



**HETERONORMATIVITY OF THE RUSSIAN LEGAL DISCOURSE:  
The Silencing, Lack, and Absence of Homosexual Subjects in Law and Policies<sup>1</sup>**

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**Abstract:**

Russia has not yet decided which one of the existing ways it follows: Is it going to integrate into the ‘civilised’ international community or to introduce its own peculiar mode of organising the life of the people? On the one hand, the authorities headed for integration, insisting on cancellation of visa regime with European Union and entering into WTO. On the other hand, as far as these processes entail a sort of commitment to the ‘Eurocentric’ legal and political order, a kind of resistance to it occurred, as well. The decisions of *the Court of Human Rights* are contested, the Russian legal system itself contains norms incompatible with democracy (such as appointment of the heads of republics of the federation), the state discussions on feminism, homosexuality, and religion may be regarded as quite ‘barbarous’ nowadays. It seems that there are lots of obstacles on this way of integration. Considering the issue discussed in the article (discourse about homosexuality), an obstacle may be found in heteronormativity who provokes a strong drive of governmentality which regulates the law, politics and the subjects of discourse themselves. The study uncovers the heteronormative character of the Russian law.

**Keywords:**

Homosexuality, Rights, Heteronormativity, Discourse-Analysis, Russia

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<sup>1</sup> The article represents a part of different studies conducted in 2008-2010 (Master’s research in the International Institute for Sociology of Law, including). Some results were published in Kondakov 2008 and 2010.

## I.- INTRODUCTION

Recently the prime minister of Russian Federation Vladimir Putin has responded a couple of questions asked by the US TV-superstar Larry King. It was a friendly-like conversation about international problems and different issues in Russian and US politics. There were no surprises popping up during the interview, Putin just replied in his usual manner: affirmatively and a bit offensively; while Larry King was just reading the questions without reacting to Putin's answers and going into depth or any details. Basically, the interview was a reiteration of Putin's best known views on democracy, Russian 'Muppet Show' presidency, and rhetorical peace in the world.

One of the questions concerned gay and lesbian policy in Russia so long as Larry King thought it existed. Putin expressed his usual position on the matter, connecting homosexual issue with demographic problems:

*"There is a rather acute demographic problem in Russia, as in the rest of Europe. We are making serious efforts to improve the situation, and we are having success. I think we have the best indicators in Europe in terms of the rate of improvement. For the first time in the last 10 to 15 years, we are seeing a sustainable trend of rising births, and the country's population has even increased somewhat this year.*

*As for same-sex marriages, they do not produce offspring, as you know. So we are fairly tolerant toward sexual minorities, however we think that the state should promote reproduction, support mothers and children, and look after their health."*

There is none of the usual Putin's lie in this text. It's not that he does actually believe in what he says; the thing is that he in a way creates the reality he is talking about and thinks himself that what he has created is true. Certainly, there is no ground in connecting demography with LGBT-rights. Having rights to express ourselves and live 'an ordinary life' (the normalised one in same-sex marriages, for example), gays and lesbians would hardly continue to commit suicide or drive out from the country, contributing into demographical situation badly. On the contrary, enjoying our lives, we could create families with children and work for the sake of the state, to put it in simple words. But Putin's rhetoric operates in a different logical realm where a bad demographic situation is indeed connected with homosexuality. It is the realm of heteronormativity.

Putin is subjected to heteronormative discourse. His rhetoric is limited by its borders, within which there exist 'natural' order of heterosexist things. In this order, homosexuality is undoubtedly connected with demographic problems through its disassociation with threat to the family – one of the most powerful forces of the heteronormative order. Family – or, to be exact, its reproduction function – is one of the pillars of heteronormativity which Putin guarantees to protect. Being homosexuals,

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<sup>2</sup> *Transcript of Vladimir Putin's interview with CNN's Larry King* (2010) is available from: <http://en.rian.ru/interview/20101202/161586625.html> [Accessed on 3 Dec. 2010].

gays and lesbians are not heteronormative subjects and, therefore, are dangerous to the order of things and its basic value – heterosexual reproduction. The heteronormative order exists while we are being alienated from it, creating the borders of the normative discourse. Hence, getting inside the order will mean its destruction. Putin's word is here to protect the 'heteronormal' realm.

Putin is not the only contributor to the heteronormative discourse of 'the Russian traditional values'. He is rather a mere product of the discourse's governmentality dispersed in the society and maintained by its different agents. This analysis will not cover the whole set of discursive practices that form heteronormativity. I shall try to show its single facet: the legal rhetoric of heteronormative discourse (let's call it a state's 'narrative'). The following text will be dedicated to the Russian law and state policies that feed heteronormative order. A close look should be taken at the position of rhetoric of tolerance, mentioned by Putin in his reply to Larry King. I argue that this particular rhetoric identifies the place of homosexuality when it is brought inside heteronormative discourse. Being outside the discourse, homosexuality still finds itself inside heteronormativity, as well, in the silence, ignorance, and disgust.

## **II.- THE IMPORTANCE OF BEING EARNEST**

In modernity, the law embraces significant areas of people's lives, substituting religious morality of the Medieval Ages. Even when there is no respect for the law, neither there is a point to say that the law does not matter. The very existence of a certain legal norm may determine – indirectly or straightforwardly – the social actions that the norm considers. Or vice versa, the norm may be seen as a reflection of a certain attitude towards its subject which was spread in the society or in certain circles of it when the norm was adopted. Moreover, legal discourse may be regarded as a great indicator of the order that is being imposed on a society to discipline and control it. The discourse then manifests itself in state public policies. Law and politics are closely coupled. I believe that these things are regulatory mechanisms that should be examined together: legal norms as rather stable discursive practices of the matter under investigation, and state policies as its contemporary appearance in the public discourse.

Therefore, the law is an immense source of knowledge for a researcher. Analysis of legal norms may lead a research towards the necessary interpretations of different discursive practices. This work approaches the Russian law and interprets creation of heteronormativity within its provisions. The analysis is focused on domestic law and policy that regards homosexuality. It is crucial to analyse domestic law to sort out local meanings of the existent order. Another concern that will be addressed is legal understanding of marriage in Russia so long as marriage traditions and emphasising of reproductive function of the family are important christian sexual ideas that construct heteronormativity.

