



AN APPROACH TO THE HISTORY OF SEXUAL MINORITY DISCRIMINATION IN RUSSIA

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I. INTRODUCTION

Nowadays more and more European countries issue laws that provide a wide range of rights to homosexuals. The time of discriminatory legal regulations, concerned the representatives of sexual minorities, seems to be passed away in Europe and some other nations. Nevertheless this process is not a worldwide one at all. Some politicians and legislators around the Globe are not eager to make such an awkward move, as they may think it is. Anyway global problems are not the subject of this study. It focuses on one country and its regulations of gay and lesbian people rights. I shall try to analyze some discriminatory legal regulations, concerned the representatives of sexual minorities, that were applying in different historical periods of past and present times of Russian Federation.

A famous Russian journalist Vladimir Pozner said in an interview, that the attitude towards gay people is an accurate indicating device that displays the level of tolerance and liberal rights in the particular society¹. Well, then he assumed that this does not make Russia a great land of freedom and democracy. Unfortunately, nowadays discriminatory legal regulations, concerned the representatives of sexual minorities, still exist in Russia. In spite of the fact, that some European countries, such as Spain, Great Britain, France, Netherlands and others, continue to grant a complete range of human rights to the greatest part of their nations, including a wide circle of minorities, the Russian legislation moves in this direction extremely slowly and reluctantly. On the other hand, it is quite obvious, that there are no any historical presuppositions to such stagnation or there are a few of them as you will see ahead.

¹ From a web-site: <http://gay.ru/news/rainbow/2007/06/16-10188.htm>

II. ANCIENT AND MEDIEVAL TIMES

Up to the present moment there have not been found any evidences which would prove that homosexual relationships were condemned by the law or the society in ancient Russia. On the contrary, the historians found some written proofs that ancestors of modern Russians were rather tolerant to the representatives of sexual minorities². For example, famous Russian historian of nineteenth century S. M. Soloviev wrote: 'Nowhere, neither West nor East, people never felt so calm about this mean and perverted sin of sodomy as they did in Russia' (Soloviev 1897: 152).

In some medieval monastery's charters it is marked, that so-called buggery is punished by a repentance, abstention, strict fast, many prays for a period from 1 up to 7 years. In especially 'heavy cases' sodomites could be excommunicated. A monk, that committed any sin with a woman, was punished in the precisely same way. Meanwhile in Europe homosexuals were castrated, burnt on fires, thrown to the river with a bag on their heads, unchurched first, of course (Aldrich 2006).

In 1551 Russian tsar Ivan the Terrible called *The Stoglav Sobor* (The Hundred Chapter Council) where among other issues, he discussed homosexual matter with clergy. Ivan the Terrible asked to prohibit buggery and assign a certain punishment³. Due to the word of Tsar the 33d chapter of *The Hundred Chapter Code* provided that anyone caught in buggery would be punished with penance for up to 7 years, and those who did not repent of their so-called sin were forbidden to step in a church (Chistyakov 1984).

It is also known a fact of another legislative initiative, directed against homosexuals, that was provided by reverend priest Maxim the Greek. Approximately in the middle of the sixteenth century he wrote '*A Word on Those Insane Who Is Killed by a Miserable Sin of Sodom Never to Step in Eden*'⁴, where he urges to pronounce an eternal anathema against sodomites and to burn them on fires. However his initiative did not find a response neither among clergy, nor among laity. Obviously, at that time in Russia the attitude to homosexuality was extremely tolerant.

Foreign guest visitors also documentary prove to be true the facts of such tolerance. An English poet George Turbeville marked in his '*Poems describing the Places and Manners of the Country and People of Russia*' (Turbeville 1999) that homosexuality resided to Russian ruling class as well as to commoners and was not restricted⁵. The same evidences

² Eg: Klien 2002. Kohn 2005. Levin 1989.

³ 'Tsar's Question No. 29: ...God is waiting for our confession and denial of the evil, we should especially deny adultery, masturbation and buggery. Otherwise what did He bring down the Flood for, saving only Noah? Not for the sin's sake. What did He burn Sodom and Gomorra for, saving only pious Lot? Not for the sin of depravity... It's better to prohibit adultery, masturbation and buggery. So confirm this strictly'. (Chistyakov 1984: appendix 4).

