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The legal situation towards homosexuals in Russia. A closer look at the law on propaganda.

Masterscription for the degree of
Master in Eastern European languages and cultures.

By: Tom Bauweleers

Promotor: Dennis Ioffe

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Introduction

Definition of the problem

In 2006 the promotion of homosexuality became punishable by law in several Russian regions.¹ A few years later, in 2013, the law on propaganda [hereinafter: law on propaganda], which entails the same restrictions, was implemented throughout the Russian Federation.² Since that moment, there has been a lot of national and international commotion around the topic of homosexuality in the Russian Federation. Russian human rights activists and gay-rights activists have been criticizing the Russian government’s policy towards homosexuals and homosexuality for years. The things they criticize usually correspond to the news that reaches the international community through (electronic) media. Newspaper articles about human rights violations³, video fragments of unjustified abuse by government agents⁴, and even reports of alleged violations of the Russian constitution itself⁵, are the reason why the Russian government has become a target for critics in Russia and the rest of the world.

Vladimir Putin, the Russian government and their supporters claim that restrictions imposed on homosexuals are legitimate and necessary to protect traditional Russian

values and to protect children from damage to their health and development. In his 2013 Annual Address to the Federal Assembly Putin claimed that the destruction of traditional values not only leads to negative consequences for society, but is also essentially anti-democratic.

The main source of the discussion between Putin’s critics and his supporters is a contradiction. Putin, on the one hand, is clear about his point of view, stating that he is “convinced that the constitutional framework must be stable, above all in what concerns its second chapter, which defines the rights and freedoms of individuals and citizens. These provisions of our fundamental law are inviolable.” In other words, Putin claims to uphold the democratic constitution of the Russian Federation and to respect its laws.

His critics, on the other hand, argue that Putin systematically circumvents the same constitutional laws he claims to respect. Several authors, whose arguments will be discussed further on, state that the president sidelines the constitution to consolidate his power.

The law on propaganda is the perfect example of this contradiction. Putin and his supporters perceive the law as a legitimate and necessary part of Russian legislation. Moreover, they claim it to be in accordance with the Russian constitution and the individual rights and freedoms guaranteed therein. His opponents on the other hand, perceive the law as in violation with the constitution and claim that its implementation is aimed at consolidating Putin’s power.

**Goal of the research**

Given the recent signing and implementation of the law on propaganda in June 2013, it is an excellent moment to make a state of affairs of the current legal situation with regards to homosexuality in the Russian Federation. This research is an attempt to do so, thereby focusing on the contradiction between on the one hand, the official policy of Putin towards homosexuals and homosexuality (i.e. recognition of individual rights and freedoms), and his alleged ‘unofficial’ strategy (i.e. suppression of the LGBT-community via, amongst other things, the law on propaganda).

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Methodology and research construction

The first chapter attempts to define the term homosexuality. In that light, a difference in values concerning homosexuality in Russia and the West will be briefly examined.

The second chapter examines the law on propaganda thoroughly. First, its history will be studied. Second, its relation to several other legal instruments will be researched. In first instance, the Russian constitution in second instance, international and European conventions, in particular the International Convention on Civil and Political Rights [hereinafter: ICCPR], the International Convention on Economic, Social and Cultural Rights [hereinafter: ICESCR] and the European Convention on Human Rights [hereinafter: ECHR].

In the third chapter, three prominent cases relating to rights of Russian gay activists, namely Alekseyev v. Russia, Fedotova v. Russia, Baev v. Russia, will shed a light on the conformity of the law on propaganda with the legal instruments discussed in the second chapter. From this analysis it follows that indeed a discrepancy exists between Putin’s official policy (i.e. recognition of individual rights and freedoms) and his ‘unofficial’ policy.

In the fourth chapter, the legal situation of the Russian LGBT-community is subjected to a comparative study. This study is made on the basis of legislation with regards to homosexuality in four different countries, namely the United Kingdom, the United States, China and Saudi Arabia. The purpose of this comparison is to scale Putin’s policy in terms of tolerance towards homosexuality.

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1. Defining homosexuality

1.1. Defining homosexuality

Homosexuality (from Ancient Greek ὁμός meaning “same” and Latin sexus, meaning “sex”) shall in this work be understood as a normal variant of human sexual orientation. This orientation refers to a pattern of or a disposition to experience sexual, affectional, or romantic attractions primarily to men, to women, or to both sexes. Homosexuality thus refers to experiencing these attractions primarily or exclusively to members of one’s own sex.\(^{11,12}\)

1.2. Homosexuality in the West

Sexual discourse and practice of sexuality in Western Europe up until the end of the 18\(^{th}\) century were governed by explicit codes, such as Christian pastoral and civil law (Foucault 1978: 37). Michel Foucault argues that the explosive discourse on sexuality during the 18\(^{th}\) and most of the 19\(^{th}\) century made a turn towards interest for sexualities that did not fit in a system centered on the marital relationship of a husband and wife (1978: 38). The development of a scientific study of sex and sexuality made the urge emerge to explain sexuality in a scientific way and find out its “truth”; an approach that entailed the gloomy justification of state racism (Foucault 1978: 54). In Western Europe (and other countries like the United States of America, Japan, and some other countries), an intergenerational value shift occurred through post-war economic prosperity and the emergence of a welfare state (Inglehart 2008: 145). These “new” values are connected with post-war existential security and are based on an increasing emphasis on autonomy, self-expression, the quality of life (2008: 131), and the pursuit of individual well-being (2008: 140). It is needless to say, this value shift has caused Western society to become increasingly tolerant towards homosexuality as dominant values allowed people to make their own interpretation of a qualitative life (2008: 140).


1.3. Homosexuality in Russia

President Putin – and a majority of Russians – claims that the “law on propaganda” is a legitimate and necessary instrument to protect “traditional Russian values”. An astounding 88% of the Russian population supports the law. These traditional values, which are supported by the Russian Orthodox Church, are bible-based. Although the bible can be interpreted in different ways, its stance towards homosexuality seems to be rather negative: "If a man lies with a male as with a woman, both of them have committed an abomination; they shall surely be put to death; their blood is upon them." (Leviticus 20:13). Within the context of discussing homosexuality, “family values” can be considered a synonym for “traditional values”. These values state that the nuclear family constitutes the essential ethical and moral social unit. As – according to these values - “normalcy” and “naturalness” lie within this patriarchal family unit, homosexuality is considered “not normal” and “against nature”.


2. The law on propaganda

2.1. Explaining the law

The law on propaganda passed in June 2013 is officially referred to as the ‘law on the protection of children from information that inflicts damage to their health and development.’ Article 6.21 of the law concerns the propaganda of ‘non-traditional sexual relations’ among minors. It states the following:

Propaganda of non-traditional sexual relations among minors expressed in distribution of information that is aimed at the formation among minors of non-traditional sexual attitudes, attractiveness of non-traditional sexual relations, misperceptions of the social equivalence of traditional and non-traditional sexual relations, or enforcing information about non-traditional sexual relations that invokes interest in such relations, if these actions do not constitute a criminal offence, - is punishable by an administrative fine for citizens in the amount of four thousand to five thousand rubles; for officials – forty to fifty thousand rubles; for legal entities – from eight hundred thousand to one million rubles, or administrative suspension of activities for the period of up to ninety days.\(^\text{15}\)

In other words, the implementation of this law means that people, who say that homosexuality is not inferior to heterosexuality in the presence of minors, can be prosecuted. Although the law dictates that only minors should be protected from this information, a major consequence is that no information on homosexuality can be given in public places, because of the possibility of a minor passing by and receiving the information.

2.2. History of the law on propaganda

When Vladimir Putin came to power in 2000, Russia had already witnessed the increasing visibility of homosexuality in Russian society. In 1996, this visibility came to its culmination with the foundation of “Triangle,” a national lobbying organization in Moscow, which had opened an advice and cultural center with a library, but already had to close its doors in 1997. Daniel Healey points out that even the wider culture was opening up toward homosexuality. Proof of this can be

found in various local and national queer periodicals that appeared at the time. It is worth noticing that in the period when Putin just got into power, a rise could be seen in the number of gay clubs, cafés, nightclubs and even gay saunas. In 2002, Duma deputy Gennadij Rajkov proposed the re-criminalization of sodomy during a debate on the legal age of consent. Rajkov’s proposal enjoyed the full support of religious leaders and conservative forces in Russia (Lahusen and Solomon 2008: 175). A proposal like the one Rajkov suggested evidently contributed to a lot of discussions. Proposals against masturbation and lesbian sex came forward in the debates, but voices from the progressive camp could also be heard. Some of the critics referred to the commitments Russia had made to the Council of Europe under El’cin. Behaving according to these commitments would imply the decriminalization of homosexual relations to Russia. Lahusen and Solomon (2008: 175) describe how, reacting toward these “progressive” views, conservative groups have regrouped and launched their own cross-party lobby after the 2003 elections. Also in 2003, nationalist politician Aleksandr Čuev submitted a draft law in an attempt to restrict public discussion on homosexuality. According to Francesca Stella, the fact that Čuev’s proposal was ridiculed in political circles and media at the time only backed up the principle that homosexuality can be tolerated in Russia as long as it stays indoors.

Two persons other than Vladimir Putin known to have had a hand in the realization of the law on propaganda are Vitalij Milonov and Elena Mizulina. Milonov is a member of United Russia and member of the Legislative Assembly of Saint-Petersburg. Besides being a politician, he is also an Orthodox priest who opposes the teaching of Darwin’s evolutionist theory and sexual education at school. Throughout the years, Milonov has become known for taking a lot of conservative initiatives, for example his attempt to prohibit smoking a water-pipe in public places because it is propaganda for the drug industry. He is mostly known as being the author of the ‘law on administrative responsibility for propaganda for

homosexuality and paedophilia. In 2012, Milonov tried – and failed - to file a lawsuit against several musicians including Lady Gaga, Madonna and German rock band Rammstein. Elena Mizulina, also active in Russian politics, is a member of the Russian Parliament. Mizulina has had a firm grip on several controversial legislative projects, including a ban on swearing on internet websites. She defends the ban on swearing with the same argument as the law on propaganda for homosexuality: the protection of children from information harmful to their health and development.

Since 2006, some Russian regions like the Ryazan Region, the Arkhangelsk Region, the Kostroma Region, the Novosibirsk Region, the Magadan Region, the Samara Region, the Krasnodar Territory and St. Petersburg have enacted the laws against “the promotion of homosexuality among minors.”

An initial bill that would lead up to the eventual adoption of the law prohibiting propaganda for homosexuality was initially introduced to Duma by the Novosibirsk Regional Legislative Assembly on 28 March 2012. Its readings were postponed many times. Almost a year later, on the 25th of January, 2013, a version of the federal law was passed at first reading in the State Duma. A total of 388 deputies


voted for the bill, one voted against it and one abstained from voting. In the wake of the imprisonment of two members of a punk-rock band called Pussy Riot in 2012 for performing an anti-Putin performance in an Orthodox cathedral in Moscow, the law was passed in the state Duma in June 2013 and signed by president Putin.

