

LGBTI rights in Russia: brief review

Lack of legal protection

Constitution of the Russian Federation contains a general prohibition of discrimination with an open list of grounds (established in the practice of Russian Constitutional Court) and equality clause. Testing on discrimination in Constitutional Court and ECHR is the same in its formal part: aiming, reasonable and objective grounds and proportionality between aim and means employed. The problem is the difference of conclusions because the main issue of such cases is balancing of interests, which is underdeveloped in the continental legal family, especially in Russia. In conjunction with political factor that makes any claim to the internal remedies obviously ineffective.

Lack of legal protection: ignorance

Art. 5.62 Administration Violations Code - responsibility for discrimination and Art. 136 Criminal Code – discrimination (by using of his official position and authority) – a few cases, very poor practice, basically on the issue of ethnic discrimination.

Sexual orientation is not mentioned as a separate ground and therefore restrictions of rights on this ground do not constitute discrimination from the judicial point of view. A striking example is the lack of mention of the discriminatory aspects of violent hate crimes and the failure to criminalize incitement of hatred towards LGBT people on the basis of non-recognition of the LGBT as social group.

Lack of legal protection: invisibility

T-people has the right to legal gender reassignment by providing the medical certificate about biological sex change. Many years Russian authorities can't adopt the legal form for such certificate and therefore doctors don't know how to confirm "irreversible sex changing", which is necessary to legal changes. So the only way is starting a legal procedure in the court. There are no issues about gender neutral toilets or health insurance, covering gender related operations in the agenda.

Intersex people are totally invisible and considered as suffering and requiring treatment. There are no any statistical research, the same as well organized public community.

“Gay propaganda” law

- prohibiting a public discussion of “non-traditional sexual relationships”
- targeting both individuals and media organizations
- imposing a fine for public discussion on homosexual relationships, calling such speech “propaganda” that is harmful to minors
- Aim: protection of vulnerable minors from the dangerous information



A resident of Kazan D.Isakov was brought to administrative responsibility for manifestation on the street with a placard "Hate is immoral, homosexuality is normal"

“Gay propaganda” law effect

- creating a widespread chilling effect on LGBTI-related speech, end of discourse about gay rights
- defining LGBT Russians as enemies of the state
- rising in homophobic assaults on LGBT community and considered as unspoken and implicit license to attack LGBT with virtual impunity

Hate speech

Hateful rhetoric about LGBT people runs unchecked on state-sponsored media, including a memorable observation by popular commentator Dmitry Kiselyov that LGBT people should not be allowed to donate blood, and that “their hearts, in case of a car accident, should be buried in the ground or burned as unsuitable for the continuation of life.»

Hate speech against LGBT people are not prosecuted because of denial of extremist character against them, in comparison with other groups.

Hate speech

F.e. famous antigay rhetoric of Ramil Ibragimov

*"Some right-minded Afghan kid f*****g shot 50 f*****ts at a gay club in Orlando (USA)," Ibragimov wrote, using an expletive and an obscene pejorative for gay men. "Another 53 are in the hospital. It's a shame they didn't croak. We really hope that they all kick the bucket."*

prosecuted as “justification of terrorism” and not “incitement to hatred against social group”

Manifestation and association banning

- Alekseyev vs Russia: Russian district court justifying the decision to ban gay pride manifestations in Moscow for safety concerns. The new reasoning: LGBT events ban is based solely on the possibility that their message will reach minors.
- Second case: In November 2009, activists tried to register in Moscow "movement for marriage equality" to fight for the legalization of same-sex marriages in Russia. Moscow Division Ministry of Justice refused to register the founders of the organization. Gagarin district court in Moscow, and later the Moscow City Court supports the decision arguing that creation of the organization would result in a violation of the established family values.

Strategic litigation: goals

- To abolish gay-propaganda law
- To adopt an effective legal protection of hate motivated violence and special attention to SOGI ground
- To bring to an end of any legal and social discrimination against LGBT
- To create a form of social recognition of same-sex relationships

Strategic litigation impediments: social aspects

1. Very intolerant society, especially in regions, what cause 2 problems:
 - Search for non-anonymous victim to design a case
 - Danger of public and media coverage, outing and prosecution by private agents and radical extremists
2. Low level of legal and advocacy coordination of Russian LGBT NGOs
3. Multiculturalism and religious aspects

Strategic litigation impediments: legal aspects

- Lack of any analysis as judicial policy. By using general and vague formulations such as "propaganda", "social equivalence", etc. judges and legislator exempt themselves of any motivation of the decision and striking the balance of interests, which could be challenged further.
- A new legislation that allows not execute the decisions of international bodies such as ECHR.
- Procedural irrevocability of decisions the Constitutional Court, which is declared ban on LGBT discussion with minors as a constitutional one.

Strategic litigation: possible solutions

- monitoring of all cases of discrimination of LGBT as searching for possible victims
- proving the motive of hatred towards persons with non-traditional sexual orientation as an aggravating circumstance
- using of cases that have egregious level of open homophobic motivation
- collecting the clone-cases demonstrating the structural human rights violation (assembly rights etc.)
- using case-law of ECHR which confirm a necessity of legal recognition of cohabitation of persons of same-sex as a family life