The theoretical framework of the work is limited by the principles of discourse analysis. The method is helpful in the study because it goes on to identify discursive practices, its products, and regulatory features. In its already classical in social science sense 'discourse' is understood in Michel Foucault's interpretation. He shifted his attention from language to discourse as a system of representation (Hall 2001: 72). "[S]ince all social practices entail meaning, and meanings shape and influence what we do - our conduct - all practices have a discursive aspect" (Hall 1992: 291 cited in Hall 2001: 72).

However, the first obstacle one finds, trying to analyse Russian legal discourse on homosexuality, is the understanding that there is almost nothing to analyse. Gays and lesbians are simply absent from the policies and from the law constituted by an imaginary without inappropriate elements. The authorities' narrative places LGBT into a domain of unspeakable. The question is how one can bring them out to the sun.

According to Foucault, the 'unsaid' constitutes a part of the said. I would distinguish three elements of it which will help to interpret the statements articulated in the legal discourse and left in the silence of it. Firstly, it is possible to find *meanings* of a statement between the lines, somewhere in the domain of unsaid. These are the hidden meanings of texts. They may be meant by the author or occur in the process of interpretations. In any case they influence the social life and organise the subjects of discourses. The hidden meanings are helpful in interpretation of laws that one way or another treat homosexual issue.

Secondly, unspoken assumptions form the spoken matters. Foucault calls it '*a lack*', "which, instead of being inside seems to be correlative with [enunciative] field and to play a role in the determination of its very existence" (Foucault 1972 [1969]: 124). The role of the 'lack' is to be "a characteristic of an enunciative regularity" (ibid), hence, it determines existence of an idea by its alienation from the others and reference to the ideas that are left unsaid. The said ideas need the ideas of something other to themselves in order to constitute themselves by referring to them. Therefore, they also organise the subjects of discourse: the accepted and the alienated ones. The lack may be found in legal norms which form and shape heteronormative order.

The third element of the silence, from my point of view, is *unspeakable* ideas: they are the matters that are relevant to the statement but left unsaid due to hegemonic conception of what is right and what is wrong. Therefore, this permits a topic to be said or dooms it to be kept in silence. There are things that may not be pronounced despite the fact that they have existed in the discourse before or the knowledge about them has came from the outside. They organise the silent subject of the discourse by forcing it into domain of the censored and unspeakable things. The unspeakable ideas exist in the Russian law and state policies as far as the following analysis shows.

Foucault introduced a variety of concepts that constitute and govern discourses. One of the most important discoveries is the relations of powers that were described by Foucault and his successors. Foucaultian conception of power draws attention to his other idea which binds it to state power: It is governmentality that is defined in terms of functions of power (Deleuze 2006: 72). Foucault believed that governmentality does not depend on the state and is dispersed in different sites of social life. Wendy Brown introduced a corrective to Foucault's account of governmentality. She argues that a "full account of governmentality, then, would attend not only to the production, organization, and mobilization of subjects by a variety of powers but also to the problem of legitimizing these operations by the singularly accountable object in the field of political power: the state" (Brown 2006: 83).

The state has a number of institutionalised discourses that promote the ideas maintained by its government. Legal discourse (articulated in law) and political discourse (articulated in policies) are one of the most important ones. They form the reality not only by disciplinary or encouraging provisions (after all, legal norms may not work and policies may fail to reach the aims), but by contributing into construction of a special sort of subjectivity governed by the powerful discourse of the state. They may form the other discourses, being the point of reference for many of them.

Foucaultian discourse analysis uncovers subjectivities of the discourses under research. It tries "to show how institutions, practices and even individual human subject itself can be understood as produced through the workings of a set of discourses" (Potter & Wetherell 1994: 47). This is the task that "consists of not — of no longer — treating discourses as groups of signs (signifying elements referring to contents or representations) but as practices that systematically form the objects of which they speak" (Foucault 1972 [1969]: 54). The production of this object who becomes an acting subject of discourse is another concern of the following analysis.

At the same time, the norms are governed by the discourse that they create, too. In his answer to Larry King, Putin was governed by heteronormative discourse he had been maintaining and in turn contributed in the discourse's reestablishment. Just alike, laws and policies reproduce the heteronormative order, shaping it once again in the very process of the reproduction. This process may be articulated or silenced - it does not matter so long as discourse analysis uncovers the behind-text meanings, as well. Hence, it is of no importance of being earnest: the hidden and the silenced statements will come out.

### **III.- BEHIND AND BEYOND**

#### **1.- Between the Lines**

Up to the present moment, there have not been found any evidences which would prove homophobia of the Russian ancient law: It seems that homosexual relationships

were not condemned by the law or the society. There are no any written proofs of those legal acts that would prohibit homosexual activities in the beginning of the Russian state. On the contrary, the historians prove to be true that the Slavs enjoyed different sorts of homosexual relations between each other (Klien 2002; Kon 2005). Some prohibitions were enacted for monks in the Ivan the Terrible epoch and for the marines in the epoch of Peter the Great.

For the first time in Russia homosexuals became outlaws only in 1832, when the criminal code, made on the German sample, was inured. *The Criminal Code of Russian Empire* (1832) included 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 (Chistyakov 1984). Lawyers of the nineteenth century considered this article rather poorly thought-out (Etkind 2002: 83). Yet the act remained valid until the cancellation of *the Criminal Code* by the revolutionary government in 1917. The new communist authorities did not tend to criminalise homosexuality. The criminal codes of 1922 and 1926 did not provide any punishments for homosexual actions.

Though a bit later, in 1934, homosexuality was criminalised again. *The RSFSR Criminal Code* provided imprisonment for a period up to 5 years as the punishment for voluntary “sexual relations of a man with a man (buggery)”<sup>3</sup> (clause 154a). Official position of the state was expressed by M. Gorky who interpreted homosexuality as one of the features of the capitalist decay. He thought homosexual relations to be incompatible with a Soviet man’s behaviour, starting to contribute in construction of a new kind of homosexual subjectivity defined through its alienation from the Soviet norms of morality.