A few years earlier, in 2002, the Russian government adopted a new law against extremism. The main targets of this law appear to have been organizations and mass media. The 2007 amendments to the extremism law allow any politically or ideologically motivated crimes to be designated as extremist. According to the Human Rights Watch report of 2009 the Russian government is using these provisions to silence government critics and in 2008 initiated cases against NGO’s, activists, and independent media, including internet sites and blogs. Another law the Russian government uses to its benefit, is the 2004 federal law on “On meetings, rallies, demonstrations, marches and pickets.” According to the Moscow Helsinki Group, the law has undergone three changes, each of which was aimed at tightening the procedures of holding meetings.

### 2.3. Law on propaganda v. constitutional freedoms

#### 2.3.1. Clarification of the Russian constitution: freedom of speech and assembly

According to the Russian Constitution, which was adopted in 1993, the Russian Federation is “a democratic federal law-bound State with a republican form of government.” (Article 1). The same Constitution states that “Man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State” (Article 2).

Two particularly interesting freedoms in this respect are the freedom of speech and the freedom of peaceful assembly. Article 29.1 of the Russian constitution declares that “everyone shall be guaranteed the freedom of ideas and speech”. Article 31 states that “citizens of the Russian Federation shall have the right to

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assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets.”

2.3.2. Freedoms of speech and assembly in international conventions

The democratic values that the Russian Federation put forward in its 1993 Constitution had already been partly established in 1968. It was on the 18th of March of that year that the Soviet Union signed the ICCPR. A few years later, in 1973, the Covenant was ratified\textsuperscript{34}. The ICCPR is regarded as a key international human rights treaty and is, together with the ICESCR, considered an International Bill of Human Rights. The Russian Federation ratified the ICESCR in the same year it ratified the ICCPR. Both Covenants are legally binding, which entails that they oblige countries that have ratified them to protect and preserve basic human rights. In 1998, Russia ratified the ECHR.\textsuperscript{35} Just like the ICCPR and ICESCR, the ECHR is legally binding.

Articles in the ICCPR most worth mentioning when discussing the topic of repression of homosexuality are article 19 and article 21. These articles declare the freedom of expression and the right of peaceful assembly. The articles deserve further investigation as they are often said to have been violated by the Russian government. Article 19 states that:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.\textsuperscript{36}

Article 21 states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or


public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.37

The ECHR, ratified by Russia, also declares the freedom of expression as a basic human right. Article 10 expresses this freedom in the same way as the ICCPR. The events in which it is authorized to restrict the freedom of expression are also the same as the ones stated in the ICCPR.

It should be noted that the articles provide certain restrictions on these rights. However, these restrictions must be provided by law and must be necessary “for the protection of national security or of public order, or of public health or morals”.38

In order to comprehend these articles and, more importantly, to understand the exact cases in which limitations can be set on exercising these rights, it is of paramount importance to clearly define certain key words. To be more precise, the terms ‘public order’, ‘public health’, ‘public morals’ and ‘the protection of the rights and freedoms of others’ will be clarified. The following definitions and interpretations are the interpretative principles used by the United Nations.39

The expression "public order" (ordre public) as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (ordre public).

Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.

Since public morality varies over time and from one culture to another, a state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community.

The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant. When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the

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Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to rights not subject to limitations in the Covenant.

In a general comment, the U.N. give more details concerning the concept of ‘public morals’:

The concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.⁴⁰

Authoritative institutions like the United Nations and the European Court of Human Rights have defined the cases in which it is permitted to restrict basic human rights – like the freedom of speech and the freedom of peaceful assembly – very clearly. This transparency is an outright contrast with the vagueness of terms used by Russian authorities. Whether this vagueness of terms is an indication of the weakness of argumentation of those in favor of the law on propaganda, will become clear through conclusions in case law.

3. Case Law

In the following chapter case law will clearly show the evolution of Russian repression against gay activists. The first case, the one of Alekseev v. Russia, will demonstrate how Russian authorities tried to silence a gay activist in the period dating before the “law on propaganda”. The second case will discuss the fate of Irina Fedotova, another gay activist, who got prosecuted under the “law on propaganda” and filed a complaint at the United Nations Human Rights Committee. Finally, the case of Baev v. Russia will discuss the same issue as the case of Irina Fedotova, but from the perspective of the European Court of Human Rights.

3.1. Alekseev v. Russia

In 2005, Nikolaj Alekseev founded the website www.gayrussia.ru. With this initiative, the gay community tried to raise awareness around LGBT-issues in Russia and fight the discrimination on the basis of sexual orientation. Following through on his beliefs, Alekseev organized the first Moscow Pride in 2006, which ended in violence through the hands of conservative protesters. The following year, in 2007, state authorities once again tried to ban the parade. The reactions to the 2007 parade, like the previous year, were very violent of nature. These violent reactions, mostly initiated by nationalists, were in fact even called for by Dmitrij Rumâncév, the leader of the Russian nationalist-socialists, with the words: “I’ve heard there’s going to be some kind of parade tomorrow. Good luck with the hunt, wolves!”41. After the activists were denied the right to assemble for a peaceful demonstration in 2007, they relocated their actions towards the City Hall in response, where they wanted to deliver a petition challenging the freedom of expression and the right to assembly. Their leaders were immediately arrested by law enforcement agents, while other participants were being assaulted by protesters. According to a Human Rights First report, the police reportedly stood by.42

Nikolaj Alekseev filed a complaint with the United Nations Human Rights Committee claiming that Russian authorities had violated his right of freedom of peaceful assembly as protected by article 21 of the Covenant. Alekseev claimed that the restriction of his right of assembly was not “necessary in a democratic society”

and that the refusal to hold a gay pride parade was “not in conformity with the law”. The Russian State claimed that Alekseev was refused permission to hold a picket in order to ensure public order. The Committee noted that permission for the proposed picket was denied on the sole ground that the subject it addressed, namely, advocacy for human rights of people belonging to sexual minorities, would provoke a negative reaction that could lead to violations of public order. The Committee also noted that “freedom of assembly protects demonstrations promoting ideas that may be regarded as annoying or offensive by others and that, in such cases, State parties have a duty to protect the participants in such a demonstration in the exercise of their rights against violence by others.” The United Nations Human Rights Committee has concluded that in the case of Alekseev v. Russia, the Russian authorities’ restriction on Alekseev’s rights was not necessary in a democratic society in the interest of public safety, and violated article 21 of the Covenant.

3.2. Fedotova v. Russia

On the 6th of April 2009, Irina Fedotova, an openly lesbian woman and activist for the lesbian, gay, bisexual and transgender field in the Russian Federation, was convicted by the justice of peace of an administrative offence under section 3.10 of the Ryazan Region Law concerning “public actions aimed at the propaganda of homosexuality” and fined 1,500 Russian roubles. This conviction was a consequence of her actions on the 30th of March 2009, when she allegedly ‘promoted’ tolerance towards gay and lesbian individuals in the Russian Federation. During her promotional action, Fedotova publicly displayed posters saying “Homosexuality is normal” and “I am proud of my homosexuality” near a secondary school in Ryazan. Fedotova appealed to the Oktyabrsky District Court stating that she did not dispute the facts but considered that the ruling of the justice of the peace was based on the provision of law that was contrary to articles 19 and 29 of the Constitution that, respectively, prohibit discrimination on the ground of social status and guarantee the right to freedom of thought and expression.45

The Oktyabrsky Court upheld the ruling of the justice of peace and considered the Code of Administrative Offence as being federal law. Irina Fedotova then appealed to the Russian Constitutional Court in an attempt to let the restriction of her constitutional right be declared unlawful. The Constitutional Court, however, dismissed her appeal, claiming that the restrictions laid upon her were lawful as the prohibition of propaganda of homosexuality is necessary to prevent “[I]ntentional and uncontrolled dissemination of information capable of harming health, morals and spiritual development, as well as forming perverted conceptions about equal social values of traditional and nontraditional family relations.” It was upon this ruling that Mrs. Fedotova appealed to the United Nations Human Rights Committee and filed an individual complaint against the Russian Federation arguing that articles 19 and 26 of the ICCPR, respectively ‘freedom of expression’ and ‘equality before law’ had been violated.

Discussing the violation of article 19 of the ICCPR, Fedotova pointed out that restrictions on constitutional rights could only have been justified if they are ‘provided by law’ or if ‘necessary’ for the respect of the rights or reputations of others; and for the protection of national security or of public order, or of public health or morals. Fedotova argued that according to the Russian Constitution, freedom of expression can be only restricted by a federal law, which the Ryazan Region Law is not. Furthermore, she argued that there was no ‘necessity’ in restricting her constitutional rights, as she was merely promoting tolerance towards homosexuality. According to Mrs. Fedotova, article 26, ‘equality before law’, had also been violated because the Ryazan Region Law de facto prohibits dissemination of any kind of information regarding homosexuality in general, but does not likewise prohibit dissemination of information regarding heterosexuality or heterosexual behavior. It was up to the Committee to decide whether or not Ryazan Regional Law constituted a lawful restriction of Fedotova’s constitutional rights in accordance with article 19 and article 26 of the ICCPR. In order to examine whether or not the restrictions were in accordance with article 19, the Committee was to examine two things. Firstly, the Committee had to examine if these restrictions were ‘provided by law’, meaning that the Ryazan law had to be


considered a federal law to allow restriction. Secondly, the restriction had to be found ‘necessary’ for the respect of the rights or reputations of others; and for the protection of national security or of public order (ordre public), or of public health or morals. Right away, the Committee concluded that it was not even useful examining whether or not the Ryazan Region Law was to be considered federal law or not, because:

[L]aws restricting the rights enumerated in article 19(2), must not only comply with the strict requirement of article 19(3) of the Covenant, but must also themselves be compatible with the provisions, aims and objectives of the Covenant, including the non-discrimination provisions of the Covenant.48

This conclusion of the Human Rights Committee led them to state that in this respect:

[A]ny such limitation must be understood in the light of universality of human rights and the principle of non-discrimination. In the present case (...) section 3.10 of the Ryazan Region Law establishes administrative liability for “public actions aimed at propaganda of homosexuality” (...) as opposed to propaganda of heterosexuality or sexuality generally – among minors. (...) The Committee recalls that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation.49

In a concluding statement, the Committee stated that differential treatment would amount to discrimination in accordance with Article 26 of the Covenant unless it is based on “reasonable” and “objective” criteria, in the pursuit of an aim that is legitimate under the Covenant. In the eyes of the Committee, the respondent, being the Russian Federation, failed to demonstrate valid reasons based on “reasonable” and “objective” criteria for the restriction of propaganda on homosexuality while allowing propaganda on heterosexuality or sexuality in general.50 Finally, the Committee decided that the respondent had indeed violated article 19 in conjunction with article 26 of the ICCPR.

