opinion centre WCIOM regularly organizes an opinion poll on social attitudes to gays, locating them in one group together with e.g. the poor, the HIV-infected, religious sect members and... murderers. In the light of such polls, the social attitude of Russians towards homosexuals is horrendous. In November 2014, 28% respondents were of an opinion that homosexuals should be “eliminated”; a slightly milder option – isolation of homosexuals from the rest of the society – was chosen by 37% of respondents. According to Yuri Levada Centre, in their poll conducted in 2013, at a time when State Duma deliberated on the law against homosexual propaganda, 35% of Russians claimed that this sexual orientation is a result of illness or a psychological trauma, while 23% of Russians believed it was a result of bad upbringing and licentiousness, and an addiction. 29% said that they would be more vigilant if gays or lesbians moved in to their neighbourhood, and 37% claimed that in such a situation they would react “very negatively” (Geje na Sybir). What is more, 61% of surveyed Russians admitted to fear for their children or grandchildren because of “homosexual propaganda.” These results are not surprising considering the fact that the introduction of the anti-LGBT law in 2013 was supported by 88% of Russians (Путин подписал закон о “нежелательных в России” НПО).

The influence of these legal records is reflected not only in the attitudes of the Russian society, but also in the practical results of this law in the Russian Federation. One of the most prominent examples of “fighting homosexual propaganda” is a court case against Madonna after her concert in St Petersburg, during which she made a short remark on defending people of non-traditional sexual orientation. After an international scandal caused by Tim Cook, Apple’s CEO, when he admitted to be gay, the Russians hastened to disassemble the Iphone statue on one of St Petersburg’s streets. Dimitr Kisielov, one of the most active propagandists, claimed in a TV programme that homosexuals should be banned from donating blood, and their hearts should be “burned or buried in the ground” (Najtwardszy propagandysta Kremla zmienił zdanie w sprawie gejów). Another such example is when Ivan Ochlobistin, an actor with strongly Orthodox outlook, admitted in an emotional interview that he would “put them [gays] all together in a crematorium” as he fears his children might become exposed to “gay propaganda” (Lasecki, 2013).

In the light of the above examples showing the social attitudes in Russia, no legal queer parade or equality march organized by LGBT community is allowed to take place, and LGBT movement itself is dispersed and does not constitute a significant group of political interest. As a result, a great majority hides their sexual orientation. According to an opinion poll conducted in 2011, in the period of time between January and October 2011 32% of LGBT citizens in Russia had problems at work caused by their sexual orientation, 5% were dismissed or forced to resign due to their sexual orientation, and next year these numbers increased: almost 40% of respondents admitted to having problems at work due to their sexual orientation, while further 5% were dismissed or forced to resign due to discrimination. (Положение лесбиянок, геев, бисексуалов, трансгендеров в Российской Федерации. Последняя четверть 2011 – первая половина 2012). An example of a famous person who lost his job due to his sexual orientation is a journalist, writer and critic Anton Krasovsky (Geje na Sybir).

The citizens of Ukraine also belong to societies which are intolerant towards homosexuals. According to the *Pew Global Attitude Project* opinion survey of 2002 only 17% of Ukrainians believe that homosexuality

should be accepted in society. Only in large cities a noticeable change in tolerance may be evident. About 15% of the citizens of Ukraine support civil partnerships.

There are also publications issued in Ukraine and several organisations working for the LGBT rights exist there. Several hundred people took part in the first LGBT manifestation organised first in Dnipropetrovsk, and then in Kiev.

To summarize the reflections included in this article, one has to note that both the Russian Federation as well as Ukraine do not belong to the states which respect the LGBT rights. There are at least several factors which have an impact on this situation, and they allow a more positive verification of the hypothesis and research questions posed in the introduction to this article. First, a tender situation in the bilateral relations between the Russian Federation and Ukraine results in the fact that the issues of respecting human rights in the countries has to be observed in a much wider context. This topic causes a heated debate, and the political experience shows that both countries have a long way to go in this respect. Russia, as well as other states which emerged after the collapse of the Soviet Union, did not avoid many mistakes, caused mainly by old habits and customs. The international community has established an effective system of monitoring and controlling the issues of human rights and civil liberties.

In respect to the Russian Federation, the following has been criticized (Кочетков, Кириченко, 2009):

- implementing guided democracy and attempts to implement vertical government;
- an excessive concentration of power in only one pair of hands, that is, the head of the state, with the simultaneous weakening of the competences of the government;
- failing to respect the rights concerning personal and family privacy, excessive control of correspondence, telephone conversation, as well as excessive “care” of opposition, etc.;
- undertaking actions disproportional to danger, especially coercive means during manifestations and gatherings, etc., which are brutal and violent;

- examples of overeager courts of law, which often pronounce sentences strangely convergent with the expectations of the authorities; courts of law eagerly issue a decision on an arrest for political reasons, which undermines the civil right of the freedom of speech; bad conditions in detention and in prisons (overcrowding, sanitary conditions, insufficient medical care, brutal treatment of the inmates, etc.);
- inertness of the national and local authorities in issuing decisions; issuing unlawful decisions and more and more common corruption; in this last issue, attempts to fight corruption have so far brought little effect.

When it comes to Ukraine, its largest weakness is the lack of political stability, caused by the polarisation of its political scene, especially when it comes to pro-Western communities, which during the Orange Revolution managed to consolidate their powers, but later, due to internal conflicts and dominance of particular interests in political actions, led to takeover of power by the pro-Russian group, represented by Victor Yanukovych and his supporters, the Party of Regions. All these circumstances lead to a situation in which the Western countries find it harder to support the pro-European politics in Ukraine, which in the face of internal problems stemming from the expansive ambitions of the Russian Federation (annexation of Crimean and federalization of Donbas) becomes more and more marginalised. It does not seem plausible that this situation could change in the foreseeable future.

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