*“There are not dozens, but hundreds of facts that prove the destructive and corruptive influence of fascism on the youth of Europe. It is disgusting to name the facts; moreover, the memory itself resists downloading the dirt which is being diligently and richly produced by bourgeoisie. To name a few, I would only point out that, in the country where proletariat **manly** and successfully manages, the perverse for the youth homosexuality is taken as a crime and is punishable; while in a ‘civilised’ country of great philosophers, scientists, and musicians, it acts free and unpunished. Even a sarcastic proverb exists by now: ‘Exterminate homosexuals, then fascism will disappear’”* (Gorky 1934, my emphasis, my translation).

According to Gorky, homosexuality is alien to the very culture and status of Russia: It is perverse and alien to the proletariat’s manliness. The initiated by Gorky discourse is an attempt to inscribe the censure of homosexuality in the Soviet sexual discourse which is not heteronormative, but ‘sovietnormative’ (see, for example, studies of Geiger 1968, Stites 1978, Rotkirch 2000). However, the new Russian heteronormative discourse is partly routed in it.

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<sup>3</sup> Legal norms are translated by the author.

The Soviet ‘buggers’ officially lost their legal subjectivity in 1993, when the *Criminal Code* amendments were issued and cancelled the clause 121.1 (a more recent descendant of clause 154a). Homosexuality, then, became decriminalised. This fact is interpreted by some researchers as a matter of conformism of the new Russian government to the requirements of European partners (Gessen 1994: 23). As far as Russia headed for integration with the international ‘civilised’ community, it had to eliminate discriminatory legal norms such as clause 121.1. But so long as Russian authorities never really wanted to take a leave of understanding of homosexuality as something wrong and perverse, the subjectivity returned to the legal discourse again in 1997 when the new *Criminal Code* was enacted.

Voluntary homosexual relations were not mentioned in *the Code*. Nevertheless, buggers appeared there again accompanied by a new homosexual subject (for the Russian legal discourse at least), which is a lesbian. Clause 132 punishes homosexual assault. It is specified in the clause that “buggery, lesbianism and other actions of sexual character with application of violence ... are punished by imprisoning for a period from three up to six years” (clause 132.1). In spite of the fact that female homosexuality does not take equal historical position with the male one in the legal and medical discourses (Jagose 2008: 22), Russian legislators tried to ‘play fair game’. Homosexual subjects were included into the law in both – male and female – kinds.

What lies beneath the text of this norm and hides between its lines is homophobia. The norm is constituted by the hidden attitude towards ‘normality’. Moreover, it categorically names the Other who is being alienated. The law assumes the existence of a commonly accepted sexuality which, it goes without saying, has heterosexual character, and it stigmatises homosexuality which is other to it, specific: a sexuality that needs to be alienated from the norm to define the normative sexuality.

Homosexuality is articulated in another Russian legal norm. The norm subjects homosexuality to the medical discourse of insaneness. It is necessary to say first, that Russia adopted classification of illnesses accepted by the World Health Organization (ICD-10) in 1999. This event forced Russian psychiatrists to exclude homosexuality from the list of mental diseases, and stop its treatment and diagnostics. Before this moment, they used the old soviet *Reference Book of Illnesses* that defined homosexuality as a pathology. *The Book* provided both appropriate technique of diagnostics and treatment of this ‘illness’.

But the psychiatrists were not ready to give up so easily. 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 Minister of Health of Russian Federation № 311. Section F65 of the Manual (*Disorders of Sexual Preference*) starts with the description of sexual norm, which, according to it, consists in heterosexuality. And “a disorder of sexual preference means any deviation from the

norm in sexual behaviour, irrespective of its displays and intensity". However, the manual does not provide any advice on treatment of the disorder.

These two kinds of contemporary legal norms seem to work in a very close liaison with each other. In spite of the fact that they formally use quite a confident and light rhetoric (well, in comparison with 'buggers shall be burnt on fire'), they produce the powerful silence which approves stigmatisation of homosexual subject, and they contribute to the two most important sub-discourses on sexuality: Criminal and medical ones. They confirm two basic discriminatory features: Homosexuals are mentally diseased and are subjects to criminal treatment. Homophobia is typed in the Russian law.

Legally, homosexuality is treated as something different to the existent norm - it is deviant in comparison with heterosexuality in the medical law; and it is specific, alienated from heterosexuality in the criminal law. The subject of this discourse is abnormal, being non-heterosexual. This is a deviant and insane subject. But the subject is not treated differently as compared with the 'normal' one. How is the subject supposed to be taken within the law? What are actual provisions of dealing with the subject? The prescribed cure is silent toleration.

Tolerance with silence in legal and political fields turns to be an appropriate technique to deal with the difference. This is what goes *without saying*. Sometimes laws do not need to talk in order to say. Silence - produced by the law to be applied to homosexual subjects - is supposed to govern the 'deviant' bodies. Therefore, we find ourselves both: subjects - as deviants; and non-subjects - so long as we are not treated differently. In other words, we find ourselves the invisible subjects of the heteronormative world imagined by the Russian law.

## **2.- An Approach to Deconstruction of Family**

The criminalisation of homosexuality was conditioned by the Soviet state's governance of the proletariat private sphere. Its decriminalisation was possible through the working of governments of 'civilised international community'. The subjection of homosexuality to the criminal and medical discourses is caused by the governmentality of heteronormativity. The heteronormativity itself is a complex idea of the order subordinated to a strict set of norms about arrangement of private life in accordance with 'everlasting' values: family, monogamy, and reproduction (see, Warner 1991; Lovaas & Jenkins 2006).

Family law may be considered as the expressive dimension of heteronormativity (or its precise measure) in the state's discourse. The family law which recognises a wide amount of different sorts of families may be regarded as less heteronormative one. On the contrary, the family law which is hostile to other than heterosexual monogamous families with three children is quite heteronormative law. It goes without saying that Russian family law does not consider gays and lesbians to be the subjects of its

regulations. Neither does it provide any treatment for other types of family except registered unions of two people of different biological sexes. It is written for an imaginary ideal of a Eurocentric heterosexual family based on religious dogmas.