The Committee’s decision has been welcomed by human rights activists and the gay community as it recognizes that the expression of opinions and information on same-sex sexual orientation cannot be limited in the name of public morality. Recalling U.N. General Comment No. 34, the Committee notes that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations […] for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.”

3.3. Baev v. Russia

In March 2009, gay-activist Nikolaj Baev, together with two others, was charged of an administrative offence for standing in front of a school in Ryazan carrying banners saying “homosexuality is normal” and “I am proud of my homosexuality.” The Oktyabrsky justice of peace found Baev’s actions as being in violation with a Ryazan Regional Law on Administrative Offences which introduced administrative liability for propaganda of homosexuality among minors. A few months later, Baev’s appeal to the Oktyabrsky District Court was dismissed. After these decisions of Russian courts, Nikolaj Baev turned to the European Court of Human Rights arguing that his human rights had been violated by the Russian authorities. More specifically, Baev’s complaint concerns article 10 European Convention of Human Rights the freedom of expression. The applicant maintains that “the prohibition of “homosexual propaganda” introduced by the recent legislation constitutes a blanket ban on the mere mention of homosexuality and that it applies irrespective of the content of the message.” Furthermore, Baev argues that the ban on ‘propaganda’ is discriminatory, and thus in breach of article 14 of the Convention, which “prohibits discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national

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minority, property, birth or other status.” Nikolaj Baev filed his complaint with the Court on November 9th 2009. In a communication of October 16th, the Court informed both parties the following questions:

1. Has there been a violation of the applicants’ right to freedom of expression, contrary to Article 10 of the Convention?

2. Do Russian legal provisions governing administrative liability for “propaganda of homosexuality among minors” meet the “quality of law” requirements contained in Article 10 § 2 of the Convention?

3. Have the applicants suffered discrimination in the enjoyment of their Convention rights, contrary to Article 14 of the Convention read in conjunction with Article 10?

If the European Court of Human Rights upheld Baev’s complaint, it would be the very first time that the Court would find a violation against article 10 of the European Convention of Human Rights in a case in which the complaint was submitted by a homosexual applicant.

3.4. Conclusion

Case law clearly shows that Russia blatantly violates international conventions. It is more important however to take a look at what changed in these three successive cases. Nikolaj Alekseev found himself prosecuted under more or less the same circumstances as Irina Fedotova and Nikolaj Baev. In his case, however, the law on propaganda had not yet been implemented. Russian authorities justified the restrictions imposed on his freedom of assembly by arguing that this restriction was needed in order to guarantee public order. Although the United Nations Human Rights Committee found this justification to be inadequate, it comes to show how Russian authorities effectively prevented Alekseev from campaigning for gay rights. After the law on propaganda was signed, gay-activists could be prosecuted more effectively. The mere possibility of “harming health, moral and spiritual development” or “forming perverted conceptions on social relations” was now

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considered sufficient to restrict the freedom of speech and the freedom of assembly. Although the European Court of Human Rights is yet to come to a conclusion in the Baev v. Russia case, the odds are high that the Court will conclude that Russia has violated the European Convention of Human Rights as well. On grounds of the three cases discussed above, one could state that Russian legislation on homosexuality was used in a repressive way towards gay-activists even before the law on propaganda was implemented.
4. Russia compared to other countries

In the discussion around the repressive Russian legislation towards homosexuality, the West has profiled itself as enshrining the complete opposite values. The West has reacted with a tidal wave of indignity. Celebrities cried for a boycott of the Sochi Winter Games.\(^56\) The political world condemned the law. A German minister stated that a “collapse in fundamental democratic values is not acceptable” and that “Russia is moving towards becoming a flawless dictatorship”\(^58\) Political heavyweights in countries like Australia, Canada and the United Kingdom have uttered their deep concerns as well and emphasized the importance of human rights in their countries.\(^59\) United States’ president Barack Obama openly stated the following: “[N]obody’s more offended than me about some of the anti-gay and lesbian legislation that you’ve been seeing in Russia.”\(^62\)

If anything, these reactions create the feeling that Russia and the West are indeed opposite poles. This chapter will examine in which way Russian legislation towards homosexuality relates to other countries. Legislations towards homosexuality from the United Kingdom, the United States, China and Saudi Arabia will be examined. In each case, specificities will be discussed and compared with Russian legislation.

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4.1. British legislation

According to Kees Waaldijk, virtually all European countries have been following the same sequence of steps towards a legislation that is tolerant towards homosexuality (Waaldijk 2000: 66). Despite differences between civil law and common law, different faiths, and East and West, European countries develop according to the same pattern. The only real split to be found is the one between Nordic and “Napoleonic” countries on the one hand, and the former British, German, Austrian and Soviet/Russian Empires on the other. But even then, there is only a difference in the speed with which these countries follow the sequence of steps. This sequence consists of the following three steps: the decriminalization of homosexuality, the implementation of anti-discrimination legislation, and same-sex partnership legislation (Waaldijk 2000: 66).

In the 1950’s, homosexuality was considered a criminal offence in the United Kingdom and thus punishable. Section 11 of the Criminal Law Amendment Act from 1895 described the outrages on decency, under which homosexual acts were categorized. In 1952, one of Britain’s wartime heroes, Alan Turing, was found guilty of “gross indecency”. Turing was given the choice between two options: imprisonment or probation. Oscar Wilde already endured two years of imprisonment for the same reasons as Turing after he had been found guilty in 1895 breaking the same law. The other option, probation, would be conditional on his agreement to undergo hormonal treatment designed to reduce his libido. Turing finally opted for the second option, chemical castration, and committed suicide two years later. “Same-sex sodomy” was decriminalized in the United Kingdom in 1967.

The case of Alan Turing is a prime example that repressive measures against homosexuals were a common practice in West. Another noteworthy element of comparison can be found in the text of the law itself. The “outrages on decency” described in the 1885 Criminal Law Amendment are described vaguely at best. One could ask the question whether this vague description serves a repressive policy or whether it merely confirms the prudishness of Victorian morale, which considered

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64 Linder, Douglas. The Trials of Oscar Wilde: an Account. Jurist Legal News and Research. Published in November 2000. Available at https://www.google.be/search?q=oscar+wilde+conviction&oq=oscar+wilde+con&aqs=chrome.3.69i57j0i563j0l7islc1aje0j0i8is2i30j0i10i10i10i10i10i10.5630j0j7&sourceid=chrome&es_sm=93&ie=UTF-8. Accessed on May 17, 2014.
precise descriptions of sexual activity as being immoral. This vagueness of terms in former British law is now an argument for LGBT-activists to protest the recent Russian “law on propaganda”, stating that the term “propaganda” is not adequately defined.

The United Kingdom has come a long way from the harsh and discriminatory legislation that was abolished in the 1960’s. Today, the British legal situation of the LGBT-community and the national policy towards it are considered to be the best in Europe.66 The 2010 Equality Act legally protects people from discrimination against sexual orientation.67 Legislation allowing same-sex marriages to take place in England and Wales came into force on March 13, 2014.68 Enforcing this law, the United Kingdom has successfully followed the three steps of Waaldijk’s pattern.

There is, however, another dimension to this positive trend. In the last three years, one in six gays, lesbians and bisexual people have experienced a homophobic hate crime or incident.69 Two thirds of those who experienced a hate crime or incident did not report it to the police. In this respect, not much has changed over the last five years. Research shows that the reasons for not reporting these crimes include anticipation that their complaint will not be taken seriously, a fear of negative response, and a belief that there is little that the police can do.70 The criminal justice system presents a number of obstacles for gay, lesbian and bisexual people. Because of their sexual orientation, they are treated worse than heterosexuals when it comes to matters such as reporting crimes, being suspected of or committing crimes, or dealing with police or prison staff.71

Although Russia has legalized homosexuality in 1993, Russian legislation lacks any norm explicitly that guarantees non-discrimination on grounds of sexual

orientation. This aspect of Russian legislation is highly remarkable, since Russia has ratified the ICESCR, in which article 2, paragraph 2 states the following:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In 2009, a General Comment of the United Nation Economic and Social Council stipulated the following:

“Other status” as recognized in article 2(2) includes sexual orientation. States parties should ensure that a person’s sexual orientation is not a barrier to realising Covenant rights [...].

The lack of legislation explicitly guaranteeing discrimination on grounds of sexual orientation and the implementation of the law on propaganda seem to be in conflict with the stipulations of the Covenant, which states that Russia has the responsibility to strive for the promotion and observance of the rights recognized in the Covenant.

4.2. United States of America

Up until 2003, consensual sodomy was still a criminal act in Alabama, Florida, Idaho, Louisiana, Mississippi, North Carolina, South Carolina, Utah and Virginia without respect to the sex of those involved. Texas, Kansas, Oklahoma and Missouri prohibited same-sex couples from engaging in anal and oral sex. The


2003 United States Supreme Court ruled the sodomy laws in thirteen states invalid, making same-sex sexual activity legal throughout the United States.\(^77\)

In the U.S. military, however, homosexuality remained topic of debate. The army’s official policy concerning same-sex orientation between February 28th, 1994 and September 20th, 2011 was known as the “don’t ask, don’t tell” policy. On the one hand, the policy made it illegal for military personnel to discriminate against or harass closeted homosexuals and bisexuals within the armed forces or applicants. On the other hand, it also barred openly homosexual or bisexual people from military service.\(^78\) In the Russian military, homosexuality had long been used as an excuse to avoid military service. Since 2003, however, homosexuals are allowed to join the ranks of the Russian army.\(^79\) Although they are permitted to enroll, homosexual recruits often become the victim of severe abuse.\(^80\)

Legislation on homosexuality in the United States has been evolving in a positive way, but still varies greatly from state to state. In relation to the topic of propaganda of homosexuality, remarkable situations exist in the United States. Although the U.S. have been condemning Russian legislation, several American states have similar statutes. The state of Utah prohibits “the advocacy of homosexuality” from being instructed in schools. It takes further conservative stances emphasizing abstinence before marriage and prohibiting the instruction of advocacy or encouragement of the use of contraceptive methods or devices.\(^81\) The state of Alabama emphasizes in a factual manner and from a public health perspective that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offence under the laws of the state.\(^82\) The Health and Safety Code of the state of Texas also declares that homosexual conduct is not an acceptable lifestyle and that it constitutes a criminal offence under the Penal


Arizona does not have a law that requires schools to provide sexual education. However, if a school chooses to teach on sexuality or sexually transmitted diseases, a “homosexual lifestyle” cannot be promoted. Even more, the school cannot portray homosexuality as a positive alternative lifestyle, or suggest that some methods of sex are safe methods of homosexual sex.

A remarkable similarity between the Russian law on propaganda and the policies of several American states is their connection to minors. Whilst Russian legislation is justified under the guise of protecting minors from homosexuality, states like Utah, Texas and Arizona try to influence the perception of sexuality and relationships through sexual education.