⁴ "As Christians have the God's precise and horrible instructions, they ought to avoid such a miserable obscenity, which provokes God's wrath very much, and burn on fires and anathematize those, who do this obscenity and do not think that it's a crime in spite of the fact that this loathsome act incites the Almighty's wrath on all the Christians as if they are accursed". (Maxim the Greek 1910).

⁵ See also: Lawrence 1993.

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can be found in the travelling notes of the ambassador of Holy Sacred Roman Empire Siegmund von Herberstein (Herberstein 1988), who was living in Moscow in the second quarters of the sixteenth century. Some other representatives of foreign states which have visited Russia at that time also agree with them.

Anyway, according to different writing sources and legislative acts mentioned above, homosexuality had never received a greater condemnation – even in morals of clergymen – than adultery or masturbation. It considered to be another sin among all the others and due to the tolerance of the Russians was not strictly restricted.

Such situation remained valid up to the government of Peter the Great. Prior to his legal acts came to force homosexuality was either ignored, or punished by light penalties within ‘corporate legal proceedings’.

III. EARLY MODERN AGE AND MODERN TIMES

For the first time in Russia Peter the Great enters the concept of homosexuality in the judicial practice. Peter adopts the buggery punishment from the Dutch and Scandinavian army regulations together with all the other punishments. In his *Statutes* of 1706 it is specified, that both a man and another man, who’ve been practicing sexual relationships between each other, should be burnt on a fire. 10 years later Peter softened the punishment that, apparently, was seldom used. From then on buggers were chastised⁶. However, historians believe that this rule concerned only militaries and was not applied to the other people (Preobrazhensky 1997). There have not been found any documentary evidences of application of these statutes.

Peter’s statutes punishing voluntary homosexual relationships were canceled by the *Instructions of Catherine II* (Gogolevsky and Kovalev 2000: 37). Probably, there was no need for such punishments, or skilful gay-lobby successfully worked in the Catherine’s administrative machinery. Besides, Catherine was keen on Denis Diderot’s ideas, who was saying that “nothing that exists can be unnatural or perverted”⁷. Nevertheless, most likely at this particular time harmful seeds of homophobia penetrated to the Russian ground from Europe and they gave the first real offspring in 1832. *The Criminal Code*, made on a German sample, then inured.

The Criminal Code of Russian Empire of 1832 included the paragraph 995, which punished anal sexual contact between men by deprivation of all rights and property and exile to Siberia for a period from 4 up to 5 years. If the accused was a Christian, he also should be cursed by the order of his confessor (Chistyakov 1984). The following paragraph

⁶ “Article 165. If a human lies with an animal or a mindless creature, this human should be cruelly chastised. Article 166. If anyone depraves a young lad, or if a man lies with a man, they must be punished as mentioned in the previous article. If it was done by force, those men must be killed or sent to galley forever.” (Preobrazhensky 1997).

⁷ Lever 1985: 247. Also: ‘Deni Didrot said, that if there’s no a natural vessel around and it is necessary to chose between masturbation and same-sex relationships, the least is preferred’ (Kohn 2006:202). See also: ‘In some Didrot’s texts such as “The Monk”... desire, that represents the pure sexuality and consequently sexual knowledge or the knowledge itself, is a same-sex desire’ (Kosofsky Sedgwick 2002: 80).

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provided punishments for violent actions of homosexual character: 10–12 years of exile to Siberia was determined for such actions.

Russian legislators adopted German practice while making The Criminal Code of the Russian Empire. They copied German sample almost word by word. There are no evidences, that it was actually necessary to include buggery punishments in the Russian Criminal Code at that time. Moreover, difficulties to apply the law appeared. As the Russian courts demanded evidences of anal sexual contact between men, all other homosexual actions did not fall under the paragraph 995; besides the definition of *corpus delicti* itself was not such a simple issue. Thus, the *Criminal Code of Russian Empire* punished exclusively those men who were practicing anal sex with other men. According to the Brokgaus and Ephron Encyclopaedia Russian courts never accused anybody of homosexuality, but of anal sex practice only (Brokgaus and Ephron 1897). Therefore it was necessary to prove the fulfillment of the aforesaid actions and adduce material and testimonial evidences.