*The Family Code of Russian Federation* (1995) doesn't straightforwardly exclude gays and lesbians from those who enjoy matrimony rights. There is no stated prohibition for homosexuals to register marital relationships (clause 14 lists all the prohibited grounds and one's sexuality isn't there). Nonetheless, the Code specifies that "in order to register a marriage mutual and voluntary consent of a man and a woman, who are entering into a marriage, is required" (clause 12.1). Hence, homosexuals are excluded from the marriage on default, 'self-evidently' so long as a same-sex couple cannot consist of a man and a woman at once.

Marriage in Russia is a quite developed item of civil law. Legislators do not provide legal recognition of common spouses or religious marriages. It is a civil act registered in special state bodies. Neither of coupledoms is recognised unless it is registered. In the legislators' imaginary an ideal family is a social unit where "the relations are built upon mutual love and respect" (clause 1.1). The regulation of family relationships is realised according to "principles of voluntary conjugality between a man and a woman, equality of rights of spouses in the family" (clause 1.3). It is the family that is supposed to establish traditional gendered roles and perpetuate reproduction.

*The Family Code* supports 'maternity', though it does not force to produce loads of children. The idea of importance of reproduction is articulated by courts and policies. One of the relevant decisions was taken by *the Constitutional Court of Russian Federation* in 2006. The court considered a claim of two gay men to be registered as a married couple (N 496-O, 2006). In the case a claimant was trying to present clause 12.1 of *the Family Code* as anti-constitutional. But *the Court* stated that due to reproductive function of family and national traditions the law is right in denying the opportunity to register a same-sex marriage:

*"the Constitution of Russian Federation and international legal norms act on the premise that one of the purposes of the family is delivery and upbringing of children.*

*Considering this and the national traditions of family that regard it as a biological union of a man and a woman, the Family Code of Russian Federation states that the regulation of family relations is to be fulfilled - particularly - in accordance with the principles of voluntariness of a marriage union of a man and a woman, priority of upbringing of children in family, care for their wealth and development"* (N 496-O 2006: 3).

This decision interprets the *Code* to include the missing element of heteronormativity - the promotion of tireless reproduction. *The Family Code* normalises only the idealised family where a man, a woman and their children enjoy the equality of rights, share responsibilities and duties. Any Others are governed by legal silence. As Brown points it, "gender detached from a heterosexual matrix — not only gay but

transgendered and transsexual bodies – immediately convenes the discourse of tolerance, confirming that it is the heterosexual family, the family-economy relation, and the sexual division of labor that secure a gender regime in which male superordination is achieved” (2006: 75). It is also true for the Russian family law. Heteronormativity is expressively and explicitly settled in the family regulations. Families that are alien to the norm are not legally recognised and sentenced to tolerance by silence without a chance for redemption.

### 3.- Hear the Silence

Silence is the most commonly used ‘rhetoric’ of Russian law that could be applied to protect rights and liberties of gays and lesbians. Through the workings of heteronormativity the argumentation of tolerance by silence is casted. But silencing produces intolerance at the same time. In legal circumstances this situation may be tailored not only to the laws relevant to problems of gays and lesbians, but never applied to protect us and our rights. It is also reproduced through interpretations and arbitrary rule of judges in the courts when they try to make us believe that we do not exist.

The Russian legal system is maintained and ruled by *the Constitution of Russian Federation*. Human rights and liberties are recognised by the Constitution: “A human, his rights and liberties are the most appreciated values. Recognition, observance, and protection of the rights and liberties of a human and a citizen are duties of the state” (clause 2). *The Constitution* draws attention to different sorts of identities that need protection from violation of their rights: “The state guarantees equality of human and citizen rights and liberties regardless of sex, race, ethnicity, language, origin, property status and official position, abode, religion, membership in social associations and other circumstances. Any forms of restraints of rights of citizens on the basis of social, racial, ethnical, linguistic, or religious belonging are prohibited” (clause 19.2).

Sexual orientation is not listed among the prohibited grounds of discrimination in *the Constitution of Russia*. But it was claimed by some (an example will follow) that it is formally there as long as LGBT-people fall under blurred descriptions of ‘social belonging’ and ‘other circumstances’. *The Constitution* is designed to include an unlimitedly wide amount of interpretations of these notions to identify groups of those who are entitled to enjoy human rights. Another concern is that there is no evidently clear reference to an individual as a subject to antidiscrimination regulations in the text. Court decisions and other legal norms are supposed to specify the conditions and the groups of rights holders.

There are a number of laws that concern human rights and liberties. The majority of them are concentrated in *the Criminal Code of Russian Federation* to punish discrimination. Clause 136.1 states: “Discrimination, that is violation of the rights, liberties or lawful interests of human and citizen on the ground of his sex, race,

ethnicity, language, origin, property status and official position, abode, religion, beliefs, membership in social associations or any social groups, shall be punished...”. Another clause (63) of the Code lists circumstances aggravating punishment. Item “e” names hate crime which is a “commission of a crime by reason of national, racial, or religious hatred or enmity, or by reason of hatred or enmity towards any social group”. There are more examples, but they all are written in a similar manner.

As it is noticeable, there is always the notion of social group whose rights are protected. Our legal subjectivity would probably benefit if LGBT were recognised as a social group, because, first, the recognition would equal us with other socially accepted groups; second, the term ‘social group’ is rather wide to include different gay and lesbian identities. In the post-modernity an identity claim may not be the best way to achieve legal recognition as far as the law needs to relativise definitive interpretations (Cossman 1994: 31-32). ‘Social group’ could appear to be a kind of post-modern identity that is blurred, fluid, and unclear enough to include a wide amount of claimants. However, it has a significant flaw: Not any identity can be perceived by the law as a social group; the term needs legal interpretation to be applied to gays and lesbians. However, judges keep silence.

An attempt to interpret LGBT-community in terms of ‘social group’ recognised in the law took place in 2007 when gay activists tried to sue a leader of Russian Muslim community, who had recently called for bashing gays and lesbians. The activists used clause 282 of *the Criminal Code* which prohibits “actions aimed at the incitement of national, racial, or religious enmity, abasement of human dignity, and propaganda of exceptionality, superiority, or inferiority of individuals by reason of their attitude to religion, national, racial affiliation, language, origin and belonging to any social group, if these acts have been committed in public or with the use of mass media”.