Despite the United States Supreme Court’s ruling that anti-sodomy laws are unconstitutional, the state of Louisiana still upholds its “crime against nature” law. On April 16, 2014, the Louisiana State House of Representatives rejected a bill which would have repealed the anti-sodomy law. The “crime against nature” law is aimed at adults who engage in consensual anal or oral sex and could lead to up to five years in prison and fines of up to $2,000. Because of the Supreme Court’s ruling, the Louisiana law is left unenforceable, but it has been documented that the sheer existence of the law promotes the discrimination of LGBT-people and invites local police to illegally harass, intimidate and arrest people suspected of engaging in homosexual acts. Although the Louisiana law has been overruled by the Supreme Court, its existence undermines the spirit of the Supreme Court’s decision. This type of behavior strongly reminds to the undermining effects that para-constitutionalist behavior has had in Russia.

The influence of religion in the states in which sodomy was considered a criminal act before 2003 is substantial. In several Southern states the influence of conservative religious values is strong, as well as in states as Utah and Nebraska (1998 Woodberry & Smith: 46). The support of religious groups for conservative values seems to be a common aspect between Russian and American conservatives. The political power of conservative forces in America, however, seems to be a bit more restricted than in the Russian Federation. On February 26, 2014, Arizona

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legislature passed a controversial bill, which would have given business owners the right to refuse service to members of the LGBT-community on religious grounds. The bill was vetoed by Arizona governor Jan Brewer, who stated that the approval of the bill could “result in unintended and negative consequences.” Although the bill has been vetoed under immense pressure from LGBT-rights activists, it constitutes a prime example of the influence of conservative forces in the state of Arizona.

Although several states have adopted laws protecting people with a same-sex orientation from discrimination, other states lag behind. In South-Carolina, for example, LGBT-people are unprotected from employment discrimination. Several states have effectively taken steps to assure the legal protection of same-sex oriented people against discrimination. Other states seem to facilitate discrimination based on sexual orientation through legislation concerning sexual education.

In terms of legislation, the United States of America and the Russian Federation have several similarities. Homosexuality is legal in both nations and homosexuals enjoy the freedom to join the military. The Russian law on propaganda is aimed at the protection of children from information according to which homosexual relationships are not inferior to heterosexual relationships and socially accepted. In several American states sexual education is required by law to prohibit “advocacy for homosexuality”. The most noticeable element of this comparison is that both parties invoke the protection of children to justify the ways information on homosexuality is dealt with. Finally, the vast amount of support of conservative values in several states of the United States comes to show that legislation repressive towards homosexuality is lurking around the corner if this support grows bigger.

Although same-sex marriage is possible in several states, other states still define marriage as a relationship between a man and a woman. The great variation between American states in the way they deal with homosexuality on the level of legislature causes difficulties comparing legislations between Russia and the United States. In general, however, it can be stated that the U.S. are in the middle of a

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positive development, which is translated into anti-discrimination legislation and the possibility of same-sex marriage in several states.

4.3. Chinese legislation

In 1997 the Chinese government decriminalized homosexuality. Four years later, in 2001, homosexuality was no longer classified as a mental disorder. According to government communications from the Ministry of Public Security, people who have changed their sex through sex reassignment operations in China or abroad can change their sex on their legal identity documents. There are, however, still remarks to be made to the Chinese policy towards homosexuality and the rights of the LGBT-community. There are no anti-discrimination laws based on sexual orientation, people from the LGBT-community are denied any adoption rights, and same-sex relationships are not legally recognized. Furthermore, gay activists continue to report police raids on gay venues. The raids are described by the activists as deliberate harassment. Although China has decriminalized homosexuality, the country is yet to take the next step towards legislation that treats hetero- and homosexual people equally in an explicit manner. In this regard, the situation of the LGBT-community is similar to the situation in Russia.

There seems to be a double standard concerning homosexuality in Chinese society today. On the one hand, positive reports and news on LGBT-people increase on official state media, such as CCTV (China Central Television) and China Daily. Because of increasing high-profile public support for LGBT-matters, social and official prejudice towards homosexuality is being overcome. A prime example of this positive trend was the reaction of CCTV towards a homophobic speech of a famous Chinese actress and her husband on Weibo – a Chinese social media website. In July 2011, CCTV publicly criticized their statements and called for

respect by the public towards people of different sexuality. On the other hand, official Chinese policies don’t seem to be up to speed on these developments in Chinese society. Chinese film censorship regulations require all LGBT-related information to be removed or revised in broadcast, television and movies. According to the “Provisions of Determination of Obscenity and Pornographic Publications”, which was released in 2006, homosexuality is regarded as “abnormal sexual behaviors”. This clearly demonstrates that, although Chinese society is becoming more tolerant towards homosexuality, Chinese legislation lags behind on the matter.

Despite indications of progress, social and official discrimination against homosexuals is still deeply entrenched in Chinese society. This poses direct problems towards the LGBT-community, as the realization of several fundamental human rights, the freedom of expression and association, is being impeded. In January 2011 the first Mr. Gay China pageant was cancelled by the Beijing police without any explanation. Also in January 2010, local Chinese gay activists were forbidden from sending a Chinese delegate to the February 2010 Mr. Gay World pageant in Oslo, Norway.

An important element contributing to the unfavorable situation of the gay community in China is poor education on the subject of LGBT-rights. The subject of homosexuality is largely ignored in the Chinese education system and the regulations on the prescribed personal, health, and sexual education curriculum for Chinese students make no reference to sexuality at all.

There have been numerous cases in which LGBT-people in China have been abused by police forces by means of extortion and harassment. Although such

behavior is prohibited according to the Police Law, the high degree of autonomy of local police forces causes very few people to take their complaint to a higher level.\textsuperscript{99}

It seems that, although a part of Chinese society is in favor of equal treatment of the LGBT-community, Chinese legislation is yet to implement legislation prohibiting discrimination based on sexual orientation and legalizing same-sex legal partnerships.

4.4. Saudi Arabian legislation

The Saudi Arabian government bases its legitimacy on its interpretation of Sharia (Islamic law) and the Basic Law dating from 1992. The system of governance, rights of citizens, and powers and duties of the state are determined in the Basic Law. The Qur’an and the Traditions (Sunna) of the Prophet Muhammad serve as the country’s constitution.\textsuperscript{100} Unlike in Russia, there is no codified Penal Law in Saudi Arabia, and strict Islamic Sharia Law is implemented instead.\textsuperscript{101} According to the Saudi Arabian interpretation of Sharia Law, homosexuality is criminalized.

Homosexuality is illegal in Saudi Arabia and those who are found guilty can be punished in several ways, ranging from flogging over imprisonment to even capital punishment. The punishment for engaging in homosexual acts for married persons is death by stoning. Unmarried persons are subject to 100 lashes of the whip and banishment for a year.\textsuperscript{102} A non-Muslim, who is found guilty of having engaged in homosexual activities with a Muslim, the penalty is death by stoning as well. For a conviction of sodomy, however, it must be proved either by a confession of the culprit for four times, or four trustworthy Muslim men must testify. These requirements make executions rather exceptional.\textsuperscript{103}


\textsuperscript{101} State-sponsored homophobia: A world survey of laws criminalizing same-sex sexual acts between consenting adults. \textit{International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)}. Published in May 2012. Available at \url{http://www.refworld.org/publisher,ILGA,,SAU,50ae380e2,0.html}. Accessed May 18, 2014.

\textsuperscript{102} Saudi Arabia: Treatment of homosexuals by authorities and by society in general; recourse available to those who have been targeted because of their sexual orientation (2004 – 2007). \textit{Immigration and Refugee Board of Canada}. Published on March 19, 2007. Available at \url{http://www.refworld.org/docid/469cd6ab3.html}. Accessed on May 18, 2014.

\textsuperscript{103} Bello, Shafi’I Abdul Azeez. The punishment of homosexuality in Islamic contemporary world, [Malaysia, Iran, Pakistan and Saudi Arabia as a case study]. \textit{International Islamic University of
Since Saudi law is not strictly codified, its implementation depends mostly on Sunni judges and scholars, as well as royal decrees. Consequently, Saudi law is in a high degree subject to variability. Other factors are in play as well when it comes to convictions and the severity of the punishment. The social class, religion and citizenship of the accused are of high importance in this respect. Non-western immigrant workers are usually punished more severely than Saudi upper class citizens.\textsuperscript{104}

For over a decade there has been controversy around an aspect of Saudi Arabian education. The textbooks used in Saudi Arabian schools are became a point of attention for the U.S. after September 11, 2001. A 2009 study concluded that the textbooks preach towards Jews, Christians, and other Non-Muslims and “expounds historical inaccuracies” (Lippman 2012: 136). The textbooks treat the topic of homosexuality as follows: “The punishment of homosexuality is death… Ibid Qudamah said, [...] Some of the companions of the Prophet said that [a homosexual] is to be burned with fire. It has also been said that he should be stoned, or thrown from a high place” (Lippman 2012: 136). Nina Shae, director of the Center of Religious Freedom, argues that these textbooks show that the Saudi government discounts or ignores passages of the Qur’an and in the accounts of the life of the Prophet Muhammad that do support tolerance.\textsuperscript{105}

The most remarkable difference between Russian and Saudi Arabian legislation on homosexuality is that homosexuality is a criminal offence in Saudi Arabia, not to mention the severe punishments that accompany the criminalization. A key element is religion, which is a determining factor around the topic of homosexuality in Saudi Arabia, since legislation is based on Sharia Law. In Russia, however, the 1993 constitution is considered the supreme law.


4.5. Conclusion

A brief comparison shows that legislation on homosexuality is highly variable throughout different countries. Because of certain limitations in this research – the number of different legislations that were investigated, for example – more can be learnt about the general position of Russian legislation in an international context than its exact position on a scale that reflects the degree of tolerance towards homosexuality.

The comparison shows that different legislations on homosexuality are not to be depicted as black and white, but rather in different shades of grey. Furthermore, Russian legislation on homosexuality does not relate in an overwhelmingly positive or negative way to the legislation of the countries in question, but rather steers a middle course instead. Although legislation in some countries – like Saudi Arabia – is still very harsh on homosexuality, a positive development can be seen in other countries. Same-sex marriage is being established in an increasing amount of American states, and high-profile rejection of intolerance towards homosexuality in China raise the question whether non-European countries will develop legislation according to the same pattern.

5. Factors that influenced the Russian view on homosexuality

5.1. Historical overview of homosexuality in Russia

5.1.1. Imperial Russia

Homosexuality in Russia has been documented for centuries. Surprisingly, when Western Europe repressed homosexuals severely, male relations in Russia seem to have been relatively open and accepted (Crompton 2003: 321). It was not until the 18th century reforms of Peter the Great that there was a government attempt aimed at preventing homosexual practices.