Famous Russian liberal lawyer V. D. Nabokov (father of the world known Russian writer) struggled for the repeal of this law. He considered paragraph 995 of the *Criminal Code* to be a perfect occasion for blackmail and extortion (Nabokov 1902). Anyway the act was seldom applied because of difficulties with the providing of evidences. However any offers to exclude this passage from the *Criminal Code* did not meet understanding in the circles of legislators and lawyers. Consequently the paragraph 995 moved to the brand-new *Punishment Code* of 1903, but the punishment was changed a lot. In the new edition of the *Criminal Code* anal sex between men was punished by three months of imprisonment (Kohn 2003).

At the same time Russia turned out to be at a critical moment of its history. In the beginning of twentieth century one revolution follows after another. The legislation reacts to the changes extremely slowly. The *Punishment Code* of 1903 had not come into force. The period of 1903 - 1917 turned out to be one of the most propitious for realization of human rights in Russia: a lot of different political and public parties appeared, plenty of free newspapers and journals were issued. The censure was cancelled, that provided to the gay and lesbian writers more freedom to express themselves.

IV. SOVIET PERIOD AND NOWADAYS

The *bolsheviks*, who came to authority in 1917, were fighting against any sexuality, including homosexuality as well. Nevertheless, at first all old discriminatory legal regulations, concerned the representatives of sexual minorities, lost their force, and in the *RSFSR*⁸ *Criminal Codes* of 1922 and 1926 homosexuality was not mentioned. Obviously the new authority did not observe any problem about this phenomenon, considering, that it will be gone together with bourgeois, which the *bolsheviks* regarded as morally rotten and intended to exterminate it. The discrimination was kept in the legislation of sister nations only: Georgia, Azerbaijan, Turkmenistan and Uzbekistan.

⁸ Russian Socialistic Federative Soviet Republic.

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This also was the time of freedom for gays and lesbians. But it also was the time of war and the beginning of new life construction. A new life for a new human being to live that live. The government of the USSR tended to control every part of that new life, including sexual relationships.

7 March 1934 a law was issued again providing prosecution for so called buggery. This law as clause 121 was included in the new *Criminal Code of RSFSR* and also in criminal codes of all republics of the Union.

The item 1 of clause 121 provided imprisonment for a period up to 5 years as a punishment for 'sexual relations of a man with a man (buggery)' (The Criminal Code of RSFSR). The item 2 of clause 121 punished for the same actions accomplished with application of violence, dependent situation or concerning the minor, for a period up to 8 years of imprisonment (Ibid). This legal rule existed up to the fall of the USSR and cancellation of its *Criminal Code* in 1993. Democratic government has given to the people of Russian Federation their private life back.

The researcher of homosexuality I. Kohn cites data, which testifies that under the clause 121 in the period from 1934 till 1989 about 1000 men per one year had been condemned:

"In the late 1980s the amounts of condemned began to decrease. According to the information of the Ministry of Justice of Russian Federation, in 1989 under clause 121 538 men were sentenced, in 1990 - 497, in 1991 - 462, in the first six months of 1992 - 227 men. According to the information received from the Ministry of Internal Affairs, by the moment of the repeal of clause 121.1 on 27 May 1993 73 men, condemned exclusively for the voluntary sexual relationships with adult men, were kept in prisons, and 192 men served their sentences under this and several other clauses" (Kohn 2005: 354-355).

Besides Soviet authorities used this clause to victimize any objectionable to them political figures, scientists and cultural workers. The accusations in homosexuality and prosecutions were used to blackmail them by the agents of KGB and the Ministry of Internal Affairs.

On 27 May 1993 the law on modification of the *Criminal Code of RSFSR* was issued, which cancelled clause 121.1. Therefore homosexuality was officially decriminalized in Russia.