The appeal to condemn the mufti was not accepted by the Russian prosecutors, so it didn’t even reach the court. In the official answer a representative of the public prosecutor’s office remarked that clause 282 could not be applied due to the fact that gays and lesbians were not regarded as representatives of a social group. According to the conclusion made by a professor of the Moscow University on the prosecutors’ request, “sexual minorities are not representatives of a social group, they are a part of a deviant group together with criminals, drug addicts and other people who have different deviations from the acceptable behaviour” (Kochetkov (Petrov) and Kirichenko 2009: 344, my translation).

Deviance comes up from the silence as a predictable feature of the discourse when one considers Foucaultian elaborations on ‘a lack’ discussed above. The regulative function of the lack that discursively denies rights to LGBT is enabled to constitute the norm. Norm cannot exist without its alienated other – the deviance. Then, homosexuality discursively becomes such a deviance in order to establish the norm and confirm it within legal discourse. What homosexuality gets in return is its total othering not only

from heterosexuality, but from the law that grants rights to the ‘normality’, as well. In this regard, social group is a notion available only to the ‘normal’, heteronormative identities.

Considering this, the law is blind and deaf to LGBT claims. Homosexuality enters the space beyond the law: it constitutes the normative subject of the legal text, but remains silenced within the ‘enunciative’ field of it. The governmentality of legal discourse keeps homosexual subjects out of law: no naming, no blaming, no granting the rights. Moreover, it goes on to shape the political discourse expressed not only in the state policies for promotion of family reproduction and in Putin’s ungrounded comments on demography, but it also casts silence in the policies relevant to gay and lesbian issues, but totally denied from us.

#### 4.- Policy of Silence

In the transitional process from authoritarian regime of the USSR to democracy, Russia was experiencing a complex and yet rather poorly thought-out period when freedom seemed to be almost undoubtedly conquered. The Russians in the 1990s suffered from destruction of social care system and permanent financial and political crises. On the other hand, we thought to get freedom of speech and association, declared human rights and started to express different points of view and experience different sorts of identities. Gays and lesbians started to fight for inclusion in the society and construct a community with its own sources of information and common public places.

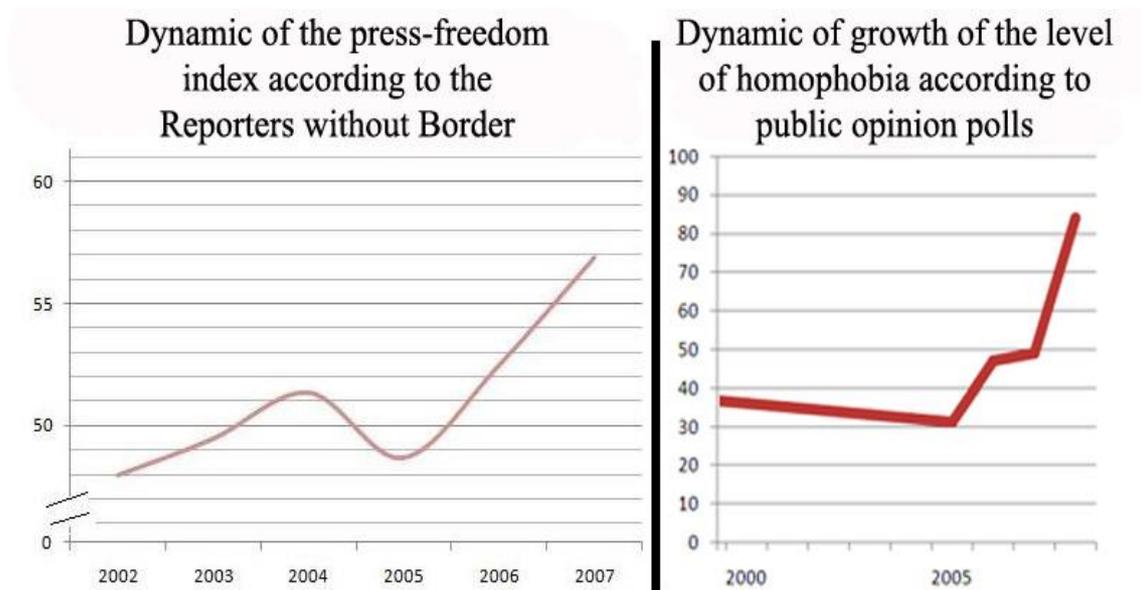


Figure 1. The Comparison of press-freedom index<sup>4</sup> with hate rate

<sup>4</sup> Press-freedom index may be consulted on: <http://en.rsf.org/>

In this particular moment the attitude towards homosexuals took a positive turn. Consider surveys of public opinion from two big centres of quantitative research in Russia (*The All-Russian Center of Public Opinion Research (CPOR)* and *The Analytical Center of Yuri Levada (Levada-Center)*). CPOR conducted a public opinion poll to find out people's attitude towards homosexuals in 1990, 2002, 2005, 2006 and 2007.<sup>5</sup> In 2008 *Levada-Center* conducted another public opinion poll about what people think to be morally acceptable.<sup>6</sup> It is curious that the rate of hatred towards gays and lesbians decreased from 1990 to 2005, and then got to increase starting from 2005. These numbers correspond to another negative tendency of the new century Russia: decreasing of liberty of speech from 2005 (fig. 1).

Hatred is usually associated with ignorance about the Other. Having control over the freedom of speech, the state regulates the presentation of information in the public discourse. So long as the attitude of the state towards homosexuality is constructed by heteronormativity, the public discourse on the matter convenes the mechanism that deals with homosexuality: the silent tolerance. As the examples of this situation, it is possible to analyse two relevant state policies: the Ombudsman's activities and the programme '*Tolerance*' introduced by the Saint-Petersburg government.

The Russian Ombudsman's reports are presented every year and describe situation with human rights in Russia. In the early summer 2010 the official introduced his regular report to the public (*The Ombudsman's Report 2009, 2010*). The report carefully covered a wide range of issues concerning claims to respect for human rights from different groups of Russian citizens: Prisoners, military servants, immigrants. Discursively the report contributes to the established practice of political talk in Russia: There are things one can say something about (especially prisons, armed forces and international friendship) and there are things that must be kept in silence, mantled and censored (poverty, social inequality, bad medical treatment, arbitrary government). It goes without saying that the situation around gay and lesbian rights is relevant to the latter group.