The first secular state laws against sodomy in Russia were based on Swedish law and put in effect under Peter the Great in military statutes in 1706 (Kon and Riordan 1993: 89). At first, these laws only applied to soldiers, not to civilians. Later, in 1832, the criminal code was rewritten by Tsar Nicolas I who made specifications to the law, making it apply to Russian citizens as well. Article 995 in the 1832 criminal code declared “sodomy” or “anal contact” to be punishable by deprivation
of all rights and exile to Siberia for between four and five years; rape or seduction of a minor was to be punished by hard labor for between ten and twenty years (Kon and Riordan 1993: 89-90).

A turning point in Russian society came when the “Great Reforms” of Alexander II were put in effect in the 1860’s. These reforms were a consequence of the realization that Russia was far behind compared to the European powers, especially on the military level. Alexander II made the reforms reach the entire Russian society, including the modernization of judicial institutions (Healey 2013: 73). The existing criminal codes reflected the ambiguous relationship between secular and religious authorities. The imperial state had undermined the material and administrative autonomy of the Orthodox Church but continued to foster the church’s moral preeminence and its privileged status in relation to other faiths (Engelstein 1992: 27). The criminal code sometimes equated religious offences with crimes against the state and prescribed secular penalties for religious offences and religious penalties for acts for which no secular punishments were at hands. In this society where state and religion were vastly intertwined, family and sexual relations constituted a ground on which the moral interests of the church coexisted with the political interests of the state in defending old-style patriarchal form of rule. It is ironic that although the Russian Orthodox Church severely condemned “sodomy” and other male and female homosexual activities, the Church anxiously had to deal with homosexuality in its own monasteries (Kon and Riordan 1993: 89). The Russian Orthodox Church clearly made certain exceptions for its prominent members, but toward the main public it was blind for homosexuality in all its manifestations.

Sexual deviance did not fit into the patriarchal hierarchic framework of Imperial Russia’s society, which was concentrated on reproductive sexuality. The legal prohibition of homosexuality rested on a religious base, while a deviant though legal form of deviance like prostitution constituted a problem of public disorder (Engelstein 1992: 56-57). Although these forms of so-called sexual deviancy were considered problems of different categories, they were both explained from the same perspective. Practitioners of forensic medicine considered them to be products and symptoms of organic pathology. This notion of irregular sexual behavior as a symptom of an underlying pathology was popular among European experts mainly because of the influential work of Alexandre Parent-Duchâtelelet (Engelstein 1992: 128).

Imperial Russian law contributed to the establishment of a system of power within the structure of the family at least as autocratic as the one governing the operation of the state: the husband wielded absolute authority over his wife, and the
father dominated the children entirely. (Engelstein 1992: 28-32). Laura Engelstein does not consider the fact that religious values and secular legal principles were strangely combined, which is typical for Imperial Russia. In fact, she states that this combination also characterized contemporary European legislation, which served the Russians as a guide (1992: 36). The criminal code up to 1903 regarded sexual offences primarily as violations of accepted patterns of association and hierarchy. The reformed code of 1903 laid more emphasis on individual rights and bodily integrity, but extended the range of criminal sexual behavior. This change of emphasis did not mean that homo- or heterosexuality were underscored, but that elements common to both homosexual as well as heterosexual rape now were the object of emphasis: the use of physical violence or other forms of coercion; statutory rape; and sex with an unconscious or incompetent partner (Engelstein 1992: 60). Under article 156, “sodomy” was punishable by incarceration for no less than three months or, given aggravating circumstances, for between three months up to eight years. This harsh legislation was, as a matter of fact, rarely put in effect. Many Russian aristocrats, and even members of the Russian imperial family and prominent members of the artistic scene openly led a homo- or bisexual life at the turn of the century. Grand Duke Sergej Aleksandrovič, the poet Aleksej Apuhtin, the famous composer Pëtr Čajkovskij as well as multiple lesbian couples were more or less open concerning their sexuality (Kon and Riordan 1993: 90). This openness can be retraced by for example the homo-erotic poetry of Mihail Kuzmin (Kon and Riordan 1993: 90). Despite of the relative “openness” toward same-sex desire, homosexuality remained de jure a criminal offence. The 1917 October Revolution abruptly ended the Romanov dynasty, as well as the tsarist law and its prohibition of homosexual activities.

5.1.2. The Soviet-Union

The 1917 Revolution appeared to be the marker of the dawning of a new era in the acceptation of homosexuality in Russia because of the disappearance of the anti-homosexual laws dating from 1903. Soviet historians claim that the elimination of these laws dating from 1903 was evidence for the fact that the Bolsheviks thought of homosexuality as a part of bourgeois culture and identity, which would disappear together with the tsar regime.106 Based on the division used by West and Green,

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policies towards homosexuality in the Soviet Union will be divided in three periods (West and Green 1997: 223).

5.1.2.1. 1917 to 1933: revolutionary aftermath

The first period sets off in 1917 with the February revolution. Homosexuality is decriminalized and society is relatively tolerant toward homosexuals. At the same time, homosexuality is officially labeled as being a sickness. Semën Karlinskij, a pioneer in the studies of homosexuality in Russia, states that the Bolsheviks had no intention to legalize homosexuality when they abrogated the tsarist criminal code in 1917. He claims that the decriminalization of sodomy in 1922 was due to negligence or oversight (Healey 2001: 3). Karlinskij’s views were criticized because they did not show complete legal, medical or social contexts in which the Bolsheviks chose to legalize sodomy between consenting adults. In this period, the Soviet regime allowed different views on the issue to coexist and develop until Stalin put a stop to it (Healey 2001: 3-4). Soviet legal and medicine experts were proud of their progressive views concerning homosexuality. In the 1930 edition of “The great Soviet encyclopedia”, medical expert Serejskij states that: “Soviet legislation does not recognize so-called crimes against morality. Our laws proceed from the principle of the protection of society and therefore countenance punishment only in those instances when juveniles and minors are the object of homosexual interest.”(West and Green 1997: 223) The formal decriminalization of homosexuality, however, did not mean one could not be prosecuted for it. Homosexual activity was often prosecuted as a form of disorderly conduct (West and Green 1997: 224).

5.1.2.2. From 1933 to 1986: the silent treatment

In 1933, the criminalization of homosexuality through the addition of article 121 to the criminal code marked the beginning of the second period. The most noticeable about this period, dating from 1933 to 1986, is the silence the regime created around the topic. Although many were prosecuted and discriminated because of this law, the Soviet government itself made only very few public statements about the change in the law. The silence around the issue of homosexuality is still to be clarified. It could have been a government effort to make homosexuality invisible in the hope that it would disappear by itself. The exact reason or reasons for this criminalization of homosexuality remains unknown, but history gave away a few indications on what might be a reasonable explanation. Nikolaj Krylenko, People’s commissar for Justice, linked homosexuality to counterrevolution. In 1936 Krylenko stated that “homosexuality was a product of the decadence of the exploiting classes who knew
no better.” (West and Green 1997: 224) Krylenko’s statement thus gives the impression that there were political reasons supporting the laws around homosexuality. David Greenberg suggests that the laws fitted within a broader legal initiative which also included ending abortion, increasing birth rates and strengthening the male domination within the family (Greenberg 1988: 441).

5.1.2.3. *From 1987 until 1993: sexual revolution*

Although it took until 1993 for homosexual activities between consenting men to become legal, Russia already went through a sexual revolution in the late eighties. After decades of suppression of everything related to sex – sexual education, literature or art – rigid government control cleared the way for a deregulated market in which sexual liberation found its culmination (Heuer 2011: 41). This was the time where homosexuality began to be publicly discussed, not only from a political, but also from a scientific and journalistic point of view. More emphasis was laid on human rights and the Russian gay community openly took more initiatives to raise awareness for their cause. Because of this increasing visibility of homosexuality, homosexuality became a popular political topic.

During the late eighties, homosexuality was given its place in art, literature and the press, as well as in popular medical literature. As Brian James Baer points out, the sudden visible existence of homosexuality caused several denunciations of Western influence and Spenglerian interpretations of Russian history, in which homosexuality, imagined in terms of effeminacy and emasculation, appeared as a symptom – and a metaphor – of the decline of post-Soviet Russia in general and of the post-Soviet male in particular. (Baer 2009: 2)

Although homosexuality got more and more visible, it was still a punishable criminal act. Besides that, numerous reports were made concerning involuntary incarceration. The practice of “punitive psychiatry” was a government weapon against opposing voices during the Soviet regime. Those who did not walk in line could be prosecuted for numerous offences. The case of Alla Konstantinova Pičerskaâ clearly demonstrates this practice. Being a self-described lesbian she had to endure continuous charges of “hooliganism” and was interrogated about her sexual orientations and political activities. She underwent involuntary psychiatric confinement for lesbianism, having been diagnosed with “sluggish schizophrenia,” a mental imbalance with few to no perceptible manifestations, save for manifestations as “psychotic behaviors”, “excessive valuation of the West” and “a
desire to be anywhere but the Soviet Union".  

This kind of treatment was deployed extensively during the Soviet period for the compulsory and punitive treatment of sexual and political dissidents. The treatment can include electroshock therapy and the use of sedative drugs. Pičerska proved to the United States Court of Appeal that “hooliganism” is a criminal charge used in Russia to arrest and detain persons for a variety of reasons, particularly political reasons” and that “many lesbians in Russia were, and continue to be, involuntarily "treated" and involuntarily confined in psychiatric institutions solely because they are lesbians.”

Comparative studies have shown that the change in sexual attitudes came to be in a very rapid manner. The sexual liberation was sped up by the free press and the commercialization of the 1980s and 1990s. When the Russian people suddenly got in contact with various forms of sexuality, it became clear that there was an obvious lack of sexual education in Russia. The contents of a 1982 teacher’s sexual education manual indicate that the level of sexual education in Russia was not up-to-date compared with the gradual liberalization of sexuality:

Homosexuality (from Greek homos – same and Latin sexus – sex) is a generalized concept which includes unnatural inclinations towards representatives of the own sex and specific actions (the so-called homosexual deeds), which arouse these inclinations. Depending on the intensity of the unnatural inclinations and peculiarities of the psyche, man can overcome it and lead a normal sexual life, but many cannot overcome it and get in sexual contact with representatives of their own sex (Hrhipkova & Kolesov 1982: 69).

We consider it is necessary to talk about the prevention of homosexuality as well, its so-called cerebral form, at the base of which in many cases lie flaws from the education of the boy, teenager, and young man (Hrhipkova & Kolesov 1982: 59).


Then again, spreading of such sexual education manuals would probably have been in vain, since the majority of the school teachers was not ready or capable to teach it to their students. Even more, not only teachers weren’t ready to talk openly about sexuality, even parents could hardly break through the barriers of the sexual taboos. Kon points out that these intergenerational taboos on sexual discourse are very strong in Russian families. In fact, according to a 1990 representative national survey, only 13% of parents have ever talked about sexual matters with their children.\textsuperscript{111} A factor which added difficulty to discussing sexuality in the late eighties was the climate of the cold war, which made discussions about sexual life very susceptible to Western fears and fantasies (Baer 2009: 20).