The *Criminal Code of Russian Federation* was enacted in 1997. It does not criminalize voluntary homosexual relationships of adult men or women. Nevertheless, article 132 highlights homosexual violent actions among other sexual violent actions. It is marked in the article, that 'buggery, lesbianism and other actions of sexual character with application of violence ... are punished by imprisoning for the period from three up to six years' (The Russian Federation Criminal Code). It remains unclear if it was actually necessary to specify, that the actions of sexual character can be also buggery and lesbianism. In spite of the fact that 'female homosexuality does not take the same historical position with the male one in the legal and medical discourses' (Jagose 2008: 22), Russian legislators tried to 'play fair game'. The term 'lesbianism' was put into Russian legislative practice for the first time

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that seems to be a rather awkward move. From then on female homosexual relationships are the subject of The Russian Federation Criminal Code in some way.

At the same time, up to 1999 in Russia psychiatrists used the old soviet *Reference Book of Illnesses* that defined homosexuality as a dangerous pathology. The Book provided both appropriate technique of diagnostics and treatment of this 'illness'. Since 1 January 1999 homosexuality has been excluded from the list of mental diseases, its treatment and diagnostics are officially ceased, the Russian psychiatrists passed to classification of illnesses accepted by the *World Health Organization (ICD-10)*. However in the same 1999 *Russian Ministry of Health* issued a clinical manual *Models of Diagnostics and Treatment of Mental and Behavioural Illnesses*, approved by the *Order of the Minister of Health of Russian Federation № 311*. The section F65 of the *Manual (Disorders of sexual preference)* is opened with the description of criteria of sexual norm, which, according to the *Order*, consists in heterosexuality. And 'a disorder of sexual preference means any deviation from the norm in sexual behaviour, irrespective of its displays and intensity' (*Models of Diagnostics and Treatment of Mental and Behavioural Illnesses*). Thus, homosexuality is legally considered to be a deviation instead of a norm variation. Nevertheless, the experts who have prepared the document do not offer any ways of returning of the 'abnormal' man in the frameworks of mental heterosexual norm.

Such situation can not promote the proper solutions concerned with the realization of civil rights to the representatives of sexual minorities. Today it is definitely possible to tell one thing - human rights are guaranteed to the Russian homosexuals by the Constitution of Russian Federation, as well as to all the citizens of the country. An infringement of the human rights is sued:

"Any discrimination, that is infringement of the rights, freedom or lawful interests of human and citizen depending on his sex, race, nationality, ... belonging to public associations or any social groups, is punished" (The Constitution of Russian Federation).

The civil rights are provided only partially. The legislative initiative of different provincial deputies about an opportunity for gays and lesbians to enter into a social partnership does not find any support among state authorities. At present official marriage of unisex partners is prohibited. Projects of appropriate laws do not even reach the *State Duma*. With a much greater pleasure Chamber of Deputies undertakes to restore prosecution for homosexuality, however such initiatives lose common voting as well.

V. CONCLUSION

So, it is necessary to carry out a few basic conclusions.

First, discriminatory legal regulations, concerned the representatives of sexual minorities, is the legislative rule introduced from the outside, but the engendered in the bosom of native legislative institutes. Adoption of such laws is a direct consequence of deep integration of

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the Russian society in all-European community in seventeenth–nineteenth centuries. But then Russia ‘lost the touch’ with Europe during a long period of communism constructing.

Secondly, during its whole history the legal practice of application of discriminatory legal regulations, concerned the representatives of sexual minorities, met a huge amount of obstacles – from difficulties of *corpus delicti* definition up to an opportunity of application of such norms for illegal actions, such as blackmail and extortion.

Thirdly, the Soviet punishment system frequently used legal regulations, concerned the representatives of sexual minorities, with the purposes of political pressure and intimidation of its opponents who were actually not homosexuals. That contradicts the sense of criminal laws application and is a crime itself against human rights and freedom. So, discriminatory legal regulations, concerned the representatives of sexual minorities, comprises potential danger of infringement of human rights in general.

Fourthly, the today’s legal base of Russian Federation does not yet corresponds to the international practice that excludes discriminatory legal regulations, concerned the representatives of sexual minorities, from the legal acts and state laws. However in the *Constitution of Russian Federation* the base for redressing the injustice is incorporated.

I believe, that there is a plenty of work ahead on providing the representatives of sexual minorities with their rights in Russia. And the work should be done on the mind of people at first. There is no more tolerance left and no sense of freedom appeared. I think that first people have to learn more about the differences and common things of other people around. And then the legislative basis will follow the will of people it serves to.

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