The silence of the Ombudsman completely deprives gay men and lesbians from human rights. It is the ombudsman's official position that is expressed in his report. And it turns out that, according to it, homosexuals are not subjects to human rights

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<sup>5</sup> The diagram is based on CPOR's reports available from the official web-site:

[http://wciom.ru/zh/print\\_q.php?s\\_id=298&q\\_id=23643&date=15.05.2002](http://wciom.ru/zh/print_q.php?s_id=298&q_id=23643&date=15.05.2002);  
[http://wciom.ru/zh/print\\_q.php?s\\_id=169&q\\_id=14075&date=30.01.2005](http://wciom.ru/zh/print_q.php?s_id=169&q_id=14075&date=30.01.2005);  
[http://wciom.ru/zh/print\\_q.php?s\\_id=407&q\\_id=32704&date=21.06.2005](http://wciom.ru/zh/print_q.php?s_id=407&q_id=32704&date=21.06.2005);  
[http://wciom.ru/zh/print\\_q.php?s\\_id=407&q\\_id=32718&date=21.06.2005](http://wciom.ru/zh/print_q.php?s_id=407&q_id=32718&date=21.06.2005);  
[http://wciom.ru/zh/print\\_q.php?s\\_id=110&q\\_id=9517&date=07.04.2006](http://wciom.ru/zh/print_q.php?s_id=110&q_id=9517&date=07.04.2006);  
[http://wciom.ru/zh/print\\_q.php?s\\_id=153&q\\_id=12841&date=04.02.2007](http://wciom.ru/zh/print_q.php?s_id=153&q_id=12841&date=04.02.2007);  
[http://wciom.ru/zh/print\\_q.php?s\\_id=154&q\\_id=12873&date=04.02.2007](http://wciom.ru/zh/print_q.php?s_id=154&q_id=12873&date=04.02.2007) [All re-accessed on 10 Dec. 2010].

<sup>6</sup> The report on this issue was available on the Levada-Center's web-page in 2009 (8 Dec.): <http://www.levada.ru/press/2007122708.html>. Unfortunately it is not available any more. Though, the results of this poll are stored on my personal computer and available from Media.Vox project page, as well: <http://subscribe.ru/archive/media.vox/200803/06172652.html> [Accessed 10 Dec. 2010].

norms. The claims of LGBT are ignored in the report, our problems are not regarded by the ombudsman as questions of his jurisdiction.

It is curious that the ombudsman and his representatives in the regions of the country have met with gay-activists and supported their claims. However, it has never found any respond in their reports or any other official publications. One may find this information on the web-sites of gay NGOs, but not on the ombudsman's web-page. Isn't it the expression of the 'policy of silence': A situation when officials filter their public discourse and avoid topics that are supposed to be kept unspoken? This is a simple and straightforward regulatory action of the realm of unspeakable ideas.

In ombudsman's official response<sup>7</sup> to my own inquiry, it is said that "there are very few complaints per year from sexual minorities" that reach his office. Therefore, "it seems unreasonable to cover this topic in every annual report". According to the letter, the complaints usually regard bans of 'gay-parades' (the Prides) and refusal to provide premises to the LGBT-organisations. From the point of view of the domestic and international laws, these pleas fall into the domain of human rights; hence, they also fall under jurisdiction of the ombudsman. As little as there was, this could hardly be regarded as an excuse to exclude the issues from the ombudsman's official papers. It rather testifies against trust towards ombudsman's work, than about real situation around gay and lesbian problems in Russia.

Another issue relevant to the LGBT questions was introduced by the government of Saint-Petersburg in 2006. The authorities proudly named it *The Tolerance* and aimed to "consolidation of tolerant environment on the ground of Russian multiethnic society's values, principles of human rights and liberties" in 2006-2010. It was elaborated in accordance with UNESCO's Declaration of Principles of Tolerance and other international and local norms. The term of the programme is to be extended for another five years.

The programme regards a wide range of issues concerning national, religious, political groups and their rights. The programme consists of a plan of events and legal initiatives that fight against xenophobia and promote tolerance. Gay activists pointed to the lack of discussion of LGBT problems in the programme.<sup>8</sup> In the end of 2009 a LGBT-organisation sent a letter to the authors of the programme with a request to include a number of events directed against homophobia and to promotion of friendly attitude towards LGBT. In the reply that was made public by the activists authorities refused to satisfy the request, especially by the money from the city budget. The government recognised the existence of 'everyday homophobia', but considered it to be less important today than issues regarded by *The Tolerance*. Moreover, in the reply it is

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<sup>7</sup> The response is published on the research official web-page: <https://sites.google.com/site/russianlgbtresearch/hot-news-1/perepiskasupolnomocennym>

<sup>8</sup> The exchange of letters between the authorities and the activists is described in '*The Culture Committee of Saint-Petersburg Recognised Existence of Homophobia in the City*' (2010) available from: <http://www.spb-pride.ru/?p=news&id=3> [Accessed on 22 Apr. 2010].

warned that any events that concern gays and lesbians may be perceived by the society as ‘propaganda of homosexuality’.

We did not become subjects of *The Tolerance*, but we clearly were tolerated! On one significant condition, though: LGBT can be ‘awarded’ with tolerance so long as silence surrounds homosexual issues. Homosexuals are not mentioned in the programme, but the authorities do not deny that homophobia exists. They just are not keen on doing something against it. This tolerance is produced by the official documents. “Tolerance of this sort can easily coexist with ignorance and can certainly coexist with contempt” (Phillips 1999a: 28). The domain of unspeakable ideas dooms certain topics to be censured. What this situation produces is unawareness, a lack of interest in knowing more about a subject because the subject is silenced to death. On the one hand, the authorities recognise that not everything is fine (they know about the existence of the subject and conditions of her being). On the other, they leave LGBT to deal with this on our own (they do not want to know more).