5.1.3. Post-Soviet, pre-Putin

This period starts in 1993 with the decriminalization of homosexuality. Homosexuality can \textit{de jure} be manifested openly and the Russian gay-scene evolves more and more toward a subculture with its own organizations and publications. As stated above, on the 27th of May 1993, homosexual acts between consenting males were legalized under president Boris El’cin. It must be noticed, however, that this reform was not the result of a sudden change of opinion in the Russian parliament. The legal reform came to be largely as a result of pressure of the Council of Europe. Neither the president nor the Russian parliament had interest in LGBT-rights legislation. The reforms were accepted in order to obtain a place in the Council of Europe.\textsuperscript{112}

Attention should also be paid to the fact that the so-called sexual revolution in Russia mainly happened in the (late) eighties, whereas Western Europe saw this phenomenon a few decades earlier, in the sixties to be more precise. Because of this later arrival, the phenomenon of the sexual revolution itself had an in-built reflective flavor (Rotkirch and Haavio-Mannila 2000: 2). The sexual revolution and a critical or ironic reflection on it took place simultaneously. Also, the later arrival could have had an influence on the structure of the phenomenon itself. The seventy years of socialism represented a way to (and through) modernity that differed from capitalist modernity. This difference had a great influence on gender and family relations. (Rotkirch and Haavio-Mannila 2000: 2) These factors have definitely had


their influence on the way gender and sexuality are not only perceived, but also studied in the West. Rotkirch and Haavio-Mannila stress the importance of the awareness of the Western academic framework from which we study these phenomena. They put forward three different interpretations of “gender” and “sexuality” in Russia, characterized by (1) equality, (2) traditionalism and (3) polarization. The first interpretation is characterized by the fact that before the sexual revolution Soviet Russia was always presented as being “ahead” of the West in the sense of being more gender equal, especially in education, employment and reproductive rights. Following the second interpretation, Russian society became more traditional during and after the mid-eighties. The authors claim this is mainly due to a lack of broader interest in feminism and gender equality in Russia. According to the last interpretation of gender and sexuality in Russia, the post-socialist gender and sexual identities have arisen also as a direct response to the new political order. (2000: 2) The rise of a new political environment and a new public sphere, as Rotkirch and Haavio-Mannila put forward, can contribute to a development of a politics of difference (2000: 2). A broad range of differences, like the ones between men and women or ethnic groups, has become important for the creation of people’s identities.

Igor Kon explains that nationalist, as well as communist groups, tried to use the sexual revolution and its consequences as a political scapegoat. He considers it to have been an attempt to deflect the people’s attention from actual pressing political issues and the government’s economic failures. In 1991, the communist party launched an anti-pornographic campaign. The main purpose of this campaign, and of others similar to it, was to incite “moral panic” among the Russian people. Another campaign was aimed at the sexual education of Russian children. The Russian Orthodox Church played an important role in spreading beliefs like the one stating that all bad things in Western life were rooted in sex education. Remarkable in this context is the choice of words of professor Dmitrij Kolesov. He proclaimed that instead of children’s “right to know,” educators should defend their “right to not know” (pravo na neznanie) (Francoeur and Noonan 2004: 896). Kolesov’s words suggest that the information children receive in sexual education is

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114 Moral panic: an intense feeling expressed in a population about an issue that appears to threaten the social order.

harmful for them. Those in favor of sexual education would therefore be “against” the well-being of children. This “logic” is not uncommon in Russian campaigning and will become a key argument for those defending the law on gay propaganda.

5.1.4. Conclusion

An historical overview on how homosexuality fits within Russian society provides an excellent opportunity to distinguish several interesting factors that influenced the way homosexuality is perceived today. It becomes clear that, throughout history, Russian society has been based on a firm patriarchal structure with strict gender roles. Before 1903, homosexuality – and other sexual offences – was considered primarily a violation of an accepted pattern and hierarchy, namely the one of a patriarchal society. A remarkable continuity can be found in the general discourse on homosexuality. Since it was considered against religious values and a symptom of an underlying pathology in Imperial Russia, and labeled as a sickness in the Soviet Union, it seems hard to be able to make a positive association with homosexuality. This negative strain of thought continued well into the nineties, as homosexuality was associated with the decline of wealth and psychological instability. Furthermore, it becomes apparent how, after Russia took an example from European legislation in the 1800’s, homosexuality became a political tool to oppose Russia to the West and divert attention from real problems in society.

5.2. The Russian Orthodox Church and conservative values

5.2.1. The Church and the Social Conception.

The importance of the above-mentioned traditional “bible based” values in Russia gives way to the assumption that the Russian Orthodox Church (ROC) has a substantial amount of influence in Russia. A better understanding of the current situation of the Russian Orthodox Church requires us to take a look at recent history.

The late 1980’s gave the Orthodox Church the possibility to establish itself again thanks to glasnost’ and perestroika. After the turbulence of the 1990’s, the Russian Orthodox Church made several steps assuring its dominant position in Russian life in the beginning of 2000. In August 2000, a new statute was adopted which granted more power to the higher regions of the Church’s hierarchy, making the Bishop’s Council the main decision making body. Another important event in the year 2000 was the official approval of the text The Bases of the Social Conception of the Russian Orthodox Church otherwise known as the Social Conception (Richters 2013: 18). In this document, the Church states its stands towards its relations with
the state as well as to numerous other social and political issues. These include public morality, culture, education and mass media. Katja Richters sees the very existence of the document as proof for the ROC’s wish to be involved in the above-mentioned spheres of post-Soviet society (2013: 18).

Richters’ work explores the fields where the Moscow Patriarchate and the Putin administration both have common interests as well as opposed opinions. The points on which both parties agree are those which involve the importance of religion in contemporary Russia and the need for Russia to become an even more important player on the international level. The fact that both Putin and the ROC are keen to stress the importance of (Orthodox) religion is unmistakably clear. In 2003, Putin advocated the introduction of optional classes on Orthodox principles in Russian secondary schools. An ideal shared by both the Kremlin and the ROC then again positively refers to the USSR. Both parties seem to regret its dissolution. The Orthodox Church claims that the separation of several states produced a rupture between peoples, families and business communities and that it was the basic reason for “bloody inter-ethnic conflicts which shook Europe” (2013: 29). Putin, addressing the Federal Assembly in 2005, referred to the collapse of the Soviet-Union as “a major geopolitical disaster of the century” which became a “genuine drama for the Russian nation”.116

Besides these subjects on which both the ROC and the Putin administration agree, other topics are often objects of discussion. The question whether Russia should be a democracy or not, for example. The Church believes that the best possible form of society would be a theocracy (Richters 2013: 24). This means that a population would not need a government or a dictator to guide them, but they would fulfill their lives to their best out of fear and devotion for their God. The Russian Orthodox Church regards the creation of a state as a consequence of a population questioning the existence of God. This would call for a more visible authority: the state. The ROC assumes that God did not approve of this form of society, but merely tolerated it. Katja Richters points out that the Orthodox Church only makes an exception for the monarchy, which it accepts as God-given (2013: 24). The ROC made its views on monarchy and its disapproving views on democracy very clear in the Social Conception. Since Putin had repeated multiple times at the Federal Assembly that he would see to it to consolidate Russia’s democracy rather than to reinstate the monarchy, it didn’t take long for the Kremlin

to publicly complain about the ROC’s lack of support for Putin’s official political course (Richters 2013: 24).

Most important in the context of the topic of homosexuality and traditional values, however, are the Church’s stances on sexuality and traditional values. The Church warns against a society in which mass media and products of mass culture become “instruments of moral corruption by praising sexual laxity, all kinds of sexual perversion and other sinful passions”. One of the Church’s priorities seems the protection of minors against sexuality. In fact, it almost seems as if the Church would rather avoid the topic of sexuality in the presence of minors at all costs. It states that “the propaganda of vice is especially harmful for the still infirm souls of children and youth”. Although the Church recognizes the need for schools and families to give children and adolescents the knowledge of sexuality and the physical human nature, it cannot support programs of sexual education. The Church deems it unacceptable to impose school programs in which premarital intercourse and “various perversions” are recognized as the norm. It is absolutely unacceptable to impose such programs upon schoolchildren.

5.2.2. Conservative groups in Russia

A direct result of the communist-era aftermath is the tendency of formerly restrained groups, such as right-winged conservatives and Orthodox fundamentalists, to fill the vacuum left after the 1980’s. The attempt of these forces to impose an ideological monopoly on today’s Russia is described by Valerij Sozaev in a 2013 Moscow-Helsinki Group report as “traditional revanchism”. The concept of “traditional revanchism”, as put forward by Sozaev, revolves on the conflicts or irreconcilable differences regarding cultural values between conservative traditionalists and liberal progressives. The conflict between these groups is demonstrated particularly in the political and religious spheres of Russian society, as debates like the ones on sexual minorities, the separation of Church and State, immigration and abortion dominate the conflict. Sozaev defines “traditional

revanchism” as “a political situation where conservative, traditionalist guardian forces not only gain visibility in the political discourse, but also become key political actors enjoying the support and patronage of the government, with their messages becoming the messages of the government.” According to Sozaev, ultra-conservative Orthodox Christianity is known for its anti-Westernism, anti-Semitism, extreme nationalism, anti-globalism, and imperialism and thus a heavily politicized version of Christianity.

In the early 1990s, a growth can be noticed in the number of extremely conservative groups in Russia. These groups, often notorious for their ultra-nationalistic views, created their identities around “Slavic Paganism” and extremely conservative versions of Orthodox Christianity and enjoy the support of the Orthodox Church. Among many other radical views they support, they are notable for their claims that “normalcy” and “naturalness” lie within the patriarchal nuclear family. Brian James Baer (2009: 22) follows Dan Healey in his view that conservative Russians are likely to have challenged the sexual geography produced by the East-West binarism, imagining instead a “tripartite of perversity.” This geography produced “a comparatively innocent Russia interpolated between a ‘civilized’ Europe and a decidedly ‘primitive’ or ‘backward’ East, which permitted and permits Russians to imagine their nation as universally, naturally, and purely heterosexual” (Baer 2009: 22).