Both types of documents explore such a sort of toleration that “suggests an act of generosity from those who have the power to interfere but refrain from doing so” (Phillips 1999b: 128) by being officially silent. The authorities refuse to make us subjects to the programmes financed from the taxpayers’ pockets. They promote unspeakability of homosexuality and topics around it especially in their official papers. The knowledge about homosexuality should not get the papers’ discursive status and mantle any meaning it can get through it. However, they must know that homosexuality is there, behind the lines, beyond the borders of the unspeakable surrounded by toleration. “The tolerance... generates a peculiarly intolerant kind of tolerance” (ibid: 142).

#### IV.- CONCLUSION

Russian legal discourse on homosexuality is maintained and governed by heteronormativity. It is heteronormativity that produces silencing of the gay and lesbian issues in the Russian law. Heterosexuality is subjected to *the Family Code* that represents the idealised heteronormative sexual order. On the contrary, homosexuality is subjected to *the Criminal Code* that introduces and governs sexual ‘deviations’. The legal norms that could be applied to protect rights and liberties of gay men and lesbians are only applicable to the normative subjects and denied from all the others. The norm is constructed by the alienated other.

The law maintains continuity of a discourse so long as the law is resistant to significant changes without political reconstruction of its principles. At the same time, the law constitutes the normative political discourse on the matter that it treats. Hence, Russian state policies reflect the discourse adjusted in a way by the law, but with some contemporary corrections. Heteronormativity of law censures homosexual problematic

in the policies, keeps it out from the enunciative field of political discourse. Tolerance with silence becomes an appropriate mechanism of dealing with homosexuality: in this case, homosexuality is not by any means condemned, but neither is it recognised.

Some forces from the outside may break the continuity of the domestic legal discursive practices. However, the domestic discourse may be more powerful than the foreign one. In European Union international institutions has taken the course for recognition of LGBT-rights. Russia has taken the course for recognition of itself in Europe. Hence, Russia needs to conform to European legal arrangements again as it happened in the 1990s. The chance to prove Russia's loyalty was given this autumn. *The European Court of Human Rights* produced a decision on Alekseyev vs. Russia.<sup>9</sup> Alekseyev is a Russian gay activist who has been trying to organise a Pride in Moscow since 2005. All his vain attempts were banned. Now the illegal ban was interpreted by *the Court of Human Rights* as a violation of a number of articles of *the Declaration of Human Rights*.

Since publication of the decision the heteronormative discourse has intensified. The Chief Justice of *the Constitutional Court of Russian Federation* Zorkin has published his article 'The Limit of Pliability' (2010) where he notices that

*“enthusiasm’ of contemporary European lawyers about protection of rights and liberties of persons with non-traditional sexual orientation has taken grotesque forms. Sometimes, the grotesque may take on a new life in a tragedy just like in Serbia when rejection of gay-parade has resulted in mass riots in this traditionally orthodox country.*

*It is easy to make extremist and fascist groups to be responsible for the riots. But what if it was a real rebellion of the majority of the citizens of a precise country who protested against activities of a minority? I mean the activities that break cultural, moral, and religious codes. To this regard, how is it possible to evaluate the recent decision of the European Court about illegality of the ban of gay-parades in Moscow? Will it result in repetition of the Serbian scenario in Russia?”<sup>10</sup>*

The justice believes that in certain cases interpretations of local traditions by himself may prevail over decisions of *the European Court of Human Rights*. This strategy is supposed to keep the existent heteronormative order of Russian law untouched and deny the rights of gay men and lesbians on the ground of our non-traditional appearance. The voice of heteronormative governmentality speaks by the lips of justice Zorkin. His speech is governed by it and the speech itself reinforces the heteronormativity within the discourse.

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<sup>9</sup> The decision is not final. The parties have a three month term to refer to *the Grand Chamber of the Court* and ask for reconsideration of the decision. The text may be found on *the Court's* web-page: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=875961&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> [Accessed on 3 Dec. 2010].

<sup>10</sup> See Internet version of the article (Zorkin 2010) on the newspaper's official web-page available from: <http://www.rg.ru/2010/10/29/zorkin.html> [Accessed on 1 Nov. 2010].

Putin's interview speaks in the same manner, as it was mentioned in the introduction. Moreover, president Medvedev is subjected to the heteronormative discourse, as well. In his *Address to the Federal Assembly of the Russian Federation*<sup>11</sup> Medvedev (2010) stressed the importance of giving birth to the third child in a family. In the *Address* he supported heteronormative family in general. But he never mentioned anything about other families that exist in Russia. It is taken for granted that heterosexual conjugality is the only way of organising private coupledoms in the world.

Hence, it would be too optimistic to say that heteronormative discourse – which leads to discrimination, homophobia and silencing of homosexual issues – will lose its strength in the nearest future. Even interference of *the European Court of Human Rights* can hardly change the situation of the Russian gay men and lesbians. Heteronormativity is too powerful and it has great support from the law and from the officials who cast tolerance by silence in regard to homosexual subjects. Next year it may result in a conflict, just like justice Zorkin predicts, though he is mistaken in its reasons, because he – and the like – is the reason.

Law should take a new turn towards inclusion of different sorts of people in the Russian society. Heteronormativity is unable to provide a relevant discursive ground for this inclusion, because the world is full of different experiences – it may not be reduced to a single model of behaviour. Tolerance is unable to articulate the claim for inclusion, but rhetoric of resistance may provoke conflicts. Hence, those in power are responsible for the peaceful solution of the problem: it is the state discourse and the state law that exclude homosexuality from the normativity. Inclusion should start by a step by step normalisation of homosexual subject in legal and political discourses. There must not be people who still suffer from the oppression and disgust expressed by their own country to themselves.

## V.- REFERENCES

### 1.- Bibliography

Brown, W. (2006) *Regulating Aversion: Tolerance in the Age of Identity and Empire*. Princeton: Princeton University Press.

Chistyakov, O. I. (1984) *Russian Legislation of X - XX centuries. Vol. 2, 5*. Moscow: Uridicheskaya Literatura.

Cossmann, B. (1994) "Family Inside/Out". *University of Toronto Law Journal*, 44(1): 1-39.