The influence of some conservative organizations reaches to the extent that it appears more than necessary to point them out. The World Russian People’s Council (WRPC) is one of the most respectable conservative organizations in Russia. The WRPC was founded in 1993 and is currently led by Patriarch Kirill. The organization has had a consultative function at the United Nations since 2005 and counts many politically and culturally prominent figures among its members. Another Russian organization worth noticing is the Interregional Public Movement “The People’s Council.” This public movement brings together over 250 various organizations from across Russia and represents a truly powerful organization. As

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Sozaev states\textsuperscript{122}, while the WRPC develops the ideology, the People’s Council puts this ideology into real life practice. On the international stage, in addition to the WRPC, Sozaev refers to a various group of organizations defending the conservative ideology. The two with the most influence and power, however, are the “Institute for Democracy and Cooperation” and the “Association of Parents’ Committees and Communities.” These organizations do not only share the same key values, but quite often the same members as well. Together with numerous other conservative organizations, they actively interact with each other within the framework of the World Congress of Families, an international lobby organization sharing the same outspoken views on LGBT-issues. When the World Congress of Families held a summit under the name of “The Moscow Demography Summit” in 2011, it took place in a Russian state university (Russian State Social University) and had the full support of government officials.\textsuperscript{123}

It is clear that the Russian Orthodox Church in general leans towards the same ideals and values as Putin does. Although they don’t always have the same priorities, they have a relationship which is based on a shared Soviet-experience and traditional values. Stating that the ROC has an substantial influence on the decision-making of president Putin would be an exaggeration, as the ROC is clearly more submissive in this relationship (Anderson 2007: 198).

\textbf{5.2.3. Conclusion}

A short overview of both Russian history in respect to homosexuality, and the stances of the Russian Orthodox Church, provides valuable insights on the reason why a majority of the Russian people experience a negative attitude towards homosexuality. In the historical overview, it has been established that homosexuality has been associated with negativity throughout history. It has also shown the importance of the traditional patriarchal society and family. These family


values are upheld by the Russian Orthodox Church. The increasing influence of conservative forces emerging after the collapse of the Soviet Union has efficiently helped these traditional values to become widely accepted as the norm in Russian society.
6. Putin’s role in the debate

6.1. Brief history of Putin’s policy

On January 1\textsuperscript{st}, 2000, Vladimir Putin became interim-president of Russia. He succeeded Boris El’cin, who was president during the first decade after the collapse of the Soviet-Union. An emerging class of oligarchs concentrated economic power in their own hands during the 1990’s. This made them a part of the ruling elite, as they had the power to make the state serve their interests (Sakwa 2008: 880). As the Russian state was “eroding”, it stumbled into a deep social and economic crisis (Shevtsova 2005: 8).

After the chaos of the El’cin-years, change is what the Russian people looked forward to, albeit gradual change. Putin was genuinely committed to this long-awaited change, which came in the form of a modernization. This modernization was based on both Putin’s commitment to transform Russia into a modern society, comfortable with the rest of the world and with itself, and his ambitions to search a way to overcome the failings that Russia had experienced in the 1990’s (Wegren & Herspring 2010: 19). From these imposed goals three main themes emerged (2010: 20). The first one, referred to as the “remedial element,” consists of the need to overcome the perceived excesses of the El’cin era, which basically came down to the tremendous inequality between the poor masses and the extreme wealth of a small elite of oligarchs. The second is a type of developmental program in which the state would have a strong and central role to ensure the separation between politics and business. The separation of politics and business seems logical as businessmen, namely oligarchs, had their share in the economic downfall during the 1990’s, concentrating the economic power in their own hands. The third theme rising from these self-imposed goals was “political managerialism,” where the main focus lay in countering irresponsibility created by an untutored democratic process. These three themes can be summarized as a new policy in which the state would lead the people to a new democratic identity and create the feeling that this goal would not succeed if not managed by the state.

Putin states that his goal is to further develop the democratic values established in the 1993 constitution. In his annual Addresses to the Federal Assembly in 2001\textsuperscript{124}, 2002\textsuperscript{125}, 2005\textsuperscript{126}, 2006\textsuperscript{127}, and 2013\textsuperscript{128}, the president confirmed this goal

and stressed its importance. As long as democracy is not achieved, Putin has the possibility to argue that Russia needs the strong leadership of the state to make this development succeed.

Throughout the period Putin had been in power, be it as a president or as a prime minister, his goal was to transform Russia into a modern and strong society. This transformation required stability, which according to Putin could only be provided by a strong state with a central role. The dominant role of the state – and of Vladimir Putin – is legitimized by the need to transform into a modern and democratic society. This argument seems difficult to counter, as in this logic, it would take one “not to want a modern and democratic society” to criticize Putin’s and the state’s role.

6.2. Putin’s unofficial policy

6.2.1. Para-constitutionalism

Although the Russian constitution enshrines democratic values and human rights as key elements for the well-being of the Russian Federation, it can be argued that the 1993 constitution is systematically being sidelined and the spirit of constitutionalism severely undermined.

The term “para-constitutionalism” can be described best as “a style of governance that remains true to the formal institutional rules but devises various strategies based on technocratic (rather than democratic) rationality to achieve desired political goals.” (Wegren & Herspring 2010: 18). In other words, para-constitutionalism can be described as two political systems that operate in parallel. On one level, there is a constitutional state system ruled by law. In this system of politics, institutions and regulations are neatly fit into the framework of the

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constitution. On the other level, “a second para-political world exists based on informal groups, factions, operating within the framework of the inner court of the presidency.” (2010: 19). Because of these parallel systems, the constitution has lost its legitimacy. This is the conclusion of Marianna Fadeičeva, stating that because of the fact that Russia has a liberal constitution, but no dominant liberal ideology, the constitution has lost its legitimacy and the development of a new ideology is inevitable (Fadeičeva 2007: 64). According to Timur Polânnikov, the events under Vladimir Putin, which he describes as “curtailing democracy”, are indicating an evolution towards a new ideology that is not based on the 1993 constitution. On the contrary, Polânnikov states that several elements of Putin’s policy suggest a nationalistic trend that is the “antithesis of the failed ‘liberal project’” of the 1990’s (Polânnikov 2006: 59). The Russian constitution is a “liberal document enshrining fundamental human rights, the rule of law, separation of powers, federalism, and accountable governance.” The key problem, however, is that in practice, the Putin administration systematically undermines the motivating spirit of democracy, political pluralism, and judicial impartiality (Wegren & Herspring 2010: 22). Wegren and Herspring argue that the further consolidation of a vertical power structure will weaken the separation of powers as it entails the loss of independence of the Duma, the Federal Council, the judiciary and the undermining of the federal system (2010:30).

An example of how Russian authorities circumvent existing law can be found around the law “On mass media”. This law concerning press and media freedoms was adopted in 1991.129 According to this law, the freedom of expression for media, journalist’s rights, and citizen’s rights for information are guaranteed. However, although this law seems to have a strong democratic character, other laws were to be implemented restricting these same freedoms.

Putin’s recent signing of a new law seems to be just another example of para-constitutionalist behavior. On May 5th, 2014, the president signed the law “On the alteration in the Federal law “On the state-language of the Russian Federation.”” The law prohibits foul language (bran’) in films, television broadcasts, theaters and the media. Violations are dealt with through fines.130 As was the case with the law on propaganda, the law is criticized by the West and anti-Putinist Russians as being

an obstacle for the freedom of expression. The vague description of what is to be prohibited again reminds of the law on propaganda.

Because of the systematic nature in which the constitution itself is sidelined and its spirit undermined, the Russian State could be described as para-constitutionalist. The main threat of the vertical structure that allows this parallel system to exist is the loss of independence of the executive, legislative and judicial powers. This principle is enshrined in Article 10 of the Russian constitution. This key aspect, the principle of separation of powers dictates that the bodies of executive, legislative, and judicial powers must be independent at all times.

The answer to the question why Putin would prefer to lead his country through a para-constitutionalist system is obvious: it works. In a short-term period, para-constitutionalist behavior brings fast results. Putin is not the only one to vouch for the efficiency of this system; para-constitutionalism has been identified in the United States’ presidentialism in the 1980’s and has only intensified since (Sakwa 2008: 889). Although the system is counter-productive in the long run, it proves to be an efficient instrument for a pragmatic approach to politics. It is this kind of pragmatism that has been helping Putin to sustain his power.

### 6.2.2. Russia’s “special path” to democracy

The character of Putin’s leadership and the direction of his policy beg for a reasonable justification. Justification is found in Russia’s ‘special path’ in history. Putin’s administration started emphasizing Russia’s historic distinctions from the West, its “special path” in history, as an immediate reaction towards El’cin’s disastrous reforms in the 1990’s.\(^{131}\) The idea of “Russian distinctiveness” gained strength in the 1990’s and was accompanied by a parallel process in which an “image of the enemy” was revived (Dubin 2012: 37). These parallel developments during the 1990’s help explain why Putin’s political party, United Russia, then started an offensive to isolate Russian collective identity thereby stigmatizing minorities.\(^{132}\)

According to Umland, the reason why Putin has recently been emphasizing Russia’s “special path” is related to Putin’s reelection in 2012. First of all, it was obvious that the 2012 voting had been manipulated. Second, Putin officially


announced the overcoming of sociopolitical backwardness to be his aim for his next presidential term. This aim, of course, contradicted reality. The fact that Putin returned to presidency in the first place testified of a huge step back in “overcoming sociopolitical backwardness” (2012: 4). Umland notices that ever since anti-Putin protests began at the end of 2011, Putin’s supporters have “increasingly embraced notions of the Russian nation’s cultural distinctiveness, historical mission, imperial destiny, Orthodox nature, Eurasian essence, and non-Western character” (2012: 5).

The instrumental usage of the “special path” concept indicates that Putin uses it only in a pragmatic way. The concept is a tool for him to sustain his power after having lost legitimacy over it.

6.2.3. Sovereign democracy

The term ‘sovereign democracy’ is a term used by Vladimir Putin to indicate that Russia will find its own path to democracy. Although the phrase looks like an oxymoron, Putin explains that “sovereign” and “democracy” are two notions standing for two different things. “Sovereign” refers to a country’s position in the outside world, and “democracy” to a method organizing society and state (Okara 2007: 17). In other words, Russia can independently determine how it will achieve to become a democracy. In his 2005 address to the Federal Assembly, the president emphasized this approach for interpreting his policy.

Russia is a country that has chosen democracy through the will of its own people. It chose this road of its own accord and it will decide itself how best to ensure that the principles of freedom and democracy are realized here, taking into account our historic, geopolitical and other particularities and respecting all fundamental democratic norms. As a sovereign nation, Russia can and will decide for itself the timeframe and conditions for its progress along this road.133

The concept thus provides an ideological justification of a greater self-reliance and more confidence in the country’s ability to solve problems on its own terms (Sakwa 2008: 882).

The concept of sovereign democracy embeds the notion of democracy in the Russian identity, a process that Boris El’cin already started in the 1990’s. It has become clear that, just by adopting a democratic constitution, one cannot immediately change the identity of a nation. Malinova points out that the concept of

‘sovereign democracy’ leads to think that democracy has been the aim of the Russian people ever since the collapse of the Soviet Union. In this way, she states, the idea was both “directed against an interpretation of the outcome of the Cold War as a victory for the West and against those who claimed that an authoritarian regime is an inseparable part of Russian culture”.\(^{134}\) Putin’s ‘sovereign democracy’ succeeded in creating an acceptable idea of democracy. The dark side of the coin is that the concept also legitimized ‘peculiar features’ of Russian transition, for example, its authoritarian character or its tendency to marginalize oppositional opinions.\(^ {135}\) The concept of a “sovereign democracy” itself can be legitimized by the instability in the El’cin period. The peculiar features described by Malinova are being used to stabilize Russia after the chaos of the 1990’s.\(^ {136}\)

The goal of the concept lies in the same line as the concept of the “special path”, namely to sustain Putin’s power. The sovereign democracy concept establishes a solid basis for the Putin-camp to upkeep its dominant status in Russian politics (Okara 2007: 18).

### 6.2.4. Symbolic politics

The 1990’s were a time in which an identity crisis developed among Russian citizens. Because of the war in Chechnya the country had become more and more isolated from international public opinion and it became increasingly clear that it was “unmanageable” because of an incompetent leader. Adding these problems to the financial burden Russian citizens had to carry due to the 1992 economic reforms, one could understand why a large part of the population longed for a stronger symbolic reconnection with the Soviet past (Dubin 2012: 37).

A possible way to confirm a collective identity can be made by referring to a collective history (Umland 2012: 46; Dubin 2012: 44). Putin’s political tactic of using historical events or individuals to increase the feeling of belonging to the same nation and people can be called “symbolic politics”.\(^ {137}\) In other words, Putin

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uses certain events from the past as symbols for what the identity of the post-Soviet citizen should be. Doing so, he emphasizes the uniform nature of the Russian people, for example, by using terms like “our people”, “our language” and “our own culture and traditions”. The use of “symbolic politics” can be seen as yet another aspect of Putin’s pragmatic approach to politics.

6.3. Sexual minorities: excluded from collective identity

During the years Vladimir Putin came to power, an increasingly polarized society developed towards aspects in society that are “alien” (Rozov 2012). On the one hand Russian authorities put considerable efforts in creating a collective identity. The process – and the obtaining – of a collective identity could then be perceived as a sign of a stabilizing Russian society after the difficulties it had gone through the last decades. On the other hand the ideas and notions put forward in this collective identity proposed by the state are predominantly right-leaning, Orthodox, nationalist, and traditionalist – that is, very conservative. Accordingly, the things opposed to this identity, for instance, progressive-minded people, sexual minorities and other parts of society that are not conform to the identity perceived as the “norm”, are considered “alien” and often characterized as hostile towards and harmful for society.  

In this respect, the situation of homosexuals in the Russian Federation should be highlighted. Events in the legal sphere suggest that people with a same-sex sexual orientation are not considered part of a social minority, thereby ignoring deeply disturbing actions of anti-gay activists. Against the background of the organization of the 2006 Moscow Pride, the Tverskaya Inter-District Prosecutor’s Office refused to hold Mufti Talgat Tadžuddin accountable under Article 282 of Russia’s Criminal Code, which prohibits “actions aimed at the incitement of hatred or enmity, as well as abasement of dignity of a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group, if these acts have been committed in public or with the use of mass media.” Mufti Talgat Tadžuddin publicly stated that said that "[t]he Parade


should not be allowed and if they still come out into the streets, then they should be bashed."¹⁴⁰

The final decision of the Prosecutor's Office derived from the opinion of A.I. Antonov, the Chairman of the Family Sociology and Demography Department of Lomonosov Moscow State University. Antonov believes that "sexual minorities are not a social group, and also they are not a social group by gender; they belong to a deviant social group that also includes criminals, drug addicts and other persons with deviations from the socially accepted behavior."¹⁴¹

Following Antonov’s train of thoughts, the Tverskaya Inter-District Prosecutor's Office concluded that Mufti Talgat Tadžuddin’s statement was not an incitement to violence, but rather a "hyperbole" and a "concerned lawful prevention of illicit hooliganism, such as organization of mass public propaganda of homosexual ideology and way of life to minors."¹⁴²

Another example of Russian Courts denying the existence of a gay community as a social group within Russian society can be found in a 2008 case in the Tambov region. The Prosecution Department of Tambov region refused to prosecute Oleg Betin, governor of the Tambov region, under article 282 of the Russian Criminal Code after he had stated: "[t]olerance?! Like hell! Faggots should be torn apart. And their pieces should be thrown in the wind."¹⁴³ The Department did not consider Betin’s statement offensive and thus not a criminal act. In addition, the Prosecution Department stated that” homosexuals could not even have hatred incited against them because they were not members of a particular social group"¹⁴⁴

¹⁴⁴Violations of the Rights of Lesbian, Gay, Bisexual And Transgender Persons in Russia. Global Rights, ILGA-Europe, International Human Rights Clinic at Harvard Law School: Published in October 2009. Available at
Although several human rights organizations condemn the Russian authorities and courts for their discriminatory behavior\textsuperscript{145}, it must be pointed out that certain “flaws” in Russian law allow these situations and decisions to occur. If acts of “incitement to violence against social minorities” are rejected because the LGBT-community is not considered a social minority, this could be interpreted as a clear sign that either the definition of what a “social minority” is to include should be clearly defined, or that new laws should be made in order to protect the human rights of people with a same-sex orientation. Either way, the acts of “hate speech” and incitement to violence are severely condemned not only by human rights organizations, but by the European Court of Human Rights as well. In the case of Alekseyev v. Russia, the Court made its opinion on the use of hate statements unmistakably clear. In this case, the Russian authorities used hate statements as an argument for defending a ban on a Gay Pride march. The Court stated:

As regards any statements calling for violence and inciting offences against the participants in a public event, such as those by a Muslim cleric from Nizhniy Novgorod, who reportedly said that homosexuals must be stoned to death…, as well as any isolated incidents of threats of violence being put into practice, they could have adequately been dealt with through the prosecution of those responsible. However, it does not appear that the authorities in the present case reacted to the cleric’s call for violence in any other way than banning the event he condemned. By relying on such blatantly unlawful calls as grounds for the ban, the authorities effectively endorsed the intentions of persons and organizations that clearly and deliberately intended to disrupt a peaceful demonstration in breach of the law and public order.\textsuperscript{146}

Due to the fact that the Russian government seems to support increasing polarization between conservative and progressive groups in Russian society through legislation and intensified by the fact that it is the conservative majority that enjoys its full support, it becomes clear that sexual minorities are increasingly excluded from society. Because the LGBT-community is not regarded as a social minority by law, influential conservative persons now have the possibility to go as


far as to incite hatred and call for violence upon the LGBT-community. This possibility does not only cause a further polarization between the two “camps”, but also creates a framework in which the public condemnation of homosexuality is set as the norm. Changes in legislation that would make incitement to violence or hatred towards homosexuals illegal, could have a considerable effect on the situation for the LGBT-community, as it implies that the Russian Federation does not tolerate such behavior.

6.4. Conclusion

It has been argued that several tactics – para-constitutionalist behavior and aspects like “a special path”, “sovereign democracy” and “symbolic politics” – have been used in a pragmatic way in order to sustain Putin’s power. Putin’s pragmatic approach to politics pushes him to seek the support of a broad supporting base. Jakub Godzimirski describes his tactics in the following way: “Putin’s popularity is due to his ability to meet latent expectations of his compatriots and conduct policy that appeals to them”. Since the majority of the Russian people adhere to the traditional values that are supported by the Church, it seems only logical that a pragmatic president would conduct policy that meets their interests.

The implementation of a law prohibiting propaganda for homosexuality at first sight seems to have been the work of homophobe politicians, like Vitalij Milonov and Elena Mizulina. Their support of the law and the fierceness with which they defend traditional values arise the suspicion that Putin has the same view on the matter. Taking into consideration the argued pragmatism with which the president sustains his power, the odds are high that his view on homosexuality is pragmatic as well. Aware of the vast support for traditional values in political circles and the general public, chances are that Putin used the topic of homosexuality as a way to emphasize the perceived differences between Russia and the West. The discussions, in which the law on propaganda – and the repression of homosexuality in general – have resulted, have also diverted the attention from other topics, such as serious social and economic problems. The president’s recent signing of the law on cursing only seems to confirm the hypothesis that conservative legislation is the


result of Putin’s actions trying to sustain his power with the support of a conservative majority.\textsuperscript{149}

7. Conclusion

The goal of this thesis was to make a state of affairs on the current legal situation with regard to homosexuality in the Russian Federation.

In the second chapter research on the history of the law on propaganda has depicted its long road from being ridiculed in political circles in 2003, to being signed into effect by president Putin in 2013. Through analysis it has become apparent that the law on propaganda restricts several rights and freedoms that are guaranteed in the Russian constitution and several international conventions. However, the cases in which limitations can be set on these rights and freedoms are very restricted and clearly defined by the said legal instruments.

The third chapter investigates three prominent cases concerning the individual rights and freedoms of gay-activists in Russia. In two cases, Alekseev v. Russia and Fedotova v. Russia, the United Nations Human Rights Committee has ruled the restrictions on individual rights and freedoms unjustifiable. These rulings reveal that the law on propaganda is not in conformity with rights and freedoms set forth in international conventions and demonstrate that a discrepancy between Putin’s official policy and an “unofficial” policy indeed exists.

The results of the comparative study to which the legal situation concerning homosexuality was subjected are highly differentiated. Legislation in the United Kingdom, the United States, China, and Saudi Arabia varies greatly on some points, but is found to be similar at other points. In the perspective of this comparative study, Russian legislation is not considered to be on either edge of a scale reflecting tolerance towards homosexuality. This result highlights the relativity of perceived differences in legislation in the West and Russia.

In the last two chapters, the emphasis was placed on the Russian policy on homosexuality. First, an examination of the history of Russian legislation towards homosexuality proves historical developments to have been a fertile ground for conservative values to develop and be maintained. Second, it has been demonstrated that the Russian Orthodox Church contributed to conservative values being upheld. It has been argued, however, that rather than the Russian Orthodox Church as such, other conservative organizations have contributed to conservative values being accepted as the norm. In the sixth and final chapter a pattern of consistent pragmatism in Putin’s general policy was revealed. It is argued that this pragmatic
approach is aimed at sustaining power through the support of a conservative Russian majority. Analysis of several aspects of Putin’s policy has demonstrated that the law on propaganda is in conformity with Putin’s pragmatic strategy.

The law on propaganda has become a symbol of the poor legal situation concerning homosexuality in Russia. A better understanding of the reason of its existence should, however, be a source of optimism for legislation more tolerant towards homosexuality. Research on Putin’s legislation suggests that not a sudden change in legislation, but the acceptance of homosexuality throughout Russian society would expedite this development.

Finally, the importance of the work of gay-activists and scholars should be stressed. Because of their tireless efforts of spreading knowledge about homosexuality and indignation about human rights violations, there is still reason to be optimistic about future developments on the Russian legal situation concerning homosexuality.
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