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<sup>11</sup> President's speeches are carefully stored on his official web-page. *The Address* is available from: <http://eng.kremlin.ru/transcripts/1384> [Accessed on 3 Dec. 2010].

Deleuze, G. (2006) *Foucault*. Minneapolis: University of Minnesota Press.

Etkind, A. (2002) "Secret Code for the Lost Sex: Literary Discourse about Homosexuality from Rosanov to Nabokov", in Zdravomyslova, E. & Temkina, A. (eds.) *In the Search for Sexuality: A Reader*. Saint-Petersburg: Dmitry Bulanin, 79-95.

Foucault, M. (1972 [1969]) *Archaeology of Knowledge*. London: Routledge.

Geiger, K. (1968) *The Family in Soviet Russia*. Cambridge: Harvard University Press.

Gessen, M. (1994) *The Rights of Lesbians and Gay Men in the Russian Federation: an International Gay and Lesbian Human Rights Commission report by Masha Gessen*. San Francisco: The International Gay and Lesbian Human Rights Commission.

Hall, S. (2001) "Foucault: Power, Knowledge and Discourse", in Wetherell M., Taylor S. and Yates, S. J. (eds.) *Discourse Theory and Practice: A Reader*. London: Sage, 72-81.

Jagose, A. (2008) *Queer Theory. An Introduction*. Moscow: Canon.

Klien, L. S. (2002) *Another Side of the Moon: Unusual Love of Famous People*. Moscow: Pholio-Prees.

Kon, I. S. (2005) *Faces and masks of Same-Sex Love*. Moscow: Iris-Press.

Kondakov, A. (2008) "An Approach to the History of Sexual Minority Discrimination in Russia". *Sortuz*, 2(2): 21-29.

\_\_\_\_\_ (2010) *The Invisible People: Gay and Lesbian Subjects of Discourses in Russia*. Saarbrücken: VDM Verlag.

Lovaas, K. & Jenkins, M. (eds.) (2006) *Sexualities and Communication in Everyday Life: A Reader*. London: Sage.

Phillips, A. (1999a) *Which Equalities Matter?* Oxford: Polity Press.

\_\_\_\_\_ (1999b) "The Politicisation of Difference: Does This Make for a More Intolerant Society", in Horton, J. & Mendus, S. (eds.) *Toleration, Identity and Difference*. New York: Macmillan, 126-145.

Potter, J. & Wetherell, M. (1994) "Analyzing Discourse", in Bryman A. & Burgess, R. G. (eds.) *Analyzing Qualitative Data*. London: Routledge, 47-66.

Rotkirch, A. (2000) *The Man Question. Loves and Lives in Late 20<sup>th</sup> Century Russia*. Helsinki: University of Helsinki.

Stites, R. (1978) *The Women's Liberation Movement in Russia: Feminism, Nihilism and Bolshevism, 1860-1930*. Princeton: Princeton University Press.

Warner, M. (1991) "Introduction: Fear of a Queer Planet". *Social Text*, 9(4): 3-17.

## 2.- Laws & Cases Cited

The Constitution of Russian Federation (1993).

The Criminal Code of Russian Socialistic Federative Soviet Republic (1934).

The Criminal Code of Russian Federation (1997).

Decision of the Constitutional Court of Russian Federation made on 16 November 2006 N 496-O.

The Family Code of Russian Federation (1995).

Judgment 21 October 2010. Case of Alekseyev v. Russia (*Applications nos. 4916/07, 25924/08 and 14599/09*). Strasbourg.

"Section F65. Disorders of Sexual Preference", in *Models of Diagnostics and Treatment of Mental and Behavioural Illnesses*. Minister of Health Order N 311, 1999.

## 3.- Internet Sources

*Culture Committee of Saint-Petersburg Recognised Existence of Homophobia in the City* (2010). Saint-Petersburg: Equality. Available from: <http://www.spb-pride.ru/?p=news&id=3> [Accessed on 22 Apr. 2010].

Gorky, M. (1934) "Proletarian Humanism". *Pravda*, 140. Available from: [http://home.mts-nn.ru/~gorky/TEXTS/OCHST/PRIM/prlh\\_pr.htm](http://home.mts-nn.ru/~gorky/TEXTS/OCHST/PRIM/prlh_pr.htm) [Accessed on 3 Dec. 2010]

Kochetkov (Petrov), I. & Kirichenko, K. (2009) "Situation with Sexual Minorities" in Mescheryakov, D. (ed.) *Human Rights in Russian Federation: 2008 Events Report*. Moscow: Moscow Helsinki Group, 289-374. Available from: <http://www.mhg.ru/publications/D4D5F55> [Accessed on 25 May 2010].

Medvedev, D. A. (2010) *Address to the Federal Assembly of the Russian Federation*. Available from: <http://eng.kremlin.ru/transcripts/1384> [Accessed on 3 Dec. 2010].

*The Ombudsman's Report 2009* (2010). Moscow: Ombudsman Office. Available from:

[http://ombudsmanrf.ru/index.php?option=com\\_content&view=article&id=718:-2009-&catid=6:2009-11-02-08-41-14&Itemid=29](http://ombudsmanrf.ru/index.php?option=com_content&view=article&id=718:-2009-&catid=6:2009-11-02-08-41-14&Itemid=29) [Accessed on 1 Jun. 2010].

*The Tolerance. Programme for Harmonisation of Interethnic and Intercultural Relations Prevention of Xenophobia, Improvement of Tolerance in Saint-Petersburg in 2006-2010* (2006). Saint-Petersburg Government. Available from:

[http://gov.spb.ru/gov/admin/otrasl/c\\_foreign/toler/zapiska](http://gov.spb.ru/gov/admin/otrasl/c_foreign/toler/zapiska) [Accessed on 10 Jul. 2009].

*Transcript of Vladimir Putin's interview with CNN's Larry King* (2010). Available from: <http://en.rian.ru/interview/20101202/161586625.html> [Accessed on 3 Dec. 2010].

Zorkin, V. (2010) "The Limit of Pliability". *Rossiyskaya Gazeta*, 5325(246). Available from: <http://www.rg.ru/2010/10/29/zorkin.html> [Accessed on 1 Nov. 2010].